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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File No. SR-FINRA-2025-003 (Proposed Rule Change to Amend FINRA Rule 3220) – Response to Comments

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this letter to respond to comments the Securities and Exchange Commission (“SEC” or “Commission”) received on the above-referenced rule filing (the “Proposal”). The Proposal would amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others) (the “Gifts Rule”) to increase the gift limit from \$100 to \$250, 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) (together, the “non-cash compensation rules”).

The Commission published the Proposal for public comment in the Federal Register on June 17, 2025.¹ The Commission received nine comment letters on the Proposal.²

¹ See Securities Exchange Act Release No. 103226 (June 11, 2025), 90 FR 25674 (June 17, 2025) (Notice of Filing of File No. SR-FINRA-2025-003).

² See letter from Daniel LeGaye, Managing Partner, LeGaye Law Firm P.C., to FINRA Office of the Corporate Secretary, dated June 26, 2025 (“LeGaye”); letter from Patricia Reinard-Kopsa, Chief Compliance Officer, Trubee Wealth Advisors, to SEC, dated July 3, 2025; letter from Jessica R. Giroux, Chief Legal Officer, American Securities Association, to Vanessa Countryman, Secretary, SEC, dated July 8, 2025 (“ASA”); letter from Michael Decker, Senior Vice President, Research and Public Policy, Bond Dealers of America, to Secretary, SEC, dated July 8, 2025 (“BDA”); letter from Clifford Kirsch & Eric Arnold, Eversheds Sutherland for the Committee of Annuity Insurers, to Secretary, SEC, dated July 8, 2025 (“CAI”); letter from David T. Bellaire, Executive Vice President & General Counsel,

All commenters expressed general support for the Proposal; however, some commenters suggested modifications. The following are FINRA's responses, by topic, to the commenters' material comments.

I. Gift Limit

All commenters supported increasing the gift limit, but some suggested that the gift limit be increased more than \$250 to account for future inflation. For example, CAI recommended a \$300 limit or alternatively suggested that FINRA embed in the Gifts Rule "some type of formalized recalculation of the gift limit on some periodic basis (e.g., every 5 years) based on the annual rate of inflation." FSI and Robinhood both suggested a \$500 limit. FSI noted that \$500 would "mitigate cost-of-living inequities and account for differences in purchasing power across parts of the country" and "provide a cushion against future inflationary pressures and reduce the frequency of necessary adjustments." Similarly, Robinhood stated that "a higher limit is necessary to take into account future inflation and the likelihood that the new limit will remain in place for many years."

Several commenters also requested that FINRA specify how often it would increase the gift limit in the future. For example, ICI suggested that, absent adopting a self-executing formula for automatically increasing the gift limit, "the rule text [should] require FINRA, no less frequently than every five years, to revisit the annual amount of permissible gifts per person and make increases as warranted, taking into account the effect of inflation and other factors as appropriate." Similarly, SIFMA and FSI suggested that FINRA review the gift limit every five or three years, respectively. ASA also supported a periodic review of the gift limit, but did not specify a time period.

In response to these comments and as stated in Partial Amendment No. 1, FINRA is amending the Proposal to increase the gift limit to \$300.³ FINRA generally agrees with the commenters that a further increase to the gift limit would account for future inflation as

Financial Services Institute, to Vanessa Countryman, Secretary, SEC, dated July 8, 2025 ("FSI"); letter from Tara Buckley, Deputy General Counsel, Investment Company Institute, to Ilana Reid, Associate General Counsel, FINRA, dated July 8, 2025 ("ICI"); letter from Matt Billings, President, Robinhood Financial LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 8, 2025 ("Robinhood"); and letter from Bernard V. Canepa, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, SEC, dated July 8, 2025 ("SIFMA").

³ As stated in Partial Amendment No. 1, FINRA proposes a conforming amendment to the gift limit in the non-cash compensation rules.

well as cost-of-living inequities and differences in purchasing power across parts of the country.

As described in the Proposal, in determining whether and how much to propose increasing the gift limit, FINRA considered the rate of inflation since 1992, when the gift limit was increased from \$50 to \$100.⁴ If the same average annual rate of inflation for the past 32 years was maintained and applied to the \$100 gift limit, this would result in a dollar value of \$294.78 in 2035. On this basis, a \$300 gift limit should account for future inflation for approximately 10 years, thereby reducing the frequency of future upward adjustments to account for inflation.

As stated in the Proposal, FINRA intends to review periodically the gift limit to determine if further increases are warranted. Given that the amended Proposal would account for an estimated 10 years of future inflation, FINRA does not believe it is necessary at this time to commit to a specific periodicity for reviewing the gift limit.

In addition, FINRA is retaining a dollar-based gift limit because it establishes a bright line standard to achieve the intended objective of the Gifts Rule. FINRA believes this approach is preferable to establishing a formalized future recalculation requirement. This approach facilitates compliance while protecting investors from 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.

II. Supplementary Material Incorporating and Substantially Codifying Existing Guidance and Interpretative Positions

In the Proposal, FINRA proposed to incorporate and substantially codify existing guidance and interpretations into the Gifts Rule, which would improve transparency, awareness, and understanding of the rule’s requirements and facilitate compliance with the proposed rule changes. As discussed below, some commenters requested clarification or

⁴ 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.

additional guidance about bereavement gifts,⁵ personal gifts,⁶ de minimis gifts,⁷ gifts to retail customers,⁸ gifts received,⁹ and other interpretive issues.¹⁰

A. Bereavement Gifts

SIFMA raised concerns about treating bereavement gifts as a type of personal gift. SIFMA pointed out that FINRA's prior guidance on bereavement gifts addresses "gifts sent on behalf of a member firm or its associated persons to acknowledge the death of an employee of a client, or a member of such employee's immediate family."¹¹ By contrast, FINRA's prior guidance on personal gifts provides 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.¹²

In response to this comment, FINRA is amending the Proposal to separate the proposed supplementary material on bereavement gifts from the proposed supplementary material on personal gifts. FINRA agrees with SIFMA's observation that, under current guidance, customary and reasonable bereavement gifts from members are not considered in relation to the business of the employer of the recipient. By contrast, under current guidance, personal gifts paid for by members are presumed to be in relation to the business of the employer of the recipient and thus not personal in nature.

⁵ See SIFMA.

⁶ See LeGaye and SIFMA.

⁷ See CAI, Robinhood and SIFMA.

⁸ See BDA and SIFMA.

⁹ See BDA.

¹⁰ For example, as discussed below, CAI, ICI and SIFMA requested that FINRA issue future guidance on various interpretive issues.

¹¹ 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/rulesguidance/guidance/interpretive-letters/amal-aly-sifma-reasonable-and-customarybereavement-gifts>.

¹² See Notice to Members ("NTM") 06-69.

Thus, as stated in Partial Amendment No. 1, FINRA is amending the Proposal to remove the reference to “bereavement gifts” from Rule 3220.04 (Personal Gifts) and to add Rule 3220.05 (Bereavement Gifts).¹³ Proposed Rule 3220.05 would state:

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.

B. Personal Gifts

LeGaye expressed concern that the presumption that a gift is not personal in nature where the member bears the cost is problematic because “firms often encourage or require representatives to use a single firm account or corporate card for all professional expenses, including in some cases gifts, to ensure expense policy compliance and to maintain clear records,” which could lead to “inadvertent rule violations for both the firm and the representative and undermine the personal gift carve-out.”¹⁴ LeGaye also requested that FINRA clarify that a personal gift does not lose that status provided that the firm has reasonable controls to confirm that a gift is in fact personal and not related to the recipient’s business duties, and the firm treats the reimbursement for accounting purposes as a personal or registered representative gift expense, rather than a client entertainment or marketing expense.

As discussed, 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.¹⁵ 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

¹³ Under Partial Amendment No. 1, proposed Rule 3220.05 through 3220.08 would be renumbered.

¹⁴ SIFMA also requested to discuss with FINRA whether the personal gift exclusion should apply to gifts given on a more frequent basis, such as birthday or holiday gifts, that are paid for by an associated person. FINRA welcomes further discussion on this topic, but notes that under current guidance, the personal gift exclusion is not intended to cover gifts given for events that occur frequently or even annually, such as birthdays. See NTM 06-69 (“firms should not treat gifts given during the holiday season or for other life events as personal in nature”), supra note 12.

¹⁵ See NTM 06-69, supra note 12.

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. FINRA believes that codifying the current guidance enhances transparency, awareness and understanding of this exclusion and, therefore, has determined not to make any changes.

FINRA continues to believe that when a firm reimburses an employee for the cost of a gift, the gift is presumptively in relation to the business of the employer of the recipient regardless of whether the firm treats the reimbursement as "personal" for accounting purposes. However, as discussed below, FINRA welcomes future discussion on these topics, including on whether additional guidance may be warranted.

C. De Minimis Gifts and Promotional Items

Robinhood requested FINRA to establish a threshold value of \$100 for de minimis gifts and promotional items. Likewise, CAI requested incorporating in the proposed supplementary material additional guidance on what constitutes "substantially below" the gift limit for purposes of this exclusion.¹⁶

As stated in the Proposal, 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 of \$300, as amended.¹⁷ As stated in the Proposal, gifts valued in amounts above or near the gift limit would not be considered nominal. This approach is consistent with existing guidance and gives members more flexibility in determining de minimis gifts.

D. Gifts to Retail Customers

BDA expressed concern that the proposed supplementary material on gifts to individual retail customers does not include a definition of "retail customer." SIFMA also requested to discuss with FINRA the "contours" of the meaning of "retail customer."

As stated in the Proposal, the proposed supplementary material is intended to clarify the scope of the Gifts Rule and improve awareness and understanding of its scope among members, associated persons, and customers. As noted above, the Gifts Rule is intended to avoid improprieties, such as conflicts of interest, that may arise when a member

¹⁶ SIFMA also requested that FINRA provide updated guidance on this exclusion, including for example, updated examples of de minimis gifts and promotional items and guidance on branded clothing, among other things. If the SEC approves the Proposal, FINRA will consider what additional guidance may be warranted.

¹⁷ See NTM 06-69, supra note 12.

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. It does not apply to gifts from a member or its associated persons to individuals who are not employees of an Institutional Customer, including individual retail customers. Although the Gifts Rules does not apply to gifts from a member or its associated persons to individual retail customers, members may have policies and procedures that restrict or prohibit gifts to individual retail customers.

E. Gifts Received

BDA requested that FINRA codify that the Gifts Rule does not apply to gifts received by employees of firms because some firms interpret the rule to apply to gifts received “out of an abundance of caution.”

As explained in the Proposal, FINRA reiterates that the Gifts Rule applies only to gifts a member or an associated person gives 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.” It does not apply to gifts a member or an associated person receives from such persons. FINRA believes this scope is sufficiently clear from paragraph (a) of the Gifts Rule, which provides: “No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value . . .” (emphasis added).

F. Future Requests for Interpretive Guidance

Several commenters requested that FINRA issue additional guidance in conjunction with or after approval of the Proposal. For example, as noted above, SIFMA requested to discuss various questions regarding the definition of “retail customer,” de minimis and promotional items, and personal gifts.¹⁸ Likewise, CAI requested guidance “explaining circumstances and the possible breadth of requests for which exemptive relief may be appropriate.” In addition, ICI requested that FINRA address whether the Gifts Rule applies to raffle prizes at events hosted by third parties and, if so, whether a member must impose any conditions. FINRA has provided guidance on the meaning of “retail customer” in the context of the proposed supplementary material above. FINRA does not believe it is necessary at this time to provide further guidance or make additional changes to the Proposal with regard to commenters’ other questions because it is premature to do so prior to approval of the Proposal. However, FINRA welcomes future discussion on these topics, including on whether additional guidance may be warranted.

¹⁸ See supra notes 14 and 16. Several commenters also requested that FINRA harmonize its rules with the standards across the industry, including with the MSRB and the exchanges. See ASA, BDA and SIFMA. FINRA appreciates these comments and will take them under advisement.

Some commenters raised interpretive questions related to business entertainment and training and education meetings under the non-cash compensation rules.¹⁹ These topics are generally outside the scope of the Proposal. As stated in the Proposal, FINRA is not at this time proposing additional changes to the non-cash compensation rules or proposing a new rule related to business entertainment.

FINRA believes that the foregoing responds to the material issues raised by the commenters to the Proposal. If you have any questions, please contact me at (202) 728-8268, email: ilana.reid@finra.org.

Best regards,

/s/ Ilana Reid

Ilana Reid
Associate General Counsel

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For example, BDA requested that FINRA expressly state in the Gifts Rule that business entertainment is outside the scope of the annual gift limit. Likewise, ICI requested that FINRA clarify whether the Gifts Rule applies to an offeror's reimbursement of an associated person's expenses related to training or education meetings under the non-cash compensation rules. FINRA notes that the current non-cash compensation rules and guidance on business entertainment continue to apply. See Rules 2310, 2320, 2341, and 5110; 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, available at <https://www.finra.org/rules-guidance/guidance/interpretive-letters/henry-h-hopkins-and-sarah-mccafferty-t-rowe-price-investment-services-inc>.