

**MEMO# 30256**

September 22, 2016

## **ICI Files Letter with FINRA on Proposed Changes to Its Non-Cash Compensation Rules**

[30256]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 34-16  
PRINCIPAL UNDERWRITERS WORKING GROUP RE: ICI FILES LETTER WITH FINRA ON  
PROPOSED CHANGES TO ITS NON-CASH COMPENSATION RULES

Earlier this month I circulated the draft of a letter the Institute was planning to file with FINRA on amendments it has proposed to its non-cash compensation rules.[\[1\]](#) As noted in the memo accompanying the draft letter, the Institute's letter supported FINRA's proposal, commended FINRA for the thorough review it conducted of its rules relating to gifts, entertainment, and non-cash compensation, and noted that many of the FINRA's proposed changes had been 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. Notwithstanding our support, the draft letter recommended 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.

In response to members' comments on the draft letter, the letter has been revised to add a recommendation that FINRA revise Rule 3221 to permit the payment of non-cash compensation in connection with educational or training meetings that are not sponsored by an offeror or member (e.g., ICI Conferences) and that are not, therefore, held in the vicinity of a member's location.

Each of the above 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.

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