



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

September 30, 2016

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006

Re: FINRA Regulatory Notice 16-29 Gifts, Gratuities and Non-Cash Compensation Rules

Dear Ms. Asquith:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I hereby submit the following comments in response to Regulatory Notice 16-29: Gifts, Gratuities and Non-Cash Compensation Rules (“the Proposal”). NASAA appreciates the opportunity to offer its comments on the Proposal and supports FINRA’s efforts to clarify and strengthen its rules related to non-cash compensation in a way that increases investor protection by mitigating risks associated with the conflicts of interest inherent in these arrangements.

In NASAA’s view, the Proposal takes reasonable steps to clarify FINRA’s existing regulatory regime surrounding non-cash compensation and gifts (FINRA Rule 3220) by codifying, as supplementary material to the rules, existing guidance and interpretive positions. Further, NASAA supports the rules-based approach contained in the Proposal as opposed to a principles-based approach. By including this material in the rules themselves and by centralizing the relevant information as opposed to a set of general principles, the Proposal makes it easier for FINRA members to comply and discourages efforts to circumvent the investor protection policies embodied in the rules.

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

Proposed Rule 3221

NASAA also supports FINRA's expansion of its non-cash compensation rules to all securities in newly proposed FINRA Rule 3221. In NASAA's view, the Proposal's expansion of the non-cash compensation rules to all securities is an important step in enhancing investor protection. The Proposal notes that the potential conflicts of interest related to non-cash compensation arrangements are not limited to only certain types or categories of securities. Therefore, the regulatory structure surrounding non-cash compensation should not remain limited, but instead apply to any non-cash compensation arrangement regardless of the security type.

NASAA also supports the Proposal's expansion of the recordkeeping requirements related to non-cash compensation arrangements. Under current FINRA rules, FINRA members are only required to keep records related to the non-cash compensation they or their associated persons receive. The Proposal's expansion of the recordkeeping requirement to include non-cash compensation paid by the firm or its associated persons is an important compliance enhancement. The Proposal explains—and NASAA agrees—that expanding the recordkeeping obligations will foster compliance with the non-cash compensation rules. Being required to keep records of not only non-cash compensation received but also non-cash compensation paid will encourage firms to more closely monitor non-cash compensation programs. The enhanced recordkeeping requirements of proposed Rule 3221 will also give regulators a more fulsome picture of practices related to non-cash compensation.

Proposed Rule 3222

NASAA further supports FINRA in its efforts to mitigate the conflicts of interest or perceived conflicts of interest related to business entertainment. As the Proposal notes, currently the business entertainment practices of FINRA members and their associated persons are governed by an interpretive letter issued in 1999 that draws from the existing non-cash compensation rules. Proposed Rule 3222 would add clarity to this area by requiring firms to develop written policies and supervisory procedures related to business entertainment. In NASAA's view, requiring firms to develop and maintain written policies and supervisory procedures related to business entertainment is an important step in reducing conflicts of interest or the appearance of conflicts of interest.

Requiring firms to develop written policies and supervisory procedures related to business entertainment is not an unduly burdensome requirement and provides firms with the flexibility to develop policies and procedures that are tailored to their business model. Further, the Proposal outlines certain key objectives that these policies and procedures must address, including the identification of potentially problematic practices, defining permissible and impermissible forms of business entertainment, training, and recordkeeping. In this context the Proposal strikes the proper balance between reducing conflicts of interest in this area while at the same time giving FINRA members the ability to implement policies and procedures that are in line with each firm's business entertainment practices.

Ms. Asquith
September 30, 2016
Page 3 of 3

Again, NASAA appreciates the opportunity to offer its comments on the Proposal and supports FINRA's efforts to add clarity to its non-cash compensation rules in a way that increases investor protection by mitigating the risks related to conflicts of interest present in these arrangements.

If you have any questions regarding these comments please contact A. Valerie Mirko, NASAA's General Counsel, at 202-737-0900 or vm@nasaa.org.

Sincerely,

A handwritten signature in cursive script that reads "Mike Rothman".

Mike Rothman
NASAA President
Minnesota Commerce Commissioner