

COMMENT LETTER

June 11, 2007

Institute Letter on NASD and NYSE Proposals Relating to Business Entertainment Expenses (pdf)

June 11, 2007 Nancy M. Morris Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-1090 Re: NASD and NYSE Proposals Relating to Business Entertainment (File Nos. SR-NASD-2006-044 and SR-NYSE-2006-06) Dear Ms. Morris: The Investment Company Institute¹ supports the efforts of NASD² and the NYSE³ to increase guidance relating to member firm business entertainment practices. In general, the proposals' principles-based approach should provide flexibility to address situations that may arise relating to business entertainment. We believe, however, that certain provisions of the proposals require further clarification. Our specific comments follow.

Clarify Proposed Requirements Relating to Policies and Procedures The Institute believes that further guidance is necessary in several areas of the proposed requirements relating to policies and procedures. **Specific Dollar Limits on Business Entertainment** Under the proposals, a member's policies and procedures must impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified 1

The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is included at the end of this letter.

² Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) ("NASD Release"). The proposed rule change was originally published for comment in NASD Notice to Members 06-06 (January 2006). See Letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Barbara Z. Sweeney, Office of the Corporate Secretary, NASD, dated February 23, 2006.

³ Securities Exchange Act Release No. 55766 (May 15, 2007), 72 FR 28534 (May 21, 2007). Nancy M. Morris June 11, 2007 Page 2 of 4

² dollar thresholds. The Institute believes 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 (e.g., a late night business dinner that unexpectedly exceeds a firm's dollar threshold). Without means to address these situations, member firms may choose to set thresholds higher than would otherwise be established to avoid exceeding their specified dollar limits. Such a result would seem counter to the intent and purpose of the proposals. To address these situations, the Institute 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. Such an exception can be patterned on the proposals' "exigent circumstances" exception, which allows, in limited circumstances, a prompt post-event review of situations that make it impractical for an associated person of a member to attend a business entertainment event. A similar exception for situations

where business expenses unexpectedly exceed a firm's specified dollar limits would provide members with needed flexibility while preserving the intent of the proposals. 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." The proposals do not discuss what is meant by the term "administer." To prevent the proposals from sweeping in certain personnel who play a minor and insignificant role in the oversight of business entertainment expenses, we recommend that the proposals clarify that personnel whose activities are solely and exclusively clerical or ministerial do not fall within the meaning of "administer."

⁴ 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. Our members report that, given the considerable changes that are necessary to their current recordkeeping systems to accommodate the new recordkeeping requirements, the proposed effective date of six months from Commission approval of the proposals is insufficient to establish and implement appropriate and effective recordkeeping systems. For example, firms may be required to integrate their business entertainment recordkeeping systems with other numerous internal reporting and compliance systems. To allow firms effectively to establish and implement appropriate tracking and recordkeeping systems, we strongly recommend that

⁴ See, e.g., NASD Membership and Registration Rule 1060 (a)(1), which exempts from NASD registration persons associated with a member whose functions are solely and exclusively clerical or ministerial. Nancy M. Morris June 11, 2007 Page 3 of 4

³ NASD and the NYSE provide an effective date for the proposals of at least twelve months from Commission approval. Conform NASD and NYSE Proposals We commend NASD and the NYSE for working together to develop similar proposals relating to business entertainment expenses.⁵ In light of the consolidation of the NASD and NYSE member regulation operations into a new, independent self-regulatory organization,⁶ we urge 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, approval of these proposals should be reserved until the merger is effective when one proposal can be considered. * * * * *

The Institute appreciates the opportunity to comment on these proposals. If you have any questions about our comments or would like any additional information, please contact me at 202-371- 5410 or Ari Burstein, Senior Counsel, at 202-371-5408. Sincerely, /s/ Jane G. Heinrichs Jane G. Heinrichs Associate Counsel cc: Erik R. Sirri, Director Robert L.D. Colby, Deputy Director Division of Market Regulation Andrew J. Donohue, Director Robert E. Plaze, Associate Director Division of Investment Management

⁵ There are currently two substantive differences between the proposals: (1) the NYSE's proposal would require that members provide notice (e.g., via the member's website, a disclosure document, or other appropriate means) to customers that upon written request customers may obtain detailed information regarding any business entertainment provided to their customer representative(s) and (2) the NYSE intends to publish an Information Memo to be released in conjunction with its final rule that will provide a list of factors that members must consider in formulating criteria to evaluate the propriety of business entertainment. ⁶ See Securities Exchange Act Release No. 55495 (March 20, 2007). Nancy M. Morris June 11, 2007 Page 4 of 4

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About the Investment Company Institute ICI members include 8,781 open-end investment companies (mutual funds), 665 closed-end investment companies, 428 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$10.917 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately

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