May 30, 2014

Via email to: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA's **Regulatory Notice 14-15** Request for Comment
On the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules ("RN 14-15")

Dear Ms. Asquith:

The Investment Program Association ("***IPA***")[1] respectfully submits this letter in response to the request for comment by the Financial Industry Regulatory Authority ("***FINRA***") on RN 14-15 (Request for comment regarding the effectiveness and efficiency of FINRA's rules relating to gifts and gratuities and non-cash compensation).

Background

FINRA has issued RN 14-15 in order to conduct a retrospective review of the gifts and gratuities and non-cash compensation rules to assess their effectiveness and efficiency. The IPA is pleased to provide comments that we believe will improve, enhance, and modernize this important rule set.

IPA Position

The IPA applauds FINRA in its continued efforts to keep current with the ever-changing environment in which its rules exist, are obeyed by FINRA members, and enforced by FINRA in routine examination of FINRA members. We believe that there are several areas in which modernization of the rules will facilitate compliance while permitting FINRA members to

[1] Formed in 1985, the IPA provides the direct investment industry with effective national leadership, and today is the leading advocate for the inclusion of direct investments in a diversified investment portfolio. IPA members include direct investment product sponsors, FINRA member broker-dealer firms, and direct investment service providers.

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conduct business in today's environment and, most importantly, protect investors. Topics to be addressed in this letter include:

I. The dollar amount of a gift or gratuity permitted by FINRA Rule 2310(c)(2)(A)[2];

II. Incidental expenses relating to a particular gift or gratuity;

III. The application and examination of non-cash compensation as it relates to entertainment as further described in FINRA Rule 2310(c)(2)(B); and,

IV. The application and examination of non-cash compensation as it relates to training and education as further described in FINRA Rule 2310(c)(2)(C).

V. Additional considerations

Analysis

I. The dollar amount of a gift or gratuity permitted by FINRA Rule 2310(c)(2)(A)

FINRA Rule 2310(c)(2)(A) is subject to a two part test. The first test is that a gift or gratuity must not exceed $100 in value. The second test is that such gift or gratuity must not be predicated on the attainment of a sales target.

While the IPA agrees with the second condition, we believe that the dollar amount should be increased. Appropriate gifts routinely cost significantly more than $100. We believe that an increase from $100 to $200 would be more practical but still embrace the spirit of the rule.

Please note that technically FINRA Rule 2310(c)(2)(A) covers both "true" gifts (wine, flowers etc.) that appear chosen for each person individually and "deal souvenir" items which are generally produced in bulk to distribute in general. In the case of true gifts, the IPA agrees that their value should be included in underwriting compensation. However, we believe that the cost of "deal souvenirs" and "deal toys" marked with at least the issuer's name or logo should not be treated as items of underwriting compensation, but rather as an issuer's cost for promoting the offering – like the cost of "generating advertising and sales materials," which is part of organization and offering expenses under Rule 2310(b)(4)(C)a. Such types of items should not be considered compensatory. Therefore, the IPA proposes that there be an exception adopted in Rule 5110(c)(3)(B)(i) to add to the exemption from underwriting compensation for "expenses customarily borne by an issuer" the "cost of souvenir items marked with the issuer's name or logo (so long as the value of each such item complies with the applicable non-cash compensation rule)." Thus, the compensation exemption would apply to the non-cash rules under Rule 5110 and

[2] It should be noted that all references in this letter related to FINRA Rule 2310 as this rule is that which is most relevant to IPA membership.

2310. Please note that the value would, however, be included in the issuer's organization and offering expenses under Rule 2310(b)(4)(C)a. when paid out of offering proceeds; therefore, it would be consistent to also amend Rule 2310(b)(4)(C)a as follows:

"a. assembling, printing and mailing offering materials, processing subscription agreements, generating advertising and sales materials (including offering souvenir items marked with the issuer's logo or name, so long as such items comply with Rule 2310(c)(2)(A) below);"

II. Incidental expenses relating to a particular gift or gratuity

As part of our comments, and in tandem with comment item *I* above, we respectfully request that any increase in the dollar value of the gift or gratuity discussed above be net of any costs relating to tax, shipping, handling, or other delivery charges. We note that NTM 06-69 already provides for a net calculation, but we suggest that this be reflected in any modifications to the rule set.

III. The application and examination of non-cash compensation as it relates to entertainment as further described in FINRA Rule 2310(c)(2)(B)

FINRA Rule 2310(c)(2)(B) is also a two part test. The first test limits entertainment to "[a]n occasional meal, ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any questions of propriety". The second test is similar to that of FINRA Rule 2310(c)(2)(A) in that such entertainment expense "is not preconditioned on achievement of a sales target".

The IPA fully supports the second test. We respectfully request clarification regarding what is either frequent or extensive vis a vis the types of entertainment described in the rule. Our concern is that, without greater specificity, a FINRA member could run afoul of the rule even if such FINRA member firmly believes that it is clearly following both the letter and spirit of FINRA Rule 2310(c)(2)(B). Our concern stems from what some FINRA members have found to be an unintentional but never the less inconsistent application of FINRA Rule 2310(c)(2)(B).

For example, the "face value" of event tickets can be high, while they are actually of little value to the offeror. Corporate season ticket holders frequently get complimentary tickets that they pass along. Similarly, firms that are frequent supporters of charitable events receive blocks of tickets that carry no additional cost. In both scenarios the face value printed on the tickets is not comparable to the actual price paid by the firm for the tickets.

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IV. The application and examination of non-cash compensation as it relates to training and education as further described in FINRA Rule 2310(c)(2)(C)

FINRA Rule 2310(C)(2)(C) permits "[p]ayment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member". This rule is subject to several conditions, including:

(i) Such associated "persons must obtain the member's prior approval to attend a meeting" and that such attendance is not predicated by the member on the achievement of a sales target;

(ii) The location must be appropriate to the purpose of the meeting;

(iii) The payment or reimbursement is not applied to the expenses of guests of the associated person; and,

(iv) The payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target.

As to the requirement that approval or receipt of funds must not be predicated on the achievement of any sales target, the IPA agrees with the rationale behind this overarching theme. Our concern is again one of clarity and consistency. The lack of clarity has created inconsistencies in the application of the rule. For compliance officers seeking to develop best practice procedures, the resulting inconsistencies have caused significant uncertainty and made it difficult for compliance officers to develop best practices.

For example, the appropriateness of a meeting location is an elusive standard to meet. Many times an appearance of opulence can be offset by competitive pricing or an exotic location can be priced to attract business conferences. There is no clear guidance regarding the "appropriateness" of these choices.

It should be noted that the costs associated with redrafting written supervisory procedures, retraining personnel, and implementing structural changes, could be reduced by providing clarity and consistency.

VI. Additional Considerations

As an alternative to the methodologies described above, we agree with the Securities and Financial Markets Association ("SIFMA") in its letter to FINRA dated May 23, 2014 (the "SIFMA Letter"), that FINRA could apply a principles-based approach to both gifts and entertainment as already applied to entertainment under FINRA Rules 2310(c), 2320(g)(4), and 5110(h). This approach would alleviate the need for a specific dollar amount limitation on gifts and entertainment as described above and could help provide clear guidance regarding the

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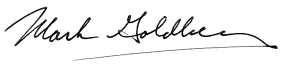
delineation between "gifts" and "entertainment". (See SIFMA Letter, Page. 13, Section III.A.) We also agree with SIFMA in requesting that FINRA not apply the current $100 limit for gifts applicable to hospitalizations and bereavements. (See SIFMA Letter, Page 14, Section III.A.)

We also believe that a principles based approach is a reasonable alternative regarding the subject rule set regarding food and travel as well as "lunch and learn" educational seminars relating to both the location of the product wholesaler or member firm if the purpose of the event is for educational and training purposes. (See SIFMA Letter, Page 15-16, Section III.B.) It should be noted that this is an area in which FAQ's could help provide clarity as circumstances and rule developments require. See SIFMA Letter, Page 15, Section III.C.)

Conclusion

Our comments are intended to help modernize and make more useful the rule set for which FINRA seeks comment. Further, we applaud FINRA for taking this proactive approach in order to make the rules more clear, appropriate and consistent. As always, we would like to express our willingness to participate in further discussions. We believe FINRA and its members must work together to ensure both a level playing field for the formation of capital and to protect investors. We welcome the opportunity to work together to accomplish these critical missions.

Respectfully submitted:



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