

Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules

Comment Period Expires: May 8, 2014

Executive Summary

FINRA is conducting a retrospective review of the gifts and gratuities and non-cash compensation rules to assess their effectiveness and efficiency. This *Notice* outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with these specific rules.

Questions regarding this *Notice* should be directed to:

- ▶ Joseph Savage, Vice President and Counsel, Regulatory Policy, at (240) 386-4534;
- ▶ Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- ▶ Hammad Qureshi, Economist, Office of the Chief Economist, at (202) 728-8150.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by May 8, 2014.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

April 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

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

Key Topics

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

Referenced Rules & Notices

- ▶ FINRA Rule 3220
- ▶ FINRA Rule 2310(c)
- ▶ FINRA Rule 2320(g)(4)
- ▶ FINRA Rule 5110(h)
- ▶ NASD Rule 2830(l)(5)

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

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

Background & Discussion

FINRA believes that it is appropriate, after a reasonable period of time, to look back at its significant rulemaking to determine whether a FINRA rule or rule set² is meeting its intended investor-protection objectives by reasonably efficient means. FINRA further believes that a retrospective review should include a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. FINRA intends to select relevant rules and to conduct retrospective rule reviews on an ongoing basis to ensure that its rules remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry and market changes.

FINRA will prioritize rules for review, taking into consideration a number of factors, including:

- ▶ feedback from FINRA's Member Relations and Education department as to rules most frequently identified by firms as raising questions or concerns;
- ▶ input from FINRA's advisory committees;
- ▶ observations and experience of FINRA's operating departments, including examination findings, enforcement actions, interpretive requests and general questions;
- ▶ how recently the rule(s) have been amended or subjected to industry feedback;
- ▶ the anticipated length of the review process based on the breadth and complexity of the rule or rule set; and
- ▶ federal laws, regulations, or rules that may preempt or otherwise limit FINRA's ability to amend rules.

For a newly adopted rule, FINRA will consider it for retrospective review after a reasonable implementation period—allowing FINRA time to gain experience with the rule and to obtain meaningful data to conduct a thorough assessment of the rule's impact.

The review process will consist of two phases: (1) findings and (2) action. During the findings phase, FINRA will assess the efficacy and efficiency of the rule or rule set as currently implemented, including FINRA's internal administrative processes. FINRA also intends to seek input from affected parties and experts, including its advisory committees, subject-matter experts inside and outside of the organization, and other stakeholders, including industry members, investors, interested groups and the public. FINRA staff will assess issues including: the existence of duplicative, inconsistent or ineffective regulatory obligations; whether market or other conditions have changed to suggest there are ways to improve the efficiency or effectiveness of a regulatory obligation without loss of investor protections; and potential gaps in the regulatory framework. Upon completion of this assessment, FINRA staff will report its findings to the Board of Governors and make a general staff recommendation as to whether the rule or rule set should be maintained as is, modified or deleted. The staff will also recommend an action plan that will, where appropriate, include recommendations as to how a rule or rule set should be modified or the need for additional research or information gathering. However, FINRA does not intend the findings phase to produce a specific proposal to modify any rules.

The action phase will then follow. If the findings report recommends modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the SEC, or both.

Request for Comment

FINRA has identified the gifts and gratuities and non-cash compensation rule set for review. This rule set includes the following rules:

[FINRA Rule 3220](#) (Influencing or Rewarding Employees of Others)³

[FINRA Rule 2310\(c\)](#) (Direct Participation Programs)

[FINRA Rule 2320\(g\)\(4\)](#) (Variable Contracts of an Insurance Company)

[FINRA Rule 5110\(h\)](#) (Corporate Financing Rule – Underwriting Terms and Arrangements)

[NASD Rule 2830\(l\)\(5\)](#) (Investment Company Securities)

FINRA seeks answers to the following questions with respect to this rule set:

1. Have the rules effectively addressed the problem(s) they were intended to mitigate?
2. What have been experiences with implementation of the rule set, including any ambiguities in the rules or challenges to comply with them?
3. What have been the costs and benefits arising from FINRA's rules? Have the costs and benefits been in line with expectations described in the rulemaking?
4. Can FINRA make the rules more efficient and effective, including FINRA's administrative processes?

In addition to comments responsive to these questions, FINRA requests any data or evidence in support of comments. While FINRA welcomes specific suggestions as to how the rules should be changed, the purpose of this *Notice* is to obtain input as to whether or not the current rule set is effective and efficient. As discussed above, FINRA will separately consider during the action phase specific changes to the rules.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [NTM 03-73](#) (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.
3. FINRA is including a review of firms' implementation experience with FINRA guidance regarding ordinary and usual business entertainment provided by firms or their associated persons to the firms' clients and their guests. See [letter](#) to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc., from R. Clark Hooper, NASD, dated June 10, 1999.

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