



VIA ELECTRONIC MAIL

September 23, 2016

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

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

Dear Ms. Asquith:

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

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

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

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

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

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

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

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

De Minimis Contributions

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

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

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

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

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

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

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

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

III. FINRA Rule 3222 (Business Entertainment)

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

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

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

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

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

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

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

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

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

Sincerely,

John Hagberg
VP, Compliance
Commonwealth Financial Network