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September 23, 2016

Via E-mail: ***pubcom@finra.org***

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 16-29: Gifts, Gratuities and Non-Cash Compensation Rules – FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA" or the "Firm") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules, set forth in Regulatory Notice 16-29 (the "Proposal").[1]

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.4 trillion in client assets. It employs approximately 15,042 full-service financial advisors in branch offices in all 50 states and 3,900 licensed financial specialists in retail bank branches across the United States.[2] WFA is a non-bank affiliate of Wells Fargo &

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[1] Regulatory Notice 16-29, Gifts, Gratuities and Non-Cash Compensation – FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules (August 2016). https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-29.pdf

[2] Wells Fargo & Company ("Wells Fargo") is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance throughout the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

Company, whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. BACKGROUND

In April of 2014, FINRA launched a retrospective review of its gifts, gratuities and non-cash compensation rules[3] to assess their effectiveness and efficiency, and in December of that year, published a report[4] on its review concluding that while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and economic impacts.

II. CURRENT PROPOSAL

FINRA is proposing amendments to the gifts, gratuities and non-cash compensation rules to: (1) consolidate the rules under a single rule series in the FINRA rulebook; (2) increase the gift limit from $100 to $175 per person per year and include a de minimis threshold below which firms would not have to keep records of gifts given or received; (3) amend the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities; and (4) incorporate existing guidelines and interpretive letters into the rules.[5]

In addition, FINRA is proposing a revised approach to internal sales contests for non-cash compensation such that if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on total production with respect to all securities products; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities.[6]

Further, FINRA is proposing to incorporate into the amended rules a principles-based standard for business entertainment that would require firms to adopt written policies and supervisory procedures for business entertainment.[7]

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[3] FINRA Regulatory Notice 14-15, Retrospective Rule Review – FINRA Requests Comment on the Effectiveness and Efficiency of Its Gifts and Gratuities and Non-Cash Compensation Rules, *available at:* https://www.finra.org/sites/default/files/NoticeDocument/p479811.pdf
[4] FINRA Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation, December 2014. https://www.finra.org/sites/default/files/p602010.pdf
[5] See *supra* note 1, p. 2
[6] *Ibid*.
[7] *Ibid*.

III. DISCUSSION

WFA supports FINRA's objective to better align the investor protection benefits with the potential economic impacts within the Proposal. However, WFA believes additional revisions and clarifications should be added to the Proposal which will aid FINRA in achieving the desired objective, while providing firms a more practical approach for implementation.

A. FINRA Should Raise The Proposed Gift Limit In FINRA Rules 3220 And 3221

FINRA is proposing to increase the gift limit to $175 per person per year (from $100) in FINRA Rule 3220(a) and 3221(b)(1),[8] citing the rate of inflation since it was raised to $100 in 1992 as the primary reason for the increase. WFA supports an increase in the gift limit but believes that a $200 gift limit per person, per year is more practical and would take into account, among other things, the increased cost of goods and any likely inflationary increases in the near future.

B. FINRA Must Reconsider The Requirement That Members Must Aggregate All Gifts To A Particular Recipient

In Supplementary Material .03 of FINRA Rule 3220,[9] FINRA states that members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year.

WFA opposes the aggregation of gifts as currently proposed. Due to the nature and size of the Firm's business, WFA believes it would be extremely difficult to collectively document gifts given across WFA by individual team members to specific recipients. For example, an industry vendor representative may receive gifts from numerous WFA associates. Under the proposal, each gift given to this individual by a WFA associate must be reported; WFA would then be required to aggregate all gifts given to this specific recipient. The amount of resources, technology and training to undertake implementation of this proposal would be significant. Additionally, the difficulties around specifically identifying gift recipients outside of the member firm's organization may prove to be extremely difficult and may result in inaccurate reporting.

Alternatively, WFA proposes a gifting policy which applies individually, for each instance of an exchange between a specific offeror and a specific recipient and does not require the aggregation of all gifts to a single recipient.

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[8] *Ibid*., p. 15
[9] *Ibid*., pp.16, 20

C. The Gifts Rule (FINRA 3220) Should Not Apply To Gifts Received

In the Proposal, FINRA requests comment on the question "should the Gifts Rule apply to gifts received as well as gifts given?"[10] FINRA Rule 3220 (the "Gifts Rule"), which currently "prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of $100 per year to any person where such payment is in relation to the business of the recipient's employer."[11] WFA opposes applying the Gifts Rule to gifts received, as we believe the scope of the Gifts Rule should not be further expanded from the Proposal. Member firms should already have detailed policies and procedures to adequately address the receipt of gifts by team members. Adding further industry regulations, including recordkeeping requirements, is unnecessary and burdensome. Further, it would be difficult for the recipient of a gift to accurately ascertain the particular value of each gift received for purposes of the $175 annual limit. Accordingly, WFA believes there is no regulatory need to expand the Gifts Rule to include gifts received.

D. FINRA Should Provide Guidance On *De Minimis* Gifts

The Proposal contains Supplementary Material[12] which proposes to exclude gifts of a *de minimis* value (below $50) from the limits imposed in the Gifts Rule and from inclusion to the limits for business entertainment in FINRA Rule 3221(b). WFA would appreciate additional clarification on how this exclusion would apply, as it appears to contradict the requirements to aggregate all gifts given as discussed in subsection B, above, as well as contradict the requirements to record all non-cash compensation given or received as discussed in subsection E, below.

For example, would an associated member have to report the receipt of numerous *de minimis* gifts which in total exceed the proposed $175 limit? Further, how would the recipient determine or verify that a gift they receive is of a *de minimis* value and does not require reporting? WFA requests additional guidance from FINRA on the appropriate application of this exclusion.

E. FINRA Must Reconsider The Recordkeeping Requirements In FINRA Rule 3221(c)

FINRA Rule 3221(c) would require a member to retain records of all non-cash compensation provided or received by the member or its associated persons.[13] As discussed in subsection B, above, WFA urges FINRA to reconsider this aspect of the proposal. The costs associated with tracking gifts, business entertainment and non-cash compensation would be overly burdensome. WFA has tens of thousands of brokers and home office team members who interact with numerous vendors and outside business partners. WFA anticipates an extraordinary economic impact to the Firm given the amount of resources WFA will need to expend for technology, recordkeeping and the recruitment and training of

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[10] *Ibid*., p. 10
[11] *Ibid.*, p. 3
[12] *Ibid.*, pp.16, 20
[13] *Ibid.*, p. 19

additional personnel. These unduly burdensome requirements would not be outweighed by the potential benefits of FINRA Rule 3221(c).

IV. CONCLUSION

WFA appreciates the opportunity to respond to FINRA's Proposal. If you would like to discuss this issue further or need additional information, please contact me at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,

Robert J. McCarthy
Director of Regulatory Policy