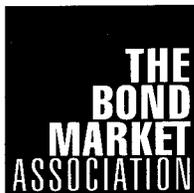


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July 17, 2006



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

Re: File Number SR-NASD-2006-44 - Proposed Rule Change to Adopt  
NASD IM-3060 - Gifts and Business Entertainment Policy

Dear Ms. Morris:

The Bond Market Association (“Association”)<sup>1</sup> appreciates this opportunity to respond to the request for comments on File Number SR-NASD-2006-44 (the “Proposed Rule”) relating to gifts and business entertainment by member firms of the National Association of Securities Dealers, Inc. (“NASD”). The Association supports the Proposed Rule, with some modifications as suggested below. In particular, the Association agrees with the NASD that a “principles-based” approach to the establishment of limits on business entertainment is the appropriate regulatory approach to dealing with this important issue, the management of which is so fact-specific.

The Association agrees that the overriding principle of the NASD’s gift and business entertainment policy should be to prevent an NASD member from using gifts or entertainment to cause an employee or agent of a present or potential customer to act contrary to the best interests of the customer. A “principles-based” approach recognizes that entertainment that would be ordinary for one representative of a customer, in light of relevant circumstances, such as that representative’s seniority or status or the occasion (e.g., the other attendees at a celebratory event), would be inappropriate for another representative of that customer or at a different event. The NASD’s approach allows and requires each member to adopt specific policies and guidelines, consistent with this overriding principle.

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<sup>1</sup> The Bond Market Association, with offices in New York, Washington, D.C. and London, represents securities firms, banks and asset managers that underwrite, invest, trade and sell debt securities and other financial products globally. More information about the Association is available on its website at <http://www.bondmarkets.com>.



As further described below, the Association has a number of comments relating to the details of the Proposed Rule.

I. Aggregate Firm Expenses

The Proposed Rule requires, among other things, that NASD members adopt detailed policies and procedures that define specific types of appropriate business entertainment, including appropriate venues, frequency, class of accommodations and transportation, and set “either the dollar amounts of business entertainment or specified dollar thresholds requiring advance written supervisory approval.” In formulating this requirement, the NASD recognized that a single business entertainment standard for all members “was unworkable and impractical” and, instead, chose to permit each member to create policies “tailored to its business needs” since members are “in the best position to determine appropriate limitations and restrictions on the business entertainment provided by its” employees.

In this regard, the Association would like the NASD to acknowledge that different divisions of a member (e.g., investment banking and trading) may do business with the same persons and, therefore, each division may entertain independently the representatives of that customer. The Association, thus, respectfully requests that the NASD acknowledge that a member’s policies are not required to contain firm-wide hard dollar expense caps (i.e., aggregate amounts with respect to specific customer representatives) above which the member’s employees violate the Proposed Rule. So long as each division is acting reasonably in accordance with its business requirements, each division should be able to pursue its business strategy.<sup>2</sup>

II. Post Event Review

The NASD has not incorporated a commenter’s suggestion to allow for a post-event review mechanism for entertainment expenses that exceed a specified threshold. In this regard, the NASD stated that there is “no effective means of rescinding business entertainment that has already been provided.” Instead, the NASD suggested that an employee concerned about the potential costs of a business entertainment event should obtain prior approval for exceeding the specified threshold.

While business entertainment cannot be rescinded, the Association, nonetheless, asks the NASD to reconsider allowing post-event approval for

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<sup>2</sup> This issue is especially relevant for NASD members that provide investment banking services where the mere fact that the member has entertained the potential customer (i.e., that the customer is considering utilizing investment banking services) may be material non-public information that cannot be legally shared with other divisions of the member.



situations in which a business entertainment event unexpectedly and in good faith exceeds a threshold. For example, a member employee may exceed a threshold during dinner at an otherwise “appropriately” priced restaurant as a result of a customer ordering an expensive bottle of wine (which the employee cannot politely prevent). Accordingly, the Association recommends that the NASD permit post-event approval, subject to the requirement that member firms implement systems to prevent abuse of the post-event approval process.

### III. Definition of Employee

The third comment of the Association relates to the definition of “employee” in the Proposed Rule. The Association feels that in order to make compliance with the recordkeeping aspects of the Proposed Rule manageable, the NASD should clarify that the term “employee” excludes non-professional agents. For example, family members frequently act on behalf of other family members (e.g., a mother acting on behalf of her children). Because, as drafted, the definition of “employee” includes “agents”, a mother would literally fall within the definition of “employee” as to her children, which is clearly not the intended result of the Proposed Rule. More broadly, if family members and other non-professional agents are considered to be acting as representatives of other family members as principals, then it will be impossible to tell who is acting as a principal and who as an agent. The Association does not believe that the Proposed Rule is intended to police these family and similar non-professional relationships. Accordingly, the Association suggests that the NASD clarify the definition by modifying it generally as follows:

The term “employee” means all persons who are employees, officers, directors, agents or representatives of a customer; *provided, however*, such term shall not include any such person acting in a personal, and not a professional, capacity.

### IV. Incorporate Prior NASD Guidance

In July 1999, the NASD published Notice to Members 99-55 (“NTM 99-55”), which addressed questions relating to the NASD Rules 2820 and 2830 compensation arrangements in the distribution of variable products and investment company securities. In answers to questions numbers 16 and 17, the NASD explained, generally, that gifts of a personal nature (e.g., wedding gifts or gifts of a congratulatory nature for the birth of a child) and promotional items of nominal value<sup>3</sup> that display the issuer’s or offeror’s logo (e.g., golf balls, shirts, towels, pens, Lucites or other deal mementos) are outside of the \$100 annual gift

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<sup>3</sup> The Association recommends that the NASD apply the “principles-based” approach set forth in the Proposed Rule to the determination of which gifts are of “nominal” value; requiring each member to establish policies and procedures that define “nominal” value.



limit specified in Rules 2820(g)(4)(A) and 2830(l)(5)(A). The Association has been informed that these exemptions are routinely relied upon by NASD members.

In footnote 3 of the Proposed Rule, the NASD states that the proposed rule change “does not alter our prior guidance in Notice to Members 99-55 that promotional items of nominal value...do not count towards the \$100 gift limit.” The Association requests that the NASD clarify that both the exemptions for promotional items and personal gifts specified in NTM 99-55 will continue to apply after the adoption of the Proposed Rule.<sup>4</sup>

In addition, the Association requests that the Proposed Rule confirm the Association’s understanding that the \$100 gift limit of Rule 3060 (as well as Rules 2820 and 2830) includes only the value of the gift and not any applicable taxes and shipping costs.

#### V. Increase *De Minimis* Threshold Amount

The Proposed Rule seeks to minimize the “burden associated with tracking small expenditures” by establishing a \$50 minimum threshold amount for tracking of business entertainment expenses. In this regard, the Association believes that the proposed tracking threshold amount will still capture numerous minor expenses that are not of a level to influence the recipient. Accordingly, the Association suggests that the tracking threshold amount be increased to \$100.

#### VI. NASD and NYSE Proposals

In addition to the NASD’s Proposed Rule, the New York Stock Exchange (“NYSE”) recently filed SR-NYSE-2006-06 (“NYSE Proposal” and collectively with the Proposed Rule, the “Proposals”) relating to gifts and business entertainment by member firms of the NYSE. While the Proposals are largely similar, there remain a number of differences that will increase the overall costs of complying with these policies and create confusion among firms subject to both policies.<sup>5</sup> In order to minimize these costs and confusion, the Association suggests that the Proposed Rule (and the NYSE Proposal) specify that each firm is subject exclusively to the gift and business entertainment rules and oversight of

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<sup>4</sup> In Item 3 of the Proposed Rule, the NASD states more generally that the Proposed Rule does “not supersede any guidance provided under other NASD rules” to which footnote 6 specifically references Notice to Members 99-55 as such prior guidance.

<sup>5</sup> These differences include: 1) the NYSE Proposal’s requirement that members provide notice to customers that upon written request customers may obtain the business entertainment information applicable to it; and 2) the Information Memorandum that the NYSE has stated it intends to publish in conjunction with its final rule that will provide a list of factors that members must consider in formulating criteria to evaluate the propriety of business entertainment.

its Designated Examining Authority<sup>6</sup>. This will avoid dual member firms becoming subject to double regulation that is inconsistent.



In conclusion, the Association supports the “principles-based” approach set forth in the Proposed Rule as an appropriate manner for dealing with the issue of business entertainment, but very much hopes that the NASD will make the modifications to the Proposed Rule suggested in this letter. We look forward to discussing these issues further with the staff of the SEC and appreciate your attention to our comments. Please contact the undersigned at (646) 637-9218 or via email at [lhotchkiss@bondmarkets.com](mailto:lhotchkiss@bondmarkets.com) with any questions that you might have.

Sincerely,

Lynnette K. Hotchkiss  
Senior Vice President  
and Associate General Counsel

cc: U.S. Securities and Exchange Commission  
Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Kathleen L. Casey  
Commissioner Annette L. Nazareth  
Robert L.D. Colby, Acting Director, Division of Market Regulation

New York Stock Exchange  
Richard Bernard, Executive Vice President and General Counsel  
Richard G. Ketchum, Chief Regulatory Officer  
Grace Vogel, Executive Vice President

National Association of Securities Dealers, Inc.  
Mary L. Schapiro, Vice Chairman and President, Regulatory Policy & Oversight  
Marc Menchel, General Counsel  
Sharon Zackula, Associate General Counsel  
Stephen Luparello, Executive Vice President  
Malcolm Northam, Director of Fixed Income Securities Examinations

Municipal Securities Rulemaking Board  
Christopher A. Taylor, Executive Director  
Diane G. Klinke, General Counsel

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<sup>6</sup> In the case of municipal securities, the gift and business entertainment rules of the Municipal Securities Rulemaking Board would apply.