

MEMO# 28572

December 12, 2014

FINRA Publishes Retrospective Rule Review Report Relating to Its Gifts, Gratuities, and Non-Cash Compensation Rules

[28572]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 58-14
PRINCIPAL UNDERWRITERS WORKING GROUP RE: FINRA PUBLISHES RETROSPECTIVE RULE REVIEW REPORT RELATING TO ITS GIFTS, GRATUITIES, AND NON-CASH COMPENSATION RULES

As you may recall, in April 2014, FINRA published a notice seeking comment on the effectiveness and efficiency of FINRA Rule 2830(I)(5) relating to non-cash compensation arrangements involving investment company securities. [\[1\]](#) In response, and following a call of Institute members to solicit their views, the Institute filed a comment letter with FINRA. [\[2\]](#) The Institute's letter commended FINRA for undertaking its initiative and expressed concerns with provisions in the existing rule relating to: (1) the \$100 limit on nominal gifts (which was last established in 1998); (2) the ambiguities associated with the rule's exception for occasional meals, tickets, and entertainment as a result of the lack of clearly defined standards regarding the implementation of this portion of the rule; and (3) the treatment of "blended" events that include both training and entertainment.

In addition to soliciting written comments, as part of this initiative, [\[3\]](#) FINRA held meetings with interested persons (including the ICI) to discuss commenters' concerns in more detail and conducted an electronic survey relating to issues raised by commenters. All of these activities were conducted during the review's "Assessment Phase." Having completed this phase, FINRA has published a "Retrospective Rule Review Report," which summarizes what they learned during this phase. [\[4\]](#) Now that this phase is complete, FINRA is transitioning to the "Action Phase," during which FINRA staff intends to consider specific rule proposals or other initiatives based on the information they learned during the Assessment Phase.

As noted in the Report, FINRA staff believes "that the rules have largely been effective in meeting their intended investor protection obligations." The staff further believes that the rules, and FINRA's administration of them, could benefit from some updating "and recalibration to better align the investor protection benefits and the economic impacts."

Along these lines, the staff recommends that FINRA consider taking the following actions, on which there was “general agreement among stakeholders”:

- Updating existing FINRA guidance on the rules and addressing issues not covered by prior FINRA notices;
- Consolidating FINRA rules governing gifts and non-cash compensation into a single rule governing both topics;
- Amending the non-cash compensation rules to cover all securities products;
- Increasing the current limits on gifts from \$100 per person per year; including a de minimis threshold below which firms would not have to track gifts given or received; and creating an exception for gifts related to “life events”;
- Creating a single rule governing business entertainment in all contexts, rather than having multiple rules depending upon the products involved; and
- Providing firms and product sponsors with more flexibility regarding the locations of training or education meetings; permitting firms and sponsors to include limited entertainment as part of training or education meetings; and publishing guidance that gives examples of permissible and impermissible training or education meetings.

Of these six action items, the last three are consistent with recommendations made by the Institute to FINRA. We will continue to monitor this initiative as FINRA now proceeds into the “Action Phase.”

Tamara K. Salmon
Senior Associate Counsel

endnotes

[1] See Institute Memorandum No. 28051 (April 21, 2014), which summarized FINRA Notice 14-15 (April 2014) in which FINRA requests comment on the effectiveness and efficiency of its non-cash compensation rules as part of its retrospective rule project.

[2] See Institute [Memorandum](#) No. 28140 (May 23, 2014), which summarized the Institute’s comment letter and included a copy of it as an attachment.

[3] Apparently FINRA received 11 letters in response to its request for comments.

[4] FINRA’s Retrospective Rule Review Report (December 2014) is available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602010.pdf>.