

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103226; 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)

June 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2025, 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).

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> FINRA has also

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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>;

issued an interpretive letter regarding the application of the Gifts Rule to bereavement gifts,<sup>6</sup> and published guidance regarding donations due to federally declared major disasters (“Disaster-Related Donations FAQ”).<sup>7</sup>

##### (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.<sup>8</sup> 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.

*Notice*, *supra* note 4. FINRA received 17 comment letters in response to the Notice. See *infra* Item II.C.

<sup>6</sup> 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>.

<sup>7</sup> 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>.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

## (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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> In determining whether and how much to propose increasing the gift limit, FINRA has considered the rate of inflation since

1992.<sup>12</sup> 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.<sup>13</sup> 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,<sup>14</sup> 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.<sup>15</sup>

## (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.<sup>16</sup> In addition, in response to inquiries regarding the Gifts Rule, FINRA staff has published frequently asked questions<sup>17</sup> and issued interpretive letters, including a letter regarding the application of the Gifts Rule to bereavement gifts.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> Thus, for example,

<sup>15</sup> 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.

<sup>16</sup> See NTM 06-69, *supra* note 5.

<sup>17</sup> Gifts/Business Entertainment/Non-Cash Compensation FAQs, *supra* note 7.

<sup>18</sup> See Aly Letter, *supra* note 6.

<sup>19</sup> See NTM 06-69, *supra* note 5.

<sup>20</sup> 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 I.I.C.(D)(v).

<sup>9</sup> See Rule 3220(c).

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> 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.

<sup>13</sup> 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).

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

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.<sup>21</sup>

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.<sup>22</sup> Likewise, under the current guidance, when valuing tickets to sporting or other events, a member must use the higher of cost or face value.<sup>23</sup>

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.<sup>24</sup>

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 compliance with the gift limit.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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 necessary in order to comply with the Gifts Rule.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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

<sup>21</sup> 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 I.I.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.

<sup>22</sup> See NTM 06–69, *supra* note 5.

<sup>23</sup> See NTM 06–69, *supra* note 5.

<sup>24</sup> See *infra* note 82 and accompanying text (discussing comments received in response to the Notice).

<sup>25</sup> See NTM 06–69, *supra* note 5.

<sup>26</sup> See NTM 06–69, *supra* note 5.

<sup>27</sup> See NTM 06–69, *supra* note 5.

<sup>28</sup> See NTM 06–69, *supra* note 5.

<sup>29</sup> See NTM 06–69, *supra* note 5.

<sup>30</sup> 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.

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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> The current guidance requires the value of *de minimis* or promotional items to be “substantially below” the current \$100 gift limit.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

(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.<sup>37</sup>

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.<sup>38</sup>

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.<sup>39</sup> 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).<sup>40</sup>

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).<sup>41</sup>

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

<sup>40</sup> 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.

<sup>41</sup> 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).

<sup>31</sup> See NTM 06–69, *supra* note 5.

<sup>32</sup> See NTM 06–69, *supra* note 5.

<sup>33</sup> See NTM 06–69, *supra* note 5.

<sup>34</sup> See NTM 06–69, *supra* note 5.

<sup>35</sup> 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.

<sup>36</sup> See NTM 06–69, *supra* note 5.

<sup>37</sup> See NTM 06–69, *supra* note 5.

<sup>38</sup> See NTM 06–69, *supra* note 5.

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

The Gifts Rule requires separate recordkeeping of all payments or gratuities.<sup>42</sup> 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.<sup>43</sup>

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 person<sup>44</sup> 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.

(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.<sup>45</sup> It is

not intended to address potential conflicts that may arise from a member giving a gift to its own associated persons,<sup>46</sup> 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,<sup>47</sup> investment company securities,<sup>48</sup> direct participation programs (“DPPs”),<sup>49</sup> and the public offerings of securities.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

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,<sup>53</sup> which requires, among other things, that

<sup>46</sup> 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.

<sup>47</sup> See Rule 2320(g)(4) (Variable Contracts of an Insurance Company).

<sup>48</sup> See Rule 2341(l)(5) (Investment Company Securities).

<sup>49</sup> See Rule 2310(c) (Direct Participation Programs).

<sup>50</sup> See Rule 5110(f) (Corporate Financing Rule—Underwriting Terms and Arrangements).

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

<sup>52</sup> 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.

<sup>53</sup> 15 U.S.C. 78o–3(b)(6).

<sup>42</sup> See Rule 3220(c).

<sup>43</sup> See *NTM* 06–69, *supra* note 5.

<sup>44</sup> 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”).

<sup>45</sup> See *Notice*, *supra* note 4.

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.

#### *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.<sup>54</sup> 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 responses of about 600 member firms.<sup>55</sup> 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 goodwill through gifts

and the potential for conflicts of interest.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup>

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

<sup>56</sup> 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>.

<sup>57</sup> 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.”).

<sup>58</sup> See proposed Rule 3220.04, 3220.05, 3220.06 and 3220.07.

<sup>59</sup> See *supra* Item II.A.1.(2)(C)(vii).

<sup>60</sup> See Retrospective Review Report, *supra* note 5, 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.”).

<sup>54</sup> See Retrospective Review Report, *supra* note 5, at 3.

<sup>55</sup> See Retrospective Review Report, *supra* note 5, at 6 (Figure 1).

market value.<sup>61</sup> 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 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup>

FINRA received a number of comment letters in response to the proposed changes to the Gifts Rule.<sup>65</sup> The commenters were generally supportive of increasing the gift limit and several commenters suggested that the gift limit be increased more than \$175.<sup>66</sup> 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,<sup>67</sup> \$250,<sup>68</sup> \$275,<sup>69</sup> \$300,<sup>70</sup> or \$350.<sup>71</sup>

However, some commenters did not support the increase.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

#### (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.<sup>75</sup> 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.<sup>76</sup> 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, variable insurance contracts, investment company securities, or public offerings of securities.<sup>77</sup> By contrast, the Gifts Rule applies to gifts given in relation to the

<sup>63</sup> 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>).

<sup>64</sup> 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.

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

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

<sup>67</sup> See, e.g., BDA, CAI, Securities Center, and WFA.

<sup>68</sup> See, e.g., ABA and SIFMA.

<sup>69</sup> See, e.g., First Asset Financial.

<sup>70</sup> See, e.g., FSI and NAIFA.

<sup>71</sup> See, e.g., Commonwealth.

<sup>72</sup> See, e.g., BDA and PIRC.

<sup>73</sup> See, e.g., FSI and SIFMA.

<sup>74</sup> See *supra* Item II.A.1.(2)(A).

<sup>75</sup> See, e.g., ABA, First Asset Financial, PIRC, WFA, and Woodforest.

<sup>76</sup> See, e.g., ABA, First Asset Financial, WFA, and Woodforest.

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

<sup>61</sup> See *supra* Item II.A.1.(2)(C)(ii).

<sup>62</sup> See *supra* note 4.

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.<sup>78</sup>

#### (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 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).<sup>79</sup> 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 market value, exclusive of tax or delivery charges.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

##### (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.<sup>85</sup> 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.<sup>86</sup>

FINRA received one comment opposing the proposed aggregation requirement.<sup>87</sup> 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

<sup>80</sup> See NTM 06–69, *supra* note 5.

<sup>81</sup> See NTM 06–69, *supra* note 5.

<sup>82</sup> See, e.g., ABA, First Asset Financial and NAIFA.

<sup>83</sup> See *supra* Item II.A.1.(2)(C)(ii).

<sup>84</sup> See *supra* Item II.A.1.(2)(C)(ii).

<sup>85</sup> See NTM 06–69, *supra* note 5.

<sup>86</sup> See NTM 06–69, *supra* note 5.

<sup>87</sup> See WFA.

<sup>78</sup> 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.

<sup>79</sup> See *supra* Item II.A.1.(2)(C)(i).

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.<sup>88</sup>

In addition, FINRA received comments requesting clarification regarding the application of the aggregation requirements.<sup>89</sup> 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.

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).<sup>90</sup>

(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.<sup>91</sup> 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 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.<sup>92</sup> 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 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.<sup>93</sup> 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

<sup>88</sup> See *supra* Item II.A.1.(2)(C)(iii).

<sup>89</sup> See, e.g., NAIFA and SIFMA.

<sup>90</sup> See *supra* Item II.A.1.(2)(C)(iii).

<sup>91</sup> See Aly Letter, *supra* note 6.

<sup>92</sup> See SIFMA and Woodforest.

<sup>93</sup> See, e.g., First Asset Financial, FSI, NAIFA, PIRC, WFA, and Woodforest.

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.<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup> 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 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.<sup>97</sup>

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.<sup>98</sup>

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

#### (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.<sup>101</sup> 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 Gifts Rule explicit in proposed Rule 3220.08.<sup>102</sup>

### 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 email to [rule-comments@sec.gov](mailto: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.

<sup>97</sup> See NTM 06–69, *supra* note 5.

<sup>98</sup> See *supra* Item II.A.1.(2)(C)(vii).

<sup>99</sup> See *supra* Item II.A.1.(2)(C)(vii).

<sup>100</sup> See NTM 06–69, *supra* note 5.

<sup>101</sup> See, e.g., ABA, First Asset Financial, FSI, and Woodforest.

<sup>102</sup> See *supra* Item II.A.1.(2)(C)(viii).

<sup>94</sup> See *supra* Item II.A.1.(2)(C)(v)(a).

<sup>95</sup> See *supra* Items II.A.1.(2)(C)(v)(b).

<sup>96</sup> See *Notice*, *supra* note 4, at 12 n.11.

All submissions should refer to File Number SR-FINRA-2025-003. This file number should be included on the subject line if email 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 July 8, 2025.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2025-10978 Filed 6-16-25; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103232; File No. SR-FINRA-2025-007]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Implementation Schedule of Amendments to Section 7 of Schedule A to the FINRA By-Laws Adopted in SR-FINRA-2024-019

June 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2025, 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. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 modify the implementation schedule of amendments adopted in SR-FINRA-2024-019 with respect to fees for filing documents pursuant to the securities offering rules under Section 7 of Schedule A to the FINRA By-Laws.

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

In November 2024, FINRA filed a proposed rule change to increase the revenues that FINRA, as a not-for-profit self-regulatory organization, relies upon to fund its regulatory mission.<sup>5</sup> The fees raised in the 2024 Fee Filing include fees related to FINRA's core regulatory functions as well as select fees related to the use of FINRA programs and services scheduled to be phased in gradually over a five-year period.<sup>6</sup> For operational reasons and to give member firms and issuers additional time to budget and plan, FINRA proposes to modify the implementation schedule for two fee changes adopted in the 2024 Fee Filing: (i) the new fee related to review of private placements submitted to FINRA's Corporate Financing Department ("Corporate Financing") (the "Corporate Financing Private Placement Review Fee"); and (ii) the increases to the fee caps related to review of public offerings submitted to Corporate Financing (the "Corporate Financing Public Offering Review Fee").

The Corporate Financing Private Placement Review Fee currently will become effective on July 1, 2025.<sup>7</sup> The increases to the Corporate Financing Public Offering Review Fee cap currently will become effective on July 1, 2025, and for Well-Known Seasoned Issuers ("WKSIs"), currently will be phased in between July 1, 2025 and January 1, 2029.<sup>8</sup>

<sup>5</sup> See Securities Exchange Act Release No. 101696 (November 21, 2024), 89 FR 93709 (November 27, 2024) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2024-019) ("2024 Fee Filing").

<sup>6</sup> See *supra* note 5.

<sup>7</sup> As described in the 2024 Fee Filing, *supra* note 5, the Corporate Financing Private Placement Review Fee consists of both a flat fee and a percentage of the maximum offering proceeds. This fee applies only to private placement offerings of greater than \$25 million and is capped at \$40,300 (0.008% of \$500,000,000 offering + \$300 flat fee).

<sup>8</sup> As described in the 2024 Fee Filing, *supra* note 5, the Corporate Financing Public Offering Review Fee provides for a flat fee of \$500 plus .015% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), with a cap of \$225,500; or a fee of \$225,500 for an offering of securities filed with the SEC and offered pursuant to Securities Act Rule 415 by a WKSI as defined in Securities Act Rule 405. As adopted, the non-WKSI fee cap would increase

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>103</sup> 17 CFR 200.30-3(a)(12).