



June 12, 2007

VIA ELECTRONIC MAIL

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number SR-NASD-2006-044

Dear Ms. Morris:

On May 3, 2007, the National Association of Securities Dealers, Inc. (NASD) filed its amended proposal with the Securities and Exchange Commission (SEC) to adopt new Interpretative Material to NASD Conduct Rule 3060 (IM-3060) that is intended to clarify a broker-dealer's obligations relating to business entertainment. In short, IM-3060 would require member firms to adopt policies and procedures to address the provision of business entertainment, including procedures necessary to i) define appropriate and inappropriate forms of business entertainment; ii) detect and prevent business entertainment perceived or intended to compel an employee to act in a manner inconsistent with the interests of his employer; iii) establish qualification standards for supervisors; and iv) provide for appropriate training and education of all relevant personnel.

Founded in 1979, Commonwealth Financial Network is the nation's second-largest, privately owned independent broker/dealer, with offices in Waltham, Massachusetts, and San Diego, California. The firm supports more than 1,000 independent financial advisors nationwide and makes available a comprehensive array of non-proprietary financial products and services. As an independent contractor broker-dealer, our financial advisors provide investment and financial planning services primarily to individual retail clients.

IM-3060 would have a significant and unintended impact on our firm and other similarly structured firms in that it appears unnecessarily broad and overly burdensome in light of its expected costs and benefits. In our view, IM-3060 would require unnecessary and time consuming resources and would be unduly burdensome on our financial advisors.

Following are our specific concerns with the proposal:

1. IM-3060's Benefits appear to be Outweighed by its Costs

NASD Notice to Members 06-06 (NtM 06-06) cited "recent events" as the basis for proposing IM-3060. As we understand it, these recent events included the NASD's December 4, 2006 announcement that it had fined Jefferies & Company, Inc. \$5.5 million for providing more than \$1.6 million in improper gifts and entertainment to equity traders employed by FMR Co., Inc. However, it would appear the NASD is using this enforcement action as justification for creating a new rule whose benefits would be greatly outweighed by the substantial costs necessary for firms like ours to comply.

In fact, IM-3060 would place the greatest burden of compliance on those firms that are the least likely to commit the offenses that IM-3060 is designed to address. The large firms that market to institutional businesses have both the incentive to engage in lavish business entertainment as well as the resources necessary to establish and implement the compliance and recordkeeping systems needed to comply with IM-3060. However, our typical client and account size simply do not create the financial incentives to engage in the type or level of business entertainment that have given rise to this proposal. Nevertheless, even firms like ours that might engage in minimal business entertainment will be forced to create sophisticated systems and tracking capabilities in order to comply with IM-3060's recordkeeping requirements. In addition, our firm will need to develop and implement training programs that are reasonably designed to ensure compliance with the proposal, at substantial cost, although we believe our clients will experience little if any benefit.

Although the NASD has attempted to limit the impact of IM-3060 on firms that engage in a minimal amount of business entertainment by establishing an exemption for members whose business entertainment expenses in the course of its fiscal year are below \$7,500, this threshold is too low. With a firm that has in excess of 1,000 advisors, it is not reasonable in our view to suggest that if only 15% of them entertained a single "customer", as that term is currently defined in the rule, with a \$50 dinner, such activity could be "reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with...the best interests of the customer..."¹

However, if the NASD and SEC insist on proceeding with this proposal, we would recommend that IM-3060 be amended to define the term "customer" to only refer to institutional clients as defined in NASD Conduct Rule 3110(c)(4). Such an amendment would serve to sufficiently address the nature of conduct that is the subject of IM-3060 without inadvertently and unnecessarily causing independent firms like ours, or other small retail firms, to incur a significant burden and expense. The proposal is designed to address activity that is unlikely to occur at our firm, given that our typical retail client and account size do not create the incentives to engage in the type or level of business entertainment that is the subject of the proposal.

2. Definition of "Customer Representative" is Overly Broad

IM-3060 defines a customer representative as "a person who is an employee, officer, director, or agent of a customer..."² This definition is far too broad as it encompasses employees and agents of a customer who have no decision making authority or control over the customer's securities business or account with the broker-dealer. While it is clear that officers and directors are likely to possess the necessary authority to determine with whom their employer does business, employees and agents are less likely to do so. If the Proposal is intended to prohibit business entertainment that would be reasonably judged to have the likely effect of causing the customer representative to act in a manner that is inconsistent with the best interests of the customer, it should be limited to those persons who have the relevant authority to impact such decisions.

If the NASD and SEC insist on proceeding with this proposal, we recommend that the definition of "customer representative" be modified as follows:

¹ See SEC Release Nos.: 34-55765, File No.: SR-NASD-2006-044 (May 22, 2007).

² See SEC Release Nos.: 34-55765, File No.: SR-NASD-2006-044 (May 22, 2007).

(b) Definitions

For purposes of this interpretation, the following definitions shall apply...

(2) The term “customer representative” means a person who possess decision making authority related to the customer’s investment banking or other securities-related business, such as an employee, officer, partner, director, or managing member of a customer, unless such person is a family member of the customer.

3. Record Keeping Requirments are Overly Burdensome

IM-3060 imposes extensive recordkeeping obligations on member firms, including the requireemnt to keep detailed records for any business expenses incurred in excess of \$50 per day to provide entertainment to any customer rerpresentative. As discussed above, we respectfully disagree that an amount of \$50 in entertainment “would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with...the best interests of the customer...”³ The record keeping obligations created by such a low threshold would be extensive, and in fact overwhelming, and the costs associated with the design, implementation, and administration of this recordkeeping requirement will be considerable.

If the NASD and SEC insist on proceeding with this proposal, we recommend that the the \$50 figure be raised to an amount that could more reasonably be expected to “have the likely effect of causing, such customer representative to act in a manner that is inconsistent with...the best interests of the customer” such as \$250 per day.

Please note that Commonwealth respects the NASD’s concerns about the use of business entertainment to encourage employees to act in a manner inconsistent with their employer’s best interests. We believe that such arrangements should be regulated. However, it is our view that IM-3060 is overly broad, unduly burdensome, and unjustified in light of the substantial anticipated costs and limited benefits of the proposal. We respectfully request that the SEC and NASD amend the proposal as outlined above, or withdraw the proposal and allow member firms to rely on previous staff interpretation that has guided member’s use of business entertainment since 1999 to remain in place.

Thank you for the opportunity to comment on IM-3060. Please feel free to contact me with any questions.

Sincerely,



Paul J. Tolley
Chief Compliance Officer
Commonwealth Financial Network

³ Id.