

MEMO# 21220

June 7, 2007

Draft Comment Letter on NASD and NYSE Business Entertainment Proposals

[21220]

June 7, 2007

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 19-07
COMPLIANCE ADVISORY COMMITTEE No. 10-07
EQUITY MARKETS ADVISORY COMMITTEE No. 31-07
INVESTMENT ADVISERS COMMITTEE No. 12-07
SEC RULES COMMITTEE No. 48-07
SMALL FUNDS COMMITTEE No. 20-07 RE: DRAFT COMMENT LETTER ON NASD AND NYSE
BUSINESS ENTERTAINMENT PROPOSALS

As we previously informed you, [\[1\]](#) the Securities and Exchange Commission has published for comment proposed rule changes filed by NASD and the NYSE addressing member firm business entertainment practices. The Institute has prepared a draft comment letter on the proposals. A copy of the draft letter is attached and the most significant aspects of the letter are summarized below.

Comments are due to the SEC no later than Monday, June 11, 2007. If you have any comments on the Institute's draft letter, please contact the undersigned at 202-371-5410 or by email at jheinrichs@ici.org.

Clarify Proposed Requirements Relating to Policies and Procedures

The draft 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 draft 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 draft 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 draft 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 must make such information promptly available to customers upon request. The draft 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 draft letter strongly recommends that NASD and the NYSE provide an effective date for the proposals of at least twelve months from 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 draft 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 when one proposal can be considered.

Jane G. Heinrichs
Associate Counsel

[Attachment](#)

endnotes

[1] 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].

should not be considered a substitute for, legal advice.