MEMO# 30228

September 9, 2016

ICI Draft Letter on FINRA's Proposed Changes to its Non-Cash Compensation Rules; Comments Requested by September 16th

[30228]

September 9, 2016

TO: BROKER/DEALER ADVISORY COMMITTEE No. 31-16
PRINCIPAL UNDERWRITERS WORKING GROUP RE: ICI DRAFT LETTER ON FINRA'S PROPOSED CHANGES TO ITS NON-CASH COMPENSATION RULES; COMMENTS REQUESTED BY SEPTEMBER 16th

As you may recall, in August, FINRA published a notice seeking comment on amendments it has proposed to its non-cash compensation rules. [1] In response to members' feedback on the proposal, the Institute has prepared the attached draft comment letter, which is briefly summarized below. Comments are due to FINRA by Friday, September 23rd. Accordingly, please provide any comments you have on the Institute's draft to the undersigned by email (tamara@ici.org) no later than the close of business on Friday, September 16th. If you recommend revisions to the letter, please include in your email the language of your recommended revisions.

Summary of the Institute's Draft Comment Letter

The Institute's letter commends FINRA for the thorough review it conducted of its rules relating to gifts, entertainment, and non-cash compensation. Indeed, many of the changes FINRA proposed to its existing rule were recommended by the Institute when we provided comments – both in comment letters and in meetings – to FINRA as part of its retrospective review of its current rule. Accordingly, the Institute supports adoption of the proposed rules. Notwithstanding our support, the Institute recommends that FINRA:

- Move language in proposed Rule 3221, Restrictions on Non-Cash Compensation, relating to "entertainment" to proposed Rule 3222, Business Entertainment, to avoid confusion between the rules applicable to the type of event – i.e., training or entertainment;
- Revise Supplementary Material .06 under Rule 3221 to remove the requirement that training events must "occupy substantially all of the work day" to qualify as a training

event under the proposed rule;
- Revise proposed Rule 3222 to:
  - Add a “reasonableness” standard to the rule;
  - Replace its proposed “quid pro quo” standard with a standard that both addresses the concerns underlying the rule and eliminates the need for FINRA to provide a clear nexus between an event and any quid pro quo. In particular, we recommend that FINRA utilize a standard of “improperly interfering with a member’s suitability obligations under Rule 2111;” and
  - Expressly require that a member’s written policies and procedures under the rule address the entertainment expenses of an associated person’s guests, subject to the same conditions imposed on an associated person’s entertainment expenses.

Each of these recommendations is discussed in more detail in the Institute’s letter. The letter also expresses the Institute’s support for FINRA deleting existing Rule 2341(l)(5) when it adopts the proposed rules.

Tamara K. Salmon
Associate General Counsel

Attachment

endnotes

[1] See Institute Memorandum No. 30127, dated August 12, 2016, which described FINRA’s proposal and included a link to it.