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Page 1 of * 195		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 003 Amendment No. (req. for Amendments *)	
Filing by Financial Industry Regulatory Authority					
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Proposed Rule Change to Amend FINRA Rule 3220 (Influencing or Rewarding Employees of others)</div>					
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Ilana Last Name * Reid Title * Associate General Counsel E-mail * ilana.reid@finra.org Telephone * (202) 728-8268 Fax					
Signature Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 05/29/2025 (Title *) By Victoria Crane Vice President & Associate General Counsel (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Victoria.Crane@finra.org Digitally signed by Victoria.Crane@finra.org Date: 2025.05.29 17:01:41 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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FINRA-2025-003 Exhibit 2b.docx		
FINRA-2025-003 Exhibit 2c.pdf		

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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FINRA-2025-003 Exhibit 5.docx		

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others) to increase the gift limit from \$100 to \$250 per person per year, provide for exemptive relief, and incorporate existing guidance and interpretive letters. The proposed rule change also would make a conforming change to the gift limit in Rule 2310 (Direct Participation Programs), Rule 2320 (Variable Contracts of an Insurance Company), Rule 2341 (Investment Company Securities), and Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

¹ 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

(1) Background

(A) Current FINRA Rules and Guidance on Gifts

FINRA Rule 3220 (Influencing or Rewarding Employees of Others) (the “Gifts Rule”) prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient’s employer.² The rule also requires members to keep separate records of all payments or gratuities in any amount known to the member. The rule seeks to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of another person, such as an institutional customer, vendor or counterparty (“Institutional Customer”) with the hope of strengthening the business relationship with the Institutional Customer.³

Over the years, FINRA staff has issued guidance on interpretive issues related to gifts. For example, in 2006, FINRA issued Notice to Members (“NTM”) 06-69, which

² FINRA notes that the term “anything of value” is broad and includes both cash and non-cash compensation. It would not, however, include intangible items such as an associated person’s time.

³ See Regulatory Notice 16-29 (August 2016) (the “Notice”). FINRA issued the Notice to request comment on proposed changes to the Gifts Rule, as well as on proposed new rules regarding non-cash compensation and business entertainment. In this filing, FINRA proposes changes to the Gifts Rule, as well as conforming amendments to the gift limit in Rules 2310, 2320, 2341, and 5110 (together, the “Non-Cash Compensation Rules”). FINRA is not at this time proposing additional changes to the Non-Cash Compensation Rules or proposing a new rule related to business entertainment.

included guidance regarding the application of the Gifts Rule to personal gifts, de minimis and promotional items, aggregation of gifts, valuation of gifts, gifts incidental to business entertainment, and supervision and recordkeeping.⁴ FINRA has also issued an interpretive letter regarding the application of the Gifts Rule to bereavement gifts,⁵ and published guidance regarding donations due to federally declared major disasters (“Disaster-Related Donations FAQ”).⁶

(B) Overview of Proposed Rule Change

The proposed rule change is summarized here and set forth in detail below. The proposed rule change would increase the gift limit from \$100 to \$250 per person per year under the Gifts Rule as well as the Non-Cash Compensation Rules, which include an exception for gifts subject to the same dollar limit. The proposed rule change would also provide for exemptive relief from the Gifts Rule.

⁴ See NTM 06-69 (December 2006). In addition, FINRA has conducted an assessment of the effectiveness and efficiency of the Gifts Rule and Non-Cash Compensation Rules through a retrospective rule review and requested comment on proposed rule amendments and guidance. See Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation (December 2014) (“Retrospective Review Report”), <https://www.finra.org/sites/default/files/p602010.pdf>; Notice, supra note 3. FINRA received 17 comment letters in response to the Notice. See infra Item 5.

⁵ See Letter from Gary L. Goldsholle, Vice President & Associate General Counsel, FINRA, to Amal Aly, Managing Director & Associate General Counsel, SIFMA, dated December 17, 2007 (“Aly Letter”), available at <https://www.finra.org/rules-guidance/guidance/interpretive-letters/amal-aly-sifma-reasonable-and-customary-bereavement-gifts>.

⁶ See Gifts/Business Entertainment/Non-Cash Compensation FAQs, available at <https://www.finra.org/rules-guidance/key-topics/gifts-gratuities-and-non-cash-compensation/faqs>.

In addition, the proposed rule change would incorporate and substantially codify existing guidance by adding supplementary material to address gifts incidental to business entertainment, valuation of gifts, aggregation of gifts, personal gifts, de minimis gifts and promotional or commemorative items, donations due to federally declared major disasters, and supervision and recordkeeping.⁷ The proposed supplementary material also would make clear that the proposed rule change, like the current Gifts Rule, does not apply to gifts from a member to its own associated persons or to gifts from a member or an associated person of a member to individual retail customers.

FINRA believes the proposed rule change would promote efficiency without reducing protection for investors and the public interest. Updating the gift limit as well as incorporating and substantially codifying existing guidance and interpretations would improve transparency, awareness, and understanding of the Gifts Rule's requirements. FINRA believes these proposed changes would also help facilitate compliance with the Gifts Rule.

(2) Proposed Changes to the Gifts Rule

The Gifts Rule prohibits any member or person associated with a member, directly or indirectly, from giving or permitting to be given anything of value in excess of \$100 per year to any person where such payment or gratuity is in relation to the business of the recipient's employer. A gift of any kind is considered a gratuity. The rule also requires members to keep separate records regarding all payments or

⁷ By incorporating and substantially codifying existing guidance and interpretations, the proposed rule change, if approved by the Commission, would supersede such guidance and interpretations.

gratuities.⁸ As stated above, the rule seeks to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of an Institutional Customer with the hope of strengthening the business relationship with the Institutional Customer.⁹

The discussion below of the proposed changes to the Gifts Rule is divided into three main topics: (A) increasing the gift limit from \$100 to \$250, (B) providing FINRA authority to grant exemptive relief from the Gifts Rule for good cause shown, and (C) adding to the Gifts Rule proposed supplementary material to incorporate existing guidance and interpretive positions regarding (i) gifts incidental to business entertainment, (ii) valuation of gifts, (iii) aggregation of gifts, (iv) personal gifts, (v) de minimis gifts and promotional or commemorative items, (vi) donations due to federally declared major disasters, (vii) supervision and recordkeeping, and (viii) gifts to a member's associated persons or individual retail customers.

(A) Increase Gift Limit from \$100 to \$250

The current gift limit of \$100 has been in place since 1992.¹⁰ In determining

⁸ See Rule 3220(c).

⁹ See Notice, supra note 3. Whereas the Gifts Rule primarily addresses gifts given to employees of Institutional Customers, the Non-Cash Compensation Rules address, among other things, gifts from a broker-dealer to persons associated with a third-party broker-dealer (e.g., from a wholesaler to associated persons of a retail broker-dealer) in connection with the sale and distribution of a security covered by one of the Non-Cash Compensation Rules. Under the Non-Cash Compensation Rules, such gifts are subject to the same gift limit as the Gifts Rule and may not be preconditioned on achievement of a sales target.

¹⁰ In 1992, FINRA increased the gift limit from \$50 to \$100. See Securities Exchange Act Release No. 31662 (December 28, 1992), 58 FR 370 (January 5, 1993) (Order Approving File No. SR-NASD-92-40). See also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984)

whether and how much to propose increasing the gift limit, FINRA has considered the rate of inflation since 1992.¹¹ The average annual rate of inflation over the 32 years from 1992 until 2024 was 2.55 percent and the compound increase in consumer prices over the period was 123.56 percent. Applying this increase to the \$100 gift limit results in a dollar value of \$223.56. To account for past and some expected future inflation, FINRA proposes to raise the gift limit to \$250. FINRA believes that the proposed \$250 gift limit would continue to permit the exchange of business courtesies while helping to guard against excessiveness. In addition, a dollar limit, as opposed to, for example, a principles-based approach, would provide certainty regarding the limit for gifts and help facilitate member compliance with the Gifts Rule.¹² FINRA recognizes that a gift limit of \$250 may need to be further adjusted at a later date to keep pace with inflation, among other factors. Thus, if the SEC approves the proposed rule change, FINRA intends to review periodically the gift limit to determine if further increases are warranted.

(Order Approving File No. SR-NASD-84-8) (increasing gift limit from \$25 to \$50).

¹¹ FINRA used the annual rate of inflation data for the United States from the Federal Reserve Bank of St. Louis website to estimate the change in consumer prices since 1992, when the SEC approved the increase in the limit from \$50 to \$100.

¹² FINRA also proposes to make a technical change to Rule 3220(b) by removing the word “to” before “compensation” in the first sentence of Rule 3220(b). Thus, under the proposed rule change, Rule 3220(b) would provide “This rule shall not apply to contracts of employment with or compensation for services rendered by...”. FINRA believes the proposed change would improve the readability and understanding of Rule 3220(b).

(B) Exemptive Relief

Proposed new paragraph (d) of the Gifts Rule would authorize FINRA staff, pursuant to the FINRA Rule 9600 Series,¹³ to conditionally or unconditionally grant an exemption from any provision of proposed Rule 3220 for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest. Given the scope of the Gifts Rule, which applies to gifts given to a wide range of recipients where the payment is in relation to the business of the employer of the recipient, and given the diversity of member sizes, structures, business, and distribution models, FINRA believes it would be useful and appropriate to have the ability to provide relief from a particular provision of the Gifts Rule under specific factual circumstances.¹⁴

(C) Supplementary Material Incorporating and Substantially Codifying Existing Guidance and Interpretative Positions

As previously noted, FINRA staff has issued guidance on various interpretive issues over the years related to the Gifts Rule. In 2006, FINRA issued NTM 06-69 to clarify, among other things, the gifts that are subject to the Gifts Rule; that members must aggregate all gifts given by the member and its associated persons to a particular recipient over the course of a year; the manner by which to value gifts; and the supervision and recordkeeping requirements for gifts.¹⁵ In addition, in response

¹³ The Rule 9600 Series provides the procedures for members that seek exemptive relief as permitted under specified rules. See Rules 9610 through 9630.

¹⁴ FINRA is also proposing to amend Rule 9610 to add the Gifts Rule to the list of rules under which a member may seek exemptive relief.

¹⁵ See NTM 06-69, supra note 4.

to inquiries regarding the Gifts Rule, FINRA staff has published frequently asked questions¹⁶ and issued interpretive letters, including a letter regarding the application of the Gifts Rule to bereavement gifts.¹⁷

The proposed rule change would incorporate and substantially codify the existing guidance and interpretations into the Gifts Rule, which would improve transparency, awareness, and understanding of the rule's requirements. In addition, it would help facilitate compliance with the proposed rule change.

(i) *Proposed FINRA Rule 3220.01 (Gifts Incidental to Business Entertainment)*

Under the current guidance, there is no express exclusion from the Gifts Rule for gifts given during the course of a business entertainment event.¹⁸ FINRA proposes to continue to apply the Gifts Rule, as proposed to be amended, to business entertainment events and to exclude personal gifts, de minimis gifts, or promotional or commemorative items. Therefore, FINRA proposes to add Rule 3220.01 to provide that a gift given during the course of a business entertainment event would be subject to the \$250 limit on gifts in paragraph (a) of the Gifts Rule unless it is a personal gift under proposed Rule 3220.04 or of de minimis value or a promotional or commemorative item under proposed Rule 3220.05.¹⁹ Thus, for example, giving away clothing or electronics

¹⁶ Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 6.

¹⁷ See Aly Letter, supra note 5.

¹⁸ See NTM 06-69, supra note 4.

¹⁹ As discussed below, de minimis gifts and promotional items must have a value substantially below the \$250 limit. See proposed Rule 3220.05(a); see also infra Item 5(D)(v).

at a business entertainment event would be subject to the gift limit. However, pens or notepads of de minimis value given during a business entertainment event would not be subject to the gift limit provided the item meets the requirements of proposed Rule 3220.05. Similarly, a decorative plaque to commemorate a business transaction given during a business entertainment event would not be subject to the gift limit provided the gift meets the requirements of proposed Rule 3220.05.²⁰

FINRA believes that gifts given incidental to a business entertainment event, such as gift baskets or other items—including gifts of food or beverages in quantities beyond what could reasonably be consumed during the event—would be subject to the gift limit. For the purpose of this limit, the cost of the business entertainment event itself would not be included in the value of the gift.

(ii) *Proposed FINRA Rule 3220.02 (Valuation of Gifts)*

The current guidance states that a member should value gifts at the higher of cost or market value, exclusive of tax and delivery charges.²¹ Likewise, under the current guidance, when valuing tickets to sporting or other events, a member must use the higher of cost or face value.²²

FINRA proposes to add Rule 3220.02, which would require that gifts (other

²⁰ As discussed below, items commemorating a business transaction must be customary and reasonable solely decorative items. See proposed Rule 3220.05(b); see also infra Item 5(D)(v). FINRA has published guidance regarding business entertainment events held virtually rather than in-person. See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 6. Proposed Rule 3220.01 would apply to gifts incidental to a virtual business entertainment event.

²¹ See NTM 06-69, supra note 4.

²² See NTM 06-69, supra note 4.

than tickets to sporting or other events) be valued at cost, exclusive of tax and delivery charges. This would be a change from the current guidance in NTM 06-69 which requires the valuation of gifts at the higher of cost or market value. FINRA believes that codifying the requirement that a member value gifts at the higher of cost or market value would add complexity and subjectivity into the rule without adding a significant benefit as it may be difficult or burdensome for members and associated persons to determine the market value of such gifts.²³

With respect to giving tickets to sporting or other events, consistent with the current guidance in NTM 06-69, proposed Rule 3220.02 would require that the member must use the higher of cost or face value. For example, if a member makes a gift of a ticket to a sporting event that it procured in the secondary market at a cost that exceeds the ticket's face value, the value of such ticket for purposes of the Gifts Rule would be the actual cost to the member, not the face value of the ticket. FINRA believes it is appropriate to distinguish tickets to sporting or other events from other gifts because such tickets are commonly purchased on secondary markets at a cost that is different from the face value of the ticket. In addition, the face value of tickets to sporting or other events is typically readily determinable and, therefore, does not raise the same concerns about the burden and complexity of determining the higher of cost or value of the gift.

In addition, the current guidance states that if gifts are given to multiple recipients, members should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis for purposes of ensuring

²³ See infra note 81, and accompanying text (discussing comments received in response to the Notice).

compliance with the gift limit.²⁴ FINRA proposes to substantially codify this guidance in proposed Rule 3220.02, which FINRA believes would improve transparency, awareness, and understanding of how to apply the gift limit in situations where a gift, such as a gift basket, is to be shared among multiple recipients.

(iii) Proposed FINRA Rule 3220.03 (Aggregation of Gifts)

Under the current guidance, members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year.²⁵ In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.²⁶

Consistent with the current guidance in NTM 06-69, FINRA proposes to add Rule 3220.03 to provide that members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year for purposes of ensuring compliance with the \$250 limit in paragraph (a) of the Gifts Rule. In addition, proposed Rule 3220.03 would provide that each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

In NTM 06-69, FINRA indicated that aggregating all gifts given by the member or associated person to a particular person over the course of a year was

²⁴ See NTM 06-69, supra note 4.

²⁵ See NTM 06-69, supra note 4.

²⁶ See NTM 06-69, supra note 4.

necessary in order to comply with the Gifts Rule.²⁷ FINRA continues to believe that the aggregation requirement is necessary to avoid the potential conflicts of interest the Gifts Rule is intended to prevent, because aggregation helps ensure that persons who give multiple gifts in a year to the same recipient do not circumvent the gift limit.

Proposed Rule 3220.03 would also provide that the aggregation requirements do not apply to a personal gift under proposed Rule 3220.04, or to a gift of de minimis value or a promotional or commemorative item under proposed Rule 3220.05. The purpose of the aggregation requirement is to determine whether the value of multiple gifts given throughout a year to a particular recipient does not exceed the gift limit. Because de minimis, promotional, commemorative, and personal gifts are not subject to the gift limit, they should not be included when aggregating the value of gifts that are subject to the limit.

(iv) Proposed FINRA Rule 3220.04 (Personal Gifts)

Under the current guidance, gifts that are given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule, provided that the gifts are not in relation to the business of the employer of the recipient.²⁸ Likewise, bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the

²⁷ See NTM 06-69, supra note 4.

²⁸ See NTM 06-69, supra note 4.

recipient and, therefore, are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.²⁹

In determining whether a gift is “in relation to the business of the employer of the recipient,” the current guidance states that members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient, and whether the associated person paid for the gift.³⁰ The current guidance states that when the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.³¹

Consistent with the current guidance, FINRA proposes to add Rule 3220.04 to provide that gifts that are given for infrequent life events (e.g., a wedding gift, a congratulatory gift for the birth of a child, or a bereavement gift) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the Gifts Rule, provided that the gifts are customary and reasonable, personal in nature, and not in relation to the business of the employer of the recipient. Consistent with the current guidance, proposed Rule 3220.04 would provide that in determining whether a gift is “personal in nature and not in relation to the business of the

²⁹ See Aly Letter, supra note 5. FINRA considers bereavement gifts to be a type of personal gift because bereavement gifts are given for infrequent life events. The exception for personal gifts would not apply to gifts given for events that occur frequently, or even annually, such as birthdays.

³⁰ See NTM 06-69, supra note 4.

³¹ See NTM 06-69, supra note 4.

employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient, and whether the associated person paid for the gift. It would also provide that when the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

FINRA believes this exception for personal gifts is appropriate because such gifts for infrequent life events do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient’s employer.

(v) *Proposed FINRA Rule 3220.05 (De Minimis Gifts and Promotional or Commemorative Items)*

(a) *De Minimis Gifts and Promotional Items*

Under the current guidance, gifts given of a de minimis value (e.g., pens, notepads, or modest desk ornaments) or promotional items of nominal value that display the member’s logo (e.g., umbrellas, tote bags, or shirts) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements of paragraph (c) of the rule.³² The current guidance requires the value of de minimis or promotional items to be “substantially below” the current \$100 gift limit.³³

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.05(a) to provide that gifts of a de minimis value (e.g., pens, notepads, or modest

³² See NTM 06-69, supra note 4.

³³ See NTM 06-69, supra note 4.

desk ornaments) or promotional items of nominal value that display the member's logo (e.g., umbrellas, tote bags, or shirts) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.³⁴ In addition, proposed Rule 3220.05(a) would provide that the value of the de minimis gift or promotional item must be substantially below the \$250 limit.

Gifts valued in amounts above or near \$250 would not be considered nominal. FINRA believes it is appropriate to specify that de minimis gifts and promotional items must have a value substantially below the proposed \$250 limit because such items often have utility.³⁵

(b) Commemorative Items

Under the current guidance, customary Lucite stones, plaques, or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirement of paragraph (c) of the rule, even when such items have a cost of more than \$100.³⁶

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.05(b) to provide that customary and reasonable solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule. For example, Lucite stones, plaques, or other similar customary and reasonable solely

³⁴ Expensive leather luggage and crystal pieces, notwithstanding the presence of a firm logo, would not be eligible for the exclusion of promotional items of nominal value.

³⁵ See NTM 06-69, supra note 4.

³⁶ See NTM 06-69, supra note 4.

decorative items commemorating a business transaction would be excluded from the requirements of the Gifts Rule, even when such items have a cost of more than \$250.³⁷

FINRA does not believe it is necessary to explicitly limit the value of customary commemorative items because they must be solely decorative. Thus, the restrictions of the Gifts Rule would apply where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. For example, providing employees of an Institutional Customer with elaborate electronic equipment following the closing of a transaction would be subject to the gift limit.

(vi) *Proposed FINRA Rule 3220.06 (Donations Due to Federally Declared Major Disasters)*

FINRA has published a Disaster-Related Donations FAQ on its website to address whether it would be consistent with the Gifts Rule for a member or an associated person to donate goods or money (either directly or through a fundraising platform) to employees of an Institutional Customer for losses sustained due to a federally-declared major disaster.³⁸ As stated in the Disaster-Related Donations FAQ, FINRA had not previously addressed the application of Rule 3220(a) to donations to employees of an Institutional Customer to help such individuals with losses sustained in a natural event that the President has declared to be a major disaster, such as a wildfire, hurricane, tornado, earthquake, or flood. Due to the nature of such disasters, which are unpredictable and catastrophic, FINRA does not consider donations by a member or an associated person to an employee of an Institutional Customer to provide assistance to the

³⁷ See NTM 06-69, supra note 4.

³⁸ See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 6.

individual in connection with such a disaster to be “in relation to the business of the employer of the recipient” for purposes of Rule 3220(a).³⁹

Consistent with the current guidance in the Disaster-Related Donations FAQ, FINRA proposes to add Rule 3220.06 to provide that donations by a member or an associated person to any person, principal, proprietor, employee, agent or representative of another person to provide assistance to the individual for losses sustained in a natural event that the President has declared to be a major disaster, such as a wildfire, hurricane, tornado, earthquake, or flood, are not considered “in relation to the business of the employer of the recipient” for purposes of Rule 3220(a).⁴⁰

(vii) Proposed FINRA Rule 3220.07 (Supervision and Recordkeeping)

The Gifts Rule requires separate recordkeeping of all payments or gratuities.⁴¹ Rule 3110 requires a member to have a supervisory system reasonably designed to achieve compliance with the Gifts Rule. Under the current guidance, to meet these standards, members are required to have systems and procedures reasonably designed to ensure that gifts in relation to the business of the employer of the recipient given by the member and its associated persons to employees of clients of the member are (i) reported to the member, (ii) reviewed for compliance with the Gifts Rule,

³⁹ FINRA encourages members to establish written procedures concerning disaster-related donations to employees of Institutional Customers. See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 6.

⁴⁰ Solicitation of charitable contributions to an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code is addressed in Notice to Members 06-21 (May 2006).

⁴¹ See Rule 3220(c).

including aggregation, and (iii) maintained in the member's records. The current guidance in NTM 06-69 provides that such procedures should include provisions reasonably designed to ensure that an associated person who is making a gift is not responsible for determining whether such gift is personal rather than in relation to the business of the recipient's employer. The current guidance also provides that gifts of de minimis value or promotional or commemorative items are not subject to the rule's recordkeeping requirements.⁴²

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.07 to provide that to have a supervisory system reasonably designed to achieve compliance with the Gifts Rule, members are required to have systems and procedures reasonably designed to ensure that payments and gratuities in relation to the business of the employer of the recipient given by the member and its associated persons to employees of another person⁴³ are: (i) reported to the member; (ii) reviewed for compliance with the Gifts Rule; and (iii) maintained in the member's records. The proposed supplementary material would also provide that such procedures must be reasonably designed to ensure that an associated person who is giving a payment or gratuity is not responsible for determining whether such payment or gratuity is in relation to the business of the recipient's employer. Rather, FINRA believes that requiring a

⁴² See NTM 06-69, supra note 4.

⁴³ The Gifts Rule applies to gifts given to "any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity." As discussed above, the term "another person" includes an institutional customer, vendor, or counterparty (for purposes of this discussion, referred to collectively as "Institutional Customers").

person other than the associated person giving the gift to assess the nature of the gift would encourage objectivity in the determination of whether a gift is personal.

Consistent with the current guidance, the proposed supplementary material would also make explicit that the recordkeeping requirements of the Gifts Rule do not apply to gifts that are excluded from the restrictions of the rule. Thus, the recordkeeping requirements would not apply to personal gifts, de minimis gifts, promotional or commemorative items, or donations due to federally declared major disasters. Although recordkeeping is not required, members may determine to implement a recordkeeping requirement for such gifts as part of their supervisory system to achieve compliance with the Gifts Rule. FINRA recognizes that there are a variety of methods for ensuring compliance with the Gifts Rule. Members should implement a reasonable process for assessing their individual needs and business models to determine systems and procedures that are reasonably designed to achieve compliance with the Gifts Rule.

(viii) Proposed FINRA Rule 3220.08 (Gifts to a Member's Associated Persons or Individual Retail Customers)

Currently, by its terms, the Gifts Rule does not apply to gifts a member gives to its own associated persons or to gifts a member or a member's associated person gives to individual retail customers. However, FINRA is aware that there may be some misunderstanding about the scope of the Gifts Rule, particularly regarding its application to gifts from a member or its associated persons to individual retail customers.

To clarify the scope of the Gifts Rule and improve awareness and understanding of its scope among members, associated persons, and customers, FINRA is proposing to add Rule 3220.08 to state expressly that the Gifts Rule does

not apply to gifts from a member to its own associated persons, or to gifts from a member or an associated person to individual retail customers.

The Gifts Rule is intended to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of an Institutional Customer with the hope of strengthening the business relationship with the Institutional Customer.⁴⁴ It is not intended to address potential conflicts that may arise from a member giving a gift to its own associated persons,⁴⁵ or a member or an associated person giving a gift to individual retail customers.

(3) Proposed Conforming Changes to the Non-Cash Compensation Rules

The Non-Cash Compensation Rules prohibit members and their associated persons from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation to any person in connection with the sale of variable insurance contracts,⁴⁶ investment company securities,⁴⁷ direct participation programs (“DPPs”),⁴⁸ and the public offerings of securities.⁴⁹ The Non-Cash Compensation Rules currently include an exception from the prohibition on members and associated persons

⁴⁴ See Notice, *supra* note 3.

⁴⁵ Note that if a member gives non-cash compensation to an associated person that is in connection with the sale and distribution of securities covered by the Non-Cash Compensation Rules, the arrangement would be governed by those rules, rather than the Gifts Rule.

⁴⁶ See Rule 2320(g)(4) (Variable Contracts of an Insurance Company).

⁴⁷ See Rule 2341(l)(5) (Investment Company Securities).

⁴⁸ See Rule 2310(c) (Direct Participation Programs).

⁴⁹ See Rule 5110(f) (Corporate Financing Rule – Underwriting Terms and Arrangements).

directly or indirectly accepting or making payments or offers of payments of any non-cash compensation for gifts that do not exceed \$100 per individual per year and are not preconditioned on the achievement of a sales target.⁵⁰ Consistent with the discussion above regarding the proposed increased dollar limit under the Gifts Rule, FINRA proposes to raise the gift limit under the Non-Cash Compensation Rules from \$100 to \$250.⁵¹

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes the proposed rule change will protect investors and the public interest by updating the Gifts Rule. For example, the proposal to increase the gift limit from \$100 to \$250 reflects the rate of inflation and accounts for future cost increases.

⁵⁰ See Rules 2310(c)(2)(A); 2320(g)(4)(A); 2341(l)(5)(A); and 5110(f)(2)(A).

⁵¹ FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB Rules incorporate FINRA Rule 3220 by reference. See CAB Rule 322 (Influencing or Rewarding Employees of Others). The CAB Rules do not incorporate by reference Rules 2310, 2320, 2341, or 5110.

⁵² 15 U.S.C. 78o-3(b)(6).

The proposed rule change will also incorporate and substantially codify existing guidance and interpretations into the Gifts Rule, which will improve transparency, awareness, and understanding of the rule's requirements. In addition, this may facilitate compliance with the proposed rule change. Thus, the proposed rule change represents a significant step toward modernizing the Gifts Rule, while codifying existing guidance in a manner that will promote efficiency without reducing protection for investors.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rulemaking, the regulatory objective of the proposal, the economic baseline of the analysis, the economic impacts, and the alternatives considered.

(a) Regulatory Need

FINRA's retrospective review of the Gifts Rule, among other things, concluded that this rule has been largely effective in meeting its intended investor protection objectives, but there are certain areas where the investor protection benefits may not align with the associated economic costs.⁵³ The retrospective review also identified certain areas for updating and streamlining. For example, some stakeholders suggested that a \$100 gift limit was too low and that raising the limit would not undermine the purposes

⁵³ See Retrospective Review Report, supra note 4, at 3.

of the Gifts Rule and the Non-Cash Compensation Rules. The proposed rule change promotes efficiency without reducing protections for investors.

(b) Economic Baseline

The current structure of the FINRA rules and guidance regarding gifts serves as an economic baseline to assess the potential impacts on members and investors. Such information on the current state of the rules is discussed above in Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change, respectively.

FINRA's retrospective review provides some information on the practice of giving gifts at the time of the review. The report provides survey results based on the responses of about 600 member firms.⁵⁴ As of 2014, the survey showed that most members responding to the survey spent some amount on gifts, as well as business entertainment and other non-cash compensation. However, except for the very largest members (i.e., exceeding \$100 million in annual revenue) and a few members with annual revenue between \$10 million and \$100 million, survey respondents generally did not spend more than \$10,000 in total on gifts in 2013.

The proposed amendments would impact members and associated persons. Using FINRA registration data, as of December 31, 2024, there were approximately 649,000 broker-dealer registered persons, of which approximately 530,000 are associated with large firms, approximately 58,000 are associated with mid-size firms, and approximately 61,000 are associated with small firms. The proposed amendments would also impact

⁵⁴ See Retrospective Review Report, supra note 4, at 6 (Figure 1).

associated persons who are not broker-dealer registered persons. Information from other FINRA data suggests that there are approximately the same number of non-registered associated persons as registered persons.

(c) Economic Impact

The proposed amendments would directly impact members that regularly engage in gift giving. The increase in the gift limit from \$100 to \$250 per person per year in the Gifts Rule, and the conforming changes to the gift exception to the Non-Cash Compensation Rules, reflects the rate of inflation since adoption of the \$100 gift limit and accounts for future cost increases. Thus, the increase would somewhat restore the historical balance between the economic benefits of developing relationships and goodwill through gifts and the potential for conflicts of interest.⁵⁵ However, because the proposal would impose the same requirements for firms of all sizes, smaller firms with fewer resources may not benefit from the increase as much as larger firms.⁵⁶

The codification of current guidance regarding personal gifts, de minimis gifts, promotional or commemorative items, and disaster-related donations, including that members would not have to keep records of such gifts given, should provide regulatory certainty.⁵⁷ Regulatory certainty allows for longer-term investments in compliance

⁵⁵ See Ying Fan, Promoting Business with Corporate Gifts - Major Issues and Empirical Evidence, *Corporate Communication: An International Journal*, 2006. 11:1, 43-55, <https://bura.brunel.ac.uk/bitstream/2438/1284/3/Corporate+gifts-1.pdf>.

⁵⁶ See Retrospective Review Report, supra note 4, at 9 (“[S]everal respondents provided comments stating that an industry-wide standard (i.e., ‘one-size-fits-all’ approach) . . . may have unintended negative consequences, particularly for small firms.”).

⁵⁷ See proposed Rule 3220.04, 3220.05, 3220.06 and 3220.07.

processes and systems, mitigating costs. As discussed above, FINRA has excluded some gifts, such as personal gifts and disaster-related donations, among others, from the restrictions and recordkeeping requirements of the Gifts Rule because such gifts do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient's employer.⁵⁸ Thus, the expected costs of recordkeeping for such gifts (which include time spent by the gift givers and member compliance staff) outweigh the benefits of doing so.⁵⁹

The proposed codification of existing guidance in supplementary material should also reduce costs associated with supervision by improving transparency, awareness, and understanding of the rule's requirements. Further, as discussed above with respect to gift valuation, the proposed rule change would require that gifts (other than tickets to sporting or other events) be valued at cost, exclusive of tax and delivery charges. This proposed change from the current guidance in NTM 06-69, which requires the valuation of gifts at the higher of cost or market value, should further reduce compliance costs associated with the complexity, subjectivity, and burden that may sometimes arise in determining a gift's market value.⁶⁰ In situations where a gift's market value is higher than its cost, this proposed change in valuation method may effectively allow a member or associated person to increase the value of gifts given (e.g., an item that costs \$250 may have a

⁵⁸ See supra Item 3(a)(2)(C)(vii).

⁵⁹ See Retrospective Review Report, supra note 4, at 4 ("Stakeholders indicated that due to the technology, recordkeeping, training and personnel costs associated with ensuring compliance with the rules' requirements, the costs and benefits may not be aligned.").

⁶⁰ See supra Item 3(a)(2)(C)(ii).

market value greater than \$250). FINRA believes any such occurrence is likely to be rare, especially since situations in which market value exceeds costs occur mostly with respect to tickets to sporting or other events, which would continue to be valued at the higher of cost or face value. Thus, investor protections are not expected to be meaningfully affected.

(d) Alternatives Considered

FINRA considered a principles-based approach to the gift limit and determined that retaining a dollar-based gift limit would better serve the intended objective of the Gifts Rule that is consistent with investor protection by establishing a bright line standard that facilitates compliance, coupled with anti-evasion provisions. Alternative gift limits were considered in 2016 and FINRA at the time proposed to increase the limit from \$100 to \$175 per person per year as the proposed limit took into account the rate of inflation since adoption of the \$100 gift limit. However, after considering the comments and with the additional passage of time, FINRA believes a \$250 limit would be appropriate, taking into account the rate of inflation since adoption of the \$100 gift limit and potential future cost increases. As mentioned earlier in Item 3(a)(2)(A) of this proposed rule change, FINRA recognizes, however, that a gift limit of \$250 may need to be further adjusted at a later date to keep pace with inflation, among other factors. Thus, if the SEC approves the proposed rule change, FINRA intends to review periodically the gift limit to determine if further increases are warranted.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In August 2016, FINRA published Regulatory Notice 16-29, requesting comment on proposed amendments to the Gifts Rule, among other things.⁶¹ A copy of the Notice is attached as Exhibit 2a. A list of the comment letters received in response to the Notice is attached as Exhibit 2b and copies of the comment letters received in response to the Notice are attached as Exhibit 2c.⁶² FINRA received 17 comments in response to the Notice. Commenters were generally supportive of the proposed rule change but also expressed some concerns.

Material comments related to the proposed changes to the Gifts Rule and FINRA's responses are set forth in detail below.

(A) Gift Limit

In the Notice, FINRA proposed to increase the gift limit from \$100 to \$175 per person per year. The proposed increase in the gift limit to \$175 took into account the rate of inflation since adoption of the \$100 gift limit.⁶³

FINRA received a number of comment letters in response to the proposed changes to the Gifts Rule.⁶⁴ The commenters were generally supportive of increasing the gift limit and several commenters suggested that the gift limit be

⁶¹ See supra note 3.

⁶² All references to commenters are to the comment letters as listed in Exhibit 2b.

⁶³ Using the same methodology described supra note 11, FINRA staff had determined at the time that the inflation-adjusted gift limit from 1992 to 2016 rose from \$100 to \$174.03.

⁶⁴ See, e.g., ABA, BDA, CAI, Commonwealth, First Asset Financial, FSI, NAIFA, PIRC, Securities Center, SIFMA, WFA and Woodforest.

increased more than \$175.⁶⁵ For example, NAIFA noted that the “current limit of \$100 has been in place since 1992, and does not reflect the steady increases in costs and prices which have taken place since that year.” Therefore, NAIFA “recommend[ed] that the dollar limit for gifts ... be increased to \$300.” Other commenters recommended the gift limit be set at \$200,⁶⁶ \$250,⁶⁷ \$275,⁶⁸ \$300,⁶⁹ or \$350.⁷⁰

However, some commenters did not support the increase.⁷¹ BDA urged FINRA to leave the gift limit unchanged at \$100. PIRC stated that it advocated for a limit of \$0 to avoid unacceptable conflicts of interest; however, at a minimum, PIRC stated that it supported maintaining the \$100 limit.

Some commenters suggested a principles-based approach to the gift limit.⁷² FSI stated that a “principles-based approach would allow firms to tailor their compliance to more accurately take into account the economic differences between geographic areas.” ABA recommended a two-pronged approach that would allow for a principles-based standard for gifts above a specified limit. CAI recommended

⁶⁵ See, e.g., ABA, CAI, Commonwealth, First Asset Financial, FSI, NAIFA, Securities Center, SIFMA, WFA, and Woodforest.

⁶⁶ See, e.g., BDA, CAI, Securities Center, and WFA.

⁶⁷ See, e.g., ABA and SIFMA.

⁶⁸ See, e.g., First Asset Financial.

⁶⁹ See, e.g., FSI and NAIFA.

⁷⁰ See, e.g., Commonwealth.

⁷¹ See, e.g., BDA and PIRC.

⁷² See, e.g., FSI and SIFMA.

embedding in the rule a formalized recalculation that would allow for increases to the limit on a periodic basis.

After considering the comments and for the reasons discussed above, FINRA believes it is appropriate at this time to propose raising the gift limit to \$250.⁷³

(B) Gifts Received

The Gifts Rule applies only to gifts a member or an associated person gives to employees of other persons. It does not apply to gifts a member or its associated persons receive from such employees or persons. FINRA sought comment in the Notice on the scope of the Gifts Rule and whether it should be extended to apply to gifts received by a member or associated person as well as gifts given.

The majority of the commenters supported the continued application of the Gifts Rule to gifts given by a member or associated person but not to gifts they receive.⁷⁴ The majority of the commenters did not believe that a member or associated person receiving gifts presented the same potential for conflicts of interest as gifts they give.⁷⁵ WFA noted that “[m]ember firms should already have detailed policies and procedures to adequately address the receipt of gifts by team members. Adding further industry regulations, including recordkeeping requirements, is unnecessary and burdensome.” ABA noted that “FINRA member firms have voluntarily adopted policies regarding the receipt of gifts by member firm personnel. Nonetheless, [the ABA] believe[s] an across-the-board requirement to limit the receipt of gifts is unnecessary ...” PIRC disagreed,

⁷³ See supra Item 3(a)(2)(A).

⁷⁴ See, e.g., ABA, First Asset Financial, PIRC, WFA, and Woodforest.

⁷⁵ See, e.g., ABA, First Asset Financial, WFA, and Woodforest.

however, believing the receipt of gifts by a member or its associated persons “... raise similar conflicts of interest and improper incentives concerns as those given to a member firm or its associated persons.”

FINRA notes that the Non-Cash Compensation Rules impose limits on gifts received where the gifts are made in connection with the sale and distribution of DPPs, variable insurance contracts, investment company securities, or public offerings of securities.⁷⁶ By contrast, the Gifts Rule applies to gifts given in relation to the business of the employer of the recipient. Thus, the Gifts Rule is intended to address a different concern—that is, the relationship with an Institutional Customer—than the Non-Cash Compensation Rules, which apply to gifts made in connection with the sale and distribution of certain products. Due to this difference and after considering the comments, FINRA has determined to retain the current scope of the Gifts Rule rather than to propose to apply it to gifts received by members and associated persons.⁷⁷

(C) FINRA Rule 3220(b)

Rule 3220(b) provides that the Gifts Rule “shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services.” The purpose of paragraph (b) is to exclude from the gift limit contracts of employment or contracts for services to be

⁷⁶ See Rule 2310(c)(2)(A); Rule 2320(g)(4)(A); 2341(l)(5)(A); 5110(f)(2)(A).

⁷⁷ FINRA notes that a member’s policies and procedures may restrict or prohibit gifts received in contexts other than the sale and distribution of securities.

rendered by an individual who is also an employee, agent, or representative of a third-party firm. To rely on this exclusion, however, there needs to be a written agreement documenting the individual's employee or services relationship with the member. It does not require that the contract establish a statutory employer-employee ("W2") relationship; rather, it envisions that the agreement may instead document an independent contractor relationship between the individual and member.

In the Notice, FINRA did not propose substantive changes to Rule 3220(b). However, ABA raised concerns that the rule "is confusing as written and may have unintended consequences" noting that typically firms "do not enter into formal employment contracts with ... 'dual employees' or may engage persons as 'independent contractors' and not statutory 'W2' employees ..." ABA stated, "[i]t is not clear to [ABA] that this provision adequately addresses such arrangements and, indeed, may be read as requiring formal employment arrangements and employment contracts, which is not the norm, particularly for lower-level personnel." ABA suggested that "this provision be modified and simplified to exclude compensation provided under such circumstances if the other employer is notified of the arrangement ... and does not object to the employee continuing in a dual capacity."

While FINRA acknowledges the commenter's concern, FINRA continues to believe that for purposes of complying with Rule 3220(b), a written agreement is needed to verify the existence of an employee or services relationship with a person who is also "a person, principal, proprietor, employee, agent or representative of another person" (emphasis added). Thus, FINRA has determined to retain the current application of Rule 3220(b), which does not apply to gifts given to traditional employees, independent

contractors, or dual employees who are employed by a member and by an affiliated or unaffiliated third party, provided there is a written agreement in place between the member and the employee, independent contractor, or dual employee.

(D) Supplementary Material Incorporating Existing Guidance and Interpretative Positions

In the Notice, FINRA proposed to incorporate the guidance in NTM 06-69, as well as its interpretation regarding the application of the Gifts Rule to bereavement gifts, into proposed Rule 3220 as supplementary material. The comments received in response to the supplementary material proposed in the Notice are discussed below.

(i) Proposed Supplementary Material Regarding Gifts Incidental to Business Entertainment

In the Notice, FINRA proposed in supplementary material that there is no express exclusion from the restrictions in paragraph (a) of the Gifts Rule for gifts given during the course of business entertainment, unless the gift is of de minimis value, or a promotional or commemorative item. FINRA did not receive any comments on this proposed supplementary material.

As discussed above, proposed Rule 3220.01 would make clear that the prohibition in paragraph (a) of the Gifts Rule does not apply to any gift given in compliance with proposed Rule 3220.04 (Personal Gifts) and 3220.05 (De Minimis Gifts and Promotional or Commemorative Items).⁷⁸ Thus, if a gift qualifies for one of these exceptions, paragraph (a) of the Gifts Rule would not apply to these gifts even if given during the course of a business entertainment event.

⁷⁸ See supra Item 3(a)(2)(C)(i).

(ii) *Proposed Supplementary Material Regarding Valuation of Gifts*

In the Notice, FINRA proposed in supplementary material to codify existing guidance regarding the Gifts Rule that gifts must be valued at the higher of cost or market value, exclusive of tax or delivery charges.⁷⁹ In addition, FINRA proposed to codify existing guidance that when valuing tickets to sporting or other events, a member must use the higher of cost or face value.⁸⁰

Several commenters to the Notice stated that requiring market value for the valuation of gifts would add unnecessary complexity and subjectivity into the rule without adding a benefit.⁸¹ For example, ABA stated that “the requirement to determine a ‘market value’ for a gift item is too difficult and costly a burden ...”

After considering the comments and as discussed above, FINRA has modified proposed Rule 3220.02 to require that gifts be valued at cost, exclusive of tax and delivery charges, thereby eliminating the requirement to value gifts at market value.⁸² Also as discussed above, consistent with existing guidance, proposed Rule 3220.02 would retain the requirement that gifted tickets for sporting or other events are to be valued at the higher of face value or actual cost paid by the member or associated person.⁸³

⁷⁹ See NTM 06-69, supra note 4.

⁸⁰ See NTM 06-69, supra note 4.

⁸¹ See, e.g., ABA, First Asset Financial and NAIFA.

⁸² See supra Item 3(a)(2)(C)(ii).

⁸³ See supra Item 3(a)(2)(C)(ii).

(iii) *Proposed Supplementary Material Regarding Aggregation of Gifts*

In the Notice, FINRA proposed in supplementary material to codify existing guidance regarding the Gifts Rule that members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year.⁸⁴ In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.⁸⁵

FINRA received one comment opposing the proposed aggregation requirement.⁸⁶ WFA stated that it believed it would be extremely difficult to collectively document gifts given across WFA by individual team members to specific recipients. WFA proposed a gifting policy that would apply individually for each instance of an exchange between a specific offeror and a specific recipient and would not require the aggregation of all gifts to a single recipient.

For the reasons discussed above, proposed Rule 3220.03 would require aggregation consistent with the current guidance in NTM 06-69.⁸⁷

In addition, FINRA received comments requesting clarification regarding the application of the aggregation requirements.⁸⁸ For example, NAIFA stated that it

⁸⁴ See NTM 06-69, supra note 4.

⁸⁵ See NTM 06-69, supra note 4.

⁸⁶ See WFA.

⁸⁷ See supra Item 3(a)(2)(C)(iii).

⁸⁸ See, e.g., NAIFA and SIFMA.

“should be expressly stated that bereavement, personal and [de minimis] gifts are not to be included when calculating the aggregation of gifts” SIFMA also recommended that FINRA clarify that gifts excluded from the Gifts Rule under the proposed supplementary material are excluded from the aggregation requirement.

After considering the comments, and for the reasons discussed above, proposed Rule 3220.03 would explicitly exclude from the aggregation requirement gifts meeting the requirements of proposed Rule 3220.04 (Personal Gifts) and 3220.05 (De minimis Gifts and Promotional or Commemorative Items).⁸⁹

(iv) Proposed Supplementary Material Regarding Bereavement Gifts and Personal Gifts

In the Notice, FINRA proposed in supplementary material to substantially codify its existing interpretive position regarding the Gifts Rule that bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the recipient and, therefore, are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.⁹⁰ FINRA did not receive any comments on the proposed supplementary material regarding bereavement gifts.

Also in the Notice, FINRA proposed in supplementary material that gifts given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule, provided the gifts are customary

⁸⁹ See supra Item 3(a)(2)(C)(iii).

⁹⁰ See Aly Letter, supra note 5.

and reasonable, personal in nature, and not in relation to the business of the employer of the recipient. In addition, the proposed supplementary material stated that, in determining whether a gift is “personal in nature and not in relation to the business of the employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient and whether the associated person paid for the gift. When the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

FINRA received two comments requesting further clarification on the application of the personal gift exclusion.⁹¹ SIFMA stated that the proposed language could be read to “limit[]” personal gifts to those given for infrequent life events, whereas SIFMA read NTM 06-69 more broadly than the proposed supplementary material: “[t]he guidance in Notice to Members 06-69 ... was more broadly written, noting that ‘[t]he prohibitions in Rule 3060 generally do not apply to personal gifts such as a wedding gift or a congratulatory gift for the birth of a child, provided that these gifts are not “in relation to the business of the employer of the recipient.”’” SIFMA requested that the proposed supplementary material be revised to align with NTM 06-69.

Woodforest recommended revising the proposed supplementary material to remove the last sentences stating that “[i]n the first several sentences the rule seems to allow a member firm to give a personal gift for occasional life events.” However,

⁹¹ See SIFMA and Woodforest.

Woodforest stated that this ability is negated by the last sentence, which notes that if the member reimburses the associated person or pays for the gift, it is presumed that it is not a personal gift.

FINRA has determined not to revise the proposed supplementary material as suggested by the commenters. The purpose of the exclusion for personal gifts is to eliminate the restrictions and recordkeeping requirements for gifts that are personal in nature and commemorate an infrequent life event because such gifts do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient's employer. The exclusion is not intended to cover gifts given for events that occur frequently or even annually, such as birthdays. FINRA believes that proposed Rule 3220.04 is consistent with, and not narrower than, the guidance in NTM 06-69.

(v) *Proposed Supplementary Material Regarding De Minimis Gifts and Promotional or Commemorative Items*

In the Notice, FINRA proposed in supplementary material to codify its existing interpretive position in NTM 06-69 regarding de minimis gifts and promotional or commemorative items, and to establish a dollar threshold for de minimis gifts and promotional items. Thus, in the Notice, the proposed supplementary material provided that: "(a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the member's logo (e.g., umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (a) of [the Gifts] Rule provided that the value of the gift or promotional item is below \$50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a)

of [the Gifts] Rule. The restrictions of [the Gifts] Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction.”

With respect to the exclusion for de minimis gifts and promotional items, commenters to the Notice were generally supportive of the proposed supplementary material, but some commenters disagreed as to the appropriate dollar threshold, as to whether the threshold applies to commemorative items, and as to the application of the Gifts Rule when there is a pattern of giving de minimis gifts or promotional items in order to circumvent the Gift Rule’s restrictions.

Commenters did not agree on what the appropriate dollar threshold should be for these items.⁹² For example, Woodforest and WFA supported a \$50 de minimis threshold. First Asset Financial supported a \$100 de minimis threshold due to the cost of recordkeeping and because the rule has not been updated in many years. NAIFA and FSI also supported a \$100 threshold. FSI noted that the de minimis “exception may ultimately become meaningless, because the proposed level is so low that firms will have to assume the value of the gift is more than \$50, and firms would be disclosing all gifts received, which is not the intent of the rule.” However, PIRC stated that the threshold should be lower at \$25 to “ensure that such gifts are truly of nominal value and that the lack of recording those gifts will not adversely affect investors.”

After considering the comments and as discussed above, FINRA believes that rather than establishing a dollar threshold at this time, it is appropriate to codify the current guidance that the value of gifts under this exclusion must be substantially below

⁹² See, e.g., First Asset Financial, FSI, NAIFA, PIRC, WFA, and Woodforest.

the gift limit, which is \$250 as proposed.⁹³ Examples of gifts of de minimis value include pens, notepads, or modest desk ornaments.

SIFMA requested clarification regarding the value for promotional or commemorative items. As discussed above, FINRA believes it is appropriate to make clear that the value of promotional items must be substantially below the \$250 limit because promotional items typically have utility (e.g., umbrellas, tote bags, or shirts). By contrast, FINRA does not believe it is necessary to explicitly limit the value of customary commemorative items, so long as they are reasonable, because such gifts are solely decorative.⁹⁴

FINRA also received comments regarding its statement in the Notice that a member or its associated persons may not engage in patterns of providing de minimis gifts or promotional items in order to circumvent the Gifts Rule's restrictions.⁹⁵ Both WFA and ABA raised concerns about this statement. ABA noted that "in order to comply with this requirement, member firms will still need to employ a reporting and recordkeeping mechanism designed to monitor gifts given that are under \$50 in value so that questionable patterns can be identified and appropriately addressed."

FINRA made clear in the Notice that giving numerous de minimis gifts in order to avoid the limitations of the Gifts Rule would be considered a violation of the Gifts Rule. However, FINRA did not intend to suggest that there is a bright line for determining when a pattern of giving promotional items or de minimis gifts arises to a violation of the

⁹³ See supra Item 3(a)(2)(C)(v)(a).

⁹⁴ See supra Items 3(a)(2)(C)(v)(b).

⁹⁵ See Notice, supra note 3, at 12 n.11.

Gifts Rule's restrictions. Whether a member or associated person engages in a pattern of giving promotional items or de minimis gifts that are designed to evade or that may result in a violation of the Gifts Rule's restrictions would depend on the facts and circumstances, including for example, whether the frequency of gifting promotional items or de minimis gifts that are each substantially below the \$250 limit appears to be for the purpose of circumventing the \$250 gift limit.

(vi) Proposed Supplementary Material Regarding Supervision and Recordkeeping

In the Notice, FINRA proposed in supplementary material to codify existing guidance in NTM 06-69 that members must have systems and procedures reasonably designed to ensure compliance with the Gifts Rule as well as Rule 3110.⁹⁶

FINRA did not receive any comments on the proposed supplementary material. However, FINRA has modified the supplementary material in the proposed rule change to make clear that the procedures must be reasonably designed to ensure that an associated person who is giving a payment or gratuity is not responsible for determining whether such payment or gratuity is in relation to the business of the recipient's employer. As discussed above, FINRA believes that requiring a person other than the associated person giving the gift to assess the nature of the gift would encourage objectivity in the determination of whether a gift is personal.⁹⁷

In addition, FINRA has further modified the proposed supplementary material in the proposed rule change to make clear that the recordkeeping requirements of the

⁹⁶ See NTM 06-69, supra note 4.

⁹⁷ See supra Item 3(a)(2)(C)(vii).

rule do not apply to gifts that are excluded from the restrictions of the rule (i.e., personal gifts, de minimis gifts, promotional or commemorative items, and disaster-related donations).⁹⁸ As noted above, these proposed amendments substantially codify existing guidance regarding the Gifts Rule.⁹⁹

(vii) *Proposed Supplementary Material Regarding
Gifts to a Member's Associated Persons or
Individual Retail Customers*

In the Notice, FINRA sought comment on whether the Gifts Rule should apply to gifts a member gives to its own associated persons or to gifts a member or a member's associated person gives to individual retail customers. All of the comments received regarding this question supported the current application of the rule.¹⁰⁰ For example, ABA stated that "[g]ifts from employers to employees are quite common and we do not believe over-arching rules prohibiting or limiting such activity are necessary or appropriate. ... [G]ifts given by member firm[s] to incentivize inappropriate behavior by member firm personnel would be addressed by other rules applicable to member firms." However, FSI stated that further clarity is needed because "many, and perhaps even the majority, of FINRA member firms have interpreted this rule to apply to gifts given by financial advisors to their individual retail clients ... FSI therefore suggests that FINRA include a clear definition of the application of the rule by explicitly stating in the rule text that it does not apply to gifts given by individual registered financial advisors associated with a FINRA member firm to their individual retail clients."

⁹⁸ See supra Item 3(a)(2)(C)(vii).

⁹⁹ See NTM 06-69, supra note 4.

¹⁰⁰ See, e.g., ABA, First Asset Financial, FSI, and Woodforest.

As discussed above, FINRA proposes to make this current application of the Gifts Rule explicit in proposed Rule 3220.08.¹⁰¹

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁰²

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 16-29 (August 2016).

Exhibit 2b. A list of comment letters received in response to Regulatory Notice 16-29 (August 2016).

¹⁰¹ See supra Item 3(a)(2)(C)(viii).

¹⁰² 15 U.S.C. 78s(b)(2).

Exhibit 2c. Copies of the comment letters received in response to Regulatory Notice 16-29 (August 2016).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2025-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others) to increase the gift limit from \$100 to \$250 per person per year, provide for exemptive relief, and incorporate existing guidance and interpretive letters. The proposed rule change also would make a conforming change to the gift limit in Rule 2310 (Direct Participation Programs), Rule 2320 (Variable Contracts of an Insurance Company), Rule 2341 (Investment Company Securities), and Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(1) Background

(A) Current FINRA Rules and Guidance on Gifts

FINRA Rule 3220 (Influencing or Rewarding Employees of Others) (the "Gifts Rule") prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient's employer.³ The rule also requires members to keep separate records of all payments or gratuities in any amount known to the member. The rule seeks to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of

³ FINRA notes that the term "anything of value" is broad and includes both cash and non-cash compensation. It would not, however, include intangible items such as an associated person's time.

another person, such as an institutional customer, vendor or counterparty (“Institutional Customer”) with the hope of strengthening the business relationship with the Institutional Customer.⁴

Over the years, FINRA staff has issued guidance on interpretive issues related to gifts. For example, in 2006, FINRA issued Notice to Members (“NTM”) 06-69, which included guidance regarding the application of the Gifts Rule to personal gifts, de minimis and promotional items, aggregation of gifts, valuation of gifts, gifts incidental to business entertainment, and supervision and recordkeeping.⁵ FINRA has also issued an interpretive letter regarding the application of the Gifts Rule to bereavement gifts,⁶ and

⁴ See Regulatory Notice 16-29 (August 2016) (the “Notice”). FINRA issued the Notice to request comment on proposed changes to the Gifts Rule, as well as on proposed new rules regarding non-cash compensation and business entertainment. In this filing, FINRA proposes changes to the Gifts Rule, as well as conforming amendments to the gift limit in Rules 2310, 2320, 2341, and 5110 (together, the “Non-Cash Compensation Rules”). FINRA is not at this time proposing additional changes to the Non-Cash Compensation Rules or proposing a new rule related to business entertainment.

⁵ See NTM 06-69 (December 2006). In addition, FINRA has conducted an assessment of the effectiveness and efficiency of the Gifts Rule and Non-Cash Compensation Rules through a retrospective rule review and requested comment on proposed rule amendments and guidance. See Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation (December 2014) (“Retrospective Review Report”), <https://www.finra.org/sites/default/files/p602010.pdf>; Notice, *supra* note 4. FINRA received 17 comment letters in response to the Notice. See *infra* Item II.C.

⁶ See Letter from Gary L. Goldsholle, Vice President & Associate General Counsel, FINRA, to Amal Aly, Managing Director & Associate General Counsel, SIFMA, dated December 17, 2007 (“Aly Letter”), available at <https://www.finra.org/rules-guidance/guidance/interpretive-letters/amal-aly-sifma-reasonable-and-customary-bereavement-gifts>.

published guidance regarding donations due to federally declared major disasters (“Disaster-Related Donations FAQ”).⁷

(B) Overview of Proposed Rule Change

The proposed rule change is summarized here and set forth in detail below. The proposed rule change would increase the gift limit from \$100 to \$250 per person per year under the Gifts Rule as well as the Non-Cash Compensation Rules, which include an exception for gifts subject to the same dollar limit. The proposed rule change would also provide for exemptive relief from the Gifts Rule.

In addition, the proposed rule change would incorporate and substantially codify existing guidance by adding supplementary material to address gifts incidental to business entertainment, valuation of gifts, aggregation of gifts, personal gifts, de minimis gifts and promotional or commemorative items, donations due to federally declared major disasters, and supervision and recordkeeping.⁸ The proposed supplementary material also would make clear that the proposed rule change, like the current Gifts Rule, does not apply to gifts from a member to its own associated persons or to gifts from a member or an associated person of a member to individual retail customers.

FINRA believes the proposed rule change would promote efficiency without reducing protection for investors and the public interest. Updating the gift limit as well as incorporating and substantially codifying existing guidance and interpretations would

⁷ See Gifts/Business Entertainment/Non-Cash Compensation FAQs, available at <https://www.finra.org/rules-guidance/key-topics/gifts-gratuities-and-non-cash-compensation/faqs>.

⁸ By incorporating and substantially codifying existing guidance and interpretations, the proposed rule change, if approved by the Commission, would supersede such guidance and interpretations.

improve transparency, awareness, and understanding of the Gifts Rule's requirements. FINRA believes these proposed changes would also help facilitate compliance with the Gifts Rule.

(2) Proposed Changes to the Gifts Rule

The Gifts Rule prohibits any member or person associated with a member, directly or indirectly, from giving or permitting to be given anything of value in excess of \$100 per year to any person where such payment or gratuity is in relation to the business of the recipient's employer. A gift of any kind is considered a gratuity. The rule also requires members to keep separate records regarding all payments or gratuities.⁹ As stated above, the rule seeks to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of an Institutional Customer with the hope of strengthening the business relationship with the Institutional Customer.¹⁰

The discussion below of the proposed changes to the Gifts Rule is divided into three main topics: (A) increasing the gift limit from \$100 to \$250, (B) providing FINRA authority to grant exemptive relief from the Gifts Rule for good cause shown, and (C) adding to the Gifts Rule proposed supplementary material to incorporate

⁹ See Rule 3220(c).

¹⁰ See Notice, *supra* note 4. Whereas the Gifts Rule primarily addresses gifts given to employees of Institutional Customers, the Non-Cash Compensation Rules address, among other things, gifts from a broker-dealer to persons associated with a third-party broker-dealer (e.g., from a wholesaler to associated persons of a retail broker-dealer) in connection with the sale and distribution of a security covered by one of the Non-Cash Compensation Rules. Under the Non-Cash Compensation Rules, such gifts are subject to the same gift limit as the Gifts Rule and may not be preconditioned on achievement of a sales target.

existing guidance and interpretive positions regarding (i) gifts incidental to business entertainment, (ii) valuation of gifts, (iii) aggregation of gifts, (iv) personal gifts, (v) de minimis gifts and promotional or commemorative items, (vi) donations due to federally declared major disasters, (vii) supervision and recordkeeping, and (viii) gifts to a member's associated persons or individual retail customers.

(A) Increase Gift Limit from \$100 to \$250

The current gift limit of \$100 has been in place since 1992.¹¹ In determining whether and how much to propose increasing the gift limit, FINRA has considered the rate of inflation since 1992.¹² The average annual rate of inflation over the 32 years from 1992 until 2024 was 2.55 percent and the compound increase in consumer prices over the period was 123.56 percent. Applying this increase to the \$100 gift limit results in a dollar value of \$223.56. To account for past and some expected future inflation, FINRA proposes to raise the gift limit to \$250. FINRA believes that the proposed \$250 gift limit would continue to permit the exchange of business courtesies while helping to guard against excessiveness. In addition, a dollar limit, as opposed to, for example, a principles-based approach, would provide certainty regarding the limit for

¹¹ In 1992, FINRA increased the gift limit from \$50 to \$100. See Securities Exchange Act Release No. 31662 (December 28, 1992), 58 FR 370 (January 5, 1993) (Order Approving File No. SR-NASD-92-40). See also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (Order Approving File No. SR-NASD-84-8) (increasing gift limit from \$25 to \$50).

¹² FINRA used the annual rate of inflation data for the United States from the Federal Reserve Bank of St. Louis website to estimate the change in consumer prices since 1992, when the SEC approved the increase in the limit from \$50 to \$100.

gifts and help facilitate member compliance with the Gifts Rule.¹³ FINRA recognizes that a gift limit of \$250 may need to be further adjusted at a later date to keep pace with inflation, among other factors. Thus, if the SEC approves the proposed rule change, FINRA intends to review periodically the gift limit to determine if further increases are warranted.

(B) Exemptive Relief

Proposed new paragraph (d) of the Gifts Rule would authorize FINRA staff, pursuant to the FINRA Rule 9600 Series,¹⁴ to conditionally or unconditionally grant an exemption from any provision of proposed Rule 3220 for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest. Given the scope of the Gifts Rule, which applies to gifts given to a wide range of recipients where the payment is in relation to the business of the employer of the recipient, and given the diversity of member sizes, structures, business, and distribution models, FINRA believes it would be useful and appropriate to have the ability to provide relief from a particular provision of the Gifts Rule under specific factual circumstances.¹⁵

¹³ FINRA also proposes to make a technical change to Rule 3220(b) by removing the word “to” before “compensation” in the first sentence of Rule 3220(b). Thus, under the proposed rule change, Rule 3220(b) would provide “This rule shall not apply to contracts of employment with or compensation for services rendered by...”. FINRA believes the proposed change would improve the readability and understanding of Rule 3220(b).

¹⁴ The Rule 9600 Series provides the procedures for members that seek exemptive relief as permitted under specified rules. See Rules 9610 through 9630.

¹⁵ FINRA is also proposing to amend Rule 9610 to add the Gifts Rule to the list of rules under which a member may seek exemptive relief.

(C) Supplementary Material Incorporating and Substantially Codifying Existing Guidance and Interpretative Positions

As previously noted, FINRA staff has issued guidance on various interpretive issues over the years related to the Gifts Rule. In 2006, FINRA issued NTM 06-69 to clarify, among other things, the gifts that are subject to the Gifts Rule; that members must aggregate all gifts given by the member and its associated persons to a particular recipient over the course of a year; the manner by which to value gifts; and the supervision and recordkeeping requirements for gifts.¹⁶ In addition, in response to inquiries regarding the Gifts Rule, FINRA staff has published frequently asked questions¹⁷ and issued interpretive letters, including a letter regarding the application of the Gifts Rule to bereavement gifts.¹⁸

The proposed rule change would incorporate and substantially codify the existing guidance and interpretations into the Gifts Rule, which would improve transparency, awareness, and understanding of the rule's requirements. In addition, it would help facilitate compliance with the proposed rule change.

(i) Proposed FINRA Rule 3220.01 (Gifts Incidental to Business Entertainment)

Under the current guidance, there is no express exclusion from the Gifts Rule for gifts given during the course of a business entertainment event.¹⁹ FINRA proposes to continue to apply the Gifts Rule, as proposed to be amended, to business

¹⁶ See NTM 06-69, supra note 5.

¹⁷ Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 7.

¹⁸ See Aly Letter, supra note 6.

¹⁹ See NTM 06-69, supra note 5.

entertainment events and to exclude personal gifts, de minimis gifts, or promotional or commemorative items. Therefore, FINRA proposes to add Rule 3220.01 to provide that a gift given during the course of a business entertainment event would be subject to the \$250 limit on gifts in paragraph (a) of the Gifts Rule unless it is a personal gift under proposed Rule 3220.04 or of de minimis value or a promotional or commemorative item under proposed Rule 3220.05.²⁰ Thus, for example, giving away clothing or electronics at a business entertainment event would be subject to the gift limit. However, pens or notepads of de minimis value given during a business entertainment event would not be subject to the gift limit provided the item meets the requirements of proposed Rule 3220.05. Similarly, a decorative plaque to commemorate a business transaction given during a business entertainment event would not be subject to the gift limit provided the gift meets the requirements of proposed Rule 3220.05.²¹

FINRA believes that gifts given incidental to a business entertainment event, such as gift baskets or other items—including gifts of food or beverages in quantities beyond what could reasonably be consumed during the event—would be subject to the gift limit. For the purpose of this limit, the cost of the business entertainment event itself would not be included in the value of the gift.

²⁰ As discussed below, de minimis gifts and promotional items must have a value substantially below the \$250 limit. See proposed Rule 3220.05(a); see also infra Item II.C.(D)(v).

²¹ As discussed below, items commemorating a business transaction must be customary and reasonable solely decorative items. See proposed Rule 3220.05(b); see also infra Item II.C.(D)(v). FINRA has published guidance regarding business entertainment events held virtually rather than in-person. See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 7. Proposed Rule 3220.01 would apply to gifts incidental to a virtual business entertainment event.

(ii) Proposed FINRA Rule 3220.02 (Valuation of Gifts)

The current guidance states that a member should value gifts at the higher of cost or market value, exclusive of tax and delivery charges.²² Likewise, under the current guidance, when valuing tickets to sporting or other events, a member must use the higher of cost or face value.²³

FINRA proposes to add Rule 3220.02, which would require that gifts (other than tickets to sporting or other events) be valued at cost, exclusive of tax and delivery charges. This would be a change from the current guidance in NTM 06-69 which requires the valuation of gifts at the higher of cost or market value. FINRA believes that codifying the requirement that a member value gifts at the higher of cost or market value would add complexity and subjectivity into the rule without adding a significant benefit as it may be difficult or burdensome for members and associated persons to determine the market value of such gifts.²⁴

With respect to giving tickets to sporting or other events, consistent with the current guidance in NTM 06-69, proposed Rule 3220.02 would require that the member must use the higher of cost or face value. For example, if a member makes a gift of a ticket to a sporting event that it procured in the secondary market at a cost that exceeds the ticket's face value, the value of such ticket for purposes of the Gifts Rule would be the actual cost to the member, not the face value of the ticket. FINRA believes

²² See NTM 06-69, supra note 5.

²³ See NTM 06-69, supra note 5.

²⁴ See infra note 82 and accompanying text (discussing comments received in response to the Notice).

it is appropriate to distinguish tickets to sporting or other events from other gifts because such tickets are commonly purchased on secondary markets at a cost that is different from the face value of the ticket. In addition, the face value of tickets to sporting or other events is typically readily determinable and, therefore, does not raise the same concerns about the burden and complexity of determining the higher of cost or value of the gift.

In addition, the current guidance states that if gifts are given to multiple recipients, members should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis for purposes of ensuring compliance with the gift limit.²⁵ FINRA proposes to substantially codify this guidance in proposed Rule 3220.02, which FINRA believes would improve transparency, awareness, and understanding of how to apply the gift limit in situations where a gift, such as a gift basket, is to be shared among multiple recipients.

(iii) Proposed FINRA Rule 3220.03 (Aggregation of Gifts)

Under the current guidance, members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year.²⁶ In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.²⁷

Consistent with the current guidance in NTM 06-69, FINRA proposes to add Rule 3220.03 to provide that members must aggregate all gifts given by the member and each

²⁵ See NTM 06-69, supra note 5.

²⁶ See NTM 06-69, supra note 5.

²⁷ See NTM 06-69, supra note 5.

associated person of the member to a particular recipient over the course of the year for purposes of ensuring compliance with the \$250 limit in paragraph (a) of the Gifts Rule. In addition, proposed Rule 3220.03 would provide that each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

In NTM 06-69, FINRA indicated that aggregating all gifts given by the member or associated person to a particular person over the course of a year was necessary in order to comply with the Gifts Rule.²⁸ FINRA continues to believe that the aggregation requirement is necessary to avoid the potential conflicts of interest the Gifts Rule is intended to prevent, because aggregation helps ensure that persons who give multiple gifts in a year to the same recipient do not circumvent the gift limit.

Proposed Rule 3220.03 would also provide that the aggregation requirements do not apply to a personal gift under proposed Rule 3220.04, or to a gift of de minimis value or a promotional or commemorative item under proposed Rule 3220.05. The purpose of the aggregation requirement is to determine whether the value of multiple gifts given throughout a year to a particular recipient does not exceed the gift limit. Because de minimis, promotional, commemorative, and personal gifts are not subject to the gift limit, they should not be included when aggregating the value of gifts that are subject to the limit.

²⁸ See NTM 06-69, supra note 5.

(iv) Proposed FINRA Rule 3220.04 (Personal Gifts)

Under the current guidance, gifts that are given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule, provided that the gifts are not in relation to the business of the employer of the recipient.²⁹ Likewise, bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the recipient and, therefore, are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.³⁰

In determining whether a gift is “in relation to the business of the employer of the recipient,” the current guidance states that members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient, and whether the associated person paid for the gift.³¹ The current guidance states that when the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.³²

²⁹ See NTM 06-69, supra note 5.

³⁰ See Aly Letter, supra note 6. FINRA considers bereavement gifts to be a type of personal gift because bereavement gifts are given for infrequent life events. The exception for personal gifts would not apply to gifts given for events that occur frequently, or even annually, such as birthdays.

³¹ See NTM 06-69, supra note 5.

³² See NTM 06-69, supra note 5.

Consistent with the current guidance, FINRA proposes to add Rule 3220.04 to provide that gifts that are given for infrequent life events (e.g., a wedding gift, a congratulatory gift for the birth of a child, or a bereavement gift) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the Gifts Rule, provided that the gifts are customary and reasonable, personal in nature, and not in relation to the business of the employer of the recipient. Consistent with the current guidance, proposed Rule 3220.04 would provide that in determining whether a gift is “personal in nature and not in relation to the business of the employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient, and whether the associated person paid for the gift. It would also provide that when the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

FINRA believes this exception for personal gifts is appropriate because such gifts for infrequent life events do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient’s employer.

(v) Proposed FINRA Rule 3220.05 (De Minimis Gifts and Promotional or Commemorative Items)

(a) De Minimis Gifts and Promotional Items

Under the current guidance, gifts given of a de minimis value (e.g., pens, notepads, or modest desk ornaments) or promotional items of nominal value that display the member’s logo (e.g., umbrellas, tote bags, or shirts) are not subject to the restrictions

in paragraph (a) of the Gifts Rule or the recordkeeping requirements of paragraph (c) of the rule.³³ The current guidance requires the value of de minimis or promotional items to be “substantially below” the current \$100 gift limit.³⁴

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.05(a) to provide that gifts of a de minimis value (e.g., pens, notepads, or modest desk ornaments) or promotional items of nominal value that display the member’s logo (e.g., umbrellas, tote bags, or shirts) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.³⁵ In addition, proposed Rule 3220.05(a) would provide that the value of the de minimis gift or promotional item must be substantially below the \$250 limit.

Gifts valued in amounts above or near \$250 would not be considered nominal. FINRA believes it is appropriate to specify that de minimis gifts and promotional items must have a value substantially below the proposed \$250 limit because such items often have utility.³⁶

(b) Commemorative Items

Under the current guidance, customary Lucite stones, plaques, or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirement of

³³ See NTM 06-69, supra note 5.

³⁴ See NTM 06-69, supra note 5.

³⁵ Expensive leather luggage and crystal pieces, notwithstanding the presence of a firm logo, would not be eligible for the exclusion of promotional items of nominal value.

³⁶ See NTM 06-69, supra note 5.

paragraph (c) of the rule, even when such items have a cost of more than \$100.³⁷

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.05(b) to provide that customary and reasonable solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule. For example, Lucite stones, plaques, or other similar customary and reasonable solely decorative items commemorating a business transaction would be excluded from the requirements of the Gifts Rule, even when such items have a cost of more than \$250.³⁸

FINRA does not believe it is necessary to explicitly limit the value of customary commemorative items because they must be solely decorative. Thus, the restrictions of the Gifts Rule would apply where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. For example, providing employees of an Institutional Customer with elaborate electronic equipment following the closing of a transaction would be subject to the gift limit.

(vi) Proposed FINRA Rule 3220.06 (Donations Due to Federally Declared Major Disasters)

FINRA has published a Disaster-Related Donations FAQ on its website to address whether it would be consistent with the Gifts Rule for a member or an associated person to donate goods or money (either directly or through a fundraising platform) to employees of an Institutional Customer for losses sustained due to a federally-declared

³⁷ See NTM 06-69, supra note 5.

³⁸ See NTM 06-69, supra note 5.

major disaster.³⁹ As stated in the Disaster-Related Donations FAQ, FINRA had not previously addressed the application of Rule 3220(a) to donations to employees of an Institutional Customer to help such individuals with losses sustained in a natural event that the President has declared to be a major disaster, such as a wildfire, hurricane, tornado, earthquake, or flood. Due to the nature of such disasters, which are unpredictable and catastrophic, FINRA does not consider donations by a member or an associated person to an employee of an Institutional Customer to provide assistance to the individual in connection with such a disaster to be “in relation to the business of the employer of the recipient” for purposes of Rule 3220(a).⁴⁰

Consistent with the current guidance in the Disaster-Related Donations FAQ, FINRA proposes to add Rule 3220.06 to provide that donations by a member or an associated person to any person, principal, proprietor, employee, agent or representative of another person to provide assistance to the individual for losses sustained in a natural event that the President has declared to be a major disaster, such as a wildfire, hurricane, tornado, earthquake, or flood, are not considered “in relation to the business of the employer of the recipient” for purposes of Rule 3220(a).⁴¹

³⁹ See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 7.

⁴⁰ FINRA encourages members to establish written procedures concerning disaster-related donations to employees of Institutional Customers. See Gifts/Business Entertainment/Non-Cash Compensation FAQs, supra note 7.

⁴¹ Solicitation of charitable contributions to an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code is addressed in Notice to Members 06-21 (May 2006).

(vii) Proposed FINRA Rule 3220.07 (Supervision and Recordkeeping)

The Gifts Rule requires separate recordkeeping of all payments or gratuities.⁴² Rule 3110 requires a member to have a supervisory system reasonably designed to achieve compliance with the Gifts Rule. Under the current guidance, to meet these standards, members are required to have systems and procedures reasonably designed to ensure that gifts in relation to the business of the employer of the recipient given by the member and its associated persons to employees of clients of the member are (i) reported to the member, (ii) reviewed for compliance with the Gifts Rule, including aggregation, and (iii) maintained in the member's records. The current guidance in NTM 06-69 provides that such procedures should include provisions reasonably designed to ensure that an associated person who is making a gift is not responsible for determining whether such gift is personal rather than in relation to the business of the recipient's employer. The current guidance also provides that gifts of de minimis value or promotional or commemorative items are not subject to the rule's recordkeeping requirements.⁴³

Consistent with the current guidance, FINRA proposes to add proposed Rule 3220.07 to provide that to have a supervisory system reasonably designed to achieve compliance with the Gifts Rule, members are required to have systems and procedures reasonably designed to ensure that payments and gratuities in relation to the business of the employer of the recipient given by the member and its associated persons to

⁴² See Rule 3220(c).

⁴³ See NTM 06-69, supra note 5.

employees of another person⁴⁴ are: (i) reported to the member; (ii) reviewed for compliance with the Gifts Rule; and (iii) maintained in the member's records. The proposed supplementary material would also provide that such procedures must be reasonably designed to ensure that an associated person who is giving a payment or gratuity is not responsible for determining whether such payment or gratuity is in relation to the business of the recipient's employer. Rather, FINRA believes that requiring a person other than the associated person giving the gift to assess the nature of the gift would encourage objectivity in the determination of whether a gift is personal.

Consistent with the current guidance, the proposed supplementary material would also make explicit that the recordkeeping requirements of the Gifts Rule do not apply to gifts that are excluded from the restrictions of the rule. Thus, the recordkeeping requirements would not apply to personal gifts, de minimis gifts, promotional or commemorative items, or donations due to federally declared major disasters. Although recordkeeping is not required, members may determine to implement a recordkeeping requirement for such gifts as part of their supervisory system to achieve compliance with the Gifts Rule. FINRA recognizes that there are a variety of methods for ensuring compliance with the Gifts Rule. Members should implement a reasonable process for assessing their individual needs and business models to determine systems and procedures that are reasonably designed to achieve compliance with the Gifts Rule.

⁴⁴ The Gifts Rule applies to gifts given to "any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity." As discussed above, the term "another person" includes an institutional customer, vendor, or counterparty (for purposes of this discussion, referred to collectively as "Institutional Customers").

(viii) Proposed FINRA Rule 3220.08 (Gifts to a Member's Associated Persons or Individual Retail Customers)

Currently, by its terms, the Gifts Rule does not apply to gifts a member gives to its own associated persons or to gifts a member or a member's associated person gives to individual retail customers. However, FINRA is aware that there may be some misunderstanding about the scope of the Gifts Rule, particularly regarding its application to gifts from a member or its associated persons to individual retail customers.

To clarify the scope of the Gifts Rule and improve awareness and understanding of its scope among members, associated persons, and customers, FINRA is proposing to add Rule 3220.08 to state expressly that the Gifts Rule does not apply to gifts from a member to its own associated persons, or to gifts from a member or an associated person to individual retail customers.

The Gifts Rule is intended to avoid improprieties, such as conflicts of interest, that may arise when a member or an associated person gives items of value to an employee of an Institutional Customer with the hope of strengthening the business relationship with the Institutional Customer.⁴⁵ It is not intended to address potential conflicts that may arise from a member giving a gift to its own associated persons,⁴⁶ or a member or an associated person giving a gift to individual retail customers.

⁴⁵ See Notice, *supra* note 4.

⁴⁶ Note that if a member gives non-cash compensation to an associated person that is in connection with the sale and distribution of securities covered by the Non-Cash Compensation Rules, the arrangement would be governed by those rules, rather than the Gifts Rule.

(3) Proposed Conforming Changes to the Non-Cash Compensation Rules

The Non-Cash Compensation Rules prohibit members and their associated persons from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation to any person in connection with the sale of variable insurance contracts,⁴⁷ investment company securities,⁴⁸ direct participation programs (“DPPs”),⁴⁹ and the public offerings of securities.⁵⁰ The Non-Cash Compensation Rules currently include an exception from the prohibition on members and associated persons directly or indirectly accepting or making payments or offers of payments of any non-cash compensation for gifts that do not exceed \$100 per individual per year and are not preconditioned on the achievement of a sales target.⁵¹ Consistent with the discussion above regarding the proposed increased dollar limit under the Gifts Rule, FINRA proposes to raise the gift limit under the Non-Cash Compensation Rules from \$100 to \$250.⁵²

⁴⁷ See Rule 2320(g)(4) (Variable Contracts of an Insurance Company).

⁴⁸ See Rule 2341(l)(5) (Investment Company Securities).

⁴⁹ See Rule 2310(c) (Direct Participation Programs).

⁵⁰ See Rule 5110(f) (Corporate Financing Rule – Underwriting Terms and Arrangements).

⁵¹ See Rules 2310(c)(2)(A); 2320(g)(4)(A); 2341(l)(5)(A); and 5110(f)(2)(A).

⁵² FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB Rules incorporate FINRA Rule 3220 by reference. See CAB Rule 322 (Influencing or Rewarding Employees of Others). The CAB Rules do not incorporate by reference Rules 2310, 2320, 2341, or 5110.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵³ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes the proposed rule change will protect investors and the public interest by updating the Gifts Rule. For example, the proposal to increase the gift limit from \$100 to \$250 reflects the rate of inflation and accounts for future cost increases. The proposed rule change will also incorporate and substantially codify existing guidance and interpretations into the Gifts Rule, which will improve transparency, awareness, and understanding of the rule's requirements. In addition, this may facilitate compliance with the proposed rule change. Thus, the proposed rule change represents a significant step toward modernizing the Gifts Rule, while codifying existing guidance in a manner that will promote efficiency without reducing protection for investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵³

15 U.S.C. 78o-3(b)(6).

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rulemaking, the regulatory objective of the proposal, the economic baseline of the analysis, the economic impacts, and the alternatives considered.

(a) Regulatory Need

FINRA's retrospective review of the Gifts Rule, among other things, concluded that this rule has been largely effective in meeting its intended investor protection objectives, but there are certain areas where the investor protection benefits may not align with the associated economic costs.⁵⁴ The retrospective review also identified certain areas for updating and streamlining. For example, some stakeholders suggested that a \$100 gift limit was too low and that raising the limit would not undermine the purposes of the Gifts Rule and the Non-Cash Compensation Rules. The proposed rule change promotes efficiency without reducing protections for investors.

(b) Economic Baseline

The current structure of the FINRA rules and guidance regarding gifts serves as an economic baseline to assess the potential impacts on members and investors. Such information on the current state of the rules is discussed above in Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change, respectively.

FINRA's retrospective review provides some information on the practice of giving gifts at the time of the review. The report provides survey results based on the

⁵⁴ See Retrospective Review Report, supra note 5, at 3.

responses of about 600 member firms.⁵⁵ As of 2014, the survey showed that most members responding to the survey spent some amount on gifts, as well as business entertainment and other non-cash compensation. However, except for the very largest members (i.e., exceeding \$100 million in annual revenue) and a few members with annual revenue between \$10 million and \$100 million, survey respondents generally did not spend more than \$10,000 in total on gifts in 2013.

The proposed amendments would impact members and associated persons. Using FINRA registration data, as of December 31, 2024, there were approximately 649,000 broker-dealer registered persons, of which approximately 530,000 are associated with large firms, approximately 58,000 are associated with mid-size firms, and approximately 61,000 are associated with small firms. The proposed amendments would also impact associated persons who are not broker-dealer registered persons. Information from other FINRA data suggests that there are approximately the same number of non-registered associated persons as registered persons.

(c) Economic Impact

The proposed amendments would directly impact members that regularly engage in gift giving. The increase in the gift limit from \$100 to \$250 per person per year in the Gifts Rule, and the conforming changes to the gift exception to the Non-Cash Compensation Rules, reflects the rate of inflation since adoption of the \$100 gift limit and accounts for future cost increases. Thus, the increase would somewhat restore the historical balance between the economic benefits of developing relationships and

⁵⁵ See Retrospective Review Report, supra note 5, at 6 (Figure 1).

goodwill through gifts and the potential for conflicts of interest.⁵⁶ However, because the proposal would impose the same requirements for firms of all sizes, smaller firms with fewer resources may not benefit from the increase as much as larger firms.⁵⁷

The codification of current guidance regarding personal gifts, de minimis gifts, promotional or commemorative items, and disaster-related donations, including that members would not have to keep records of such gifts given, should provide regulatory certainty.⁵⁸ Regulatory certainty allows for longer-term investments in compliance processes and systems, mitigating costs. As discussed above, FINRA has excluded some gifts, such as personal gifts and disaster-related donations, among others, from the restrictions and recordkeeping requirements of the Gifts Rule because such gifts do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient's employer.⁵⁹ Thus, the expected costs of recordkeeping for such gifts (which include time spent by the gift givers and member compliance staff) outweigh the benefits of doing so.⁶⁰

⁵⁶ See Ying Fan, Promoting Business with Corporate Gifts - Major Issues and Empirical Evidence, *Corporate Communication: An International Journal*, 2006. 11:1, 43-55, <https://bura.brunel.ac.uk/bitstream/2438/1284/3/Corporate+gifts-1.pdf>.

⁵⁷ See Retrospective Review Report, supra note 5, at 9 (“[S]everal respondents provided comments stating that an industry-wide standard (i.e., ‘one-size-fits-all’ approach) . . . may have unintended negative consequences, particularly for small firms.”).

⁵⁸ See proposed Rule 3220.04, 3220.05, 3220.06 and 3220.07.

⁵⁹ See supra Item II.A.1.(2)(C)(vii).

⁶⁰ See Retrospective Review Report, supra note 5, at 4 (“Stakeholders indicated that due to the technology, recordkeeping, training and personnel costs associated with

The proposed codification of existing guidance in supplementary material should also reduce costs associated with supervision by improving transparency, awareness, and understanding of the rule’s requirements. Further, as discussed above with respect to gift valuation, the proposed rule change would require that gifts (other than tickets to sporting or other events) be valued at cost, exclusive of tax and delivery charges. This proposed change from the current guidance in NTM 06-69, which requires the valuation of gifts at the higher of cost or market value, should further reduce compliance costs associated with the complexity, subjectivity, and burden that may sometimes arise in determining a gift’s market value.⁶¹ In situations where a gift’s market value is higher than its cost, this proposed change in valuation method may effectively allow a member or associated person to increase the value of gifts given (e.g., an item that costs \$250 may have a market value greater than \$250). FINRA believes any such occurrence is likely to be rare, especially since situations in which market value exceeds costs occur mostly with respect to tickets to sporting or other events, which would continue to be valued at the higher of cost or face value. Thus, investor protections are not expected to be meaningfully affected.

(d) Alternatives Considered

FINRA considered a principles-based approach to the gift limit and determined that retaining a dollar-based gift limit would better serve the intended objective of the Gifts Rule that is consistent with investor protection by establishing

ensuring compliance with the rules’ requirements, the costs and benefits may not be aligned.”).

⁶¹ See supra Item II.A.1.(2)(C)(ii).

a bright line standard that facilitates compliance, coupled with anti-evasion provisions. Alternative gift limits were considered in 2016 and FINRA at the time proposed to increase the limit from \$100 to \$175 per person per year as the proposed limit took into account the rate of inflation since adoption of the \$100 gift limit. However, after considering the comments and with the additional passage of time, FINRA believes a \$250 limit would be appropriate, taking into account the rate of inflation since adoption of the \$100 gift limit and potential future cost increases. As mentioned earlier in Item 3(a)(2)(A) of this proposed rule change, FINRA recognizes, however, that a gift limit of \$250 may need to be further adjusted at a later date to keep pace with inflation, among other factors. Thus, if the SEC approves the proposed rule change, FINRA intends to review periodically the gift limit to determine if further increases are warranted.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In August 2016, FINRA published Regulatory Notice 16-29, requesting comment on proposed amendments to the Gifts Rule, among other things.⁶² A copy of the Notice is available on FINRA's website at <http://www.finra.org>. A list of the comment letters received in response to the Notice and copies of the comment letters received in response to the Notice are available on FINRA's website.⁶³ FINRA received 17 comments in

⁶² See supra note 4.

⁶³ See SR-FINRA-2025-003 (Form 19b-4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at <http://www.finra.org>).

response to the Notice. Commenters were generally supportive of the proposed rule change but also expressed some concerns.

Material comments related to the proposed changes to the Gifts Rule and FINRA's responses are set forth in detail below.

(A) Gift Limit

In the Notice, FINRA proposed to increase the gift limit from \$100 to \$175 per person per year. The proposed increase in the gift limit to \$175 took into account the rate of inflation since adoption of the \$100 gift limit.⁶⁴

FINRA received a number of comment letters in response to the proposed changes to the Gifts Rule.⁶⁵ The commenters were generally supportive of increasing the gift limit and several commenters suggested that the gift limit be increased more than \$175.⁶⁶ For example, NAIFA noted that the "current limit of \$100 has been in place since 1992, and does not reflect the steady increases in costs and prices which have taken place since that year." Therefore, NAIFA "recommend[ed] that the dollar limit for gifts ... be increased to \$300." Other

⁶⁴ Using the same methodology described supra note 12, FINRA staff had determined at the time that the inflation-adjusted gift limit from 1992 to 2016 rose from \$100 to \$174.03.

⁶⁵ See, e.g., ABA, BDA, CAI, Commonwealth, First Asset Financial, FSI, NAIFA, PIRC, Securities Center, SIFMA, WFA and Woodforest.

⁶⁶ See, e.g., ABA, CAI, Commonwealth, First Asset Financial, FSI, NAIFA, Securities Center, SIFMA, WFA, and Woodforest.

commenters recommended the gift limit be set at \$200,⁶⁷ \$250,⁶⁸ \$275,⁶⁹ \$300,⁷⁰ or \$350.⁷¹

However, some commenters did not support the increase.⁷² BDA urged FINRA to leave the gift limit unchanged at \$100. PIRC stated that it advocated for a limit of \$0 to avoid unacceptable conflicts of interest; however, at a minimum, PIRC stated that it supported maintaining the \$100 limit.

Some commenters suggested a principles-based approach to the gift limit.⁷³ FSI stated that a “principles-based approach would allow firms to tailor their compliance to more accurately take into account the economic differences between geographic areas.” ABA recommended a two-pronged approach that would allow for a principles-based standard for gifts above a specified limit. CAI recommended embedding in the rule a formalized recalculation that would allow for increases to the limit on a periodic basis.

After considering the comments and for the reasons discussed above, FINRA believes it is appropriate at this time to propose raising the gift limit to \$250.⁷⁴

⁶⁷ See, e.g., BDA, CAI, Securities Center, and WFA.

⁶⁸ See, e.g., ABA and SIFMA.

⁶⁹ See, e.g., First Asset Financial.

⁷⁰ See, e.g., FSI and NAIFA.

⁷¹ See, e.g., Commonwealth.

⁷² See, e.g., BDA and PIRC.

⁷³ See, e.g., FSI and SIFMA.

⁷⁴ See supra Item II.A.1.(2)(A).

(B) Gifts Received

The Gifts Rule applies only to gifts a member or an associated person gives to employees of other persons. It does not apply to gifts a member or its associated persons receive from such employees or persons. FINRA sought comment in the Notice on the scope of the Gifts Rule and whether it should be extended to apply to gifts received by a member or associated person as well as gifts given.

The majority of the commenters supported the continued application of the Gifts Rule to gifts given by a member or associated person but not to gifts they receive.⁷⁵ The majority of the commenters did not believe that a member or associated person receiving gifts presented the same potential for conflicts of interest as gifts they give.⁷⁶ WFA noted that “[m]ember firms should already have detailed policies and procedures to adequately address the receipt of gifts by team members. Adding further industry regulations, including recordkeeping requirements, is unnecessary and burdensome.” ABA noted that “FINRA member firms have voluntarily adopted policies regarding the receipt of gifts by member firm personnel. Nonetheless, [the ABA] believe[s] an across-the-board requirement to limit the receipt of gifts is unnecessary ...” PIRC disagreed, however, believing the receipt of gifts by a member or its associated persons “... raise similar conflicts of interest and improper incentives concerns as those given to a member firm or its associated persons.”

FINRA notes that the Non-Cash Compensation Rules impose limits on gifts received where the gifts are made in connection with the sale and distribution of DPPs,

⁷⁵ See, e.g., ABA, First Asset Financial, PIRC, WFA, and Woodforest.

⁷⁶ See, e.g., ABA, First Asset Financial, WFA, and Woodforest.

variable insurance contracts, investment company securities, or public offerings of securities.⁷⁷ By contrast, the Gifts Rule applies to gifts given in relation to the business of the employer of the recipient. Thus, the Gifts Rule is intended to address a different concern—that is, the relationship with an Institutional Customer—than the Non-Cash Compensation Rules, which apply to gifts made in connection with the sale and distribution of certain products. Due to this difference and after considering the comments, FINRA has determined to retain the current scope of the Gifts Rule rather than to propose to apply it to gifts received by members and associated persons.⁷⁸

(C) FINRA Rule 3220(b)

Rule 3220(b) provides that the Gifts Rule “shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services.” The purpose of paragraph (b) is to exclude from the gift limit contracts of employment or contracts for services to be rendered by an individual who is also an employee, agent, or representative of a third-party firm. To rely on this exclusion, however, there needs to be a written agreement documenting the individual’s employee or services relationship with the member. It does not require that the contract establish a statutory employer-employee (“W2”) relationship; rather, it envisions that the agreement may instead document an independent contractor

⁷⁷ See Rule 2310(c)(2)(A); Rule 2320(g)(4)(A); 2341(l)(5)(A); 5110(f)(2)(A).

⁷⁸ FINRA notes that a member’s policies and procedures may restrict or prohibit gifts received in contexts other than the sale and distribution of securities.

relationship between the individual and member.

In the Notice, FINRA did not propose substantive changes to Rule 3220(b). However, ABA raised concerns that the rule “is confusing as written and may have unintended consequences” noting that typically firms “do not enter into formal employment contracts with ... ‘dual employees’ or may engage persons as ‘independent contractors’ and not statutory ‘W2’ employees ...” ABA stated, “[i]t is not clear to [ABA] that this provision adequately addresses such arrangements and, indeed, may be read as requiring formal employment arrangements and employment contracts, which is not the norm, particularly for lower-level personnel.” ABA suggested that “this provision be modified and simplified to exclude compensation provided under such circumstances if the other employer is notified of the arrangement ... and does not object to the employee continuing in a dual capacity.”

While FINRA acknowledges the commenter’s concern, FINRA continues to believe that for purposes of complying with Rule 3220(b), a written agreement is needed to verify the existence of an employee or services relationship with a person who is also “a person, principal, proprietor, employee, agent or representative of another person” (emphasis added). Thus, FINRA has determined to retain the current application of Rule 3220(b), which does not apply to gifts given to traditional employees, independent contractors, or dual employees who are employed by a member and by an affiliated or unaffiliated third party, provided there is a written agreement in place between the member and the employee, independent contractor, or dual employee.

(D) Supplementary Material Incorporating Existing Guidance and Interpretative Positions

In the Notice, FINRA proposed to incorporate the guidance in NTM 06-69, as well as its interpretation regarding the application of the Gifts Rule to bereavement gifts, into proposed Rule 3220 as supplementary material. The comments received in response to the supplementary material proposed in the Notice are discussed below.

(i) Proposed Supplementary Material Regarding Gifts Incidental to Business Entertainment

In the Notice, FINRA proposed in supplementary material that there is no express exclusion from the restrictions in paragraph (a) of the Gifts Rule for gifts given during the course of business entertainment, unless the gift is of de minimis value, or a promotional or commemorative item. FINRA did not receive any comments on this proposed supplementary material.

As discussed above, proposed Rule 3220.01 would make clear that the prohibition in paragraph (a) of the Gifts Rule does not apply to any gift given in compliance with proposed Rule 3220.04 (Personal Gifts) and 3220.05 (De Minimis Gifts and Promotional or Commemorative Items).⁷⁹ Thus, if a gift qualifies for one of these exceptions, paragraph (a) of the Gifts Rule would not apply to these gifts even if given during the course of a business entertainment event.

(ii) Proposed Supplementary Material Regarding Valuation of Gifts

In the Notice, FINRA proposed in supplementary material to codify existing guidance regarding the Gifts Rule that gifts must be valued at the higher of cost or

⁷⁹ See supra Item II.A.1.(2)(C)(i).

market value, exclusive of tax or delivery charges.⁸⁰ In addition, FINRA proposed to codify existing guidance that when valuing tickets to sporting or other events, a member must use the higher of cost or face value.⁸¹

Several commenters to the Notice stated that requiring market value for the valuation of gifts would add unnecessary complexity and subjectivity into the rule without adding a benefit.⁸² For example, ABA stated that “the requirement to determine a ‘market value’ for a gift item is too difficult and costly a burden ...”

After considering the comments and as discussed above, FINRA has modified proposed Rule 3220.02 to require that gifts be valued at cost, exclusive of tax and delivery charges, thereby eliminating the requirement to value gifts at market value.⁸³ Also as discussed above, consistent with existing guidance, proposed Rule 3220.02 would retain the requirement that gifted tickets for sporting or other events are to be valued at the higher of face value or actual cost paid by the member or associated person.⁸⁴

(iii) Proposed Supplementary Material Regarding Aggregation of Gifts

In the Notice, FINRA proposed in supplementary material to codify existing guidance regarding the Gifts Rule that members must aggregate all gifts given by the

⁸⁰ See NTM 06-69, supra note 5.

⁸¹ See NTM 06-69, supra note 5.

⁸² See, e.g., ABA, First Asset Financial and NAIFA.

⁸³ See supra Item II.A.1.(2)(C)(ii).

⁸⁴ See supra Item II.A.1.(2)(C)(ii).

member and each associated person of the member to a particular recipient over the course of the year.⁸⁵ In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.⁸⁶

FINRA received one comment opposing the proposed aggregation requirement.⁸⁷ WFA stated that it believed it would be extremely difficult to collectively document gifts given across WFA by individual team members to specific recipients. WFA proposed a gifting policy that would apply individually for each instance of an exchange between a specific offeror and a specific recipient and would not require the aggregation of all gifts to a single recipient.

For the reasons discussed above, proposed Rule 3220.03 would require aggregation consistent with the current guidance in NTM 06-69.⁸⁸

In addition, FINRA received comments requesting clarification regarding the application of the aggregation requirements.⁸⁹ For example, NAIFA stated that it “should be expressly stated that bereavement, personal and [de minimis] gifts are not to be included when calculating the aggregation of gifts” SIFMA also recommended that FINRA clarify that gifts excluded from the Gifts Rule under the proposed supplementary material are excluded from the aggregation requirement.

⁸⁵ See NTM 06-69, supra note 5.

⁸⁶ See NTM 06-69, supra note 5.

⁸⁷ See WFA.

⁸⁸ See supra Item II.A.1.(2)(C)(iii).

⁸⁹ See, e.g., NAIFA and SIFMA.

After considering the comments, and for the reasons discussed above, proposed Rule 3220.03 would explicitly exclude from the aggregation requirement gifts meeting the requirements of proposed Rule 3220.04 (Personal Gifts) and 3220.05 (De minimis Gifts and Promotional or Commemorative Items).⁹⁰

(iv) Proposed Supplementary Material Regarding Bereavement Gifts and Personal Gifts

In the Notice, FINRA proposed in supplementary material to substantially codify its existing interpretive position regarding the Gifts Rule that bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the recipient and, therefore, are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule.⁹¹ FINRA did not receive any comments on the proposed supplementary material regarding bereavement gifts.

Also in the Notice, FINRA proposed in supplementary material that gifts given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of the Gifts Rule or the recordkeeping requirements in paragraph (c) of the rule, provided the gifts are customary and reasonable, personal in nature, and not in relation to the business of the employer of the recipient. In addition, the proposed supplementary material stated that, in determining whether a gift is “personal in nature and not in relation to the business of the employer of the recipient,” members should consider a number of factors, including the

⁹⁰ See supra Item II.A.1.(2)(C)(iii).

⁹¹ See Aly Letter, supra note 6.

nature of any pre-existing personal or family relationship between the person giving the gift and the recipient and whether the associated person paid for the gift. When the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

FINRA received two comments requesting further clarification on the application of the personal gift exclusion.⁹² SIFMA stated that the proposed language could be read to “limit[]” personal gifts to those given for infrequent life events, whereas SIFMA read NTM 06-69 more broadly than the proposed supplementary material: “[t]he guidance in Notice to Members 06-69 ... was more broadly written, noting that ‘[t]he prohibitions in Rule 3060 generally do not apply to personal gifts such as a wedding gift or a congratulatory gift for the birth of a child, provided that these gifts are not “in relation to the business of the employer of the recipient.”’” SIFMA requested that the proposed supplementary material be revised to align with NTM 06-69.

Woodforest recommended revising the proposed supplementary material to remove the last sentences stating that “[i]n the first several sentences the rule seems to allow a member firm to give a personal gift for occasional life events.” However, Woodforest stated that this ability is negated by the last sentence, which notes that if the member reimburses the associated person or pays for the gift, it is presumed that it is not a personal gift.

FINRA has determined not to revise the proposed supplementary material as

⁹² See SIFMA and Woodforest.

suggested by the commenters. The purpose of the exclusion for personal gifts is to eliminate the restrictions and recordkeeping requirements for gifts that are personal in nature and commemorate an infrequent life event because such gifts do not typically create the types of improper incentives that the Gifts Rule seeks to avoid when gifts are given in relation to the business of the recipient's employer. The exclusion is not intended to cover gifts given for events that occur frequently or even annually, such as birthdays. FINRA believes that proposed Rule 3220.04 is consistent with, and not narrower than, the guidance in NTM 06-69.

(v) Proposed Supplementary Material Regarding De Minimis Gifts and Promotional or Commemorative Items

In the Notice, FINRA proposed in supplementary material to codify its existing interpretive position in NTM 06-69 regarding de minimis gifts and promotional or commemorative items, and to establish a dollar threshold for de minimis gifts and promotional items. Thus, in the Notice, the proposed supplementary material provided that: "(a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the member's logo (e.g., umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (a) of [the Gifts] Rule provided that the value of the gift or promotional item is below \$50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of [the Gifts] Rule. The restrictions of [the Gifts] Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction."

With respect to the exclusion for de minimis gifts and promotional items, commenters to the Notice were generally supportive of the proposed supplementary material, but some commenters disagreed as to the appropriate dollar threshold, as to whether the threshold applies to commemorative items, and as to the application of the Gifts Rule when there is a pattern of giving de minimis gifts or promotional items in order to circumvent the Gift Rule's restrictions.

Commenters did not agree on what the appropriate dollar threshold should be for these items.⁹³ For example, Woodforest and WFA supported a \$50 de minimis threshold. First Asset Financial supported a \$100 de minimis threshold due to the cost of recordkeeping and because the rule has not been updated in many years. NAIFA and FSI also supported a \$100 threshold. FSI noted that the de minimis "exception may ultimately become meaningless, because the proposed level is so low that firms will have to assume the value of the gift is more than \$50, and firms would be disclosing all gifts received, which is not the intent of the rule." However, PIRC stated that the threshold should be lower at \$25 to "ensure that such gifts are truly of nominal value and that the lack of recording those gifts will not adversely affect investors."

After considering the comments and as discussed above, FINRA believes that rather than establishing a dollar threshold at this time, it is appropriate to codify the current guidance that the value of gifts under this exclusion must be substantially below the gift limit, which is \$250 as proposed.⁹⁴ Examples of gifts of de minimis value include pens, notepads, or modest desk ornaments.

⁹³ See, e.g., First Asset Financial, FSI, NAIFA, PIRC, WFA, and Woodforest.

⁹⁴ See supra Item II.A.1.(2)(C)(v)(a).

SIFMA requested clarification regarding the value for promotional or commemorative items. As discussed above, FINRA believes it is appropriate to make clear that the value of promotional items must be substantially below the \$250 limit because promotional items typically have utility (e.g., umbrellas, tote bags, or shirts). By contrast, FINRA does not believe it is necessary to explicitly limit the value of customary commemorative items, so long as they are reasonable, because such gifts are solely decorative.⁹⁵

FINRA also received comments regarding its statement in the Notice that a member or its associated persons may not engage in patterns of providing de minimis gifts or promotional items in order to circumvent the Gifts Rule's restrictions.⁹⁶ Both WFA and ABA raised concerns about this statement. ABA noted that "in order to comply with this requirement, member firms will still need to employ a reporting and recordkeeping mechanism designed to monitor gifts given that are under \$50 in value so that questionable patterns can be identified and appropriately addressed."

FINRA made clear in the Notice that giving numerous de minimis gifts in order to avoid the limitations of the Gifts Rule would be considered a violation of the Gifts Rule. However, FINRA did not intend to suggest that there is a bright line for determining when a pattern of giving promotional items or de minimis gifts arises to a violation of the Gifts Rule's restrictions. Whether a member or associated person engages in a pattern of giving promotional items or de minimis gifts that are designed to evade or that may result in a violation of the Gifts Rule's restrictions would depend on the facts and

⁹⁵ See supra Items II.A.1.(2)(C)(v)(b).

⁹⁶ See Notice, supra note 4, at 12 n.11.

circumstances, including for example, whether the frequency of gifting promotional items or de minimis gifts that are each substantially below the \$250 limit appears to be for the purpose of circumventing the \$250 gift limit.

(vi) Proposed Supplementary Material Regarding Supervision and Recordkeeping

In the Notice, FINRA proposed in supplementary material to codify existing guidance in NTM 06-69 that members must have systems and procedures reasonably designed to ensure compliance with the Gifts Rule as well as Rule 3110.⁹⁷

FINRA did not receive any comments on the proposed supplementary material. However, FINRA has modified the supplementary material in the proposed rule change to make clear that the procedures must be reasonably designed to ensure that an associated person who is giving a payment or gratuity is not responsible for determining whether such payment or gratuity is in relation to the business of the recipient's employer. As discussed above, FINRA believes that requiring a person other than the associated person giving the gift to assess the nature of the gift would encourage objectivity in the determination of whether a gift is personal.⁹⁸

In addition, FINRA has further modified the proposed supplementary material in the proposed rule change to make clear that the recordkeeping requirements of the rule do not apply to gifts that are excluded from the restrictions of the rule (i.e., personal gifts, de minimis gifts, promotional or commemorative items, and disaster-related

⁹⁷ See NTM 06-69, supra note 5.

⁹⁸ See supra Item II.A.1.(2)(C)(vii).

donations).⁹⁹ As noted above, these proposed amendments substantially codify existing guidance regarding the Gifts Rule.¹⁰⁰

(vii) Proposed Supplementary Material Regarding Gifts to a Member’s Associated Persons or Individual Retail Customers

In the Notice, FINRA sought comment on whether the Gifts Rule should apply to gifts a member gives to its own associated persons or to gifts a member or a member’s associated person gives to individual retail customers. All of the comments received regarding this question supported the current application of the rule.¹⁰¹ For example, ABA stated that “[g]ifts from employers to employees are quite common and we do not believe over-arching rules prohibiting or limiting such activity are necessary or appropriate. ... [G]ifts given by member firm[s] to incentivize inappropriate behavior by member firm personnel would be addressed by other rules applicable to member firms.” However, FSI stated that further clarity is needed because “many, and perhaps even the majority, of FINRA member firms have interpreted this rule to apply to gifts given by financial advisors to their individual retail clients ... FSI therefore suggests that FINRA include a clear definition of the application of the rule by explicitly stating in the rule text that it does not apply to gifts given by individual registered financial advisors associated with a FINRA member firm to their individual retail clients.”

As discussed above, FINRA proposes to make this current application of the

⁹⁹ See supra Item II.A.1.(2)(C)(vii).

¹⁰⁰ See NTM 06-69, supra note 5.

¹⁰¹ See, e.g., ABA, First Asset Financial, FSI, and Woodforest.

Gifts Rule explicit in proposed Rule 3220.08.¹⁰²

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2025-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹⁰² See supra Item II.A.1.(2)(C)(viii).

All submissions should refer to File Number SR-FINRA-2025-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2025-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰³

Jill M. Peterson
Assistant Secretary

¹⁰³ 17 CFR 200.30-3(a)(12).

Regulatory Notice

16-29

Gifts, Gratuities and Non-Cash Compensation Rules

FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules

Comment Period Expires: September 23, 2016

Executive Summary

FINRA is seeking comment on proposed amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others), as well as on proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation), and proposed FINRA Rule 3222 (Business Entertainment).

The proposed rule text is available in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- ▶ Joseph Savage, Vice President and Counsel, Regulatory Policy, at (240) 386-4534.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by September 23, 2016.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

August 2016

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Investment Companies
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Variable Contracts

Key Topics

- ▶ Business Entertainment
- ▶ Commercial Bribery
- ▶ Gifts
- ▶ Gratuities
- ▶ Non-Cash Compensation

Referenced Rules & Notices

- ▶ FINRA Rule 2310
- ▶ FINRA Rule 2320
- ▶ FINRA Rule 3220
- ▶ FINRA Rule 3221
- ▶ FINRA Rule 3222
- ▶ FINRA Rule 5110
- ▶ NASD Rule 2830
- ▶ Notice to Members 06-69

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background & Discussion

In April 2014, FINRA launched a retrospective review of its gifts, gratuities and non-cash compensation rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on its review.³ The report concluded that while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and the economic impacts. To that end, FINRA recommended exploring a combination of proposed rule amendments and guidance.

As discussed further below, FINRA is proposing amendments to the gifts, gratuities and non-cash compensation rules to, among other things: (1) consolidate the rules under a single rule series in the FINRA rulebook; (2) increase the gift limit from \$100 to \$175 per person per year and include a *de minimis* threshold below which firms would not have to keep records of gifts given or received; (3) amend the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities; and (4) incorporate existing guidance and interpretive letters into the rules.

In addition, FINRA is proposing a revised approach to internal sales contests for non-cash compensation such that if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on the total production with respect to all securities products; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities.

Finally, FINRA is proposing to incorporate into the amended rules a principles-based standard for business entertainment that would require firms to adopt written policies and supervisory procedures for business entertainment.

Proposed Rule Amendments

A. Gifts

FINRA Rule 3220 (Influencing or Rewarding Employees of Others)⁴ (the Gifts Rule) prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient's employer. The rule also requires members to keep separate records regarding gifts and gratuities.⁵ The rule seeks both to avoid improprieties that may arise when a member firm or its associated persons give anything of value to an employee of a customer or counterparty and to preserve an employee's duty to act in the best interests of that customer.

1. \$100 Gift Limit

FINRA proposes to increase the gift limit from \$100 to \$175 per person per year.⁶ FINRA believes that an increase in the gift limit to \$175 is appropriate because it takes into account the rate of inflation since adoption of the \$100 gift limit.⁷

2. Incorporation of Existing Guidance and Interpretive Positions

In 2006, FINRA issued [*Notice to Members \(NTM\) 06-69*](#) addressing gifts and business entertainment to clarify the gifts that are subject to the Gifts Rule; that members must aggregate all gifts given by the firm and its associated persons to a particular recipient over the course of a year; the manner by which to value gifts; and the supervision and recordkeeping requirements for gifts.⁸ In addition, over the years, in response to inquiries regarding the Gifts Rule, the staff has issued various interpretive letters, including a letter regarding the application of the Gifts Rule to bereavement gifts.⁹

FINRA proposes to incorporate, without material change, the guidance in *NTM 06-69* as well as its interpretation regarding the application of the Gifts Rule to bereavement gifts into FINRA Rule 3220 as Supplementary Material. Thus, the Supplementary Material would provide that: (1) there is no express exclusion from the Gifts Rule for gifts given during the course of business entertainment, unless the gift is of *de minimis* value, or a promotional or commemorative item; (2) gifts must be valued at the higher of cost or market value;¹⁰ (3) members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year; (4) bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the recipient and, therefore, are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements; (5) gifts given for infrequent life events (*e.g.*, a wedding gift or congratulatory gift for the birth of a child) are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided the gifts are customary and reasonable, personal in nature and not in relation to the business of the employer of the recipient; and

(6) gifts of a *de minimis* value, promotional items of nominal value and commemorative items are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided they meet the conditions specified in the Supplementary Material.¹¹ In addition, FINRA proposes to incorporate into the Supplementary Material to FINRA Rule 3220 the guidance in [NTM 06-69](#) regarding supervision and recordkeeping requirements for gifts.

B. Restrictions on Non-Cash Compensation

FINRA and NASD rules generally prohibit members and their associated persons from directly or indirectly accepting or making payments or offers of non-cash compensation in connection with the sale of variable insurance contracts,¹² investment company securities,¹³ DPPs¹⁴ and the public offerings of debt and equity securities.¹⁵ These prohibitions are subject to specified exceptions that permit:

- ▶ gifts that do not exceed an annual amount per person fixed by the FINRA Board of Governors (currently \$100) and are not preconditioned on achievement of a sales target;
- ▶ an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target;
- ▶ payment or reimbursement by “offerors” (product issuers, advisers, underwriters and their affiliates) in connection with training or education meetings, subject to specified conditions, including meeting location restrictions and not preconditioning attendance on achievement of a sales target; and
- ▶ internal firm non-cash compensation arrangements that are based on total production and equal weighting of product sales.¹⁶

1. Proposed FINRA Rule 3221

a. Application to Any Security

FINRA believes that the general prohibitions regarding the payment or receipt of non-cash compensation should be extended beyond investment company securities, variable insurance contracts, DPPs and public offerings of securities as the conflicts underlying these prohibitions exist with respect to all securities. Accordingly, FINRA proposes to eliminate the existing non-cash compensation rules and replace them with proposed FINRA Rule 3221, which would apply to the payment or receipt of non-cash compensation in connection with the sale of any security. Specifically, proposed FINRA Rule 3221(b) would provide that “No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation in connection with the sale of securities.” This prohibition would be subject to the exceptions discussed below.

b. Exceptions to the Prohibition on Non-Cash Compensation Arrangements

i. Gifts From Offerors

Consistent with the existing non-cash compensation rules, the proposal would except from the prohibitions on non-cash compensation arrangements gifts from offerors¹⁷ that do not exceed a specified threshold per individual per year and are not preconditioned on the achievement of a sales target.

The proposal would define the term “preconditioned on the achievement of a sales target” as describing a non-cash compensation arrangement in which an offeror or member communicates in advance that an associated person will receive non-cash compensation only if the associated person achieves either a dollar-denominated goal for selling securities or a goal of finishing within a defined number of top sellers of securities.¹⁸ As with the dollar threshold under the proposed amendments to the Gifts Rule, FINRA proposes to limit the gifts exception under proposed FINRA Rule 3221 to \$175.

ii. Training or Education Meetings

The proposal would permit an offeror to make payments or reimbursements of associated persons’ expenses in connection with a training or education meeting held by an offeror or a member, provided that the meeting meets the following conditions:

- ▶ Associated persons must obtain the member’s prior approval to attend the meeting and attendance, as well as the payment or reimbursement by the offeror, must not be preconditioned on the achievement of a sales target.
- ▶ The location must be appropriate to the purpose of the meeting. The proposal would establish appropriate locations to be a U.S. office of the offeror or member holding the meeting, a facility located in the vicinity of such office, a U.S. regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with DPPs or real estate investment trusts (REITs), a U.S. location at which a significant or representative asset of the program or REIT is located.
- ▶ Payment or reimbursement by the offeror must apply only to the training, education, meals, lodging and transportation for associated persons. The proposed rule would make clear that the offeror could not pay or provide reimbursement for the entertainment or expenses of guests of associated persons or for the entertainment of associated persons.
- ▶ FINRA believes that the conditions relating to training or education meetings are largely consistent with the restrictions relating to such meetings in the existing non-cash compensation rules as well as staff interpretations relating to those rules.¹⁹

iii. Internal Sales Contests

The existing non-cash compensation rules permit non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that: (1) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities or investment company securities, is based on the total production of associated persons with respect to all variable contract securities or investment company securities, as applicable, distributed by the member; (2) the non-cash compensation arrangement requires that the credit received for each variable contract security or investment company security, as applicable, is equally weighted; (3) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) the recordkeeping requirement relating to member compensation is satisfied.²⁰

FINRA proposes to continue to permit non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member if payment or reimbursement of expenses associated with the non-cash compensation arrangement is not preconditioned on achievement of a sales target. If payment or reimbursement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on the total production of associated persons with respect to all securities distributed by the member; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities. In addition, no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement.²¹

Thus, the proposal would permit members to continue to pay non-cash compensation to their associated persons outside the context of an internal sales contest. For example, this provision would permit a member to send its associated persons to an internal training meeting that is not tied to achievement of a sales target. The meeting would not have to meet the same requirements as a training or education meeting sponsored by a third-party offeror, but no unaffiliated entity could participate in the organization of these types of arrangements.

Unlike the existing non-cash compensation rules, however, the proposal would not permit product-specific internal sales contests. FINRA believes that internal sales contests that favor one security (*e.g.*, a proprietary investment company) or one type of security (*e.g.*, investment companies or stocks) potentially create an incentive to engage in sales conduct contrary to the best interests of customers. Consequently, "stock of the day" and similar promotions would be impermissible under the proposal.

Although the proposed rule change relating to internal sales contests is a significant substantive change to the existing rules, FINRA's impression is that product-specific internal sales contests for non-cash compensation are not widely used today. Moreover, to the extent that firms engage in internal sales contests, FINRA believes that requiring payment or reimbursement to be based on the total production of associated persons with respect to all securities distributed by the member and not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities would reduce the potential for conflicts of interest and risk of abuse.

c. Incorporation of Existing Guidance and Interpretive Positions

FINRA proposes to incorporate into proposed FINRA Rule 3221 as Supplementary Material language similar to the language discussed above in connection with the proposed Supplementary Material to the Gifts Rule. Thus, the Supplementary Material would provide that: (1) there is no express exclusion from the restrictions in the non-cash compensation rule for gifts given during the course of business entertainment, unless the gift is of a *de minimis* value, or a promotional or commemorative item; (2) gifts must be valued at the higher of cost or market value;²² (3) members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year; (4) gifts given for infrequent life events (*e.g.*, a wedding gift or congratulatory gift for the birth of a child) are not subject to the restrictions of the non-cash compensation rule or its recordkeeping requirements provided the gifts are customary and reasonable and personal in nature; and (5) gifts of a *de minimis* value, promotional items of nominal value and commemorative items are not subject to the restrictions of the non-cash compensation rule provided they meet the conditions specified in the Supplementary Material.²³

In addition, FINRA proposes to incorporate into the Supplementary Material prior guidance it has provided regarding training or education meetings. Specifically, the Supplementary Material would provide that the proposed rule's training or education exception "must first and foremost be intended to provide training or education to an associated person. Any training must occupy substantially all of the work day. Payment or reimbursement for any related meals, lodging and transportation is permissible, but reimbursement or payment for outings (*e.g.*, golf outings), tours, or other forms of entertainment while at the location for the purpose of training or education is impermissible."²⁴

d. Recordkeeping

The proposal would require a member to retain records of all non-cash compensation provided or received by the member or its associated persons for arrangements permitted under the proposed rule. The records must include: the names of the offerors, non-members or other members making the non-cash compensation contribution; the names of associated persons receiving the non-cash compensation under the arrangements; the nature and value of non-cash compensation provided or received; the location of training or education meetings; and any other information that evidences compliance by the member and its associated persons with the rule.

The proposed recordkeeping requirements differ from the existing non-cash compensation rules' recordkeeping requirements in that the proposal would require members to retain records of non-cash compensation provided or received by a member or its associated person. The existing non-cash compensation rules require members to maintain records of non-cash compensation received by a member or its associated persons. FINRA believes it would be important for members to retain records of non-cash compensation provided and received to help ensure that members comply with the provisions of the non-cash compensation rule.

C. Business Entertainment

In 1999, FINRA staff issued an interpretive letter stating that the Gifts Rule does not prohibit "ordinary and usual business entertainment" (such as an occasional meal, sporting event, theater production or comparable entertainment event) provided that the entertainment "is neither so frequent nor so extensive as to raise any question of propriety."²⁵ The 1999 letter noted that the interpretation was based, in part, on FINRA's rules governing non-cash compensation in connection with the offer and sale of investment company shares and variable annuities.

FINRA proposes to replace the business entertainment standard in the existing non-cash compensation rules and 1999 letter with proposed FINRA Rule 3222, which would require each member to adopt written policies and supervisory procedures relating to business entertainment tailored to its business needs.²⁶ The proposed rule would explicitly address the content of those policies and procedures and would incorporate elements of the business entertainment standard in the existing non-cash compensation rules and the 1999 letter. Specifically, proposed FINRA Rule 3222 would require that each member's written policies and supervisory procedures: (1) are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived as intended as, an improper *quid pro quo*; (2) define forms of permissible and impermissible business entertainment based on the location, nature, frequency and dollar amount of the business entertainment provided, as well as the type and dollar amount of any accommodations or transportation provided in connection with such business entertainment;²⁷ (3) require that the offeror, member or one or more of the member's associated persons hosts the business entertainment; (4) specify that the business entertainment must not be preconditioned on the achievement of a sales target; and (5) require appropriate training and education of all personnel who supervise, administer or are subject to the written policies and supervisory procedures.

In addition, the proposed rule change would require that each member's written policies and supervisory procedures must require the maintenance of detailed records of business entertainment expenses, including the names of all persons providing and receiving business entertainment, the location, nature, frequency and dollar amount of the business entertainment, and the type and dollar amount of any accommodations or transportation provided.

Economic Impact Assessment

Regulatory Need

The assessment phase of FINRA's retrospective review of the gifts, gratuities and non-cash compensation rules concluded that these rules have been largely effective in meeting their intended investor protection objectives, but there are certain areas where the investor protection benefits may not align with the associated economic costs. For example, the views expressed by the stakeholders during the assessment suggested that a \$100 gift limit is too low and that raising the limit would not undermine the purposes of the gifts and non-cash compensation rules. Stakeholders also raised concerns that the gifts, gratuities and non-cash compensation rules are scattered throughout the FINRA rulebook causing difficulties from a reference and compliance standpoint.

The amendments in this rule proposal are intended to address these current limitations and better align the investor protection benefits and the economic impacts.

Economic Impacts

The proposed amendments would directly impact member firms that regularly engage in gift giving and non-cash compensation arrangements. The proposed consolidation of the rules under a single rule series in the FINRA rulebook should simplify the supervisory efforts and could potentially lead to better use of compliance resources elsewhere within the firms. The increase in the gift limit from \$100 to \$175 per person per year reflects the rate of inflation since adoption of the \$100 gift limit, and addresses the increase in not only the prices of goods, but also the shipping costs, taxes and other expenses. Furthermore, the inclusion of a *de minimis* threshold below which firms would not have to keep records of gifts given or received, and the exception regarding gifts related to specified life events—such as bereavement and wedding gifts, or gifts for the birth of a child—should reduce the costs associated with tracking and supervising such instances.

The proposal extends the general prohibitions regarding the payment or receipt of non-cash compensation in connection with the sale of investment company securities, variable insurance products, DPPs and public offerings of securities to the sale of all securities products. As mentioned above, such prohibitions on the payment or receipt of non-cash compensation are covered in several FINRA rules,²⁸ so only firm activities that fall outside the scope of the current rules would be impacted by the proposed extension. FINRA identified that a potential area that would be impacted is private placements of securities. Between December 2012 and March 2016, there were 6,702 private placements facilitated by 750 FINRA member firms. While FINRA understands that, due to the nature of the private placements, accepting or making payments or offers of non-cash compensation is not a common industry practice, there may still be instances where the proposed rule may potentially apply.

The proposal also requires member firms to adopt written policies and supervisory procedures to maintain detailed records of business entertainment expenses. Member firms that have no relevant policies and supervisory procedures in place must dedicate compliance resources to recording and tracking such expenses. In the past several years, FINRA's examination staff has found instances of poor recordkeeping of such expenses. Specifically, the firms' logs that were used to record gifts and business entertainment did not indicate the recipient of each employee's expenditures or its intended business purpose. Member firms are expected to benefit from the reinforcement of more effective recordkeeping requirements. Moreover, the proposed rule would establish a principles-based standard that would allow firms to tailor their written policies and supervisory procedures to meet their business needs and to take a risk-based approach, so that they can allocate compliance resources to more significant issues.

FINRA also considered the potential impacts of the proposed amendments on investors. FINRA believes the proposed prohibition of product-specific internal sales contests, which typically favor one security or one type of security, reduces the potential for sales of products that are not aligned with the best interests of customers.

Request for Comment

FINRA requests comment on all aspects of the proposed rules, including any potential costs and burdens of the proposed rules. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA particularly requests comment on the following questions:

1. The proposed amendments would increase the gift limit under FINRA Rule 3220 and proposed FINRA Rule 3221 to \$175. What risks, if any, might arise to customers by raising the gift limit? Should FINRA increase the limit to \$175? If not, what, if any, would be an appropriate limit?
2. The Gifts Rule applies to gifts a member firm or its associated persons give and not to gifts the member firm or its associated persons receive. Should the Gifts Rule apply to gifts received as well as gifts given?
3. The Gifts Rule does not apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers. Should the Gifts Rule apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers? Please explain.
4. FINRA is proposing a \$50 *de minimis* threshold below which member firms would not have to keep records of gifts given or received. Is a \$50 *de minimis* threshold appropriate? Should the threshold be higher or lower or should FINRA not include a *de minimis* threshold?

5. To what extent would FINRA's proposal to no longer allow product-specific internal sales contests for non-cash compensation impact member firms? In what ways, if any, could it potentially impact customers? Is FINRA's proposed approach to internal sales contests for non-cash compensation appropriate? Please explain.
6. Commenters have said that restricting entertainment at training sessions paid for by offerors is logically inconsistent with the rule's business entertainment approach. Should the requirements for training and education meetings allow entertainment that complies with the limitations on business entertainment provided by members?
7. Are the proposed recordkeeping requirements appropriately tailored to obtain information that would be relevant for purposes of monitoring for compliance with the proposed rules?
8. What are the estimated costs of drafting policies and procedures to comply with proposed Rule 3222 relating to business entertainment?
9. How would the consolidation of the rules governing gifts, gratuities and non-cash compensation in this proposal simplify compliance? What impact would it have on the costs of compliance?
10. What economic impact, if any, would be associated with the extension of the rules governing non-cash compensation to all securities?
11. Are there any expected economic impacts associated with the proposed rules not discussed in this *Notice*? What are they and what are the estimates of those impacts?

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. *See Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation* (December 2014).
4. In 2008, the SEC approved the transfer of NASD Rule 3060 into the Consolidated FINRA Rulebook without material change and renumbered the rule as FINRA Rule 3220.
5. *See* FINRA Rule 3220(c).
6. The current \$100 gift limit has been in place since 1992, when the SEC approved an increase in the limit from \$50 to \$100. *See* Securities Exchange Act Release No. 31662 (December 28, 1992), 58 FR 370 (January 5, 1993) (Order Approving File No. SR-NASD-92-40). *See also* Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (Order Approving File No. SR-NASD-84-8) (increasing the gift limit from \$25 to \$50).
7. FINRA staff used the annual rate of inflation data for the United States from the [Federal Reserve Bank of St. Louis website](#) to estimate the change in consumer prices since 1992, when the SEC approved the increase in the limit from \$50 to \$100. The average rate of inflation over the 26 years is 2.34 percent and the compound increase in consumer prices over the period is 74.03 percent. Applying this increase to the \$100 gift limit results in \$174.03.
8. *See* [NTM 06-69](#) (December 2006).
9. *See* letter from Gary L. Goldsholle, Vice President & Associate General Counsel, FINRA, to Amal Aly, Managing Director & Associate General Counsel, SIFMA, dated December 17, 2007 (“Aly Letter”). In 1999, the staff issued an interpretive letter stating that the Gifts Rule does not prohibit “ordinary and usual business entertainment” provided that the entertainment “is neither so frequent nor so extensive as to raise any question of propriety.” That letter is discussed in more detail below in connection with proposed FINRA Rule 3222.
10. Tickets to sporting or other events would be valued at the higher of cost or face value.
11. In *NTM 06-69*, the staff stated that for a promotional item to be considered of nominal value its value must be substantially below \$100. In addition, the staff did not specify in *NTM 06-69* at what value it would consider a gift to be of *de minimis* value. Under the proposed rule change, FINRA proposes that gifts of *de minimis* value or promotional items of nominal value would not be subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided that the value of the gift or promotional item is below \$50. A firm or its associated persons may not engage in patterns of providing gifts or promotional items of less than \$50 to circumvent the Gifts Rule’s restrictions and recordkeeping requirements.

12. See FINRA Rule 2320(g)(4) (Variable Contracts of an Insurance Company).
13. See NASD Rule 2830(l)(5) (Investment Company Securities).
14. See FINRA Rule 2310(c) (Direct Participation Programs).
15. See FINRA Rule 5110(h) (Corporate Financing Rule – Underwriting Terms and Arrangements).
16. See NASD Rule 2830(l)(5) and FINRA Rule 2320(g)(4). FINRA Rules 5110 and 2310 do not require internal firm non-cash compensation arrangements in connection with public offerings of securities or direct participation programs to be based on total production and equal weighting of product sales.
17. The proposed definition of “offeror” is based on the current definitions of “offeror” in the existing non-cash compensation rules. Specifically, the proposal would define the term “offeror” to mean: “(A) with respect to the sale and distribution of variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; (B) with respect to the sale and distribution of investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and (C) with respect to the sale and distribution of any other type of security, an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.”
18. To fall within this definition, a communication may be either explicit or implicit. Thus, an arrangement normally would not be considered preconditioned on the achievement of a sales target if a member or an offeror designates persons to participate in the arrangement in recognition of past sales, without stating the goal in advance. If, however, after several events, the selection criteria of the member or offeror becomes reasonably apparent, there may have been an implicit communication of a goal, and any similar arrangement in the future might be deemed preconditioned on the achievement of a sales target.
19. See, e.g., “[Non-Cash Compensation – Training or Education Meetings](#),” [NASD Regulatory & Compliance Alert 13](#) (Summer 2000), (interpreting the training or education meeting exception in the existing non-cash compensation rules “as an event that is first and foremost intended to provide training or education to an associated person. Any training meeting should occupy substantially all of the work day.”). FINRA subsequently published a letter reminding offerors that they may not pay for entertainment expenses of training or education meeting attendees. See [letter](#) from Mary L. Schapiro, President, NASD (March 7, 2001).
20. The total production and equal weighting requirements do not apply to arrangements involving DPPs or public offerings of securities.

21. Consistent with the existing non-cash compensation rules, the proposal would include a provision that would permit contributions by a non-member company or other member to a non-cash arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that it meets the requirements for such arrangements, including the total production standard.
22. As stated above, tickets to sporting or other events would be valued at the higher of cost or face value.
23. Consistent with the Gifts Rule, FINRA proposes a \$50 *de minimis* threshold. In addition, the proposal would specify that gifts of *de minimis* value, promotional items of nominal value and commemorative items would not be subject to the proposed recordkeeping requirements relating to non-cash compensation arrangements.
24. *See supra* note 19.
25. *See* [letter](#) from R. Clark Hooper, Executive Vice President, NASD, to Henry H. Hopkins, Director, and Sarah McCafferty, Vice President, T. Rowe Price Investment Services, Inc., dated June 10, 1999 (“1999 letter”).
26. FINRA proposes to include in Supplementary Material to proposed FINRA Rule 3222 language that makes clear that the purpose of the rule is to govern business entertainment provided by a member or its associated persons, as well as business entertainment accepted by a member or its associated persons from an offeror. In addition, the Supplementary Material would provide that business entertainment includes, but it not limited to, an occasional meal, a ticket to an event (*e.g.*, sporting event) or theater and other comparable entertainment.
27. FINRA notes that a principles-based, rather than prescriptive, approach to what is permissible and impermissible business entertainment would satisfy this requirement of proposed Rule 3222.
28. *See supra* notes 12-15.

ATTACHMENT A

Below is the text of the amendments. New language is underlined; deletions are in brackets.

* * * * *

3220. Influencing or Rewarding Employees of Others

(a) No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of [one hundred dollars] \$175 per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

(b) This Rule shall not apply to contracts of employment with, or [to] compensation for services rendered by, persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

(c) Subject to Supplementary Material .07, a[A] separate record of all payments or gratuities under this Rule in any amount known to the member, the employment agreement referred to in paragraph (b) and any employment compensation paid as a result thereof, shall be retained by the member for the period specified by SEA Rule 17a-4.

• • • Supplementary Material: -----

.01 Gifts Incidental to Business Entertainment. There is no express exclusion from the restrictions in paragraph (a) of this Rule for gifts given during the course of business entertainment, unless the gift is of de minimis value, or a promotional or commemorative item consistent with Supplementary Material .06.

.02 Valuation of Gifts. Gifts must be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other events, a member must use the higher of cost or face value. If gifts are given to multiple recipients, members must record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the \$175 limit in paragraph (a) of this Rule.

.03 Aggregation of Gifts. Members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year. In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

.04 Bereavement Gifts. Bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the recipient and, therefore, are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule.

.05 Personal Gifts. Gifts that are given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule, provided the gifts are customary and reasonable, personal in nature and not in relation to the business of the employer of the recipient. In determining whether a gift is “personal in nature and not in relation to the business of the employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient and whether the associated person paid for the gift. When the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

.06 De Minimis Gifts and Promotional or Commemorative Items. (a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the member’s logo (e.g., umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (a) of this Rule provided that the value of the gift or promotional item is below \$50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of this Rule. The restrictions of this Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction.

.07 Supervision and Recordkeeping. Paragraph (c) of this Rule requires a separate record of payments and gratuities. Rule 3110 requires a member to have a supervisory system reasonably designed to achieve compliance with Rule 3220. To meet these standards, members are required to have systems and procedures reasonably designed to ensure that payments and gratuities in relation to the business of the employer of the recipient given

by the member and its associated persons to employees of clients of the member are: (i) reported to the member; (ii) reviewed for compliance with this Rule; and (iii) maintained in the member's records. Such procedures must include provisions reasonably designed to ensure that supervisory personnel, other than the associated person who gives or is permitted to give a payment or gratuity, determines whether such payment or gratuity is personal in nature rather than in relation to the business of the recipient's employer. Gifts of *de minimis* value or nominal promotional or commemorative items consistent with Supplementary Material .06 are not subject to the recordkeeping requirements of paragraph (c) of this Rule.

3221. Restrictions on Non-Cash Compensation

(a) Definitions

(1) "Affiliated Member" shall mean a member that, directly or indirectly, controls, is controlled by or is under common control with a non-member company.

(2) "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of securities.

(3) "Non-cash compensation" shall mean any form of compensation that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(4) "Offeror" shall mean:

(A) with respect to the sale and distribution of variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities;

(B) with respect to the sale and distribution of investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and

(C) with respect to the sale and distribution of any other type of security, an issuer, a sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(5) "Preconditioned on the achievement of a sales target" shall describe a non-cash compensation arrangement in which an offeror or member communicates in advance that an associated person will receive non-cash compensation only if the associated person achieves either a dollar-denominated goal for selling securities or a goal of finishing within a defined number of top sellers of securities.

(b) Non-Cash Compensation Arrangements

No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation in connection with the sale of securities, except the following:

(1) Gifts from offerors that do not exceed \$175 per individual per year and are not preconditioned on the achievement of a sales target.

(2) Payment or reimbursement by an offeror in connection with a meeting held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(A) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned on the achievement of a sales target;

(B) the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office, or a United States regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with direct participation programs or real estate investment trusts, a United States location at which a significant or representative asset of the program or real estate investment trust is located;

(C) the payment or reimbursement applies only to training, education, meals, lodging and transportation for associated persons and is not applied to the entertainment or expenses of guests of associated persons or to the entertainment of associated persons; and

(D) the payment or reimbursement by the offeror is not preconditioned on the achievement of a sales target.

(3) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an Affiliated Member, provided that:

(A) (i) payment or reimbursement of expenses associated with the non-cash compensation arrangement is not preconditioned on the achievement of a sales target; or

(ii) if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on the achievement of a sales target, the non-cash compensation arrangement is:

(a) based on the total production of associated persons with respect to all securities distributed by the member; and

(b) not based on conditions that would encourage an associated person to recommend particular securities or categories of securities; and

(B) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement.

(4) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the criteria in paragraph (b)(3).

(c) Recordkeeping

A member shall retain records of all non-cash compensation provided or received by the member or its associated persons for arrangements permitted by paragraph (b) for the period specified by SEA Rule 17a-4. The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contribution; the names of associated persons receiving the non-cash compensation under the arrangements; the nature and value of non-cash compensation provided or received; the location of training or education meetings; and any other information that evidences compliance by the member and its associated persons with paragraph (b).

• • • **Supplementary Material:** -----

.01 Gifts Incidental to Business Entertainment. There is no express exclusion from the restrictions in paragraph (b) of this Rule for gifts given during the course of business entertainment, unless the gift is of *de minimis* value, or a promotional or commemorative item consistent with Supplementary Material .05.

.02 Valuation of Gifts. Gifts must be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other events, a member must use the higher of cost or face value. If gifts are given to multiple recipients, members must record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the \$175 limit in paragraph (b) of this Rule.

.03 Aggregation of Gifts. Members must aggregate all gifts received or given by the member and each associated person of the member over the course of the year for purposes of ensuring compliance with the \$175 limit in paragraph (b) of this Rule. In addition, each member must state in its procedures whether it is aggregating all gifts received or given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift received or given.

.04 Personal Gifts. Gifts that are given for infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (b), or the recordkeeping requirements of paragraph (c), of this Rule provided the gifts are customary and reasonable and personal in nature.

.05 De Minimis Gifts and Promotional or Commemorative Items. (a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the offeror's logo (e.g., umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (b) of this Rule provided that the value of the gift or promotional item is below \$50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (b) of this Rule. The restrictions of this Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. Gifts of de minimis value or nominal promotional or commemorative items consistent with Supplementary Material .05 are not subject to the recordkeeping requirements of paragraph (c) of this Rule.

.06 Training or Education Meetings. The training or education exception in paragraph (b)(2) of this Rule must first and foremost be intended to provide training or education to an associated person. Any training must occupy substantially all of the work day. Payment or reimbursement for any related meals, lodging and transportation is permissible, but reimbursement or payment for outings (e.g., golf outings), tours, or other forms of entertainment while at the location for the purpose of training or education is impermissible. In addition, there is no express exclusion from the restrictions in paragraph (b) of this Rule for gifts given during the course of training or education meetings, unless the gift is of de minimis value, or a promotional or commemorative item consistent with Supplementary Material .05.

3222. Business Entertainment

(a) Each member that engages in business entertainment must have written policies and supervisory procedures with respect to business entertainment that:

- (1) Are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived as intended as, an improper quid pro quo;
- (2) Define forms of permissible and impermissible business entertainment based on the location, nature, frequency and dollar amount of the business entertainment provided, as well as the type and dollar amount of any accommodations or transportation provided in connection with such business entertainment;
- (3) Require that the offeror, member or one or more of the member's associated persons hosts the business entertainment;
- (4) Specify that the business entertainment must not be pre-conditioned on the achievement of a sales target; and
- (5) Require appropriate training and education of all personnel who supervise, administer or are subject to the written policies and supervisory procedures.

(b) Each member's written policies and supervisory procedures must require the maintenance of detailed records of business entertainment expenses, including the names of all persons providing and receiving the business entertainment, the location, nature, frequency and dollar amount of the business entertainment, and the type and dollar amount of any accommodations or transportation provided.

• • • **Supplementary Material:** -----

.01 Definitions. The terms “offeror” and “preconditioned on the achievement of a sales target” shall have the same meanings as in Rule 3221.

.02 Purpose. The purpose of Rule 3222 is to govern business entertainment provided by a member or its associated persons, as well as business entertainment accepted by a member or its associated persons from an offeror. Business entertainment includes, but is not limited to, an occasional meal, a ticket to an event (e.g., sporting event) or the theater and other comparable entertainment.

.03 Obligations of Persons Associated with a Member. Consistent with Rule 0140, persons associated with a member must comply with such member’s written policies and supervisory procedures as established pursuant to this Rule 3222. In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated person to engage in the conduct to be prevented (i.e., business entertainment that is intended as, or could reasonably be perceived as intended as, an improper quid pro quo) through the establishment, maintenance and enforcement of the policies and procedures required by this Rule.

3223. Exemptions

Pursuant to the Rule 9600 Series, FINRA staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of the 3200 Series to the extent that such exemption is consistent with the purpose of the 3200 Series, the protection of investors, and the public interest.

EXHIBIT 2b

**Alphabetical List of Written Comments
Regulatory Notice 16-29**

1. Anonymous, (January 13, 2017)
2. Eric Arnold, Cliff Kirsch & Susan Krawczyk, Sutherland Asbill & Brennan LLP for Committee of Annuity Insurers (“CAI”) (September 23, 2016)
3. David T. Bellaire, Financial Services Institute (“FSI”) (September 23, 2016)
4. Jim Biddle, The Securities Center, Inc. (“Securities Center”) (August 17, 2016)
5. Robyn Downing, Alyse Velger & Elissa Germaine, Investor Rights Clinic at Pace Law School, Operating Through John Jay Legal Services, Inc. (“PIRC”) (September 23, 2016)
6. Frederick T. Greene, Woodforest Financial Services, Inc. (“Woodforest”) (August 16, 2016)
7. John Hagberg, Commonwealth Financial Network (“Commonwealth”) (September 23, 2016)
8. Robert L. Hamman, First Asset Financial, Inc. (“First Asset Financial”) (September 19, 2016)
9. David M. Lynn, Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (“ABA”) (October 7, 2016)
10. Robert J. McCarthy, Wells Fargo Advisors, LLC (“WFA”) (September 23, 2016)
11. Mike Nicholas, Bond Dealers of America (“BDA”) (September 23, 2016)
12. Fran Pollack-Matz, T. Rowe Price Investment Services, Inc. (“T. Rowe”) (September 23, 2016)
13. Matthew Rothchild, EFS Advisors (“EFS”) (September 1, 2016)
14. Mike Rothman, North American Securities Administrators Association, Inc. (“NASAA”) (September 30, 2016)

15. Tamara K. Salmon, Investment Company Institute (“ICI”) (September 22, 2016)
16. Gary A. Sanders, National Association of Insurance and Financial Advisors (“NAIFA”) (September 23, 2016)
17. Stephen Vogt & Kevin Zambrowicz, Securities Industry and Financial Markets Association (“SIFMA”) (September 23, 2016)

Exhibit 2c



Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

January 13th, 2017

Ms Asquith,

I am writing to provide feedback on FINRA Regulatory Notice 16-29 regarding Gifts, Gratuities, and Non-Cash Compensation Rules. I believe my perspective may be valuable to your decision making process and would appreciate the opportunity to share, despite having missed the commentary deadline.

I am a tenured investment Wholesaler for a significant global asset manager. It is my job to relay the intellectual capital of my firm to Financial Advisors within my assigned geography, with a primary goal of delivering optimal portfolio outcomes for retail investors, and a secondary goal of raising capital for my firm. Wholesalers like myself provide an immeasurable amount of protection to investors, and also see the daily happenings of the financial services industry from a unique perspective. It is through this lens that I have observed practices that I deem both inappropriate and undeniably punitive to investors. For this reason, the specifics of which I will describe below, I applaud FINRA's efforts and implore you to follow-through with Rules 3020-3222.

Each year, "offeror" firms allocate hundreds of millions of dollars so that their wholesalers can supply financial advisors with concert tickets, private suites at hockey games, and dinners at pretentious steakhouses; we throw outrageous parties at the Phoenix Open, host DJ-ed tailgates, fishing tournaments, and the list goes on. Investors would be mortified to know that their financial advisor seeks investment updates only when bribed with filet mignon, or that no update is given while dining.

Additionally, member firms require “offeror” firms to pay large sums of money in order to secure shelf space for their product offerings. While it may be reasonable for “offeror” firms to help support the technological and logistical costs associated with maintaining a product platform, the reality is that the majority of these funds are dedicated to providing additional luxuries for financial advisors. By and large, this occurs via production based incentive trips. In 2016 alone, I know financial advisors that traveled to the Bahamas, Hawaii, California, Las Vegas, and other luxury destinations, free of charge. Furthermore, because FINRA requires sponsors to have representation at these events, “offeror” firms will use attendance at these broker dealer incentive trips as a reward for their top producing wholesalers, whose professional responsibilities for the week will include hosting poolside cabanas, surfing lessons, swimming with dolphins, etc. for the financial advisors and their families. Again, this is all free of charge to financial advisors, wholesalers, and their families.

In addition to using broker dealer top producer trips as rewards for wholesalers, “offeror” firms hold their own incentive trips. I have wholesaling friends that have been sent to Mexico, Portugal, Aruba, etc. or allowed to use their firm’s corporate jet in exchange for their level of annual production. I even know wholesalers that have walked the red carpet at awards shows, courtesy of their firm or a sub advisor on their products.

Finally, there are “educational” due diligence conferences, which, in all reality, aren’t educationally focused at all. Here, “offeror” firms will host a 1-2 day meeting at a five-star hotel in order for the financial advisors to hear directly from portfolio managers. The invitees are typically prospects with whom the “offeror” wishes to curry favor, or existing clients whom the “offeror” wishes to reward, and the meetings usually start or end on a Monday or Friday so that the financial advisor can conveniently extend the trip for the weekend at the cost of the “offeror.” Many financial advisors skip the educational sessions so as to enjoy their vacation, but even those who attend the sessions haven’t traveled cross-country with a primary focus on education. Point in case: Never in my career have I heard of an undersubscribed due diligence meeting, yet when the exact same portfolio manager delivers the identical content via conference call or Webex, few financial advisors find the information important enough that they bother to dial-in. I’d place a substantial wager on the fact that these “educational” events would cease to exist if registered representatives were responsible for paying the cost of their own attendance.

Separate from the various reward trip issues, the current system allows misconduct on a daily basis. Extra names are being added to expense reports to make \$500 tickets appear as though they were only \$50; wholesalers will split the cost of events so that the fraction they each report to their firm falls within allowable limits; wholesalers bring their friends and family to corporate entertainment events (or just take their family out to dinner) and then add financial advisor names to the expense report to conceal the personal expenses; wholesalers give event tickets to financial advisors without attending; financial advisors threaten to withhold their business unless a wholesaler

agrees to financially support their client entertainment event which is disguised as "educational"; wholesalers sponsor financial advisor events without attending nor participating; logos are added to expensive items so as to make them allowable; wholesalers and financial advisors vacation in the same locale in order to corporately fund their family vacations. I could elaborate for hours with specific examples of the ethical issues I witness on a daily basis, but we don't need additional examples to see that both firms and registered representatives are taking profound advantage of the system. Bottom-line:

- INVESTMENT PRODUCTS ARE BEING SOLD TO INVESTORS BASED-UPON TICKETS, TRIPS, AND FANCY MEALS. THIS REPRESENTS A SYSTEMIC BREACH OF FIDUCIARY DUTY.
- THE COST OF THESE LUXURIES IS BEING SHOULDERED-BY INVESTORS VIA THE FEES THEY PAY TO THEIR FINANCIAL ADVISOR, THE EXPENSE RATIOS OF THE INVESTMENT PRODUCTS THEY OWN, AND THROUGH SACRIFICED SHAREHOLDER VALUE.
- FIRMS ARE EXPLOITING THESE REGULATORY ALLOWANCES IN ORDER TO CONCEAL EGREGIOUS AMOUNTS OF SUPPLEMENTAL TAX-FREE INCOME THEY GIVE TO THEIR TOP PRODUCERS AND PROSPECTS. THIS IS ALSO A MEANS OF CIRCUMVENTING THE COMPENSATION LIMITS DEFINED IN PROSPECTUSES AND SHOWN ON QUARTERLY STATEMENTS.

It's a very sad truth that my opinion on Gift, Entertainment, and Non-Cash issues is non-consensus, but it is based-upon my belief that we can do more for investors. I don't buy business, I don't use my corporate budget for personal gain, I don't give gifts to clients, and I trust my firm to compensate me appropriately and honestly. I would like to see the industry shift back toward investment decisions that are based-upon legitimate in-office business conversations and a more investor-centric culture. All of that said, please move forward with 3020-3022 and aggressively expand and enforce the definition and application of non-cash compensation rules. In doing so, please consider the following suggestions:

- Please disallow reward and incentive trips of all kinds. This would prioritize client outcomes over production levels.
- Please limit member firms to hosting educational conferences only for their own Registered Representatives, or require attendees to pay their way. This would remove a conflict of interest without sacrificing meetings with true educational components.

- Please disallow Financial Advisors from soliciting any financial support from Wholesalers. This would remove an enormous conflict of interest, streamline the compliance process, and could be easily funded at the discretion of the Advisor's broker dealer with the monies that were previously devoted to rewards trips. Better yet, let Financial Advisors invest in their own businesses and pay for the marketing efforts that they deem most important.
- Limit the expenses for which member and "offeror" firms can reimburse their Registered Representatives. A wholesaler should be reimbursed for personal travel, personal meals, meals with clients during the day, and evening events at which a portfolio manager or other speaker is present. These expenses should only occur within the wholesaler's defined territory. Again, this limits conflicts of interest, simplifies the monitoring of expense reporting, enhances the legitimacy of all meetings, and reduces costs for firms.
- Know that the gifts limit will only matter if you eliminate the off-record compensation and are able to enforce it. As is, the limit may as well be \$100K.

In conclusion, if FINRA's goal is to protect investors and shareholders, the current rules and enforcement are falling-short, and I am grateful to you for addressing this issue. The proposed rules could single-handedly reduce fees, compliance burden, and liability while protecting jobs, shareholder value, and the reputation of the financial services industry. I appreciate your consideration and hope you'll capitalize on this opportunity.

Respectfully,

A Concerned Wholesaler



SUTHERLAND ASBILL & BRENNAN LLP
700 6th Street, NW, Suite 700
Washington, DC 20001-3980
202.383.0100 Fax 202.637.3593
www.sutherland.com

September 23, 2016

VIA ELECTRONIC MAIL

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

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

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to Regulatory Notice 16-29, *Gifts, Gratuities and Non-Cash Compensation Rules* (the "Notice," or "RN 16-29") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA").² The Notice requests comments on proposed amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others) ("Rule 3220") and adoption of new FINRA Rules 3221 (Restrictions on Non-Cash Compensation) ("Rule 3221," or "Non-Cash Rules") and 3222 ("Rule 3222," sometimes referred to together with Rule 3220 and Rule 3221 as the "Proposed Rules").

THE PROPOSED RULES

The Proposed Rules follow up on FINRA's April 2014 retrospective rule review of its gifts, gratuities and non-cash compensation rules ("rule set"). The Committee commented on that rule review in 2014.³ Following that rule review, FINRA published its report which provided several potential next steps for revising the rule set ("2014 Report"). As indicated in the Notice, FINRA has proposed, among others, the following changes to the rule set:

¹ The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

² RN 16-29 is available [here](#).

³ A copy of the Committee's comment letter is available: [here](#) ("2014 Comment Letter").

Marcia E. Asquith
September 23, 2016
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- Consolidating the rule set under a single rule series in the FINRA rulebook;
- Increasing the gift limit from \$100 to \$175 per person per year;
- Amending the non-cash compensation rules to cover all securities products, rather than only direct participation programs, variable insurance contracts, investment company securities and public offerings of securities;
- Incorporating existing guidance and interpretive letters into the rule set;
- Amending the rules for internal sales contests for non-cash compensation such that if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on the total production with respect to all securities products; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities; and
- Incorporating a principles-based standard for business entertainment that would require firms to adopt written policies and supervisory procedures for business entertainment.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rules. The Committee supports FINRA's efforts to review and refresh its rules through the retrospective rule review process. In addition, the Committee believes that certain of the changes proposed under the Proposed Rules provide increased clarity and rationality. As indicated below, the Committee has identified a number of concerns related to the Proposed Rules, as well as some requests for additional interpretation and clarification.

The Rule 3221 Requirement that *All Securities Products Must Count Toward Non-Cash Compensation Programs Should Be Modified to Allow Firms to Exclude Certain Tax-Qualified Production.* Under Rule 3221(b)(3), any non-cash arrangement between a member and its associated persons, or between a non-member company (such as a company issuing variable annuities) and its sales personnel of an affiliated member firm, must be based on "the total production of associated persons with respect to *all securities*" distributed by the member. The Committee recognizes FINRA's intent to "reduce the potential for conflicts of interest and risks of abuse"⁴ from a non-cash program that could favor the recommendation of one type of securities product over another. However, the Committee believes that such programs should be permitted to be structured in a manner that would allow non-cash compensation programs to exclude certain tax-qualified investments.

As you are aware, the Department of Labor's newly adopted fiduciary rule (the "DOL Rule") imposes significant limitations on any non-cash compensation program offered in

⁴ RN 16-29 at p. 7.

Marcia E. Asquith
 September 23, 2016
 Page 3

connection with the tax-qualified accounts covered under DOL Rule (“covered accounts”).⁵ In order to meet the terms of the DOL Rules, some firms and affiliated non-members have been contemplating restructuring their historical non-cash compensation programs to eliminate providing credit for production in covered accounts. The Committee requests that Rule 3221 be reconsidered in light of the implications arising under the DOL Rule for non-cash compensation, and that Rule 3221 be revised to allow firms to exclude securities products held in covered accounts from the “total production” requirements under Rule 3221(b)(3)(A)(ii)(a). The Committee believes that the types of point-of-sale incentives FINRA is attempting to guard against here (e.g., choosing to offer a customer a proprietary product, or a type of securities product that could generate higher non-cash compensation awards) are not significantly impacted by allowing covered accounts to be excluded from the total production requirements.

The New Standard under Rule 3221(b)(3) Is Overly Broad and May Be Unworkable. Under Proposed FINRA Rule 3221, a non-cash compensation program offered by a member (or a member’s affiliate like an insurance company) must not be “based on conditions that would encourage an associated person to recommend particular securities or categories of securities” (the “Section (b) Standard”).⁶ The Committee is concerned that the Section (b) Standard is too broad, and may make it extremely difficult to construct metrics for qualification for a non-cash program that are clearly compliant with the Section (b) Standard. For example, it does not appear that non-cash compensation programs could be constructed by providing credit through gross dealer concession (“GDC”) since GDC varies with the type of securities product sold. For example, a \$10,000 investment in securities product “X” might produce a higher GDC than a \$10,000 investment in securities product “Y.” It appears that under the Section (b) Standard, the non-cash incentive program would therefore impermissibly “encourage” the registered person to recommend securities product X that generates higher GDC based on the same total dollar amount invested. Another methodology that could neutralize the issues with using GDC as a qualifying metric would be to use the total dollar amount invested for assessing non-cash compensation credit. Even if a firm relied on the total dollars invested, it seems like that could “encourage” certain types of products or transactions that may tend to generate higher total dollar volumes (e.g., IRA Rollovers or other types of securities product purchases).⁷

The Committee believes that FINRA should revise the Section (b) Standard by using qualifying language to modify the degree to which the registered person would be encouraged (e.g., “materially encouraged,” “meaningfully encouraged”) to favor one product over another. In addition or in the alternative, the Committee believes that it would be beneficial for FINRA to provide examples of the types of non-cash compensation qualification criteria that it believes meet the Section (b) Standard.

⁵ The DOL Rule was issued in April 2016 in a series of releases, including but not limited to the following: *Best Interest Contract Exemption*, 68 Fed. Reg. 21,002 (Apr. 8, 2016); *Definition of the Term-“Fiduciary”*; *Conflict of Interest Rule – Retirement Investment Advice*, 68 Fed. Reg. 20,946 (Apr. 8, 2016).

⁶ Rule 3221(b)(3)(A)(ii)(b).

⁷ It appears possible that attempting to generate a non-cash compensation program metric that does not “encourage” one class of securities products over another may be limited by the FINRA-permitted compensation model that allows cash compensation practices to vary among securities products.

Marcia E. Asquith
September 23, 2016
Page 4

The Committee Is in Favor of Permitting Otherwise Permissible Business Entertainment at a Training and Education Meeting. The Committee has previously commented on this and was disappointed that the Non-Cash Rules did not provide for this after the tone and tenor with which this issue was discussed in the 2014 Report. The Committee continues to believe that such entertainment should be permissible. As we stated in our 2014 Letter, the Committee believes that FINRA's position that an offeror cannot pay for business entertainment while at a meeting it sponsors for the purpose of training or education is overly broad and prescriptive. These meetings are already subject to numerous safeguards that prevent them from becoming overly lavish, as set forth under Rule 3221(b)(2), such as:

- The limits on the appropriate location for the meeting;
- The prohibition on reimbursement of the costs for guests of the associated person;
- The obligation for the training to occupy "substantially all of the work day."⁸

As a result of those limitations, the Committee believes that providing business entertainment associated with the meeting that complies with the business entertainment provisions of Rule 3222 should be permissible. Allowing measured entertainment should not impact the status of the meeting as "first and foremost intended to . . . provide training or education to an associated person."⁹

Location of Training and Education Meetings. Rule 3221(b)(2)(B) appears to require that a training and education meeting must be held in the United States ("US"). The Committee believes that in certain circumstances, it should be permissible for such meetings to occur outside of the US, particularly where such meetings are held in a country that borders the US in which the firm or offeror may have a business location. The Committee recommends that Rule 3221(b)(2)(B) be revised to permit meetings outside the US when such meetings otherwise meet the articulated standards of the Rule (*e.g.*, an office or facility of the member or offeror, or a facility located within the vicinity of such office).¹⁰

The Gift Limit under Rules 3221 and 3222 Should be Raised to \$200 or those Rules Should Provide for Automatic, Periodic Increases of the Limit. The Committee recognizes that FINRA relied on data related to the rate of inflation to set the \$175 limit and understands the rationality of that approach. However, given that it has been nearly 25 years since the dollar amount was increased, and additional increases by FINRA over the next 10 years or so seem unlikely, the Committee recommends that the permitted gift amount be set at \$200. In the alternative, the Committee suggests that a formalized recalculation be embedded in the applicable Rule that allows for increases on some periodic basis (*e.g.*, every 5 years).

Applicability of Rule 3222 to Offeror and Firm Entertainment. The Committee request clarification that the provisions of Rule 3222 are now designed to cover firm activities that were formerly addressed and permitted under the current non-cash compensation rules such

⁸ See Rule 3221 SM.06.

⁹ *Id.*

¹⁰ The Committee also notes that so-called "diligence" trips are often viewed by FINRA exam staff as needing to comply with this requirement. Such trips in certain situations may require firms to travel outside of the US.

Marcia E. Asquith
September 23, 2016
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as FINRA Rule 3220(g)(4)(B)(the exception permitting “an occasional meal, a ticket to sporting event or the theater”). Stated alternatively, the provision of tickets to the theater or sporting events to or from a member firm that previously needed to conform to the non-cash compensation rule exception, now are treated instead as subject to the principles-based rules of the business entertainment rule (Rule 3222). The Committee is requesting that FINRA confirm this interpretation.¹¹

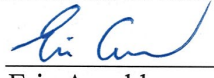
Implementation Period Prior To Compliance Date. The Proposed Rules create a number of operational and other challenges. The Committee feels strongly that the Proposed Rules, once finalized, should have at least a one-year period to allow firms to appropriately train and educate their personnel and to develop and implement their new policies, systems and forms under the Proposed Rules.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposed Rules. The Committee would be pleased to meet with FINRA staff to discuss the comments in this letter and provide additional feedback to FINRA on the implications of moving forward with the Proposed Rules. Please do not hesitate to contact Eric Arnold (202.383.0741), Cliff Kirsch (212.389.5052) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Eric Arnold

BY:  EA
Cliff Kirsch

BY:  EA
Susan Krawczyk

FOR THE COMMITTEE OF ANNUITY INSURERS

¹¹ RN 16-29 (at page 8) indicates that Rule 3222 is designed “to replace the business entertainment standard in the existing non-cash compensation rules and the 1999 letter.”

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.



VIA ELECTRONIC MAIL

September 23, 2016

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Proposed Amendments to Gifts, Gratuities and Non-Cash Compensation Rules

Dear Ms. Asquith:

On August 10, 2016, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on proposed amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others), as well as on proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation), and proposed FINRA Rule 3222 (Business Entertainment) (collectively referred to in this letter as the Proposal or Proposed Amendments).¹ Among other significant changes, the Proposed Amendments would increase the gift limit from \$100 to \$175 per person per year and include a \$50 de minimis threshold below which firms would not have to keep records of gifts given or received. The Proposal also amends the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities. Lastly, the Proposal creates a new rule addressing business entertainment that, among other things, requires firms to promulgate written policies and procedures related to business entertainment along with corresponding books and records requirements.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important Proposal. FSI strongly supports FINRA's retrospective rule review efforts, which are vital to increasing the transparency and accountability of rulemaking, and will ensure that FINRA's rules remain relevant and are appropriately designed to achieve their objectives. With regard to the gifts and gratuities, non-cash compensation, and business entertainment rules in particular, FSI appreciates the careful and thoughtful manner in which FINRA collected input from various stakeholders, including FSI and our members, while developing potential common sense changes to update the existing rules and to better ensure that the rules adequately address their intended goals. FSI supports updating the gifts and gratuities and non-cash compensation rules and instituting specific business entertainment rules in the manner proposed and we offer suggestions

¹ See Regulatory Notice, Gifts, Gratuities and Non-Cash Compensation Rules August 2016, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

for ways the Proposal could be improved to provide clarity to FINRA members. FSI supports the non-cash compensation requirements and will not be providing additional comment on those provisions because the majority of FSI members have already adopted compliance programs that exceed the requirements of the non-cash compensation rules.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the Proposed Amendments to FINRA's gifts, gratuities, non-cash compensation, and business entertainment rules. FSI provides suggestions, outlined in our comments below, to improve the Proposal and provide greater clarity to FINRA members.

I. Firms frequently misapply the gift and gratuities rules so FINRA should consider providing clarification in the Proposed Amendments

The gifts and gratuities rules state that they are applicable specifically to "any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity."⁴ Despite this clear definition, many, and perhaps even the majority, of FINRA member firms have interpreted this rule to apply to gifts given by financial advisors to their individual retail clients. Given this common misperception, FSI believes the Proposal regarding gifts and gratuities will benefit from additional clarification.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁴ See Regulatory Notice, Gifts, Gratuities and Non-Cash Compensation Rules August 2016, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

FSI has observed that firms extend the gifts and gratuities rule requirements to gifts their associated individual financial advisors give to their individual retail clients. We believe firms do so in an overabundance of caution. While this approach results in many firms going above and beyond what is required by the rule, the resources they use to apply the rule requirements to their associated financial advisors could be redirected to other important areas of compliance. Indeed, the very purpose of FINRA's retrospective review is to determine whether the rules meet their objectives while aligning with the economic impacts. In this particular case, FSI believes the rule has created an environment where the misinterpretation and misapplication has resulted in unnecessary economic impact. If FINRA were to clarify for firms that the requirements do not apply to gifts provided to individual retail clients, firms would then be free to re-allocate the resources to other compliance efforts and programs. FSI therefore suggests that FINRA include a clear definition of the application of the rule by explicitly stating in the rule text that it does not apply to gifts given by individual registered financial advisors associated with a FINRA member firm to their individual retail clients.

To further highlight the benefit of clarification of the application of the rule, FINRA stated in the Regulatory Notice that it has fielded a number of questions about the application of these rules since their inception.⁵ By clarifying the application of both of these rules, FINRA staff will no longer need to expend resources in responding to the questions, which allows them to spend their time and energy elsewhere. Clarification seems a common sense approach to freeing up both member and FINRA resources.

II. FSI requests guidance on the types of transactions subject to the gift and gratuities rules

FSI believes the Proposal would greatly benefit from additional clarification on the provision of the rule that prohibits, "any member or person associated with a member, directly or indirectly, from giving *anything of value* in excess of \$175 per year to any person where such payment is in relation to the business of the recipient's employer." (emphasis added)⁶ FSI is concerned that, "anything of value" is vague and may unintentionally cause confusion for FINRA members. For example, would an advisor's time constitute "anything of value" under these rules, considering how some advisors charge based on an hourly rate? Therefore, we request that FINRA include clarification of whether "anything of value" includes only tangible things which can be purchased with currency or if it also includes items of intangible value or items that may have a current market value or an anticipated market value in the near future, say one year. To the extent FINRA can provide firms examples of what would be considered "anything of value" and examples of things that are not, this would provide additional clarification to FINRA members in complying with the rule.

III. FSI applauds FINRA for adopting a principles based approach to the business entertainment rule and encourage FINRA to consider the same approach with gifts and gratuities

⁵ See Regulatory Notice, Gifts, Gratuities and Non-Cash Compensation December 2014, available at <https://www.finra.org/sites/default/files/p602010.pdf>

⁶ See Regulatory Notice, Gifts, Gratuities and Non-Cash Compensation Rules August 2016, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

FINRA has proposed a limit of \$175 for gifts and gratuities, regardless of geographic area or individual cost of living. FSI instead believes that adopting a principles based approach would better achieve the regulatory goal of protecting investors while still maintaining the flexibility, practicality, and efficiency of the rule.

A principles based approach would allow firms to tailor their compliance to more accurately take into account the economic differences between geographical areas. The Bureau of Economic Analysis has calculated the relative value of the dollar across all fifty states.⁷ Prices for the same goods are cheaper in some states and more expensive in others, making the “cost of living” different among geographical locations. For example, in Mississippi, \$100 would purchase goods that would cost \$115.34 at the national average price level. Because \$175 will purchase more in Mississippi than it will in New York, the Proposal’s impact will vary significantly. A principles based approach on the other hand, would provide for efficient application of the rule because the limit could be adjusted to account for differences in purchasing power. If FINRA is concerned that a principles-based approach could still result in potential investor harm, FINRA should consider allowing flexibility in the dollar limit but not to exceed a certain amount, regardless. FSI suggests a \$300 absolute limit would be reasonable. Additionally, FINRA could require firms to include in their books and records the rationale for allowing a gift be given in the value range of \$175 to \$300 and exam to ensure adequate documentation.

IV. FSI applauds FINRA for allowing a de minimis threshold and we encourage FINRA to consider increasing the dollar amount

FINRA has proposed a \$50 de minimis threshold below which firms would not have to report their gift-giving. This particular provision of the gifts and gratuities portion of the Proposal is aimed at eliminating large, lavish gifts that could causes improper relationships, which is why FINRA determined that gifts of low dollar value need not be recorded. FSI applauds FINRA for adopting a de minimis value below which member firms would not need to expend resources to track gifts. As stated above, given the fact that actual dollar value varies based on geographical location, we suggest the de minimis amount be raised to better reflect market realities.

FINRA is admittedly not concerned with regulating gifts of nominal or inconsequential value that do not present the appearance of impropriety.⁸ If the de minimis exception remains at \$50 this will surely result in firms tracking seemingly nominal gifts of \$51 or slightly more. Additionally, gifts the firm or advisor receive will often not have an easily determined value and social convention deters people from asking the value of a gift they receive. Consequently, firms who want to be sure not to run afoul of the rule requirements are likely to record every gift received, particularly during the holiday season. We believe this will negate much of the benefit of the exception. FSI suggests a \$100 de minimis exception would actually eliminate the inclusion of nominal gifts, particularly in urban areas and areas with a lower actual dollar value and would better allow firms and advisors to determine which gifts they receive should be recorded.

Without increasing the de minimis threshold, it will be difficult to determine the value of a gift, as the value of a gift is rarely disclosed, which would force gift recipients to determine on their own whether the value of the gift is more than \$50 and therefore needs to be disclosed. The de

⁷ See Bureau of Economic Analysis, “Real Personal Income for States and Metropolitan Areas, 2014” available at http://www.bea.gov/newsreleases/regional/rpp/rpp_newsrelease.htm

⁸ See Regulatory Notice, Gifts, Gratuities and Non-Cash Compensation Rules August 2016, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

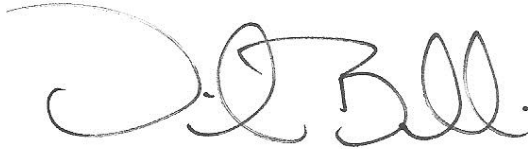
minimis exception may ultimately become meaningless, because the proposed level is so low that firms will have to assume the value of the gift is more than \$50, and firms would be disclosing all gifts received, which is not the intent of the rule. Raising the limit will make for easier identification of value, because many will find it simpler to determine whether a gift given to them is over or under \$100. Raising the threshold will best serve FINRA's interest in recording gifts of consequential value and make for a more efficient and effective disclosure regime.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by the name "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

It seems fairly ludicrous to change from \$100 to \$175 after at least 15 years at \$100. Why not make it simply \$200 that makes for an easier number for all involved?

Jim Biddle, President and CEO

The Securities Center, Inc.

(619) 426-3550

245 E Street

Chula Vista, CA 91910-2942

www.securitiescenter.com**[securitiescenter.com]**

Member FINRA/SIPC/MSRB

Faculty Supervisors

DAVID N. DORFMAN
MARGARET M. FLINT
ROBIN FRANKEL
ELISSA GERMAINE
JILL GROSS
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VANESSA MERTON

Page 130 of 195
JOHN JAY LEGAL SERVICES, INC.

ELISABETH HAUB SCHOOL OF LAW
PACE UNIVERSITY
80 NORTH BROADWAY
WHITE PLAINS, NY 10603
TEL 914-422-4333
FAX 914-422-4391
JJLS@LAW.PACE.EDU

Executive Director

MARGARET M. FLINT

Clinic Administrator

ROBERT WALKER

Staff

MIGUEL SANCHEZ ROBLES
BRENDA THORNTON

September 23, 2016

VIA EMAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

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

Dear Ms. Asquith:

The Investor Rights Clinic at the Elisabeth Haub School of Law at Pace University, operating through John Jay Legal Services, Inc. (“PIRC”),¹ welcomes the opportunity to submit this comment letter regarding FINRA’s proposed amendments to its Gifts, Gratuities and Non-Cash Compensation Rules. PIRC supports FINRA’s regulation of gifts, gratuities and non-cash compensation as an important part of its role in protecting investors by minimizing conflicts of interest and the appearance of impropriety. However, PIRC believes that the best way to accomplish this goal would be to ban all gifts or non-cash compensation that could lead to conflicts of interest. In the absence of an outright prohibition, we support FINRA’s proposed amendments to regulate the terms of gifts, gratuities and non-cash compensation to the extent that they prevent conflicts of interest.

Gift Limit Increase

PIRC does not support FINRA’s proposed increase to the gift limit under Rule 3220 (Influencing or Rewarding Employees of Others) and Rule 3221 (Restrictions on Non-Cash Compensation) from \$100 to \$175 per person per year. Current FINRA Rule 3220 “prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient’s employer...The rule seeks both to avoid improprieties that may arise when a

¹ PIRC opened in 1997 as the nation’s first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release, Securities Exchange Commission, SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors - Levitt Responds To Concerns Voiced At Town Meetings (Nov. 12, 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

member firm or its associated persons give anything of value to an employee of a customer or counterparty and to preserve an employee's duty to act in the best interests of that customer.”²

PIRC believes that gift giving, especially in the absence of a universal fiduciary standard, increases the risk that member firms and associated persons will provide conflicted investment advice rather than advice in the customer's best interest. While the \$75 inflation-related increase may not materially affect the underlying goal of avoiding impropriety and conflicts of interest, increasing the limit sends a message condoning this type of gift giving. Therefore, PIRC advocates for a limit of \$0 under FINRA Rules 3220 and 3221 to avoid unacceptable conflicts of interest; however, at a minimum, PIRC supports maintaining the \$100 limit in Rules 3220 and 3221.

Application to All Securities Products

PIRC supports FINRA's proposal to extend Rule 3221 to cover all securities products, rather than only direct participation programs, variable insurance contracts, investment company securities, and public offerings of securities. However, PIRC believes that Rule 3220, as well as Rule 3221, should expressly state that it applies to all securities products.

Incorporating Gifts Received

PIRC supports FINRA's proposal to incorporate gifts received by a member firm or its associated persons into Rule 3220 and proposed Rule 3221. This incorporation furthers FINRA's stated goal for Rule 3220, which is to avoid improprieties and “preserve an employee's duty to act in the best interests of [the] customer.”³ Gifts received by a member firm or its associated persons raise similar conflicts of interest and improper incentives concerns as those given to a member firm or its associated persons. In order to protect the integrity of regulated investment activity and to protect the interests of customers, the proposed gifts rule should encompass not only gifts given, but gifts received as well.

***De Minimis* Threshold**

In the absence of a general prohibition on gift giving, PIRC supports FINRA's proposal for a *de minimis* threshold below which firms would not have to keep records of gifts given or received in an effort to prevent firms from passing on compliance costs to customers. However, we believe the *de minimis* threshold should be \$25 rather than \$50. This should help ensure that such gifts are truly of nominal value and that the lack of recording those gifts will not adversely affect investors.

Internal Sales Contests

PIRC strongly supports FINRA's proposed ban of product-specific internal sales contests. However, we feel that this proposal does not do enough to prevent conflicts of interest. Other types of non-cash compensation contests can encourage a broker to invest without

² *Regulatory Notice 16-29*, Financial Industry Regulatory Authority, Aug. 2016, 3.

³ *Id.*

considering the suitability of the investment for the customer, let alone the customer's best interest. Banning all internal sales contests would help ensure customers do not end up with unsuitable investments. This would also further promote "an employee's duty to act in the best interests of [the] customer," the stated goal of Rule 3220.⁴ PIRC believes the ban should also be extended to proposed Rule 3221.

Business Entertainment at Training Sessions

In question 6 of the Regulatory Notice, FINRA seeks feedback about aligning entertainment at training sessions paid for by offerors with FINRA's general business entertainment rule. PIRC does not support non-cash compensation, including business entertainment, given or received by member firms and associated persons. This includes business entertainment provided at training sessions paid for by offerors. We believe that the structure of proposed Rule 3221, which does not permit payment or reimbursement for entertainment or expenses of guests or associated persons at training sessions, is sufficient to limit the risk of improper incentives that arise through extravagant use of business entertainment at training sessions. Non-cash compensation can harm investors by providing an incentive to brokers that competes with customers' best interests. We believe aligning the business entertainment approach with the rules on training sessions would improperly incentivize brokers, as training sessions should have an educational basis and offeror-funded business entertainment can not only distract from learning, but can encourage attendance for inappropriate reasons. If FINRA does choose to align the two approaches, the frequency requirement for training sessions should be tailored to the length of a training session rather than the general business entertainment approach under each member's written policies and supervisory procedures. This should help ensure that the business entertainment is appropriate and not extravagant under the circumstances of a training session.

Consolidation of Rules and Recordkeeping

PIRC supports consolidating the rules governing gifts, gratuities and non-cash compensation, as such consolidation should eliminate the risk that someone will overlook these rules or be unaware that there are multiple compliance rules governing this subject. Additionally, consolidation should simplify compliance by allowing member firms to look in one easily accessible place for guidance on recording any gift, gratuity, or non-cash compensation they receive.

⁴ *Id.*

Conclusion

PIRC supports FINRA's regulation of gifts, gratuities, and non-cash compensation as a way to minimize the risk of improprieties and conflicts of interest. While we support FINRA's continued amendments to improve and consolidate these rules, we believe further revision is necessary to preserve an employee's duty to act in the best interests of the customer and avoid conflicts of interest. PIRC believes that customers should be a broker's number one priority, and FINRA rules should serve to ensure that investors' interests are protected.

Respectfully yours,

Pace Investor Rights Clinic

Robyn Downing
Student Intern, PIRC

Alyse Velger
Student Intern, PIRC

Elissa Germaine
Director, PIRC



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1.800.856.0869
Fax: 281.681.2864

August 16, 2016

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Request for comment
FINRA Reg. Notice 16-29

Dear Ms. Aaquith.

Thank you for this opportunity to comment. There are a couple attachments associated with these comments. Please feel free to post these attachments as well.

Changes and amendments to existing FINRA rule 3220 as well as the newly proposed rules 3221 and 3222 are long overdue. I am commenting based on my experience on three levels, all affected by these rules; a registered person, a corporate event sponsor and a charity board member.

- 1) I applaud your move to increase the gift limit to something over \$ 100. However, I recommend utilizing the same method as the IRS for allowing retirement plan contribution limits to increase over time with inflation in \$ 25 (twenty five USD) increments. By stating the formula, like the IRS, you only have to send a notice of the new level instead of going back through this process.
- 2) Since your rule is based on the value of gifts given, unless the giver tells the receiver the actual value of the gift, I do not know how the receiver would value the gift received.
- 3) As a registered person, my member firm should be able to feel free to give me whatever they like. Based on their budget constraints and responsibility to their public shareholders, I get excited about a \$ 5.00 coffee gift card. As a registered person giving gifts to clients, I feel the gift rule should apply as well.
- 4) A \$ 50 *de Minimis* threshold is long overdue. This number should inflate as described in response # 1.
- 5) I am unaware of any member firm still allowing product specific internal sales contests. In my opinion, it is time to move past this practice forever.

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- 6) It is easy to understand FNRA's logic behind the entertainment restriction at training/education sessions, however the actual application of such restrictions need to be further defined. As a registered person, I have attended many of these training/education session. Most follow a similar schedule loosely defined as: travel, cocktails, dinner and speaker in the evening, breakfast, speakers/breakout sessions, lunch with speaker and travel.

If the purpose of this proposed rule is to assure these sessions are actually training or educational, then requiring the provider of the training or education session to assure some type of specific continuing education credits are earned through attendance would be a better approach. Registered persons have CE requirements to maintain their various licenses and professional designations. Acquiring CE credits through face-to-face interactions with qualified providers, in my opinion, is vastly more effective than any internet based training course. If there are 8 total hours of speakers/sessions/breakouts, etc., you should be able to earn at least six (6) hours of relevant CE.

If the purpose of this rule is to simply prevent the potential of the attendees having any fun or socializing, I recommend FINRA cease and desist with exhibitor sponsored events at their meetings. What's good for the goose.....

- 7) In my opinion, with the rules as currently proposed, you will never achieve the recordkeeping and compliance monitoring you desire. See my comments below for a better solution.
- 8) Way more than they need be. See my comments below.
- 9) Anytime there is only one place to go for guidance, you have improved the system. As proposed, the costs out weight the benefits. See my comments below.
- 10) With proposed changes, nominal.
- 11) My comments follow.

I believe FINRA has failed to deal successfully with the actual purpose of these proposed rules. I do not believe FINRA is really concerned about the prices of tickets to sporting events or costs of a dinner. I believe FINRA is concerned about the appearance of some type *quid pro quo* between a sponsor and a registered person, a registered person and a client or a member firm and a registered person.

Before continuing, please allow me to elaborate on my background. As charity board member with a financial background, I have often functioned as a fund raiser. When a corporation is approached to sponsor a specific event or venue, the charity is loath to put a specific price on the individual pieces of that sponsorship. A company might choose to sponsor The Center for the Performing Arts at The Woodlands. As such, The Center might be unable to put an independent value on the differing aspects of the sponsorship offered. However, the sponsorship might well include tickets to events throughout a

defined season. Those tickets might or might not have a "face value" associated with them. Please refer to exhibit # 1.

Some professional sports teams offering sponsorships also refrain from putting an actual dollar value on each aspect of a sponsorship. Exhibit # 2 shows Houston Astros baseball tickets our parent company gets as a result of our corporate sponsorship. No face amount shown. Exhibit # 3 shows Houston Texans football tickets our parent company receives. This sponsorship package does include face value tickets.

FINRA's proposed rule requires the member value the tickets, if given as a gift or as non-cash compensation (proposed rule 3220 and 3221), at "the higher of costs or face value". As seen in exhibit # 1, there is no face value listed on the ticket. Since The Center for the Performing Arts at The Woodlands does not provide a face value nor a breakout of the various costs associated with the sponsorship package, how can the value be determined? Is there a difference in the value of the tickets shown in exhibit # 1 of a Dierks Bentley concert or a Houston Symphony concert? Probably. So who determines the value and how do they determine it? The Houston Astros tickets in 2013 were not even worth the face values shown but maybe this year they are worth something more.

In my opinion, and as found in proposed rule 3222 and accurately defined in section (a) subsection (1), FINRA's intent is to assure there is no possibility these tickets /dinners/etc. could become *quid pro quo* for selling or promoting one specific product or service over another.

As a charity fundraiser, I am absolutely not putting a value on tickets that a sponsor obtains as part of a corporate sponsorship. How would a PGA Tour event, value the corporate signage behind the 18th hole that happens to be in every camera shot based on the pin position the PGA Tour has set up that day? Based on the TV air time, a sponsorship package that included 100 tickets might have a negative value versus what the sponsor actually paid. What about the Master's? Based on the face value, everyone can go. But really?

So how can FINRA apply a similar standard to proposed rules 3220 and 3221 as they have in proposed rule 3222?

I recommend FINRA not put a value on a ticket to a sporting event or dinner or other entertainment. Instead of using a value, use a number of occurrences. How many? Two or three times in a calendar year for any tickets/dinner or other similar event of any type is plenty. This also makes compliance and recordkeeping much easier and your potential to monitor that recordkeeping easier as well. If you see a registered person going to several sporting events or dinners hosted by the same provider, throw a penalty flag. Review expense accounts to see which clients are going to dinners or sporting events and throw a penalty flag.

Another issue I have is with proposed rule 3220, supplementary material .05 personal gifts. In the first several sentences the rule seems to allow a member firm to give a personal gift for occasional life events. In the last sentence, that ability is taken away. Drop the last sentence.

My last comment revolves around rule 3221, item (b) subsection (2) item (c). As with FINRA meetings I have attended, many attendees bring a spouse or significant other along to enjoy the city or location of the event. Often, even at FINRA committee meetings, dinners are held. While I do not think it should become common occurrence, I do not believe spouses should always be excluded from these events. I believe these events could be a lot more effective if they were included. After all, it takes a special breed of person to marry anyone affiliated with any part of this industry and they can and usually do provide interesting insights insiders sometimes miss.

Thank you for allowing me to comment. I appreciate your open and honest approach to these potential changes.

Regards,



Frederick T. Greene, CIMA ®
Executive V.P., Portfolio Manager
Financial Advisor, branch Manager



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VS



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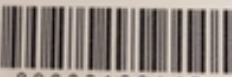
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nrg stadium

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VIA ELECTRONIC MAIL

September 23, 2016

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 16-29 – Gifts, Gratuities and Non-Cash Compensation Rule

Dear Ms. Asquith:

In its Regulatory Notice 16-29 (“RN 16-29”), the Financial Industry Regulatory Authority, Inc. (“FINRA”), solicited comments regarding a proposal to amend Rule 3220 (Influencing or Rewarding Employees of Others) (hereinafter “Proposed Amendment”) and to adopt new FINRA Rules 3221 (Restrictions on Non-Cash Compensation) and 3222 (Business Entertainment) (hereinafter “Proposed Rule(s)”).

Commonwealth Financial Network[®] (“Commonwealth”) is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 1,700 registered representatives (“RRs”) who are independent contractors conducting business in all 50 states. Commonwealth and its advisors are in the position to receive and provide gifts, receive non-cash compensation, and provide business entertainment as a part of the normal course of business.

Commonwealth supports FINRA’s efforts to streamline the rules and regulatory notices that have previously governed the activities covered by the Proposed Amendment and Proposed Rules. Commonwealth agrees strongly that applying the requirements for non-cash compensation to all types of securities in Proposed Rule 3221 addresses a current gap in the effectiveness of FINRA Rules 2320(g)(4), 2830(i)(5), and 2310(c). Additionally, Commonwealth is in support of the written policy and supervisory procedure requirements in Proposed Rule 3222(a) and applauds FINRA for its approach toward allowing firms the flexibility to determine a system of oversight that is tailored to each member firm’s specific business model.

While largely in support of these rule-making efforts, Commonwealth does have concerns regarding some of the specific requirements imposed within the Proposed Amendment and Proposed Rules. These issues are addressed below in detail.

29 Sawyer Road
Waltham, MA 02453-3483
800.237.0081
781.398.9972 fax

110 West A Street,
Suite 1800
San Diego, CA 92101-3706
877.347.1982
619.471.9701 fax

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Marcia E. Asquith
September 23, 2016
Page 2 of 4

I. Proposed Amendment to Rule 3200, (Influencing or Rewarding Employees of Others)

The Proposed Amendment to Rule 3220 increases the aggregate annual monetary threshold to \$175 for gifts made to any person where such payment is in relation to the business of the recipient's employer. As described in footnote 6 of RN 16-29, the increase is directly based upon the calculation of the rate of inflation since adoption of the arbitrary \$100 gift limit in 1992.

Commonwealth believes that the \$175 threshold will quickly become obsolete due to continued inflation following implementation of this rule. As the \$175 threshold becomes obsolete, FINRA will either need to undertake additional rule making or leave firms to enforce a rule that is not consistent with economic realities.

In addition to the concern for future inflation, Commonwealth looks to the *de minimis* thresholds provided in FINRA Rule 2030 regarding permissible political contributions. In Regulatory Notice 14-50, regarding that rule making, FINRA states the following (*emphasis added*):

De Minimis Contributions

Proposed Rule 2390(d)(1) would except from the rule's restrictions contributions made by a covered associate to government entity officials for whom the covered associate was entitled to vote at the time of the contributions, ***provided the contributions do not exceed \$350 in the aggregate to any one official per election.*** If the covered associate was not entitled to vote for the official at the time of the contribution, the contribution must not exceed \$150 in the aggregate per election. Consistent with the SEC Pay-to-Play Rule, under both exceptions, primary and general elections would be considered separate elections. ***These exceptions are based on the theory that such contributions are typically made without the intent or ability to influence the selection process.***

Commonwealth contends that gifts to employees of others below reasonable dollar limits carry a similar lack of intent or ability to influence the recipient. Further, it seems reasonable that rules designed to curtail undue influence with respect to the giving of gifts, gratuities, and political contributions should be set at the same dollar thresholds. In light of these factors, Commonwealth proposes that FINRA consider an annual gift limit of \$350 rather than \$175.

II. FINRA Rule 3221 (Restrictions on Non-Cash Compensation)

Proposed Rule 3221(b)(2)(C) is inconsistent with the permissible business entertainment activities allowed under Proposed Rule 3222. This inconsistency creates the potential for unnecessary confusion between offerors and firms and their associated persons as they seek

Marcia E. Asquith
September 23, 2016
Page 3 of 4

to reasonably comply with these rules. In addition, the restrictions imposed by the Proposed Rule are unduly burdensome and do not provide any meaningful protection to investors.

For illustrative purposes, we offer the following as examples of this conflict:

- Scenario 1: Offeror A hosts a one-and-a-half-day training meeting on September 19 and 20 in Boston and invites local advisors to attend. Firm A reviews the agenda and sees that Offeror A proposes to take attending advisors out for a round of golf on the afternoon of September 20 in connection with the training meeting. To comply with 3221(b)(2), Firm A would have to deny the approval for Advisor A to attend the training meeting.
- Scenario 2: Offeror A invites Adviser B to a round of golf on the afternoon of September 20 in Boston after the conclusion of the training meeting. Offeror A does not invite Adviser B to the training meeting. Adviser B seeks Firm A's approval to attend the golf outing in accordance with its policies on business entertainment. Assuming this business entertainment complies with Firm A's policies established under Rule 3222, Firm A can approve attendance.

Commonwealth believes that Rule 3221(b)(2) should be amended to allow business entertainment for associated persons at training and education meetings, provided such business entertainment otherwise meets the firm's policies and procedures established to comply with Rule 3222.

III. FINRA Rule 3222 (Business Entertainment)

As proposed, Rule 3222 does not contemplate a *de minimis* exemption to the recordkeeping requirements described under FINRA Rule 3222(b). As defined in Supplementary material .02, "the purpose of Rule 3222 is to govern business entertainment provided by a member or its associated persons, as well as business entertainment accepted by a member or its associated persons from an offeror. Business entertainment includes, but is not limited to, an occasional meal, a ticket to an event (e.g., sporting event) or the theater and other comparable entertainment."

As proposed, each of the following events would obligate a firm to create a detailed record of business entertainment expenses under Rule 3222(b).

- Advisor conducts his annual meeting with a client at a local coffee shop and pays for the client's coffee.
- Advisor who owns season tickets to the local minor league baseball team hosts a client and her family in his seats for a game.
- Advisor hosts a client event where she pays for a shredding truck so that clients may dispose of sensitive data in a secure manner.

Marcia E. Asquith
September 23, 2016
Page 4 of 4

In the examples provided above, the monetary value of the business entertainment provided to the client is less than the \$50 *de minimis* amount contemplated in the Proposed Amendment to Rule 3220. Additionally, the Proposed Amendment does not contemplate creating an obligation for firms to create a record of gifts provided to the same retail customers as described in the examples of events above. As such, the firm would not be obligated to create a record if the same advisor gave the client a gift certificate to the coffee shop, the tickets to the baseball game, or access to the shredder.

Commonwealth believes that obligating a firm to create detailed records of such immaterial events is unduly burdensome when compared to any potential investor protection provided. As such, FINRA should modify Proposed Rule 3222(b) to provide the same \$50 *de minimis* amount contemplated in the Proposed Amendment to Rule 3220.

Commonwealth also requests that FINRA clarify the record creation requirements as they pertain to recruitment efforts. Please consider the following example:

Firm A invites Advisor B to tour its home office as part of the recruiting process. Advisor B is currently affiliated with Firm B. As part of the tour, Firm A pays for Advisor B's airfare, accommodations, and meals.

As written, Proposed Rule 3222(b) would require firms providing and receiving business entertainment to create a record of the business entertainment. As such, it appears that the Proposed Rule would obligate Advisor B to report Firm A's business entertainment to Firm B, their current employer. While we do not believe this is FINRA's intent, we request that FINRA clarify this point for the record.

Commonwealth appreciates the opportunity to comment on the Proposed Amendment and Proposed Rules as described in RN 16-29. If you have any questions regarding our comments or concerns, please contact me directly at 781-529-9163.

Sincerely,

John Hagberg
VP, Compliance
Commonwealth Financial Network



**FIRST ASSET
FINANCIAL Inc.**
Member SIPC • FINRA

110 East Iron Ave.
Salina, KS 67401
(785) 825-5050
Fax (785) 823-9207

September 19, 2016

Dear FINRA,

Under the proposed 3220.(c).(02) it is stated that the “Gifts must be valued at the higher of cost or market value...” The “market value” in this rule is totally unnecessary and it is difficult to imagine a reason for it, except for an examiner to use it as a “gotcha” in an exam. Firms are not in the business of keeping current with the “market value” of gifts and the firm’s time is better spent elsewhere. It is difficult for a firm to “prove” the market value of gifts. Should they keep abreast of high quality steak prices to be assured that the Omaha Steak sent to a customer is at “cost or market value”? Regulators should be realistic in their demands and strike the “or market value” from 3220.(c).(02).

In regard to Regulatory Notice 16-29, comments were requested to items 1-11 on pages 10 & 11 of the Notice. Please find the comments below.

1. The proposed amendments would increase the gift limit under FINRA Rule 3220 and proposed FINRA Rule 3221 to \$175. What risks, if any, might arise to customers by raising the gift limit?
A. If the gift was too large, it might unduly influence a customer. Should FINRA increase the limit to \$175? **A. NO, it should be greater.** If not, what, if any, would be an appropriate limit?
A. The absolute minimum should be \$225 and preferably \$275. The cost of entertainment (sporting tickets, concerts, restaurants, hired cars, parking, etc.) has grown far faster than inflation since 1992 when the level was last set. If this rule is not changed for another 23 years, future cost increases need to be taken into consideration as well, hence the \$275 recommendation. FINRA needs to look forward as well as backwards on the issue.
2. The Gifts Rule applies to gifts a member firm or its associated persons give and not to gifts the member firm or its associated persons receive. Should the Gifts Rule apply to gifts received as well as gifts given? **A. No Logic often evades regulators. It is logical that one could not control the value of a gift given. Also an attempt to influence through a gift given to a member firm or associated person would be highly unlikely! How would “good will” with customers be increased by giving back a gift if it exceeded a rule they were not aware of?**
3. The Gifts Rule does not apply to gifts a member firm gives to its own employees or from a member firm’s employee to his or her individual retail clients or customers. Should the Gifts Rule apply to gifts a member firm gives to its own employees or from a member firm’s employee to his or her individual retail clients or customers? **A. NO Please explain. A. This is a “gray” area and could be considered employee compensation. FINRA should not limit or regulate employee compensation.**
4. FINRA is proposing a \$50 de minimis threshold below which member firms would not have to keep records of gifts given or received. Is a \$50 de minimis threshold appropriate? **A. NO** Should the threshold be higher or lower or should FINRA not include a de minimis threshold? **A. It should be higher. The gift level of \$100 should be used rather than \$50. Record keeping is expensive due to employee time and diligence from associated persons that must be given as well. Associated persons should not have to report any expenditure of under \$100 for record keeping purposes. If this rule is not changed for another 23 years, future cost increases need to be taken into consideration as well, hence the \$100 recommendation.**

5. To what extent would FINRA's proposal to no longer allow product-specific internal sales contests for non-cash compensation impact member firms? **A. No Comment** In what ways, if any, could it potentially impact customers? **A. No Comment** Is FINRA's proposed approach to internal sales contests for non-cash compensation appropriate? **A. No Comment** Please explain. **A. No Comment**
6. Commenters have said that restricting entertainment at training sessions paid for by offerors is logically inconsistent with the rule's business entertainment approach. Should the requirements for training and education meetings allow entertainment that complies with the limitations on business entertainment provided by members? **A. No, absolutely not. Most often these are "group events" and the costs are difficult to determine on an individual basis for the set limitation. Again, this would be regulatory overreach to "micro manage" a group endeavor. If FINRA went as far as our phone provider does at rate hearings for the cost of a serviceman (hourly wage, pension benefits, cost of amortization of his truck, tools, health insurance, portion of supervisors time used, etc.) they could easily prove violation of the gifts rule with even the cheapest hotel food and drink!**
7. Are the proposed recordkeeping requirements appropriately tailored to obtain information that would be relevant for purposes of monitoring for compliance with the proposed rules? **A. Again, this appears to be a "micro-managing" approach to the record keeping required. It is overly detailed and will require considerable time by a firm to produce such a record with many required entries.**
8. What are the estimated costs of drafting policies and procedures to comply with proposed Rule 3222 relating to business entertainment? **A. If you consider the advisor's time and the staff time it could be no less than \$75 per hour and probably considerably more. I do not know how many hours would be involved, particularly for #6. The compliance burden placed on firms by FINRA is never lighter, but always increasing.**
9. How would the consolidation of the rules governing gifts, gratuities and non-cash compensation in this proposal simplify compliance? **A. It would allow location of most of the gifts, gratuities & non-cash compensation to be in one section of the rules. What impact would it have on the costs of compliance? A. The impact of having the rules in one location would not affect the costs much, but the rules themselves with increase the cost of compliance.**
10. What economic impact, if any, would be associated with the extension of the rules governing non-cash compensation to all securities? **A. It is difficult to assess, but no doubt, it would cost firms MORE for additional compliance costs!**
11. Are there any expected economic impacts associated with the proposed rules not discussed in this Notice? **A. YES** What are they and what are the estimates of those impacts? **A. Again, attempting to determine "market value" of gifts will cause unknown expense, depending on the difficulty of determining the market and the frequency of checking the "market value" of a gift. The amount of detail required by the proposal appears to be greater than the current rules, thus demanding more time and effort on behalf of staff and advisors.**

To summarize my comments on Regulatory Notice 16-29:

- should increase the gifts limit to \$275 or, at a minimum \$225
- should increase the *diminimus* amount to \$100
- the requirement for "market value" assessment of gifts should be stricken in its entirety and the cost basis only should be used in computing the value of any gift or gratuity for record keeping purposes
- Relax the detailed record keeping requirements
- should not involve employee gifts
- should eliminate the idea of a requirement entirely for entertainment at training sessions & educational meetings of advisors or employees

Please consider the above and the changes suggested prior to finalizing the rule.

Sincerely,



Robert L. Hamman
President & Chief Compliance Officer
Current Member of FINRA District IV Committee
Member of the Rules Advisory Committee (RAC)

2016 – 2017 ASSOCIATION YEAR

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Wilmington, DE
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wjnston@yst.com

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christopher.recken@huschblackwell.com

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vtucker@hunts.com

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Patrick T. Clendenen
Boston, MA
pclendenen@tda.com

BUDGET OFFICER

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Seattle, WA
jrusch37@gmail.com

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Jonathan C. Upton
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jupton@temple.edu

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wrosenberg@bell.com

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October 7, 2016

Submitted via email to: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 16-29
Request for Comment on Proposed Amendments to
its Gifts, Gratuities and Non-Cash Compensation Rules**

This letter is submitted on behalf of the Federal Regulation of Securities Committee (the “**Committee**” or “**we**”) of the Business Law Section (the “**Section**”) of the American Bar Association (the “**ABA**”) in response to the request for comment by the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) on proposed amendments to its gifts, gratuities and non-cash compensation rules set forth in Regulatory Notice 16-29 (“**RN 16-29**”). As described in RN 16-29, the proposed amendments would: (1) consolidate the rules on these matters into under a single rule series; (2) increase the gift limit from \$100 to \$175 per person per year and include a de minimis threshold below which firms would not have to keep records of gifts given or received; (3) amend the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities; and (4) incorporate existing guidance and interpretive letters into the rules.

This letter was prepared by members of the Committee’s Trading and Markets Subcommittee and FINRA Corporate Financing Rules Subcommittee. Although this letter represents the views of those who have prepared and reviewed it, this letter has not been approved by the ABA’s House of Delegates or Board of Governors and, therefore, does not represent the official position of the ABA or the Section.

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General Comments

We support FINRA's proposed amendments to consolidate the gifts, gratuities and non-cash compensation rules into one comprehensive rule series that incorporates existing guidance and interpretive letters. We believe this consolidation will help FINRA member firms more easily understand and comply with the requirements for gifts, gratuities and non-cash compensation and will help streamline and simplify other rules, such as Rule 5110, which currently contains references to non-cash compensation items that we believe are confusing in the context of that rule. Nonetheless, we do have some comments and requests for further clarification on the proposal as further detailed below. Please note that we do not respond in this letter to all of the questions posed in RN 16-29 and, in particular, have elected not to comment on those questions relating to estimated costs and anticipated economic impact of the proposed amendments, which we believe can be better addressed directly by affected member firms.

Specific Comments

Below in bold are certain questions posed by FINRA in RN 16-29 followed by the Committee's comments with respect thereto.

1. **The proposed amendments would increase the gift limit under FINRA Rule 3220 and proposed FINRA Rule 3221 to \$175. What risks, if any, might arise to customers by raising the gift limit? Should FINRA increase the limit to \$175? If not, what, if any, would be an appropriate limit?**

- a. Gift Limit.

We believe the current \$100 gift limit is too low, particularly given differences in the cost of living in various parts of the United States and elsewhere, and welcome FINRA's proposal to raise this amount. We do not believe that increasing the limit will present any identifiable risks or investor protection concerns. However, we recommend that the limit be increased to \$250. This recommendation is based, in part, on the median proposed gift limit determined by responses to FINRA's 2014 survey sent to all member firms. We believe a \$250 limit is reasonable, more workable and more in line with present day reality than the inflation-based metric proposed in RN 16-29.

In addition, we also recommend allowing for a principles-based standard for gifts exceeding the \$250 limit. Such a "two-pronged" approach would maintain the certainty and simplicity of a uniform fixed amount across member firms, but would allow firms additional flexibility to tailor policies to fit their individual business models and address instances in which a gift above the FINRA-fixed amount would be determined to be appropriate in particular circumstances. Given that the primary reason for the limit on gifts to employees of customers or prospective customers is to minimize the potential conflict of interest that may arise from receipt of such a gift by the employee, we believe this conflict could be avoided by requiring the consent of the

Ms. Marcia E. Asquith
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receiving entity. Accordingly, we propose that a member firm be permitted to adopt, in its discretion, additional policies and procedures that would allow associated persons to make gifts in excess of the \$250 limit if approved by (i) the firm's legal or compliance department or other appropriately designated internal personnel, and (ii) the general counsel or senior management of the customer or counterparty. Factors that may be relevant to a member firm in approving such a gift may, for example, be whether the gift is to be given to, and shared among, an entire organization or larger department within an organization, or is intended to commemorate a significant milestone. We believe that so long as the customer or counterparty is aware of and has approved the giving of a gift in excess of the FINRA-fixed amount to one or more of its employees, member firms should be allowed to create policies and procedures that set out a mechanism for extending such gifts if they are determined to be reasonable in light of the existing facts and circumstances. Such an approach would be in line with the requirements in connection with gifts to individuals, as further discussed below, and would reflect an appropriate balance between FINRA's investor protection mandate and allowing member firms to design policies and procedures reasonably designed to minimize conflicts of interest.

b. Valuation of Gifts.

With respect to the question of how to value gifts for purposes of the rule set, we note that FINRA has helpfully clarified that for ticketed events, valuation would be the higher of actual cost or face value. With respect to non-ticketed gifts, however, the interpretive guidance states that the value would be the "higher of cost or market value." We believe that the requirement to determine a "market value" for a gift item is too difficult and costly a burden (e.g., does this require getting an appraisal or consulting eBay, auction houses and/or secondhand stores?). Instead, we suggest that the same standard used for ticketed items be used for all gifts – i.e., the higher of actual cost or face value.

2. The Gifts Rule applies to gifts a member firm or its associated persons give and not to gifts the member firm or its associated persons receive. Should the Gifts Rule apply to gifts received as well as gifts given?

We understand that the rationale underlying the limitation on gifts is to prevent a FINRA member or its associated persons from providing gifts that could unduly influence the recipient to steer business from his/her employer to the FINRA member. This same rationale, however, does not apply to the receipt by member firms or associated persons of gifts from customers or prospective customers. That said, we note that many FINRA members have voluntarily adopted policies regarding the receipt of gifts by member firm personnel. Nonetheless, we believe an across-the-board requirement to limit the receipt of gifts is unnecessary, particularly in view of other requirements already

Ms. Marcia E. Asquith
Office of the Corporate Secretary
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applicable to member firms to supervise the activities of member firm personnel and identify, minimize and manage conflicts of interest.¹

3. The Gifts Rule does not apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers. Should the Gifts Rule apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers? Please explain.

a. Gifts to Individual Retail Customers.

The absence of a restriction in the current FINRA rulebook on gifts to individual retail customers presumably is based on the recognition that an individual customer does not owe a duty to someone else with respect to the conduct of business and thus is not presented with the same potential conflict of interest faced by a person that is receiving gifts in the context of the person's employment with an entity that is the actual customer of the member firm. Although an individual customer might be motivated to do business with one firm as opposed to another based on the receipt of gifts, we do not believe FINRA should extend the gift limit to such customers. Rather, member firms should be allowed to determine their own policies in this regard.

b. Gifts From Member Firms to Their Own Employees.

As with gifts to individual retail customers, we do not believe the underlying rationale for the gift limitation applies in the context of gifts given by member firms to their own employees. Gifts from employers to employees are quite common and we do not believe over-arching rules prohibiting or limiting such activity are necessary or appropriate. Of course, gifts given by member firm to incentivize inappropriate behavior by member firm personnel would be addressed by other rules applicable to member firms, including, e.g., Rule 2010 and proposed Rule 3221.

¹ We note that proposed Rule 3221 would prohibit FINRA members from accepting any gifts from "offerors" in excess of \$175 per person per year. An "offeror" would be defined as: (A) with respect to the sale and distribution of variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; (B) with respect to the sale and distribution of investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and (C) with respect to the sale and distribution of any other type of security, an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities." To the extent that FINRA accepts our recommendation to raise the gift limit in Rule 3220 to \$250 (or some other amount based on other comments received), we suggest this provision mirror such amount.

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4. FINRA is proposing a \$50 de minimis threshold below which member firms would not have to keep records of gifts given or received. Is a \$50 de minimis threshold appropriate? Should the threshold be higher or lower or should FINRA not include a de minimis threshold?

The proposed \$50 de minimis threshold would allow member firms to exclude gifts under \$50 when calculating the annual gift limit of \$175 per person and members would not need to keep records of gifts valued under \$50, provided that a member firm or its associated persons do “not engage in patterns of providing gifts or promotional items of less than \$50 to circumvent the Gifts Rule’s restrictions and recordkeeping requirements.” While this exception initially seems appealing, we are not certain if it will be workable in practice. It would appear that in order to comply with this requirement, member firms will still need to employ a reporting and recordkeeping mechanism designed to monitor gifts given that are under \$50 in value so that questionable patterns can be identified and appropriately addressed. Accordingly, we believe that further clarification as to the scope of this exemption will be required. For example, if a registered representative knows an employee of a customer likes flowers, is it within the parameters of the de minimis exemption if he or she sends the employee a bouquet of fresh flowers every week so long as each weekly delivery is below the \$50 threshold? In addition, it is not clear to us whether the exemption is intended to apply to all gifts falling below the de minimis threshold (including, e.g., cash, gift cards and ticketed events), or whether the type of gift permitted under the exemption is intended to be more narrow and limited to the kinds of functional items (such as pens and pads) provided as examples in the parenthetical accompanying the provision. FINRA may wish to clarify this as well.

5. Commenters have said that restricting entertainment at training sessions paid for by offerors is logically inconsistent with the rule’s business entertainment approach. Should the requirements for training and education meetings allow entertainment that complies with the limitations on business entertainment provided by members?

We believe that FINRA should permit entertainment at training sessions or educational meetings if such entertainment falls within the parameters of proposed Rule 3222. Moreover – and most importantly – we also believe FINRA should add a specific provision in Rule 3220 that expressly carves out “business entertainment” from characterization as a “gift” under that rule. Otherwise, it is not clear how Rules 3220 and 3222 relate to each other, or that business entertainment conducted in compliance with Rule 3222 is indeed not counted toward the gift limit set forth in Rule 3220.

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Additional Comments and Requests for Clarification

Proposed Rule 3220(b) – Influencing or Rewarding Employees of Others.

(b) This Rule shall not apply to contracts of employment with, or [to] compensation for services rendered by, persons enumerated in paragraph (a) provided that there is inexistence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

We recognize that the foregoing provision is largely unchanged from the language set forth in current Rule 3220(b), but we believe it is confusing as written and may have unintended consequences. We understand this provision to exclude ordinary employment relationships between member firms and their own employees (who may also be employees of others) from the gift rule, such that compensation provided to a member firm's own employees is not considered a prohibited "gift" or "gratuity." For example, a member firm might employ an individual who is also employed by an investment adviser or bank that is affiliated with the member firm. Or the "dual" employee may be employed by a third party that is not affiliated with the member firm, but maintains an account at, and receives services from, the member firm. Often, member firm personnel do not enter into formal employment contracts with such "dual employees" or may engage persons as "independent contractors" and not statutory "W-2" employees. Moreover, the amount of proposed compensation may not be known at the time or may be based on factors that could produce highly variable compensation over time. It is not clear to us that this provision adequately addresses such arrangements and, indeed, may be read as requiring formal employment arrangements and employment contracts, which is not the norm, particularly for lower-level personnel. We suggest that this provision be modified and simplified to exclude compensation provided under such circumstances if the other employer is notified of the arrangement (including, if deemed necessary, the general basis on which the employee may be compensated) and does not object to the employee continuing in a dual capacity.

* * *

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We appreciate the opportunity to comment on the proposed rule changes and thank FINRA staff in advance for their consideration of our suggestions and requests for clarification. To the extent helpful, we are available to discuss these matters further and to respond to any additional questions.

Sincerely,

/s/ David M. Lynn

David M. Lynn
Chair, Federal Regulation of Securities Committee

Members of the Drafting Committee:

Dana G. Fleischman, Chair, FINRA Corporate Financing Rules Subcommittee
Marlon Q. Paz, Chair, Trading and Markets Subcommittee
Faith Colish
Brian C. Daughney
Steve Ganis
K. Susan Grafton
Martin A. Hewitt
Linda Lerner
Valentino Vasi
Stephen P. Wink

cc: Victoria Crane, Associate General Counsel, Office of General Counsel, FINRA
Joseph Savage, Vice President and Counsel, Regulatory Policy, FINRA



Wells Fargo Advisors, LLC
Regulatory Policy
One North Jefferson Avenue
St. Louis, MO 63103
HO004-095
314-242-3193 (t)
314-875-7805 (f)

Member FINRA/SIPC

September 23, 2016

Via E-mail: *pubcom@finra.org*

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 16-29: Gifts, Gratuities and Non-Cash Compensation Rules – FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA” or the “Firm”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules, set forth in Regulatory Notice 16-29 (the “Proposal”).¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,042 full-service financial advisors in branch offices in all 50 states and 3,900 licensed financial specialists in retail bank branches across the United States.² WFA is a non-bank affiliate of Wells Fargo &

¹ Regulatory Notice 16-29, Gifts, Gratuities and Non-Cash Compensation – FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules (August 2016).
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

² Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

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Company, whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. BACKGROUND

In April of 2014, FINRA launched a retrospective review of its gifts, gratuities and non-cash compensation rules³ to assess their effectiveness and efficiency, and in December of that year, published a report⁴ on its review concluding that while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and economic impacts.

II. CURRENT PROPOSAL

FINRA is proposing amendments to the gifts, gratuities and non-cash compensation rules to: (1) consolidate the rules under a single rule series in the FINRA rulebook; (2) increase the gift limit from \$100 to \$175 per person per year and include a de minimis threshold below which firms would not have to keep records of gifts given or received; (3) amend the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities; and (4) incorporate existing guidelines and interpretive letters into the rules.⁵

In addition, FINRA is proposing a revised approach to internal sales contests for non-cash compensation such that if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on total production with respect to all securities products; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities.⁶

Further, FINRA is proposing to incorporate into the amended rules a principles-based standard for business entertainment that would require firms to adopt written policies and supervisory procedures for business entertainment.⁷

³ FINRA Regulatory Notice 14-15, Retrospective Rule Review – FINRA Requests Comment on the Effectiveness and Efficiency of Its Gifts and Gratuities and Non-Cash Compensation Rules, *available at*: <https://www.finra.org/sites/default/files/NoticeDocument/p479811.pdf>

⁴ FINRA Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation, December 2014. <https://www.finra.org/sites/default/files/p602010.pdf>

⁵ See *supra* note 1, p. 2

⁶ *Ibid.*

⁷ *Ibid.*

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III. DISCUSSION

WFA supports FINRA's objective to better align the investor protection benefits with the potential economic impacts within the Proposal. However, WFA believes additional revisions and clarifications should be added to the Proposal which will aid FINRA in achieving the desired objective, while providing firms a more practical approach for implementation.

A. FINRA Should Raise The Proposed Gift Limit In FINRA Rules 3220 And 3221

FINRA is proposing to increase the gift limit to \$175 per person per year (from \$100) in FINRA Rule 3220(a) and 3221(b)(1),⁸ citing the rate of inflation since it was raised to \$100 in 1992 as the primary reason for the increase. WFA supports an increase in the gift limit but believes that a \$200 gift limit per person, per year is more practical and would take into account, among other things, the increased cost of goods and any likely inflationary increases in the near future.

B. FINRA Must Reconsider The Requirement That Members Must Aggregate All Gifts To A Particular Recipient

In Supplementary Material .03 of FINRA Rule 3220,⁹ FINRA states that members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year.

WFA opposes the aggregation of gifts as currently proposed. Due to the nature and size of the Firm's business, WFA believes it would be extremely difficult to collectively document gifts given across WFA by individual team members to specific recipients. For example, an industry vendor representative may receive gifts from numerous WFA associates. Under the proposal, each gift given to this individual by a WFA associate must be reported; WFA would then be required to aggregate all gifts given to this specific recipient. The amount of resources, technology and training to undertake implementation of this proposal would be significant. Additionally, the difficulties around specifically identifying gift recipients outside of the member firm's organization may prove to be extremely difficult and may result in inaccurate reporting.

Alternatively, WFA proposes a gifting policy which applies individually, for each instance of an exchange between a specific offeror and a specific recipient and does not require the aggregation of all gifts to a single recipient.

⁸ *Ibid.*, p. 15

⁹ *Ibid.*, pp.16, 20

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C. The Gifts Rule (FINRA 3220) Should Not Apply To Gifts Received

In the Proposal, FINRA requests comment on the question “should the Gifts Rule apply to gifts received as well as gifts given?”¹⁰ FINRA Rule 3220 (the “Gifts Rule”), which currently “prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of \$100 per year to any person where such payment is in relation to the business of the recipient’s employer.”¹¹ WFA opposes applying the Gifts Rule to gifts received, as we believe the scope of the Gifts Rule should not be further expanded from the Proposal. Member firms should already have detailed policies and procedures to adequately address the receipt of gifts by team members. Adding further industry regulations, including recordkeeping requirements, is unnecessary and burdensome. Further, it would be difficult for the recipient of a gift to accurately ascertain the particular value of each gift received for purposes of the \$175 annual limit. Accordingly, WFA believes there is no regulatory need to expand the Gifts Rule to include gifts received.

D. FINRA Should Provide Guidance On *De Minimis* Gifts

The Proposal contains Supplementary Material¹² which proposes to exclude gifts of a *de minimis* value (below \$50) from the limits imposed in the Gifts Rule and from inclusion to the limits for business entertainment in FINRA Rule 3221(b). WFA would appreciate additional clarification on how this exclusion would apply, as it appears to contradict the requirements to aggregate all gifts given as discussed in subsection B, above, as well as contradict the requirements to record all non-cash compensation given or received as discussed in subsection E, below.

For example, would an associated member have to report the receipt of numerous *de minimis* gifts which in total exceed the proposed \$175 limit? Further, how would the recipient determine or verify that a gift they receive is of a *de minimis* value and does not require reporting? WFA requests additional guidance from FINRA on the appropriate application of this exclusion.

E. FINRA Must Reconsider The Recordkeeping Requirements In FINRA Rule 3221(c)

FINRA Rule 3221(c) would require a member to retain records of all non-cash compensation provided or received by the member or its associated persons.¹³ As discussed in subsection B, above, WFA urges FINRA to reconsider this aspect of the proposal. The costs associated with tracking gifts, business entertainment and non-cash compensation would be overly burdensome. WFA has tens of thousands of brokers and home office team members who interact with numerous vendors and outside business partners. WFA anticipates an extraordinary economic impact to the Firm given the amount of resources WFA will need to expend for technology, recordkeeping and the recruitment and training of

¹⁰ *Ibid.*, p. 10

¹¹ *Ibid.*, p. 3

¹² *Ibid.*, pp.16, 20

¹³ *Ibid.*, p. 19

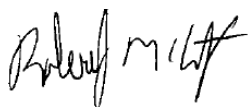
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additional personnel. These unduly burdensome requirements would not be outweighed by the potential benefits of FINRA Rule 3221(c).

IV. CONCLUSION

WFA appreciates the opportunity to respond to FINRA's Proposal. If you would like to discuss this issue further or need additional information, please contact me at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy", with a stylized flourish at the end.

Robert J. McCarthy
Director of Regulatory Policy



1909 K Street NW • Suite 510
Washington, DC 20006
202.204.7900
www.bdamerica.org

September 23, 2016

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: FINRA Regulatory Notice (16-29): Request for Comment on Proposed Amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others), as well as Proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation), and Proposed FINRA Rule 3222 (Business Entertainment)

Dear Ms. Asquith:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit these comments in response to FINRA Regulatory Notice (16-29), on proposed amendments to its gifts, gratuities and non-cash compensation rules. BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets. We welcome this opportunity to present our comments on this Notice.

BDA members appreciate that FINRA has proposed to consolidate various interpretative guidance documents related to gifts and non-cash compensation into the FINRA rulebook. This should aid compliance and improve the clarity of FINRA rules related to gifts, gratuities, and non-cash compensation. However, many of the compliance efficiencies that could be created through consolidation will be minimized by the departure in harmonization with the MSRB’s corresponding rule (G-20). For example, the proposed \$175 limit exceeds the \$100 limit set in MSRB’s Rule G-20 and this differential will create unnecessary compliance burdens for dealer firms. Below, we outline our specific concerns with the proposed lack of harmonization between FINRA and MSRB gift and non-cash compensation rules.

BDA urges FINRA to leave the gift limit unchanged at \$100 until such time that FINRA and the MSRB can harmonize this limit.

While BDA believes that it makes sense to increase this limit to reflect inflation, BDA does not believe it will be valuable to increase the gift limit at this time since the increase would result in differing FINRA and MSRB gift limits. This unnecessary lack of harmonization will create compliance difficulties that are similar to the burden that exists today due to differences in political contribution limits. Specifically, MSRB’s political contribution limit in Rule G-37 is \$250 for contributions to officials for which the person can vote. The corresponding political contribution limits for investment advisers and swap dealers are \$350. We believe that MSRB and FINRA should endeavor to eliminate this type of unnecessary compliance burden.

As you know, the current gift and non-cash compensation limit set by MSRB Rule G-20 is \$100. For dealers active in both the taxable and municipal marketplaces, differing standards present an unnecessary compliance burden and create an unnecessary operational burden because dealers will be required to follow two different rule sets for supervising and tracking an identical activity. It would be far easier to have an established, identical limit for gifts related to municipal and non-municipal securities activities. MSRB and FINRA should increase their efforts related to establishing harmonized rules when, in instances like this, it would easily reduce regulatory and compliance burdens on dealers.

For example, a dealer that is active in both the taxable and municipal securities markets would have to ensure that it has given no more than \$100 to a person specifically in relation to municipal securities or municipal advisory activities, and no more than \$175 to the same person specifically related to the “business of the employer of the recipient” exclusive of the \$100 limit related municipal securities or municipal advisory activities. This creates an unnecessarily confusing circumstance for dealers active in both markets. Until the MSRB is prepared to increase the limit in Rule G-20, BDA’s members believe it would be much easier to retain the current limit of \$100 so that dealers can more easily track the aggregate value of gifts as required by .07 of the proposed Supplementary Material to a specific individual. We would be open to increasing this limit at a future point in time when FINRA and the MSRB can revise the limit in both rules simultaneously.

However, if FINRA feels compelled to increase the gift limit at this time, BDA recommends increasing the limit to \$200 to make recordkeeping and tracking aggregate amounts easier. Compliance personnel at dealer firms would prefer to build systems that track an even, round number.

In summary, BDA dealer firms believe that for the sake of regulatory and compliance simplicity, the limit should be the same as the limit contained in MSRB Rule G-20, which is \$100 until FINRA and the MSRB can revise the limit in both rules. This would make it far easier for dealers to track, supervise, and comply.

BDA appreciates the opportunity to present these comments.

Sincerely,



Mike Nicholas
Chief Executive Officer

T. ROWE PRICE INVESTMENT SERVICES, INC.

WWW.TROWEPRICE.COM

Filed Electronically

September 23, 2016

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

P.O. Box 89000
Baltimore, Maryland
21289
4515 Painters Mill Road
Owings Mills, Maryland
21117-4903
Toll Free 800-638-7890
Fax 410-345-6575

**Re: Proposed FINRA Rules 3220, 3221, and 3222 Relating to Gifts, Gratuities
and Non-Cash Compensation Rules**

Dear Ms. Asquith:

T. Rowe Price Investment Services, Inc.¹ appreciates the opportunity to comment on the above-referenced proposal (the “**Proposal**”) by FINRA to amend its gifts, gratuities and non-cash compensation rules. We generally support the comments from the Investment Company Institute (“ICI”) and the Proposal, but would like to provide the following additional comments.

Non-Cash Compensation

The proposal would codify the guidance that restricts the payment for entertainment at training and education events. Although we understand the current guidance, we believe that there are legitimate business entertainment events that may occur before or after a training and education event. In addition, the proposal continues to reference “the entertainment or expenses of guests of associated persons or to the entertainment of associated persons” in Rule 3221. We believe that the inclusion of this language in the provision in Rule 3221 related to training and education events will continue to cause confusion related to whether an event should be categorized under Rule 3221 or 3222. Since FINRA is adopting a new Rule 3222 that will govern business entertainment, we believe that it would be more appropriate to delete the reference to entertainment in Rule 3221.

Moreover, we agree with the ICI that FINRA should clarify that if a member has events that involve separate education and entertainment events, the education event should be analyzed under Rule 3221 and the entertainment event should be analyzed under the member’s policies and procedures adopted under Rule 3222. Therefore, member firms would be permitted to contribute to and/or sponsor entertainment held during a training and education event as long as the event is appropriate under the member’s business entertainment policies and procedures. For example, a member firm may host a dinner for attendees at the conclusion of a training and education event.

¹T. Rowe Price Investment Services, Inc. is a registered broker-dealer and acts as the principal distributor of the T. Rowe Price mutual funds.

The proposal also provides location restrictions for training and education events, which include an office of the offeror holding the meeting, a facility located in the vicinity of such office, a US regional location if associated persons work within that region, and other locations with respect to meetings dealing with real estate investment trusts. We note that members may be requested to contribute to or reimburse the expenses of associated persons related to attending an industry training or educational conference that is not sponsored by the offeror or the member (e.g., a Morningstar conference). These conferences may be held in a national location that may not be associated with the location of an offeror or member. We recommend that FINRA permit offerors and members to support attendance of associated persons at such conferences that may occur at a select national location and may not specifically meet the location requirements outlined in the Rule. We agree with the ICI that this accommodation is appropriate due to the training or educational value provided to members and their associated persons by these conferences.

In addition, the supplementary material to Rule 3221 provides that the training and education exception must be used for events that “first and foremost” intend to provide training and education. The supplementary material indicates that the training must occupy substantially all of the work day. However, we agree with the ICI that certain training events may take place over a breakfast or lunch session that should still qualify for the training and education exemption, even if the event does not occupy substantially all of the work day and as long as the focus of the meeting is training and education.

Business Entertainment

T. Rowe Price generally supports the proposal of a separate rule related to business entertainment, which takes a principles-based approach that allows members to develop policies and procedures that take into account the nature and location of the member’s business. We agree with the ICI that a principles-based approach will continue to satisfy FINRA’s goal of protecting against potential conflicts of interest or questions of propriety. We also agree with FINRA’s perspective that the frequency of business entertainment needs to be evaluated in light of all facts and circumstances, which would require the member firm to decide when the frequency has risen too high to be appropriate. We believe that the facts and circumstances could include the size or maturity of the business relationship, as well as the type of business entertainment.

Although we generally support the proposal of Rule 3222, we would like FINRA to provide clarification either in the Rule or in supplementary material regarding the points below. First, the proposed Rule would require members to “define forms of permissible and impermissible business entertainment” based on certain criteria. We believe that instead of defining specific “forms” of permissible entertainment, it would be more appropriate and operationally more expedient to administer a policy that defined general categories of permissible and impermissible business entertainment. We believe that FINRA should provide clarification on this point.

In addition, the proposed Rule requires the offeror or one of the member’s associated persons to “host” the business entertainment. In certain instances, although the member will attend the

business entertainment event, the member may not be the official host or there may be more than one host. We believe that FINRA should clarify that the member must attend the event, but is not necessarily required to "host" the event. Moreover, in the case of larger business entertainment events, we also believe that tracking all of the names of the persons in attendance at the event would be administratively difficult and may not provide any material protection against potential conflicts of interest. Therefore, we believe that a member's policy should only require recordkeeping of the names of the other member firms in attendance and attendees that sign in as registered for the event, if that list is readily available.

Thank you again for the opportunity to comment on the Proposal. Should you have any questions or wish to discuss our letter, please contact Stephanie Mumford at (410) 345-6638 or the undersigned at (410) 345-6601.

Sincerely,



Fran Pollack-Matz

Vice President

Please note that the following comments correspond to the numbered items in the “Request for Comment” section of Regulatory Notice 16-29:

4) A \$50 de minimis threshold is appropriate and FINRA should write this into their rules.

My representatives maintain relationships with a great many small retail clients through school-sponsored 403(b) plans. As an act of goodwill, it’s customary for my representatives to present edible gifts to clients and school district offices during the Christmas season. I have yet to see any of these items exceed a sum of \$50, but having to keep up with recordkeeping on these sorts of items creates considerable activity and time expenditures during a 2-3 week period that could be better utilized pursuing more pressing matters .

Creating a de minimis threshold would greatly relieve me and my representatives of an onerous requirement that doesn’t deliver a commensurate level of supervisory value.

6) Yes. The sort of entertainment in question should be treated the same as other forms of business entertainment.

9) I’ve long felt that a rules consolidation similar to the proposal should be done for no other reason than to speed my ability to reference those rules rather than spending extra time going back and forth between different sections of the rulebook. In fact, I have posting on my office wall the different rules for quick reference purposes. This consolidation, if enacted, would at very least give my office a cleaner look.



Matthew Rothchild

Compliance Officer

EFS Advisors

440 Emerson Street N. #2

Cambridge, MN 55008

Office: 763-552-6075

Fax: 763-689-3742

mattr@efsadvisors.com

[Important disclaimers\[efsadvisors.com\]](http://efsadvisors.com)



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.

Ms. Asquith
September 30, 2016
Page 2 of 3

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.

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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



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

September 22, 2016

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

Re: Proposed FINRA Rules 3220, 3221,
and 3222 Relating to Gifts, Gratuities
and Non-Cash Compensation

Dear Ms. Asquith:

The Investment Company Institute¹ is writing in response to FINRA's request for comment on its proposal to amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and to adopt new Rules 3221 (Restrictions on Non-Cash Compensation) and 3222 (Business Entertainment).² This proposal results from FINRA's retrospective review of its regulation of members' non-cash compensation arrangements, which it began in 2014. In addition to supporting adoption of these rules and rule amendments, the Institute commends FINRA for conducting its retrospective rule review and for proposing amendments to address concerns identified during it.

As it noted when it began its review, FINRA was interested in determining the effectiveness of its non-cash compensation rule. FINRA also was interested in understanding members' experiences with the rule, including any ambiguities or compliance challenges. To obtain meaningful input to assist

¹ The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$18.4 trillion and serve more than 90 million U.S. shareholders.

² See *Gifts, Gratuities and Non-Cash Compensation Rules*, FINRA Regulatory Notice 16-29 (August 2016).

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September 22, 2016
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its review, FINRA published a notice seeking comment on its current rule.³ It supplemented the written comments it received⁴ by conducting a survey of its members to get their views on the rule and holding meetings with interested persons, including the Institute, to discuss ways to reform the rule. We greatly appreciate the extent of FINRA's outreach in conducting its retrospective rule review and, as stated above, we support the proposed revisions that resulted from this process.

Notwithstanding our support for adoption of FINRA's proposal, we provide below several comments and recommendations to better clarify some of its provisions.

I. RULE 3221, RESTRICTIONS ON NON-CASH COMPENSATION

FINRA's proposal, in part, will better distinguish those provisions that govern non-cash compensation relating to non-business entertainment (including compensation relating to training and educational events) from that relating to business entertainment. As proposed, new Rule 3221 will govern the former. The Institute supports FINRA addressing these arrangements through separate rules because we believe it will provide greater clarity regarding which FINRA rule governs which type of event. The Institute's comment letter had recommended that FINRA address the uncertainty under its current rule and we are pleased that it has done so. We also are pleased that FINRA is proposing to extend the scope of its regulation of non-cash compensation arrangements, which currently apply only to investment company securities, to all offerings of securities. We concur with FINRA that the conflicts underlying the rule's prohibitions exist with respect to all securities.

While we support FINRA adopting Rule 3221 to govern non-cash compensation arrangements relating to non-business entertainment events, we recommend two revisions to the portion of the rule that addresses training or education meetings. The first recommendation relates to the provision in subdivision (b)(2)(B) that requires the meeting location to be an appropriate location, which is defined to mean an "office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office." We note that it is not uncommon for our members, as offerors, to pay or reimburse the expenses of associated persons related to attending an industry training or educational conference that is not sponsored by the offeror or the member (*e.g.*, an ICI or Morningstar conference). Because these conferences are not sponsored by an offeror or member, they likely may not be held in an appropriate

³ See *FINRA Requests Comment on the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules*, FINRA Notice 14-15 (April 2014).

⁴ In response to FINRA's request for comment, the Institute filed a comment letter that focused on those provisions in the rule that our members found to be ambiguous and that, therefore, challenged their compliance efforts. In addition to pointing out these ambiguities and challenges, our letter advocated that, in revising the rule, FINRA explore adopting a principles-based approach to regulate members' non-cash compensation arrangements. See Letter from the undersigned to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated May 23, 2014, which was filed in response to FINRA Notice 14-15.

Marcia E. Asquith
September 22, 2016
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location as defined in subdivision (b)(2)(B). We recommend that FINRA accommodate, either in the rule or in Supplementary Material, offerors' and members' support of associated persons' attendance at such conferences without running afoul of subdivision (b)(2)(B) of the rule because of the location of the conference. We believe this accommodation is appropriate due to the training or educational value provided to members and their associated persons by these conferences.

Our second recommendation relates to subdivision (b)(2)(C) of the rule. We recommend that FINRA delete the language in the provision relating "to the entertainment or expenses of guests of associated persons or to the entertainment of associated persons." We believe that including this provision in this rule will again lead to uncertainty regarding whether events fall under Rule 3221 or under new Rule 3222, which governs business entertainment expenses. To avoid this uncertainty, we recommend that this phrase be moved from Rule 3221 to Rule 3222. By doing so, Rule 3222 will address all issues relating to the entertainment expenses of associated persons and their guests⁵.

We additionally recommend that FINRA clarify, either in the rule or in guidance or interpretive material relating to the rule, the treatment of member events that involve separate training and entertainment components (*e.g.*, if the member has a training event during the day and an entertainment event that evening). We recommend that FINRA clarify that, for such events, the training component must satisfy the requirements of Rule 3221 (and its Supplementary Material) while the entertainment component must comply with the policies and procedures the member has adopted pursuant to Rule 3222.

II. RULE 3221, SUPPLEMENTARY MATERIAL .06, TRAINING OR EDUCATION MEETINGS

As proposed, Rule 3221 would include Supplementary Material .06 to clarify the conditions a training or educational event must satisfy to qualify for the exemption in proposed Rule 3221(b). We support this Supplementary Material because we believe the additional guidance will benefit members' compliance efforts. We recommend, however, that FINRA revise this Supplementary Material to address the treatment of those educational events that do not "occupy substantially all of the work day." For example, if a member hosts an educational event over breakfast or a "lunch and learn" event in which the member provides an educational seminar over breakfast or lunch, such events would not qualify for the training exception of Rule 3221(b) because they do not occupy substantially all of the work day. And yet, because of associated persons' time constraints during a business day, it is not uncommon for an educational session to be held over breakfast or lunch. Just because the training event is limited in duration and held over a meal, we do not believe the rule should preclude the event from qualifying as a training or educational event; nor do we believe that associated persons attending these events should be required to pay for their lunch or breakfast in order to comply with FINRA's

⁵ In our view, this recommendation is technical in nature and will not impact FINRA's interest in ensuring that non-cash compensation paid in connection with training or educational events cannot be used to pay for or reimburse entertainment expenses.

Marcia E. Asquith
September 22, 2016
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rule. The *de minimis* nature of the meal provided during these events would not appear to raise the conflicts FINRA seeks to address through the rule's conditions and prohibitions. Accordingly, we recommend that FINRA revise Supplementary Material .06 to permit members to accept a meal associated with a training event even when such event does not occupy substantially all of the work day.

III. RULE 3222, BUSINESS ENTERTAINMENT

The Institute is very pleased to see FINRA propose a new separate rule dedicated to compensation relating to business entertainment. We also are pleased that this new rule takes a principles-based approach to regulating members' business entertainment arrangements. In our view, this approach will enable members to adopt policies and procedures tailored to their circumstances, thereby avoiding a "one-size-fits-all" approach that fails to take into account the member's location, the nature of their business, the necessary frequency of their events, and the dollar amount associated with particular business events. As such, the rule will provide greater flexibility to members while, at the same time, avoiding even the appearance of conflicts of interests that those events may raise. The Institute's comment letter had supported a principles-based approach to entertainment expenses, and we commend FINRA for proposing a principles-based rule.

A. Reasonably Designed Policies and Procedures

As proposed, Rule 3222 will require each member that engages in business entertainment to have written policies and procedures governing their business entertainment activities. Among other things, these policies must be "designed to detect and prevent" certain prohibited business entertainment. The Institute recommends that this clause be revised in relevant part to read: "(1) Are reasonably designed to detect and prevent . . ." This change, which imposes an objective standard by which FINRA can assess the member's policies and procedures, is consistent with the standard contained in other FINRA rules.⁶

B. Quid Pro Quo As a Standard

We also recommend that FINRA reconsider the rule's proposed quid pro quo standard. In part, Rule 3222 will replace the current standard by which entertainment events are judged with a new standard. While the current rule prohibits entertainment events that are "so frequent" or "extensive as to raise any question of propriety," Rule 3222 would replace this standard with a "quid pro quo" standard in which events are judged based on whether they are intended to result in quid pro quo. We support FINRA including a standard in the new rule. We are concerned, however, that the rule will

⁶ See, e.g., FINRA Rule 3130(b), relating to the annual certification of the member's compliance policies and procedures, which requires the member to certify, in part, that its policies and procedures are "reasonably designed to achieve compliance with applicable FINRA rules . . ."

Marcia E. Asquith
September 22, 2016
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require FINRA to prove that business entertainment was intended to result in quid pro quo in order to sanction a member for violating the rule. This evidentiary standard would appear to require FINRA to connect an entertainment event with specific quid pro quo (or intended quid pro quo), which might prove difficult.

To avoid these evidentiary challenges, we recommend that FINRA utilize a different standard that both addresses the concerns underlying this rule and eliminates the need for FINRA to prove a clear nexus between an event and any intended quid pro quo. In particular, we recommend that FINRA require a member's policies and procedures under the rule to be reasonably designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived as intended as, "improperly interfering with a member's suitability obligations under Rule 2111." We believe this is an appropriate standard because the conflicts of interest that would arise from business entertainment are those that would result in the member subordinating its customers' interest to those of the member – which would arise in connection with the member's recommendations to its customers. Violations of this new standard would appear easier for FINRA to prove because, instead of having to prove intended quid pro quo, FINRA would only need to prove that a member is making recommendations either before an anticipated entertainment event or following the event that seem to advantage the sale of securities offered by the sponsor of the event. Accordingly, we believe this standard would better address the concerns underlying the proposed rule and better enable FINRA to prove violations of the rule.

C. Guests' Entertainment Expenses

As proposed, Rule 3222 is silent on whether the entertainment expenses of guests must be addressed in a member's policies and procedures under the rule. It appears that the only mention of expenses associated with "guests of associated persons" appears in Rule 3221(b)(2)(C), relating to the payment or reimbursement of training expenses. As noted above, the Institute recommends that FINRA move any provisions relating to entertainment from Rule 3221 to Rule 3222. In addition, however, we recommend that FINRA revise Rule 3222 to expressly require that a member's written policies and supervisory procedures under the rule address the entertainment expenses of an associated person's guests, subject to the same conditions and standards set forth in the rule for the entertainment expenses of the member or its associated persons.

IV. RULE 2341(l)(5)

FINRA's proposed rules would update and modernize FINRA's existing rule, Rule 2341(l)(5), which currently governs members' non-cash compensation arrangements. Though not expressly mentioned in FINRA's Notice, we presume that FINRA intends to delete Rule 2341(l)(5) as part of this initiative. We support eliminating this rule to avoid any inconsistency between FINRA's current rule and the new rules.

Marcia E. Asquith
September 22, 2016
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We again commend FINRA for its thoroughness in conducting its retrospective review of its non-cash compensation rule and we appreciate all the ways in which FINRA engaged with its members and interested persons during its multi-year review. The resulting proposal evidences the care with which FINRA went about this process and, in our view, addresses those issues with the current rule that are of concern to our members. We support adoption of FINRA's proposed rules. If you have any questions regarding our comments, please contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

Regards,

/s/ Tamara K. Salmon

Tamara K. Salmon
Associate General Counsel

Cc: Joseph Savage, Vice President and Counsel, Regulatory Policy



September 23, 2016

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Via Electronic Mail: pubcom@finra.org

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

Dear Ms. Asquith:

This letter will present the views of the National Association of Insurance and Financial Advisors (“NAIFA”) in response to FINRA’s request for comments on proposed amendments to FINRA’s rules pertaining to gifts, gratuities and non-cash compensation.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation’s oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. Approximately two-thirds of all NAIFA members are licensed as registered representatives of broker-dealers and market and service mutual funds and other investment products to their clients.

The rules proposed by FINRA via Regulatory Notice 16-29 would revise and modernize FINRA’s rules which address issues dealing with gifts, gratuities and non-cash compensation, for the purpose of improving the effectiveness and efficiency of these rules. NAIFA respectfully makes the following comments with respect to the rule revisions proposed in Regulatory Notice 16-29:

1. **FINRA Question #1:** NAIFA agrees with and supports the proposal to increase the dollar limit for gifts set forth in Rule 3220 and Proposed Rule 3221. The current limit of

\$100 has been in place since 1992, and does not reflect the steady increases in costs and prices which have taken place since that year. However, the costs of entertainment and other items which would likely fall under these rules appear to have increased at a faster rate than inflation since 1992. NAIFA therefore recommends that the dollar limit for gifts in the referenced rules be increased to \$300. This amount would account for not only cost increases since 1992 but also accommodate likely cost and price increases that will subsequently occur. Also, the use of a “round number” would allow for simpler administration and monitoring of compliance with these rules.

2. **FINRA Question # 4:** NAIFA supports the inclusion of a de minimis threshold below which members would not have to keep records of gifts given or received. However, in light of the fact that the cost/price of items which would fall under these rules have in the past, and are likely to continue to, increase at a rate greater than the inflation rate, NAIFA recommends that the de minimis threshold be set at \$100. This amount would accommodate inflationary trends for the near future, while not being set so high as to encourage or facilitate improper behavior. A \$100 de minimis threshold would also help to minimize the additional recordkeeping costs that will occur as a result of these rule revisions.
3. **FINRA Question #5:** As far as NAIFA is aware, the practice of member firms using sales contests or incentives tied to sales of specific products is largely a relic of the past. We do not believe that this part of the proposal will have a significant impact on member firms, associated persons or consumers, and that it could positively impact perceptions regarding potential conflicts of interest.
4. **FINRA Question #9:** NAIFA supports efforts to consolidate in one “place” rules, guidance, etc. pertaining to a specific topic. Doing so will not only increase the likelihood and ease of compliance but will likely positively impact both the financial and resource costs of compliance.
5. **Rule 3220, Supplementary Material .02:** Determining “market value” is at best an often difficult and subjective determination. NAIFA recommends that gifts simply be valued at cost.
6. **Rule 3220, Supplementary Material .04--.06; Proposed Rule 3221, Supplementary Material .05:** It should be expressly stated that bereavement, personal and de minimis gifts are not to be included when calculating the aggregation of gifts required under Supplementary Material .03 of these rules.
7. **Proposed Rule 3222:** Subsection (a) (1) states that a member must have written policies designed to prevent business entertainment that is intended as “an improper quid pro quo”. The term “improper” is subjective and imprecise, and should be further discussed or defined in order to provide clear guidance to members. Further, the use of the term “improper quid pro quo” seems to imply that there are certain types of a quid pro quo that would be considered proper and appropriate. If this is the case, FINRA should include in

the Proposed Rule or in the Supplemental Material a discussion of what would be a proper quid pro quo.

Thank you for your consideration of NAIFA's views on this important issue. Please contact the undersigned if you have any questions regarding our comments.

Yours Truly,

A handwritten signature in cursive script that reads "Gary Sanders".

Gary A. Sanders
Counsel and Vice President, Government Relations



September 23, 2016

By Electronic Mail to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20549-1090

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

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to respond to FINRA’s request for comment on Regulatory Notice 16-29 (“RN 16-29” or the “Proposal”),² which proposes amendments to FINRA’s gifts, gratuities and non-cash compensation rules. The Proposal would be adopted in the consolidated FINRA rulebook³ as amended FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and new FINRA Rules 3221 (Restrictions on Non-Cash Compensation) and 3222 (Business Entertainment).

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Regulatory Notice 16-29 (Gifts, Gratuities and Non-Cash Compensation Rules) (August 2016), available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf (last visited September 20, 2016).

³ See generally, Information Notice 03-12-08 (Rulebook Consolidation Process) (March 12, 2008), available at <http://www.finra.org/sites/default/files/NoticeDocument/p038121.pdf> (last visited September 20, 2016).

Ms. Marcia E. Asquith
September 23, 2016
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I. Executive Summary of Comments

SIFMA applauds FINRA's retrospective rule review efforts. SIFMA believes this process should facilitate the identification of outdated and inefficient rules and interpretations while also recognizing and balancing investor protection concerns. In many respects the Proposal should update and refine FINRA's gifts, gratuities and non-cash compensation rules and interpretations. SIFMA believes the Proposal could be further refined by:

- **Gifts**: applying a principles-based approach to gifts or increasing the annual gift limit to \$250;
- **Gifts**: providing guidance on firms' tracking and recordkeeping requirements with respect to gifts of a *de minimis* value;
- **Gifts**: providing guidance on the difference in treatment between *de minimis* gifts, promotional items of nominal value, and commemorative items;
- **Gifts**: providing additional guidance on the scope of "personal gifts";
- **Non-cash compensation**: providing an exception for investor education programs and confirming the permissibility of prospecting trips;
- **Training & Education**: providing guidance on partial-day training events;
- **Training & Education**: providing guidance on the meaning of "vicinity";
- **Training & Education**: providing guidance on internal training and education meetings;
- **Business Entertainment**: defining business entertainment; and
- **Business Entertainment**: providing an exception for tracking business entertainment of a *de minimis* value.

SIFMA's comments are further discussed in the various sections of this comment letter.

Ms. Marcia E. Asquith
September 23, 2016
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II. Background on the Proposal

The Proposal is an outgrowth of FINRA's retrospective rule review process.⁴ In December 2014, FINRA published a report assessing its rules on gifts, gratuities and non-cash compensation.⁵ FINRA stated in the report that "the rules and FINRA's administration of them may benefit from some updating and recalibration to better align the investor protection benefits and economic impacts."⁶ To that end, the report included several recommendations to enhance the effectiveness and efficiency of the rules, such as updating the existing guidance, consolidating the rules into a single rule series, and increasing the annual gift limit.⁷

SIFMA applauds FINRA for its efforts in undertaking an extensive, multi-step assessment process in connection with the Proposal. We understand that FINRA met with and solicited feedback from a broad range of interested parties. The resulting report reflects a thorough and thoughtful data collection and analytic process. Further, the Proposal reflects careful consideration of the feedback and recommendations of interested parties, including SIFMA and its member firms. We encourage FINRA to expand its use of these assessment techniques beyond proposals related to the retrospective rule review process. We believe FINRA, member firms, and investors would benefit from FINRA applying a similar level of economic analysis, and transparency, to most if not all of its rule proposals.

SIFMA also commends FINRA for engaging in a retrospective rule review process. Both with respect to the current Proposal and FINRA's proposed amendments to the rules governing communications with the public,⁸ we believe the process will result in changes to existing rules that increase the rules' effectiveness and efficiency

⁴ See News Release: FINRA Launches Retrospective Rule Review (April 8, 2014), available at <https://www.finra.org/newsroom/2014/finra-launches-retrospective-rule-review> (last visited September 20, 2016). See also, FINRA Regulatory Notice 14-15 (Retrospective Rule Review) (April 2014), available at <https://www.finra.org/sites/default/files/NoticeDocument/p479811.pdf> (last visited September 20, 2016).

⁵ FINRA Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation (December 2014) ("Gifts Report"), available at <https://www.finra.org/sites/default/files/p602010.pdf> (last visited September 20, 2016).

⁶ *Id.* at 9.

⁷ See *id.*

⁸ See FINRA Regulatory Notice 15-16 (Communications with the Public) (May 2015), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory_Notece_15-16.pdf (last visited September 20, 2016). See also Letter from Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA and Stephen Vogt, Assistant Vice President and Assistant General Counsel, SIFMA to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (July 2, 2015), available at <http://www.sifma.org/issues/item.aspx?id=8589955404> (last visited September 20, 2016).

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without adversely impacting their investor protection goals. Outdated and inefficient rules and interpretations do not benefit anyone, particularly not investors, who ultimately may bear the burden of the increased costs and inefficiencies of these rules. We hope and expect that FINRA will continue and expand its retrospective rule review process, reevaluating rules and interpretations on an ongoing basis to ensure they are still relevant and meeting their underlying investor protection mandates in a cost effective and efficient manner.

As FINRA continues its retrospective rule review and rulebook consolidation processes, and in considering comments on the Proposal, SIFMA encourages FINRA to apply a principles-based approach to rulemaking rather than imposing rules with prescriptive requirements. A principles-based approach to rulemaking provides flexibility to account for the rapid pace of innovation in the financial services business while also establishing general principles of investor protection that will endure over time.

III. Overview of the Proposal

The Proposal arises from FINRA's assessment of its current gifts, gratuities and non-cash compensation rules and existing guidance in connection with the retrospective rule review. As a result of this analysis, FINRA concluded that the rules could benefit from certain changes to "better align the investor protection benefits and the economic impacts" of the rules.⁹ Specifically, in RN 16-29, FINRA proposes to make the following changes to its gifts, gratuities and non-cash compensation rules:

- consolidate the rules under a single rule series in the FINRA rulebook;
- increase the gift limit from \$100 to \$175 per person per year;
- include a *de minimis* threshold in the annual gift limit below which firms would not have to keep records of gifts given or received;
- amend the non-cash compensation rules to cover all securities products;
- prohibit product-specific internal sales contests; and
- add a new rule for business entertainment.

⁹ Gifts Report, *supra* note 5, at 9.

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Subject to our comments below, SIFMA believes that these changes will improve the effectiveness and efficiency of the rules without compromising their underlying investor protection goals.

IV. Recommended Changes and Requests for Clarification and Guidance

SIFMA supports the investor protection objectives of the gifts, gratuities and non-cash compensation rules. SIFMA agrees that these rules have been largely effective in meeting their intended investor protection objectives, including limiting conflicts of interest. SIFMA also agrees with the notion that “there are certain areas where the investor protection benefits may not align with the associated economic costs” of the rules.¹⁰

As a general matter, SIFMA believes the proposed changes in RN 16-29 would better align the rules’ investor protection benefits and economic impacts. SIFMA respectfully suggests that FINRA consider the following changes to the Proposal which SIFMA believes should further balance the rules’ benefits and costs.

A. Gifts

1. FINRA Should Consider Applying a Principles-Based Approach to Gifts or Increase the Annual Gift Limit to \$250

SIFMA believes that FINRA should consider adopting a principles-based approach, rather than a specific dollar threshold, to gifts under FINRA Rule 3220. As we stated in our comments on Regulatory Notice 14-15, an approach based on the principles of reasonableness, propriety and avoiding conflicts would accomplish the rule’s investor protection goals. This approach should align the gifts and entertainment rules, which would resolve the existing supervisory challenges and difficult judgments associated with distinguishing between “gifts” and “entertainment” (or a mix of both).¹¹ Such an approach also should avoid some of the other shortcomings associated with the existing dollar-based annual gift limit, such as variances in buying power across geographies and time as well as the gift rule’s set of exceptions that, as a whole, are complex, costly, and inefficient to administer.

¹⁰ RN 16-29, *supra* note 2, at 9.

¹¹ SIFMA is concerned that the distinction between gifts and business entertainment creates unintended challenges for member firms. For example, a registered representative may, as permissible business entertainment, take a client and the client’s spouse to a professional sporting event. If the representative becomes ill or is delayed in traffic and cannot attend the event, however, the tickets may become an impermissible gift. Allowing for a principles-based approach to both gifts and entertainment would allow firms some flexibility in addressing such situations, while still fostering the rules’ investor protection goals.

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In the alternative, if FINRA remains committed to a dollar-based threshold, then SIFMA believes that the annual gift limit should be increased to \$250. This higher amount is consistent with the median proposed gift limit observed in connection with FINRA's survey, is reasonable and is not so high that it would materially increase the potential for conflicts of interest and risk of abuse.¹² An annual gift limit of \$250 also would be consistent with the U.S. Department of Labor's ("DOL") standard for gifts and other consideration given by a service provider to a fiduciary of a plan subject to the Employee Retirement Income Security Act of 1974 as well as reporting and disclosure on DOL Form LM-10 under the Labor-Management Reporting and Disclosure Act of 1959.¹³

2. Guidance Regarding *De Minimis* Gifts

i. *Recordkeeping*

SIFMA requests that FINRA revise proposed Rule 3220's Supplementary Material .03 to exclude gifts of a *de minimis* value from the rule's aggregation requirement, consistent with the exclusion contained in Supplementary Material .07 for recordkeeping. Supplementary Material .07 provides that *de minimis* gifts consistent with Supplementary Material .06 are not subject to the recordkeeping requirements of paragraph (c) of Rule 3220. As currently drafted, however, Supplementary Material .03 requires that firms aggregate *all* gifts given by the firm and its associated persons to any particular recipient. If there is no express exclusion from the aggregation requirement for *de minimis* gifts, it could render relief from the rule's recordkeeping requirements of limited utility since records would need to be maintained in order to perform aggregation.

ii. *Distinctions between De Minimis Gifts and Promotional or Commemorative Items*

SIFMA requests that FINRA provide guidance to clarify the difference in treatment under proposed Rule 3220 between *de minimis* gifts, promotional items of nominal value, and commemorative items. Whereas Supplementary Material .06 appears to indicate that *de minimis* gifts and promotional items of nominal value need to be below \$50 to come within the exclusion from proposed Rule 3220(a), it appears that

¹² See Gifts Report, *supra* note 5, at 7. According to the report, retail-only firms and institutional-only firms on average proposed an annual gift limit of \$321 and \$370, respectively. *Id.*

¹³ See DOL's Employee Benefits Security Administration (EBSA) Enforcement Manual (August 2008), available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/oe-manual/chapter-48> (last visited September 20, 2016) and DOL's Office of Labor-Management Standards (OLMS) Form LM-10 – Employer Reports Frequently Asked Questions (August 30, 2016), available at https://www.dol.gov/olms/regs/compliance/lm10_faq.htm (last visited September 20, 2016).

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commemorative items do not need to be below \$50 – and could even exceed the proposed annual gift limit of \$175 – as long as such items are solely decorative. SIFMA requests that FINRA confirm this approach or otherwise clarify the intended application of the exclusions from the rule under Supplementary Material .06.

iii. *Personal Gifts*

SIFMA also requests that FINRA consider providing additional guidance on personal gifts. Supplementary Material .05 currently reads as if it is limited to “[g]ifts that are given for infrequent life events (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child).” The guidance in Notice to Members 06-69 (“NTM 06-69”), however, was more broadly written, noting that “[t]he prohibitions in Rule 3060 generally do not apply to personal gifts such as a wedding gift or a congratulatory gift for the birth of a child, provided that these gifts are not ‘in relation to the business of the employer of the recipient.’”¹⁴ SIFMA believes that Supplementary Material .05 should be revised to align with NTM 06-69.

B. Non-Cash Compensation

1. FINRA Should Provide an Exception for Investor Education Programs and Confirm Permissibility of Prospecting Trips

Proposed Rule 3221 prohibits member firms and their associated persons from accepting or making payments or offers of payments of any non-cash compensation in connection with the sale of securities, except under certain enumerated circumstances. SIFMA recommends that FINRA include under proposed Rule 3221(b) an exception for investor education programs. Based on prior FINRA guidance,¹⁵ it has become standard industry practice for offerors to pay for, or reimburse member firms for, the costs associated with organizing and sponsoring customer and prospective customer seminars. Allowing offerors to pay for these kinds of investor education programs serves the industry well by helping to educate investors on the products and services that may best meet their needs.

¹⁴ NTM 06-69 (NASD Issues Additional Guidance on Rule 3060) (December 2006), at 2, available at <https://www.finra.org/sites/default/files/NoticeDocument/p018024.pdf> (last visited September 20, 2016).

¹⁵ See NASD Notice to Members 99-55 (Questions and Answers Relating to Non-Cash Compensation Rules) (July 1999) (“NTM 99-55”), Question 15, available at <http://www.finra.org/sites/default/files/NoticeDocument/p004217.pdf> (last visited September 20, 2016). See also, Letter from Joseph Furey, Assistant Chief Counsel, Division of Trading and Markets, U.S. Securities and Exchange Commission to Elliott R. Curzon, Esq., Dechert LLP (August 23, 2012) (“Charles Schwab No-Action Letter”), available at <https://www.sec.gov/divisions/marketregr/mr-noaction/2012/charlesschwab082312-11d.pdf> (last visited September 20, 2016).

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In addition, SIFMA requests that FINRA confirm that, consistent with existing rules and interpretative guidance, prospecting trips continue to be permitted under proposed Rule 3221.¹⁶

2. Training & Education Meetings – Partial-Day Training Events

Proposed FINRA Rule 3221(b)(2) incorporates the same general requirements from the existing non-cash compensation rule for the exception on “Training or Education Meetings.” Proposed Supplementary Material .06 includes conditions that are currently covered by guidance found in various FINRA Notices to Members and Regulatory Notices that have been issued over the years. As addressed in previous FINRA guidance, Supplementary Material .06 provides that “any training must occupy substantially all of the work day.” This condition, without additional guidance or elaboration, could be interpreted as limiting the training exception only to meetings that cover a full day and not to shorter, partial-day training meetings where a meal is commonly provided.

SIFMA requests that FINRA remove the “substantially all of the work day” requirement of Supplementary Material .06 and that FINRA allow this exception to apply to full-day and partial-day training events. SIFMA understands that shorter training meetings with a meal are common in the industry, and that it has become a standard practice to cover partial-day meetings where meals are provided under the training exception of the current non-cash compensation rule. SIFMA also understands that firms may host two “back-to-back” partial-day training events and include one night of lodging to accommodate the participants’ other business obligations and travel time.

3. Training & Education Meetings – “Vicinity”

The Proposal would permit an offeror to make payments or reimbursements of associated persons’ expenses in connection with a training or education meeting held by an offeror or a member, provided that the meeting meets various conditions including that “the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office”¹⁷ SIFMA requests that FINRA reconsider the need for the “vicinity” requirement. Some firms have indicated they would prefer to hold national meetings at desirable locations convenient for all participants, even in the absence of having firm offices at the location, and we question whether the vicinity conditions provide any meaningful investor protections in practice.

¹⁶ See NTM 99-55, *supra* note 15.

¹⁷ Proposed Rule 3221(b)(2)(B).

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Additionally, SIFMA requests clarification regarding the meaning of “vicinity” in the rule text for offerors who are based offshore. In particular, would offshore locations be permitted if the offeror is based there?

4. Training & Education Meetings – Internal Training

In Regulatory Notice 16-29, FINRA states that the proposal “would permit a member to send its associated persons to an internal training meeting that is not tied to achievement of a sales target. The meeting would not have to meet the same requirements as a training or education meeting sponsored by a third-party offeror, but no unaffiliated entity could participate in the organization of these types of arrangements.”¹⁸ SIFMA requests that FINRA provide further clarification on what standards would apply to these internal training and education meetings. In addition, SIFMA requests that FINRA clarify what it means by the phrase: “no unaffiliated entity could participate in the organization of these types of arrangements.”

C. Business Entertainment

1. FINRA Should Consider Defining Business Entertainment

SIFMA requests that FINRA include a comprehensive definition of business entertainment in proposed Rule 3222’s text or supplementary material. Although the supplementary material provides that “[b]usiness entertainment includes, but is not limited to, an occasional meal, a ticket to an event (e.g., sporting event) or the theater, and other comparable entertainment,”¹⁹ more is needed. The rule as currently drafted appears to apply to *all* business entertainment, without limitation. Therefore it is not clear whether proposed Rule 3222 is intended to apply to *all* customers, including both retail customers and customer representatives, or only to business entertainment provided to customer representatives, like proposed Rule 3220. Member firms would benefit from a definitive statement of the rule’s scope, especially in light of the difference in treatment between gifts and entertainment under the rules.

2. FINRA Should Provide an Exception for Tracking Business Entertainment of a *De Minimis* Value

SIFMA supports the principles-based approach to business entertainment under proposed Rule 3222. Notwithstanding our support for the rule’s non-prescriptive approach, SIFMA has concerns with the potential costs of the recordkeeping requirements under Rule 3222(b). This provision of the rule appears to require the

¹⁸ RN 16-29, *supra* note 2, at 6.

¹⁹ Proposed Rule 3222.02.

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maintenance of detailed records of *all* expenses related to business entertainment. Requiring member firms and their employees to track and report every dollar of business entertainment (including, for example, a cup of coffee purchased by an offeror) would be administratively burdensome and of questionable value from a cost-benefit/economic analysis perspective.

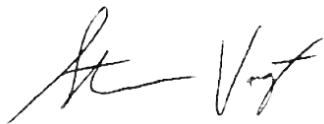
SIFMA suggests that FINRA incorporate into Rule 3222(b)'s reporting and recordkeeping requirement an exception for business entertainment of a *de minimis* value. Consistent with SIFMA's preference for principles-based standards, SIFMA believes that member firms should be given the flexibility to establish by policy a *de minimis* threshold for business entertainment. Alternatively, FINRA could apply a uniform value for *de minimis* business entertainment that aligns with the exception for *de minimis* gifts under proposed Rule 3220 (*i.e.*, below \$50 in value).

V. Conclusion

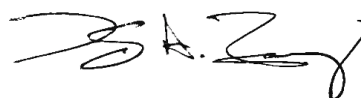
SIFMA appreciates the opportunity to comment on the Proposal. SIFMA commends FINRA for undertaking an evaluation of its gifts, gratuities and non-cash compensation rules in an effort to find ways to improve their effectiveness and efficiency. SIFMA believes the comments included in this letter should foster FINRA's efforts to update these rules and align the rules' costs and investor protection benefits. We look forward to a continuing dialogue with FINRA and working together on this important proposal.

If you have any questions or would like additional information, please contact Stephen Vogt, Assistant Vice President & Assistant General Counsel, SIFMA, at (202) 962-7393 (svogt@sifma.org), or Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA, at (202) 962-7386 (kzambrowicz@sifma.org).

Very truly yours,



Stephen Vogt
Assistant Vice President &
Assistant General Counsel



Kevin Zambrowicz
Managing Director &
Associate General Counsel

cc: Evan Charkes, Co-Chair, SIFMA Compliance & Regulatory Policy Committee
Mary Beth Findlay, Co-Chair, SIFMA Compliance & Regulatory Policy Committee

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

FINRA Rules

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2300. SPECIAL PRODUCTS

2310. Direct Participation Programs

(a) through (b) No Change.

(c) Non-Cash Compensation

(1) No Change.

(2) Restriction on Non-Cash Compensation

In connection with the sale and distribution of direct participation program or REIT securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Non-cash compensation arrangements must be consistent with the applicable requirements of SEA Rule 151-1 (“Regulation Best Interest”) and are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors¹ and are not conditioned on achievement of a sales target.

(B) through (E) No Change.

(d) No Change.

¹ The current annual amount fixed by the Board of Governors is \$250[100].

2320. Variable Contracts of an Insurance Company

(a) through (f) No Change.

(g) Member Compensation

In connection with the sale and distribution of variable contracts:

(1) through (3) No Change.

(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Notwithstanding the provisions of paragraph (g)(1), the following non-cash compensation arrangements are permitted provided that they are consistent with the applicable requirements of SEA Rule 151-1 (“Regulation Best Interest”):

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA¹ and are not preconditioned on achievement of a sales target.

(B) through (E) No Change.

* * * * *

2341. Investment Company Securities

(a) through (k) No Change.

(l) Member Compensation

In connection with the sale and distribution of investment company securities:

(1) through (4) No Change.

¹ The current annual amount fixed by the Board of Governors is \$250[100].

(5) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Notwithstanding the provisions of paragraph (l)(1), the following non-cash compensation arrangements are permitted provided that they are consistent with the applicable requirements of SEA Rule 15l-1 (“Regulation Best Interest”):

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA¹ and are not preconditioned on achievement of a sales target.

(B) through (E) No Change.

(m) through (n) No Change.

* * * * *

3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

3220. Influencing or Rewarding Employees of Others

(a) No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of [one hundred dollars] \$250 per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

¹ The current annual amount fixed by the Board of Governors is \$250[100].

(b) This Rule shall not apply to contracts of employment with or [to] compensation for services rendered by persons enumerated in paragraph (a) of this Rule provided that there is in existence, prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

(c) Subject to Supplementary Materials .04 through .06, a[A] separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in paragraph (b) of this Rule and any employment compensation paid as a result thereof shall be retained by the member for the period specified by SEA Rule 17a-4.

(d) Pursuant to the Rule 9600 Series, FINRA staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purpose of the Rule, the protection of investors, and the public interest.

• • • Supplementary Material: -----

.01 Gifts Incidental to Business Entertainment. A gift given during the course of a business entertainment event is subject to this Rule unless it is consistent with the requirements of Supplementary Material .04 or .05 of this Rule.

.02 Valuation of Gifts. Gifts must be valued at cost, exclusive of tax and delivery charges, except when valuing tickets for sporting or other events, for which a member

must use the higher of cost or face value. If gifts are given to multiple recipients, members must record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the \$250 limit in paragraph (a) of this Rule.

.03 Aggregation of Gifts. Members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year for purposes of ensuring compliance with the \$250 limit in paragraph (a) of this Rule. In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient. The aggregation requirements of this Supplementary Material do not apply to gifts that are consistent with the requirements of Supplementary Material .04 or .05 of this Rule.

.04 Personal Gifts. Gifts that are given for infrequent life events (e.g., a wedding gift, a congratulatory gift for the birth of a child, or a bereavement gift) are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule, provided the gifts are customary and reasonable, personal in nature and not in relation to the business of the employer of the recipient. In determining whether a gift is “personal in nature and not in relation to the business of the employer of the recipient,” members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient and whether the associated person paid for the gift. When the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes

that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

.05 De Minimis Gifts and Promotional or Commemorative Items

(a) Gifts of a *de minimis* value (e.g., pens, notepads, or modest desk ornaments) or promotional items of nominal value that display the member's logo (e.g., umbrellas, tote bags, or shirts) are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule, provided that the value of the gift or promotional item is substantially below the \$250 limit.

(b) Customary and reasonable solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule.

.06 Donations Due to Federally Declared Major Disasters. Donations by a member or an associated person to any person, principal, proprietor, employee, agent or representative of another person to provide assistance to the individual for losses sustained in a natural event that the President has declared to be a major disaster, such as a wildfire, hurricane, tornado, earthquake, or flood, are not considered "in relation to the business of the employer of the recipient" for purposes of Rule 3220(a). Such donations are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule.

.07 Supervision and Recordkeeping. Rule 3110 requires a member to have a supervisory system reasonably designed to achieve compliance with Rule 3220. To meet these standards, members are required to have systems and procedures reasonably designed to ensure that payments and gratuities in relation to the business of the employer

of the recipient given by the member and its associated persons to employees of another person are: (a) reported to the member; (b) reviewed for compliance with this Rule; and (c) maintained in the member's records. Such procedures must be reasonably designed to ensure that an associated person who is giving a payment or gratuity is not responsible for determining whether such payment or gratuity is in relation to the business of the recipient's employer. Members are not required to maintain records of gifts that are consistent with the requirements of Supplementary Material .04 through .06 of this Rule.

.08 Gifts to a Member's Associated Persons or Individual Retail Customers. This Rule does not apply to gifts from a member to its own associated persons, or to gifts from a member or an associated person to individual retail customers.

* * * * *

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

5110. Corporate Financing Rule — Underwriting Terms and Arrangements

(a) through (e) No Change.

(f) Non-Cash Compensation

(1) No Change.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Non-cash compensation arrangements must be consistent with the applicable requirements of SEA Rule 151-1 ("Regulation Best Interest") and are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors¹ and are not preconditioned on achievement of a sales target.

(B) through (E) No Change.

(g) through (j) No Change.

• • • **Supplementary Material:** -----

.01 through .07 No Change.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 0180, 1210, 1220, 2030, 2114, 2210, 2231, 2241, 2242, 2310, 2359, 2360, 3170, 3220, 4210, 4311, 4320, 4360, 4540, 5110, 5121, 5122, 5123, 5130, 5131, 6183, 6625, 6731, 6732, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of FINRA.

(b) through (c) No Change.

* * * * *

¹ The current annual amount fixed by the Board of Governors is \$250[100].