

Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Continuing Education
Executive Representatives
Internal Audit
Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Gifts
Gratuities
Rule 3060

GUIDANCE

Gifts and Gratuities

NASD Issues Additional Guidance on Rule 3060
(Influencing or Rewarding Employees of Others)

Executive Summary

As a result of a recent review of gift and gratuity practices at member firms, NASD has become aware of several deficiencies in firms' compliance procedures relating to the application of Rule 3060. To aid firms in their compliance efforts, NASD is issuing the *Notice*, which focuses on some of the more common compliance weaknesses observed.

Questions/Further Information

Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of the General Counsel, at (202) 728-8104; or Joseph P. Savage, Associate Vice President, Investment Companies Regulation, Regulatory Policy and Oversight, at (240) 386-4534.

Background and Discussion

Rule 3060 prohibits any member or person associated with a member from giving, or permitting to be given, anything of value in excess of \$100 per individual per year where such payment is in relation to the business of the recipient's employer. The rule protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer.

A. Personal Gifts/Exclusions

The 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.” In determining whether a gift is “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 registered representative paid for the gift. When a firm bears the cost of a gift, either directly or by reimbursing an employee, NASD presumes that such gift is in relation to the business of the employer of the recipient.

The analysis of whether a gift is “in relation to the business of the employer” is required in connection with all gifts; firms should not treat gifts given during the holiday season or for other life events as personal in nature.

B. *De minimis* and Promotional Items

Rule 3060 also does not apply to gifts of *de minimis* value (e.g., pens, notepads or modest desk ornaments) or to promotional items of nominal value that display the firm’s logo (e.g., umbrellas, tote bags or shirts).¹ In order for a promotional item to fall within this exclusion, its value must be substantially below the \$100 limit. Gifts valued in amounts above or near \$100 would not be considered nominal. For example, expensive leather luggage and crystal pieces, notwithstanding the presence of firm logos, are not eligible for the exclusion for promotional items of nominal value.

NASD also generally does not apply the prohibition in Rule 3060 to customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction, even when such items have a cost of more than \$100. NASD does not believe such gifts are items of value within the scope of Rule 3060. The restrictions of Rule 3060 would apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. For example, NASD staff observed firms providing individuals with a bicycle and elaborate electronic equipment following the closing of a transaction. Such items are impermissible gifts under Rule 3060.

C. Aggregation of Gifts

Rule 3060 imposes a gift limit of \$100 per individual recipient per year. To ensure compliance with this \$100 limit, firms must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of a year. In addition, each firm must state in its procedures whether it is aggregating all gifts given by the firm and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

D. Valuation of Gifts

In general, gifts should be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets, a member should 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, the value of such ticket would be the higher cost to the member, not the face value of the ticket.²

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 \$100 limit. A gift basket worth \$250 delivered to an office of three individuals for the benefit of each individual would be permissible under the Rule.

E. Gifts Incidental to Business Entertainment

There is no express exclusion from Rule 3060 for gifts given during the course of business entertainment and conferences.³ Thus, for example, purchasing an umbrella during a round of golf would be considered a gift. Firms must record these gifts, and include the value of such gifts, as part of their Rule 3060 compliance procedures.

F. Supervision and Recordkeeping

Rule 3060 requires separate recordkeeping of gifts and gratuities. Rule 3010 requires a firm to have a supervisory system reasonably designed to achieve compliance with Rule 3060. In order to meet these standards, firms 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 firm and its associated persons to employees of clients of the firm are (i) reported to the firm, (ii) reviewed for compliance with Rule 3060, including aggregation as discussed above, and (iii) maintained in the firm's records. 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. Items of *de minimis* value or nominal promotional or commemorative items are not subject to Rule 3060's record-keeping requirements.

Endnotes

- 1 Additional guidance concerning recordkeeping requirements is provided in Section F, *infra*.
- 2 For purposes of this example, we are treating the ticket as a gift insofar as no representative from the member firm accompanied the recipient at the event.
- 3 In some cases, gifts given during business entertainment may fall within the exclusion for promotional items, discussed above.

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