



June 11, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**VIA ELECTRONIC FILING AND  
FIRST CLASS MAIL**

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

Dear Ms. Morris:

Bank of America Corporation (“Bank of America”), its affiliates and subsidiaries, appreciate the opportunity to comment on the above-referenced rule filings (the “Proposals”) by the New York Stock Exchange Regulation, Inc. (“NYSE”) and National Association of Securities Dealers, Inc. (“NASD”) (together, the “SROs”), which would adopt new rules and interpretive guidance governing business entertainment practices by member firms and their associated persons. Bank of America’s affiliates and subsidiaries include registered broker-dealers that provide a full range of investment banking, and securities products and services to their clients. Bank of America, with almost \$1.5 trillion in total assets, is one of the world's largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. Bank of America provides unmatched convenience in the United States, serving more than 55 million consumer and small business relationships with more than 5,700 retail banking offices, nearly 17,000 ATMs and award-winning online banking with more than 20 million active users.

We commend the SROs for their considerable effort in developing uniform business entertainment rules and interpretive guidance for broker-dealers. We also thank the SROs for their continued dialogue with representatives from the industry so as to craft rule proposals that are workable and address varied business models.

**I. Bank of America Supports the Proposals**

We strongly support the Proposals’ flexible approach to rulemaking which allows each firm to develop, within a prescribed regulatory framework, appropriate, firm-specific policies and procedures tailored to its individual business model. The Proposals are generally reasonable and achieve the stated regulatory objective of curtailing potentially inappropriate business entertainment practices that could give rise to conflicts of interest by fiduciaries of client accounts. Bank of America therefore generally supports the Proposals and offers comments and recommendations herein that are





intended to clarify the Proposals and to enable broker-dealers adequate time to design and implement systems and controls to comply. Bank of America's detailed comments follow below.

### **II. Implementation Period**

As a general matter, firms have policies and procedures in place relating to business gifts and entertainment, and should be prepared to update their written procedures to include appropriate entertainment standards across their varied business units within a reasonable amount of time. Many firms also have systems for firm-related gift, travel and entertainment expenses. Often however, these procedures and systems do not track business expenses in the manner set forth in the Proposals (i.e., expenditures aggregated by individual customer representative across different business lines, which may have different entertainment expense policies). In addition, existing vendor programs do not track the exact requirements of the Proposals, or follow the varied business model(s) of different firms (or different business units within firms). These vendor solutions would also likely take extended periods of time to develop, customize and implement. As a result, we understand that many firms have been working diligently to design system requirements and review internal and external applications in anticipation of the final rules. Based upon the substantial time and effort already spent on preparation, and due to the complexity of systems design and integration processes that would be needed to gather and aggregate business expenses as set forth in the Proposals, we strongly believe that a six-month implementation period is unworkable.

Moreover, many key terms (e.g., definition of "customer representative") and the final amendments to NYSE Rule 350 regarding gifts and gratuities (the "Gift Rule Amendments"),<sup>1</sup> which are critical to systems programming have yet to be finalized. While working on the design specifications for proposed systems, a number of firms had determined that it was essential for the smooth functioning of their process and system to include the expected Gift Rule Amendments in their designs. For example, many firms determined that requiring two separate systems – one each for entertainment and gifts, would be cumbersome and unworkable. As a result, both requirements are often included in the firms' system design. However, these firms have not – and could not until both rule proposals were finalized – commenced full systems programming, testing and training. Moreover, as noted in the NYSE Proposal, it is anticipated that there will be additional interpretive guidance provided via Information Memo after the final rules are approved. If the SROs decide to keep the six month implementation period, only a portion of the Proposals' requirements would likely be included in these systems, resulting in manual processes and a high risk of non-compliance. We recommend that the SROs provide for a minimum of nine full months from the later date of approval of the Proposals or the Gift Rule Amendments.

---

<sup>1</sup> See, SR-NYSE-2004-60 (Relating to Proposed Amendments to Exchange Rule 350).



In addition, we recommend that the SROs take into consideration that most financial institutions have an approximately month-long systems implementation moratorium that is usually scheduled in the months of December and/or January each year. During this moratorium, no change activity can be moved into the systems production environment. Depending on the date of the Proposals' approval, a six-month implementation requirement would most likely fall within this moratorium period. As a result, no changes could be made to the system design and it would prevent many firms from moving any system solution to production until after the moratorium ends. To complicate matters, if the Gift Rule Amendments are approved after the entertainment Proposals, any changes to the system design, as a result of changes to the NYSE Gift Rule, could not be made during this period, thereby likely preventing a cohesive implementation.

Therefore, we recommend that the requested nine month minimum implementation period start with the later of the approval of the entertainment Proposals, or the expected Gift Rule Amendments. Also, if any said implementation period ends within the months of December or January, we recommend that the implementation period be extended to the end of the first quarter to account for the various firms' systems moratoriums.

### **III. Post-Entertainment Review**

We also request that the SROs re-evaluate permitting the review of business entertainment expenses that exceed firms' specific thresholds after the business entertainment has occurred. The Proposals suggest that an employee concerned about the potential costs of a scheduled business entertainment should prepare by obtaining prior approval to exceed the firms' specific thresholds. We recommend that firms should be able to allow for post-event approval for situations in which business entertainment unexpectedly exceeds a specific threshold. For example, a broker-dealer employee may exceed a threshold during dinner at an otherwise normally priced restaurant as a result of a client ordering an expensive meal, beverage, etc. In this situation it would be inappropriate and impolite (and possibly offensive to the client, who may have personal reasons for making the selection) for the employee to decline. In such a situation, we believe a reasonably designed procedure would permit the employee's supervisor to review, and if appropriate approve, the business entertainment expenses. Accordingly, we urge the SROs to permit post-entertainment approval, provided that firms also have policies and procedures reasonably designed to prevent abuse of the post-entertainment approval process.

Bank of America appreciates the opportunity to provide comments in response to the SRO's rule filings governing member firm business entertainment practices. We commend the SROs for their considerable efforts with regard to these important proposals and thank them in advance for their continued willingness to work in developing flexible rules and guidance that address potential conflicts of interest without interfering with legitimate business practices and client development.



## Global Compliance & Operational Risk

---

In addition, Bank of America would like to voice our agreement and full support for the points raised in the Securities Industry and Financial Markets Association's ("SIFMA") and Investment Company Institute's ("ICI"), comment letters on the Proposals. If you have any questions or require further information, please contact the undersigned.

Sincerely,

Douglas G. Preston  
Senior Vice President  
Regulatory Affairs

cc: Erik R. Sirri, SEC, Director, Division of Market Regulation  
Mary L. Schapiro, NASD, Chairman & CEO  
Elisse B. Walter, NASD, Senior Executive Vice President  
Marc Menchel, NASD Executive Vice President and General Counsel  
Richard G. Ketchum, NYSE Regulation, Chief Regulatory Officer  
Grace B. Vogel, NYSE Regulation, Executive Vice President

