

September 2, 2008

BY EMAIL TO: rule-comments@sec.gov.

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2008-027 – Notice of Filing of Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

Dear Ms. Harmon:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced rule filing. At the outset, we note that the rule filing is part of FINRA’s effort to create a consolidated rulebook, and we once again express our strong support for that effort. However, we also note that FINRA has proposed to transfer NASD Rule 3060 into the consolidated FINRA rulebook as new FINRA Rule 3220 without material change. If adopted, the proposal would carry over to the consolidated rulebook the prescriptive requirements of NASD Rule 3060 rather than the type of principles-based approach FINRA has proposed under in connection with business entertainment. Accordingly, we urge FINRA to amend its proposal to incorporate a similar principles-based rule to gifts and gratuities in which firms are permitted to establish their own gift and gratuities policies and limits that are reasonably designed to prohibit gifts and gratuities relating to the business of the employer of the recipient that could influence a recipient's business judgment.

Discussion

Currently, Rule 3060(a) provides that a FINRA member firm may not, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor,

¹ SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington, D.C., and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.” Rule 3060 has proven to be rigid, prescriptive, and burdensome to administer and track. The industry has previously had a number of discussions with FINRA and the NYSE Regulation seeking (i) to increase the dollar limit, (ii) guidance on gifts that were de minimis, did not relate to the business and/or would not improperly influence a recipient’s business judgment, and (iii) a revised rule that was principles-based.

In a separate rule filing, FINRA has proposed to adopt interpretive material under Rule 3060 that would establish a principles-based approach to compliance with Rule 3060 with respect to “business entertainment,” which effectively would be a subset of the “gifts and gratuities” to which Rule 3060 applies.² Under that approach, FINRA member firms would not be subject to a fixed annual dollar amount but instead would be prohibited from providing any “business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with: (1) the best interests of the customer; or (2) the best interests of any person to whom the customer owes a fiduciary duty.” In addition, the business entertainment proposal provides generally that FINRA member firms must establish written policies and supervisory procedures for compliance with the business entertainment requirements.

We have previously provided the Commission with our comments on FINRA’s business entertainment proposal.³ Notwithstanding our comments on certain specific aspects of that proposal, we generally supported the proposal, and commended in particular FINRA’s effort to address business entertainment practices that give rise to potential conflicts of interest without unduly burdening firms through prescriptive “one-size-fits-all” standards.

Those views apply equally to FINRA’s proposal on gifts and gratuities. We urge FINRA to adopt a principles-based approach to gifts and gratuities overall rather than limiting such an approach to the subset of “business entertainment.” As noted above, we think the rule should permit firms to establish their own policies and limits that are reasonably designed to prohibit gifts and gratuities relating to the business of the employer of the recipient that could influence a recipient’s business judgment. In addition, we also support the inclusion of a safe harbor in new Rule 3220, under which a FINRA member firm would be deemed to be in compliance with new Rule 3220, if the

² File No. SR-NASD-2006-44. See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743.

³ See Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Nancy Morris, Secretary, Commission (June 11, 2007).

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aggregate annual amount of gifts and gratuities to any one person did not exceed a de minimis amount, such as \$250.

We believe that adopting a principles-based approach to gifts and gratuities would allow each firm to develop, within a prescribed regulatory framework, appropriate, firm-specific policies and procedures tailored to their individual business models. Just as importantly, we believe that such a principles-based approach would achieve the regulatory objective of curtailing potentially inappropriate gift and gratuities practices without compromising investor protection.

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SIFMA appreciates the opportunity to provide comments on FINRA's proposed new Rule 3220 governing gifts and gratuities. If you have any questions or require further information, please contact Amal Aly, SIFMA Managing Director and Assistant General Counsel at (212) 313-1268.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Amal Aly', with a long, sweeping flourish extending from the end.

Amal Aly
Managing Director and Associate
General Counsel

cc: Marc Menchel, Executive Vice President and General Counsel for Regulation
Grace Vogel, Executive Vice President, Member Regulation