

Who Doesn't Love A Gift?

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Sometimes gifts and entertainment may be acceptable and appreciated; however, for individuals associated with a regulated entity such as a broker-dealer or investment advisor, gifts, meals, and entertainment may be more problematic and less heartwarming.

While it is one thing to give a box of chocolates during the holiday season or provide a meal in conjunction with a business meeting, it is another to attend a championship sporting event or coveted theater show.

While giving and receiving gifts, meals, and business entertainment play an important role in building business relationships, FINRA has provisions in its rules and regulations prohibiting individuals from giving or receiving a gift or providing entertainment as a reward for any business relationship. The rules seek to avoid conflicts of interest and improprieties that may arise when persons give or receive anything of value. Additionally, with the SEC's recent adoption of Regulation Best Interest, as well as passage of the Massachusetts Fiduciary Rule and other proposed regulations in the federal and states agencies rule-making pipelines, firms should review their policies related to giving and receiving gifts and providing meals and business entertainment to ensure that they are mitigating or eliminating any potential conflicts that these actions may create. Keeping in mind that a gift is anything of value offered to or received from a business partner. Whereas, entertainment is any event, including meals, sporting or social event, which an individual host, participates or attends in such event.

Recently, seemingly in light of the increased focus on conflicts, a large brokerage firm revised its policies and procedures to 1) the limit the acceptance of gifts to promotional items of nominal value (i.e., logoed gifts); 2) permit meals solely in conjunction with a training or educational seminar; and 3) prohibit business entertainment unless the recipient is responsible for the expense.

So, under what circumstances might accepting gifts and entertainment be acceptable? To pre-empt problems, firms should ask the following:

- What is the primary consideration for the gift, meal, or entertainment?
- Is the intent an authentic expression of gratitude?
- Is the gift/entertainment appropriate and reasonable in amount and nature for the occasion?
- Is the gift/entertainment being offered before the anticipated closing of a transaction?
- Does the gift exceed firm or regulatory limits?

It goes without saying that if the aim of giving a gift or providing entertainment is to reward, influence, or create the expectation of a business, then the action would likely be deemed problematic and should be avoided.

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