

April 18, 2008

Hello David.

Thank you again for meeting with us last week regarding FINRA's proposed business entertainment proposal. We thought the meeting was extremely helpful.

As discussed, attached for your consideration are proposed modifications to FINRA's rule proposal. Our objective was to draw clearer distinctions between institutional and retail clients. In particular, our proposed modifications make it more apparent that the overarching goals of the rule are designed to address abuses relating to entertainment of individuals who (i) are in a fiduciary relationship to an actual or potential institutional client of the member firm, and (ii) have an actual or potential client relationship with the provider of the business entertainment. We believe that these proposed changes will accomplish those goals and help ease some of the administrative and economic burdens on firms. With that said, even with the proposed modifications, the rule will still require significant systems development for many firms, particularly those that have grown through acquisitions or mergers of companies with separate business lines and systems that cannot be integrated quickly or without incurring significant costs. We would hope that to the extent necessary, individual firms may approach FINRA and/or the SEC to discuss systems challenges.

Also please note, that while we believe the rule could be clearer with more extensive changes, we chose instead to make as few suggested changes to the language of the rule as possible at this time. Again, we thank you for your time and look forward to your comments. Please feel free to call me if you have any questions.

Regards,

Amal Aly
Managing Director and
Associate General Counsel
Securities Industry and Financial Markets Association

IM-3060. Business Entertainment

The FINRA Board of Governors is issuing this interpretation concerning the obligations of a member in connection with any business entertainment of a customer representative. This interpretation does not apply to any non-cash compensation that falls within Rule 2820(g) or Rule 2830(1) (i.e., entertainment provided by offerors to associated persons of a member in connection with the sale and distribution of variable contracts or investment company securities). This interpretation does not apply to any member that does not engage in business entertainment. For any member that engages in business entertainment, this interpretation applies only with respect to business entertainment provided to customer representatives. This interpretation does not apply to business entertainment provided to a natural person customer except where the natural person customer is a customer representative of an institutional customer, as defined below, and the member firm employee who provides the business entertainment has an existing or prospective relationship with that institutional customer. This interpretation supersedes any prior interpretive letters or statements of NASD staff regarding business entertainment under Rule 3060.

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(a) General Requirements

No member or person associated with a member shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with:

- (1) the best interests of the customer; or
- (2) the best interests of any person to whom the customer owes a fiduciary duty.

(b) Definitions

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

- (1) The term “customer” means:

(A) an institution that maintains a business relationship with a member via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity; or

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(B) an institution whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with the member by opening an account with the member or by conducting investment banking or other securities-related activity with the member.

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- (2) The term “customer representative” means a person who is an executive, officer, director, or has a fiduciary relationship to a customer, unless such person is a family member of the customer.

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(3) The term “family member” means a person’s parents, grandparents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, and niece or nephew.

(4) The term “institutional customer” means a customer that meets the definition of “institutional account” in Rule 3110(c)(4) and excludes any natural person customer who meets this definition.

(5) The term “institution” excludes a personal or family trust, personal investment company, limited liability partnership, sole proprietorship or similar corporate structure where an individual has control.

(A) The term “business entertainment” means any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose regarding an existing or prospective customer relationship, including business entertainment offered in connection with a charitable event, educational event or business conference, as well as any transportation or lodging related to such activity or event, in which an appropriate associated person of a member accompanies a customer representative.

(B) If a customer representative is not accompanied by an appropriate associated person of the member, any expenses associated with the business entertainment will be considered a gift under Rule 3060 unless exigent circumstances make it impractical for an associated person of the member to attend. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

(C) Anything of value given or provided to a customer representative that does not fall within the definition of “business entertainment” is a gift under Rule 3060.

(D) In valuing business entertainment expenses pursuant to this interpretation, a member’s written policies and procedures must specify the methodology to be used by the member to calculate the value of business entertainment. In general, business entertainment expenses should be valued at the higher of face value or cost to the member.

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(c) Written Policies and Procedures

(1) Each member must have written policies and supervisory procedures that, with respect to business entertainment provided to customer representatives of institutional customers:

(A) define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment; and

(B) impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds.

(2) Each member must have written policies and supervisory procedures that, with respect to business entertainment provided to customer representatives of institutions that are not “institutional customers:”

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- (A) are reasonably designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or undermine the performance of a customer representative’s duty to a customer or any person to whom the customer owes a fiduciary duty;
- (B) require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures; and
- (C) make clear that anything of value given or otherwise provided to a customer representative that does not fall within the definition of “business entertainment” is a gift under Rule 3060.

(3) A member’s written policies and procedures may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are deemed to be primarily educational, charitable, or philanthropic in nature, provided that such standards comply with the requirements of this interpretation and are explicitly addressed in the written policies and procedures.

(d) Recordkeeping

- (1) Each member’s written policies and procedures must require the maintenance of detailed records of business entertainment expenses provided to any customer representative of an institutional customer and must include provisions reasonably designed to prevent associated persons of the member from circumventing the recordkeeping requirements in contravention of the spirit and purpose of this interpretation.
- (2) Each member’s written policies and procedures must require that, upon an institutional customer’s written request, the member will promptly make available to the institutional customer any business entertainment records regarding business entertainment provided to customer representatives of that institutional customer.

(e) Exemption for Members with Business Entertainment Expenses Below \$7,500

A member whose business entertainment expenses in the course of its fiscal year are below \$7,500 shall be subject only to paragraphs (a), (b), and (c)(2) of this interpretation. Each member that relies on this exemption must evidence that its business entertainment expenses are below the \$7,500 threshold.