June 15, 2007

Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street
Washington, DC 20549-9303

Re: File Nos. SR-NASD 2006-044 and SR-NYSE-2006-06; Proposed Amendments to NASD Rule 3060 and Proposed NYSE Rule 350A Relating to Business Entertainment

Dear Ms. Morris,

Lehman Brothers Inc. ("LBI") is pleased to offer its comments in response to the above-referenced rule proposals of the NYSE and NASD ("SROs"). The proposed rules would establish standards for broker-dealers to reasonably prevent excessive or inappropriate entertainment spending that could unduly influence a client to act contrary to the interests of his or her employer or those to whom a fiduciary duty is owed.

Preliminarily, we wish to commend the SROs for their thorough and deliberative approach to rulemaking in this area and for engaging the industry and others in the search for effective compliance controls. LBI has contributed to the comment letter submitted by the Securities Industry and Financial Markets Association (SIFMA) and wishes to express its strong support for the views expressed in that letter. Rather than reiterate the points made in that letter, LBI wishes to emphasize several of the points raised and offer some additional ideas for consideration.

General Comments

We agree with both the NYSE and NASD that the decision to direct business to a particular broker-dealer should be made on the basis of the quality of the brokerage services to be provided. As is the case in most businesses, entertainment provides a context in which broker-dealers can inform clients of the type and quality of service it can provide. Other means used include advertising, direct marketing, solicitation, seminars, conferences, and promotions. Broker-dealers are thus no different from other businesses in seeking to find a forum conducive to highlighting for potential and existing clients the value of the services it is offering. Whichever means are used, the client's representatives bear ultimate responsibility for how to allocate the assets of the company or the fiduciary. Brokers can set limits on what they reasonably believe to be excessive

or inappropriate, as contemplated by this proposal, however employers must be the ones to educate, train and supervise their employees who make decisions on the company's behalf.

Implementation Period

LBI supports a one-year implementation period as fair and reasonable. At large international financial institutions, customers may be served in different capacities by different business units of the firm. Tracking spending on a per-client basis across all of the diverse client relationship management systems used by the different businesses of a firm is a daunting task from a systems development perspective. Many of the systems across a firm differ by design; others may purely be an accident of history, such as the result of business combinations. Still others may have resulted from ad-hoc decision-making by different management over time as well as the availability of new, upgraded, ever-changing technologies. These are simply the historical reasons for suggesting that it would be shortsighted to require firms to undo or retool over so short a time frame the efforts of systems developed over decades.

The effectiveness of such a database is critical to ensuring the quality of other controls a firm has in place. For example, it would be difficult for a supervisor to make an informed judgment as to the appropriateness of a client entertainment event without the benefit of accurate and current information indicating how and to what extent that client has been entertained previously. Getting the database built, populated, tested, and quality-controlled is therefore critical not only to the quality of pre-review processes, but, also to the quality of surveillance and exception reports that will be equally critical to monitoring entertainment spending.

Finally, given the resources required to get such a database built, its utility must be demonstrable beyond the immediate goal that would be served by compliance with SRO entertainment regulations. As you might expect, there are many other constituencies within a broker-dealer – Finance, Anti-money Laundering Compliance, and Business Development Services to name just a few - for whom this database will also be valuable. Thus, the design must take into account their needs and interests as well since it would be inefficient and costly to develop more than one global system to perform essentially the same function. Rushing this important component of the overall compliance solution will not be in the best interests of anyone and, we respectfully request the assistance of the regulators in ensuring that ample time be afforded firms to get it right.

Principles-Based Rulemaking

For broker-dealers, a determination as to the appropriateness and scale of entertainment that may influence a third party's judgment is an inherently subjective exercise. It is unlikely that any two broker-dealers, or any two customers, would come to the same conclusions as to what is appropriate. Moreover, the regulators have already

acknowledged that a single quantitative standard applied across the spectrum of broker-dealer business models would be impracticable. For this reason, LBI supports a principles-based approach requiring each firm to develop, within a prescribed regulatory framework, standards that are considered effective and appropriate for its business model that would be administered via procedures that are transparent and well documented.

While the rule proposals speak to principles-based regulation - and, in fact, specifically acknowledge the benefits of principles-based regulation for business entertainment – there are a few instances in which the "flexible prescriptive elements and guidelines" sought by these rules are actually *more* prescriptive and *less* flexible. For example, by defining "customer" so broadly, the current proposals do not provide firms with the flexibility to make a risk-based determination as to who among their customers are acting as true fiduciaries and are in a position to direct business to the firm. This broad reading threatens firms' ability and efforts to design a principles-based solution on a practical level because it does not permit a dedication of resources in proportion to perceived risk. As a result, thousands of low-frequency, low-dollar entertainment events will be subject to review and recordkeeping processes, adding complexity and size to a firm's compliance burden with little likelihood of uncovering problematic entertaining. It would be more consistent with risk-based principles to permit firms to determine the universe of clients with respect to whom entertainment policies should apply.

The proposed rule language is also too prescriptive in requiring firms to "define forms of business entertainment that are appropriate/inappropriate using quantitative and/or qualitative standards that address the nature and frequency of entertainment provided" including "the type and class of accommodation to be furnished to clients." This language seems to suggest that firms should have outcomes pre-set in policy rather than produced by a process of considered judgment based on the nature of the client, the entertainment, and other guidelines set by the firm. We believe that such language reflects a shortsighted focus on the process to be administered rather than an outcome to be encouraged or avoided as the case may be.

In seeking to follow a principles-based approach to rulemaking, we would hope that regulators avoid the temptation to rely on prescriptive elements for two reasons. First, prescriptive rule elements undercut the risk-based focus of principles-based regulation by pre-ordaining both the universe of risks firms must consider and the processes that they must utilize to address them. In the case of these rule proposals, we have noted our belief that the determination of who is a client ought to be risk-based and left to each firm. Second, it will not be possible to reasonably evaluate the effectiveness of principles-based rulemaking without allowing firms to develop and refine the processes themselves. Principles-based rulemaking is outcome-focused, allowing firms to make the initial risk-based judgments as to how to achieve a desired outcome with regulators and industry groups supplementing firms' efforts with guidance regarding best practices that can adapt to changing circumstances. Firms can also be expected to adapt

their approaches in response to internal and supervisory control testing. Recent regulatory changes instituting formalized testing should give regulators comfort that firms have the means (indeed, the obligation) to test the efficacy of whatever firm-designed controls they have put into place to prevent problematic entertaining. The strong internal control environment that regulators have sought to nourish seems perfectly suited to ensure that the flexibility granted to firms under principles-based entertainment rules is used responsibly.

Supervisory Pre-Review Thresholds

We support the requirement for firms to have supervisory pre-review thresholds, but, we do not believe it is efficient to require pre-review in connection with all individual events. We appreciate that the SROs have already sought to minimize the burden of supervisory pre-review by allowing firms to set their own supervisory review thresholds for per-client spending, however, we believe there is an additional step the SROs could take in order to make the most effective use of pre-review. Since cumulative spending on a particular client is a more revealing data point in developing outcome-based policies, we believe that supervisory pre-approval ought to be allowed to "kick in" once a cumulative threshold of spending on a client is reached. The benefit of this more focused approach would be greater supervisory attention to higher risk entertainment and the removal from supervisory review of isolated, ordinary-course dinner/entertainment outings which are the most common examples but the least probative of potential excessiveness or inappropriateness. Of course, individual events should generally be subject to pre-review if the number of attendees expected to attend or the cost is of a sufficient number.

Conclusion

We appreciate the efforts of the SROs to pursue principles-based regulations for entertainment of clients and believe that the recommended changes will appropriately focus firm attention on outcomes that matter and processes that permit flexible and reasonable judgments. We thank the Commission for the opportunity to present our views. If you have any questions, please contact the undersigned at 212-320-6732.

Very truly yours,

Scott C. Kursman
Senior Vice President
Lehman Brothers Inc.

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner

The Honorable Roel C. Campos, Commissioner
The Honorable Annette L. Nazareth, Commissioner
The Honorable Kathleen L. Casey, Commissioner

Elisse B. Walter, NASD, Senior Executive Vice President
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