

**COMMENTS ON MSRB PROPOSED RULE CHANGE RELATING TO MSRB
RULE G-20, ON GIFTS AND GRATUITIES SUBMITTED BY ROBERT J.
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These comments are submitted on behalf of a broker-dealer registered with the MSRB who is a member of the NASD.

We believe that adoption of any changes to Rule G-20 is premature for the following reasons:

1. As indicated in numerous articles in The Wall Street Journal (and presumably other national media) over the last several months, the NASD and other regulators are deeply immersed in the question of appropriate rules and standards for gifts stemming from questions raised by a relationship between Fidelity Investments and Jeffries Group, Inc.
2. The New York Stock Exchange (“NYSE”) has a filing pending relating to the gift issue which differs radically in concept from the MSRB proposal, the MSRB current rule or the NASD current rule.
3. The status of the NASD current rule and interpretation is less than clear.

We agree wholeheartedly with the MSRB that the regulation of gifts and gratuities ought to be consistent across those regulators governing the conduct of broker-dealers. The proposed changes by the MSRB relating to entertainment would not accomplish this goal at this time, much less for the future.

If The Wall Street Journal is to be believed, particularly in the issue of June 30, 2005, “Wall Street regulators are trying to define when business entertainment becomes lavish. No decisions have been made.” Possible changes mentioned range from banning all entertainment to setting certain dollar standards, above which internal approval must be obtained. Both the current rules and proposed MSRB changes are radically different in that they set dollar limits with no flexibility. In our view, such dollar limits (\$100 per recipient per year) are grossly outdated and unworkable.

The MSRB, in its notice, references the pending NYSE filing (MSRB footnote 3) and states that it “has agreed to consider filing further amendments to Rule G-20 or other rules, as necessary, to make its rules on gifts and gratuities consistent with future rule changes made by other self-regulatory organizations (SROs) overseen by the Commission.” We agree that consistency ought to be the paramount objective. The NYSE filing is radically different from the MSRB proposal or the current MSRB and NASD rules. Specifically, while dealing with the issue of entertainment and hosting, it proposes a regulatory apparatus which gives flexibility to member firms to develop policies and internal approvals for gifts or gratuities over \$100. That type of system makes far more sense than anything currently in force by the MSRB or NASD or proposed by the MSRB

The MSRB states in its filing that “the proposed amendments are intended to more fully conform Rule G-20 to NASD requirements relating to gifts and gratuities.” With all due respect, we believe that the NASD has adopted a procedure which totally disregards its regulatory obligations. The language of NASD Rule 3060 and current MSRB Rule G-20 is harmonious. The NASD issued a private letter interpretation in 1999 with regard to entertainment hosting and made no attempt to amend its rule by appropriate procedures or to even make its members aware of its interpretation by notice or otherwise. Whatever the merits of requiring hosting, a private interpretation should not be considered the language of an NASD rule for the purpose of the MSRB’s changing its specific language for so-called conformity’s sake. On the merits, the NYSE flexible approach would easily resolve this issue. For example, if a salesperson invited some customers to a baseball game and suddenly became ill, what possible purpose would be served by telling the customers they couldn’t go without the salesperson and having the tickets go to waste? The so-called NASD interpretation and the proposed MSRB amendment would dictate this result while the proposed NYSE system would enable a firm to develop appropriate policies and procedures to deal with such a situation.

Business entertainment is a part of life. Certainly, excesses should be dealt with but rigidity as proposed here is unnecessary and unworkable. Any changes should be deferred pending coordinated review of the whole situation so that true consistency among regulators can be accomplished. And it would help if the NASD would not “interpret” the clear language of a long-standing rule in a less than fully public manner.