

**MEMO# 21236**

June 13, 2007

# **Institute Letter on NASD and NYSE Proposals Relating to Business Entertainment Expenses**

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 34-07  
EQUITY MARKETS ADVISORY COMMITTEE No. 33-07  
INVESTMENT ADVISER MEMBERS No. 19-07  
COMPLIANCE MEMBERS No. 24-07  
SEC RULES MEMBERS No. 60-07  
SMALL FUNDS MEMBERS No. 40-07 RE: INSTITUTE LETTER ON NASD AND NYSE PROPOSALS  
RELATING TO BUSINESS ENTERTAINMENT EXPENSES

The Institute has filed a comment letter with the SEC on proposed rule changes filed by NASD and the NYSE addressing the business entertainment practices of member firms. [\[1\]](#) The most significant aspects of the comment letter are summarized below and a copy of the letter is attached.

## **Clarify Proposed Requirements Relating to Policies and Procedures**

The letter requests clarification in several areas of the proposed requirements relating to policies and procedures.

- *Specific Dollar Limits on Business Entertainment:* Under the proposals, a member's written policies and procedures must impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds. The letter states that flexibility is necessary in situations where business entertainment expenses unexpectedly exceed a firm's specified dollar threshold and prior approval of such business entertainment cannot reasonably be obtained. The letter recommends that member firms have the ability to conduct, in

limited circumstances, a prompt post-event review of any business entertainment expenses that exceed a firm's specified dollar thresholds.

- *Training and Education of Personnel:* The proposals require that members have written policies and procedures that, among other things, "require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures." To prevent the proposals from sweeping in certain personnel who play a minor and insignificant role in the oversight of business entertainment expenses, the letter recommends that the proposals clarify that personnel whose activities are solely clerical or ministerial do not fall within the meaning of "administer."
- *Recordkeeping Requirements and Effective Date of Proposals:* A member's policies and procedures must include procedures regarding the maintenance of detailed records of business entertainment expenses provided to any customer representative, and the member must make such information promptly available to customers upon request. The letter notes that firms may be required to integrate their business entertainment recordkeeping systems with other numerous internal reporting and compliance systems to accommodate the new recordkeeping requirements. Accordingly, the letter strongly recommends that NASD and the NYSE provide an effective date for the proposals of at least twelve months from the date of Commission approval.

## Conform NASD and NYSE Proposals

In light of the consolidation of the NASD and NYSE member regulation operations into a new, independent self-regulatory organization, the letter urges both organizations to continue to work together to ensure that their respective business entertainment rules (and related guidance), when finalized, are identical to avoid confusion among member firms. In the alternative, the letter recommends that approval of these proposals be reserved until the merger is effective and a single proposal can be considered.

Jane G. Heinrichs  
Associate Counsel

### [Attachment](#)

[1] For a summary of the proposed rule changes, see [Memorandum](#) to Closed-End Investment Company Members No. 28-07, Equity Markets Advisory Committee No. 30-07, Investment Adviser Members No. 15-07, Compliance Members No. 19-07, SEC Rules Members No. 53-07, and Small Funds Members No. 32-07, dated May 25, 2007 [21171].