

Thursday TIP

Outside Business Activities

Thank you to everyone who has already provided feedback on last Friday's 'what did you learn?' inquiry. Please keep your feedback coming. After reviewing the responses to date I wanted to pick one observation and build on that to cover some extra nuances that you may not be aware of. We will do a compilation email later in the process for anything that doesn't lend itself to this kind of coverage, but for this week I'd like to thank Jared Lester for giving us our Thursday Tip topic of the week.

“One item that I found particularly helpful was from the 2020 Annual Compliance Meeting training regarding OBAs:

If involvement in an OBA ends, you are required to deactivate the outside activity in Compliance Questionnaires within 5 business days to maintain an accurate Form U4.

I feel this is one that can easily be forgotten until the Annual Attestations are completed.”

Great point. We frequently remind everyone to submit an OBA prior to starting a new venture but haven't really addressed updates or deactivations. Per above reference, it is equally important to take care of OBA maintenance in a timely manner. I have attached the compliance guide chapter on the topic. You will note Business is not included in the chapter title because disclosure requirements apply to volunteer activities as well as revenue generating activities. For instance, Ron Cutsinger had to submit an OBA indicating he was running for office; this week he had to update the OBA to indicate he is now a County Commissioner (Congrats!)

There is a distinction between a DBA and an OBA. Your DBA is considered your Marketing Name and was submitted under that category when you onboarded. If you change your brand you will update the Marketing Name. If you do more than marketing or payroll under your DBA, like sell insurance, it is an OBA and should also be part of your OBA certification/review process.

Another step that may be overlooked is updating your ADV in conjunction with any OBA changes. Outside Business Activity submissions/updates are completely separate from your form ADV so you should review your ADV anytime you add or remove an OBA (or professional designation) to make sure there is no disconnect in the data.

Also, it is important to be mindful of the fact that Securities America periodically reruns the Lexus Nexis review that you went through for onboarding. If this report detects an unreported OBA you may be subject to fines.

The disclosure of Outside Activities is required of ALL licensed associates. Whether you are a financial professional or a licensed administrative assistant, if you have any uncertainty as to whether something needs to be disclosed, it probably does. We are always happy to review with you to make sure you are compliant.

Outside Activities

A. Background

FINRA Rule 3270 states: *“No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Passive investments and activities subject to the requirements of FINRA Rule 3280 shall be exempted from this requirement.”*

Furthermore, *“Upon receipt of a written notice under Rule 3270, a member shall consider whether the proposed activity will: (1) interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered.”*

B. Policy

The policies and procedures contained in this “Outside Activities” chapter of the Securities America Field Compliance Manual apply to all registered persons of Securities America. Accordingly, the meaning of the term “representative”, when used in this chapter, includes all registered persons of Securities America (e.g., registered employees of the Securities America home office, Securities America registered representatives, and registered office staff in Securities America branch offices, etc.).

Representatives must obtain Securities America approval if they participate in, or intend to participate in, an “Outside Activity” outside the scope of their relationship with the firm, regardless of whether compensation for the activity is received. Representatives must complete an Outside Activity request through the OBA Manager Module located within Compliance Questionnaires. The Compliance Questionnaires system may be accessed from the "Staying Compliant" tab on Securities America's Business Center website. Final approval MUST be obtained prior to participating, engaging in, or changing the scope of any outside activity.

To avoid conflicts of interest that would put Securities America or a customer at a disadvantage, the OSJ Branch Manager (if applicable) and Regional Sales Supervision Principal will make a determination whether an activity is appropriate. If the activity is deemed to be inappropriate, the representative is disallowed from participation in the activity.

Representatives are prohibited from conducting any business activity that would include the custody of client assets including, but not limited to, having check writing authority, power of attorney, or acting as a trustee/custodian/executor of any client account. *For additional guidance regarding fiduciary activities for family members (including spouses), refer to the section of this chapter titled, “Fiduciary Activities for a Family Member Who is a Client,” and the section below titled, “Special Note Regarding the Family Members of Securities America representatives.”*

Representatives are prohibited from engaging in any solicitation of securities or securities products issued by, or on behalf of, any Outside Activity. This prohibition extends to every type of security and security product. Some examples of the prohibition include, but are not limited to, bonds, notes, and other debt instruments.

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Personal securities transactions and passive investments that are held in brokerage accounts do not need to be disclosed as an Outside Activity, but must be disclosed in accordance with Securities America's policy concerning personal trading activities. *See the "Personal Trading Activities" chapter of the Field Compliance Manual for detailed information about personal trading activities policies and procedures.*

When to Disclose Outside Activities:

Securities America representatives are required to:

1. Disclose their Outside Activities information when they first become registered with Securities America;
2. Submit and update their Outside Activity information prior to accepting or engaging in any new Outside Activity;
3. Disclose Outside Activity information prior to any change in the scope of involvement in an Outside Activity;
4. Disclose Outside Activity information prior to any change in the nature of the Outside Activity; and
5. Disclose the termination of an approved Outside Activity within five (5) business days of ending involvement with the Outside Activity.

Family Members of Securities America Representatives:

For the purposes of Securities America's "Outside Activities" policies, acting in a fiduciary capacity for a family member who is a client is excluded from the Securities America Outside Activity policy which states that Representatives "are prohibited from conducting any business activity that would include the custody of client assets including, but not limited to, having check writing authority, power of attorney, or acting as a trustee/custodian/executor of any client account." Furthermore, representatives are not required to document this type of activity for family members as an outside activity in the Compliance Questionnaires System. Representatives that have questions or concerns about specific circumstances should consult with their OSJ Branch Manager, designated Acting Principal (if applicable) or Regional Sales Supervision Principal for guidance.

Outside Activity Names – Marketing Names:

Representatives who intend to use the Outside Activity name or DBA ("Doing Business As") name in conjunction with the marketing of their Securities America business must receive approval from Compliance Communications Review **prior to use**. *For more information about requirements associated with marketing and marketing materials, refer to the "Communications" chapter of the Securities America Field Compliance Manual.*

Family and Household Terminology (Definitions):

For the purposes of this chapter the following definitions apply.

Immediate family: "Immediate family" is defined to include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children

and domestic partner. In addition, the term shall include any other person who is supported by, directly or indirectly, to a material extent by the member or person associated with the member.

Family members: “Family member” is defined to include uncles, aunts, cousins, grandparents and “Immediate Family.”

Household member: “Household member” is defined to be any person who is supported by, directly or indirectly, to a material extent, such as spouse and dependent children.

If a representative is uncertain of the proper application of these “family” definitions for specific facts and circumstances, the representative should consult with his or her Regional Sales Supervision Principal (“RSSP”) for guidance.

C. Letters of Release

For instances in which a “Letter of Release” is required for the approval of an Outside Activity, the representative must:

- Provide a copy of the letter to the client;
- Maintain a copy of the letter in the client file; and
- Submit the letter, signed by both the client and the representative, to the applicable Regional Sales Supervision Principal for approval.

The required “Letter of Release” forms can be found online in Securities America’s Business Center website. Representatives must use the correct Letter of Release to match the specific circumstances.

- Real Estate Ownership/Co-Ownership involving a Securities America client requires the “Letter of Release – Real Estate.”
- Business Ownership/Co-Ownership involving an Securities America Client requires the “Letter of Release – Business Co-Ownership.”
- Fiduciary Activities for a family member who is a client requires the “Letter of Release – Fiduciary Capacity.”

Additional Guidance Regarding Business Ownership/Co-Ownership Involving a Client:

Representatives are not allowed to co-own a business, or real estate, with any Securities America client unless one of the criteria below has been documented and approved by the applicable Regional Sales Supervision Principal:

- The client is an immediate family member; or
- The co-ownership pre-existed the representative’s client relationship.

The representative must submit:

- A written letter of agreement to refrain from purchasing additional business investments or expanding the existing business relationship with the client; and

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- The required Letter of Release.
 - “Letter of Release – Business Co-Ownership” - Business Ownership/Co-Ownership involving an Securities America Client; or
 - “Letter of Release – Real Estate” - Real Estate Ownership/Co-Ownership involving a Securities America client.

Among other details, the Letters of Release for business co-ownership and real estate co-ownership state that the business relationship is unrelated to Securities America. This Letter of Release is not required from immediate family members of the representative. Family members other than immediate family members, however, are also subject to the requirement.

Contingent upon RSSP approval, representatives may continue the relationship provided the business does not compete with the products and services of Securities America.

It is the responsibility of the representative to ascertain whether a potential business associate (e.g., “co-owner”) is a client of Securities America. Representatives may contact the Rep Relations Center (“RRC”) to determine whether a specific individual is a client of Securities America (the representative will be required to supply the RRC with sufficient information to effectively query Securities America systems).

Fiduciary Activities for a Family Member Who is a Client:

Representatives may serve in a fiduciary capacity for a family member who is a client (e.g., power of attorney (POA) or trustee). In such situations, the representative is required to obtain the “Letter of Release – Fiduciary Capacity” signed by the client (i.e., signed by the family member) stating he/she has authorized the representative to act in a fiduciary capacity. However, unless specifically directed by the representative’s RSSP to obtain one, the Letter of Release is not required to serve in a fiduciary capacity for the representative’s spouse.

D. Board of Directors Memberships

Representatives who have obtained Securities America approval for a board of directors Outside Activity are allowed to act as the servicing advisor (i.e., “representative of record”) for accounts the for-profit or non-profit organization may have with Securities America. Representatives may provide the board with information and recommendations about approved Securities America products and services. However, representatives may not analyze or provide recommendations on financial products or services not approved by Securities America (i.e., unapproved products) that the organization or corporation holds or in which the organization or corporation is considering investing. Such conduct may be considered “Selling Away” and could result in consequence management for the representative. *For additional detail regarding the prohibition, see the “Selling Away” entry in the “Prohibited Activities” section of the Registered Representative Activities Chapter of the SAI Field Compliance Manual.*

Board of Directors Membership with a Non-profit Entity: This category of Outside Activity includes any board positions held for non-profit organizations, including charitable, civic, religious, public, political or social organizations. In addition to the requirements specified above, the following requirements apply to representative participation on non-profit boards:

- The Securities America representative may not vote or otherwise actively participate in board decisions that would affect the compensation he/she receives.

- The Securities America representative is responsible for knowledge of and adherence to any state-specific laws or regulations that may apply to his/her participation as a member of a non-profit board of directors. Accordingly, prior to participation as a board member, the representative is responsible for conducting any due diligence that may be necessary to ensure that his/her participation as a board member on a non-profit board does not constitute a violation of any state or local law, statute, or regulation. For example, some states may have certain prohibitions associated with serving on the board of a municipal entity and other public entities.

Board of Directors Membership with a For-profit Entity: As a member of a for-profit board, Representatives are prohibited from the following activities:

- Receiving compensation in the form of securities
- Recommending the company's stock to their clients; and
- Soliciting investors or raising capital (excluding loans from a bank or other lending organization) on behalf of the company.

E. Business Activities within the Ladenburg Thalmann Family of Companies

Certain business activities conducted in conjunction with firms that are members of the Ladenburg Thalmann Family of Companies are not considered "Outside Activities." In the context of FINRA Rule 3270, these business activities of a Securities America representative are not "*outside the scope of the relationship with his or her member firm*". As such, for the business activities specifically listed below, submission for review and approval via the Outside Business Activities module of the Compliance Questionnaires system is not appropriate. If any of these activities are submitted for review in the Outside Activities module, the "Outside Activity" request will be rejected due to the fact that the business activity is not an Outside Activity. To the extent that other policies and procedures exist which provide guidance for participation in these activities, representatives are responsible for following any such guidance provided.

- **Trust Services with Premier Trust:** Securities America representatives may engage in providing trust services on a referral basis via Premier Trust, a subsidiary company of Ladenburg Thalmann.
- **Investment Banking with Ladenburg Thalmann & Co. Inc.:** Securities America representatives may engage in investment banking referral activity with Ladenburg Thalmann & Co. Inc., Ladenburg's investment bank.

F. Prohibited Outside Activities

Participation in the Outside Activities noted below is prohibited. Prohibited Outside Activities are often those that create a potential conflict of interest with Securities America and may interfere with a representative's ability to provide effective service to clients.

Prohibited Outside Activities include, but are not limited to:

- **Bill-Paying Services**
- **Business Brokerage (Investment Banking)** – Business brokerage is only permissible if this outside activity is conducted on a referral basis only and through Ladenburg Thalmann. *For*

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additional guidance on engaging in permissible investment banking referrals via Ladenburg Thalmann, see the section of this chapter titled, "Business activities conducted in conjunction with other firms in the Ladenburg Thalmann Family of Companies."

- **Commercial Property Management** - Investment Syndicates, Limited Partnerships or General Partner Activities
- **Commodities brokerage**
- **Executor or Personal Representative of an Estate (of anyone other than an immediate family member)**
- **Fiduciary Activities for Non-Household Members** – It is unacceptable for representatives or any member of a representative’s household to serve in a fiduciary capacity for any Securities America clients. Examples of fiduciary capacity include, but are not limited to, attorney-in-fact (POA), trustee, conservator, guardian, executor and personal representative. *Refer to the "Policy" section of this chapter for definitions of family and household terminology.*
- **Guaranteed Investment Contract (GIC) Sales**
- **Investment Banking** – Investment banking is only permissible if this outside activity is conducted on a referral basis only and through Ladenburg Thalmann. Securities America approval of this Outside Activity must be obtained prior to engaging in investment banking through Ladenburg Thalmann.
- **Investment Clubs (Membership and Participation)** – A written notification will be sent by Securities America to the Investment Club indicating Securities America’s prohibition of this activity.
- **Lease Financing** – Representatives may not sell promissory notes to clients or borrow funds from clients for the purpose of financing leases.
- **Money Manager for Mutual Fund Company or Hedge Fund**
- **Private Debt Instrument Sales**
- **Private Equity Sales**
- **Pooled Interests** – Representatives may not facilitate the lending of funds from a group of investors, regardless of whether they are Securities America clients, for the purpose of funding any product, such as a mortgage. In addition, representatives may not be a partner in any entity that lends funds or raises capital for the purpose of funding an investment.
- **Purchase of Life Settlement Contracts or Viatical Contracts**
- **Syndication of Real Estate**
- **Trustee, Successor Trustee, Trust Protector, or any Trust Services** – Serving in a role as a Trustee, Successor Trustee or Trust Protector is prohibited, except for "Family Members" as defined earlier in this chapter. Providing trust services or engaging in any other trust services role not conducted through Premier Trust, a subsidiary of Ladenburg Thalmann, is prohibited. *For*

additional guidance on engaging in permissible trust services referrals via Premier Trust, see the section of this chapter titled, "Business activities conducted in conjunction with other firms in the Ladenburg Thalmann Family of Companies."

- **Trust Deed Sales**
- **Venture Capital**

G. Approval, Rejection, Update, and Recordkeeping

Approval: If the Outside Activity is approved, the Licensing Department will file a Form U4 amendment updating the approved Outside Activity on the representative's Form U4 in FINRA's Central Registration Depository ("CRD").

Rejection: Outside Activity requests may be rejected by the OSJ Branch Manager (or designee), the Regional Sales Supervision Principal ("RSSP"), or any higher level of supervisory authority. Representatives may not engage in an Outside Activity without first obtaining final documented approval in the Outside Activity module in Compliance Questionnaires. Representatives found to have engaged in an Outside Activity without documented final approval in the Outside Activity module may be subject to disciplinary action(s), up to and including termination.

If the Outside Activity was rejected on procedural grounds (e.g., failure to provide timely responses to supervisory follow-up inquiries or representative selection of an inaccurate Outside Activity category), representatives may submit a new Outside Activity request.

Updates: If a registered representative inactivates a previously approved Outside Activity, the RSSP, or any higher level of supervisory authority, must provide the Licensing Department approval to remove the Outside Activity from the registered representative's Form U4 in CRD. If the RSSP does not approve the Outside Activity to be removed from the U4, the registered representative must re-enter the Outside Activity within the OBA Manager of the Compliance Questionnaires.

Recordkeeping: Recordkeeping for Outside Activity requests submitted through Compliance Questionnaires is handled within Compliance Questionnaires.