

FINANCIAL INDUSTRY GIFTS AND ENTERTAINMENT GUIDE

Regulatory Obligations and Rules of Engagement
for the Holidays and Everyday



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ABOUT THIS GUIDE

In western culture, the end-of-year holiday season is often synonymous with the exchange of gifts between family members, friends, business associates, and even between businesses and their clients. Anyone working in the financial services industry must ensure that gifts given to, and received from, clients, other firms, and third-party service providers fall within regulatory parameters.

This guide was designed to help firms and their personnel navigate gifts and entertainment rules without inadvertently triggering compliance violations and potential regulatory scrutiny. Regulatory obligations are not just for the holidays though. This practical guide also applies to everyday in between.

WHAT THE REGULATORS HAVE TO SAY ABOUT GIFTS AND ENTERTAINMENT

One thing all of the regulators have in common is their goal of preserving integrity and public confidence by avoiding real or perceived conflicts of interest. Gift giving cannot be tied in any way to a future obligation of the recipient, or of a financial industry employee or their firm. Similarly, gifts, gratuities, and entertainment should not make the recipient feel a sense of obligation to the person or firm that gave the gift.

» **RIA Firms and Personnel**

For investment advisory firms, there is not a specific SEC rule that addresses gifts and entertainment. Rather, the fiduciary rules advisors must abide by the anti-fraud provisions of the Investment Adviser's Act that regulate gifts, gratuities, and entertainment. That means advisory personnel should not give or accept gifts of an extravagant nature or gifts designed to influence the recipient.

» **FINRA Member Firms and Personnel**

[FINRA Rule 3220](#) (Influencing or Rewarding Employees of Others) caps gifts and gratuities at a flat \$100 per year when the payment is related to the business of the

employer or the recipient. The rule also requires firms to maintain separate records of payments or gratuities. Similarly, FINRA Rules also address non-cash compensation, prohibiting firms and their personnel from accepting gifts, entertainment, or other non-cash compensation related to the sale of financial products. There are exceptions for occasional meals and entertainment as well as gifts valued at \$100 or less. It is important to note that in 2016, FINRA [proposed amendments](#) to these rules that would raise the allowable amount of such gifts and gratuities to \$175. At this time, these proposed rule changes have not yet been approved.

» **Municipal Dealers, Advisors, and Personnel**

MSRB Rule G-20, which applies to regulated dealers, municipal advisors, and their associated persons, prohibits them from giving gifts to, or providing services for, another person when the gift or service is valued at greater than \$100/year, and when the gift or service relates to the recipient's employer's municipal securities activities. The rule does provide an exception for "normal business dealings," including occasional meals or event tickets hosted by the regulated entity or by its associated persons as a deductible business expense under IRS rules and that is not frequent or excessive. There are also certain exceptions for infrequent personal gifts to mark special

occasions, bereavement gifts, promotional gifts, commemorative gifts, and gifts of promotional items valued substantially below \$100.

» **Financial Conduct Authority (FCA)**

The FCA expects firms to document and manage real and perceived conflicts of interest, including potential conflicts associated with gifts, gratuities, and entertainment. [Chapter 10 of the FCA Handbook](#) leaves the analysis and setting of limits largely in firms' hands, requiring that firms implement measures and policies appropriate to organizational size and activities. Firms are expected to consider and assess how gifts or entertainment would enhance the quality of services provided to recipients.

PRACTICAL GUIDANCE FOR FIRMS AND COVERED PERSONNEL

Whether your firm and its personnel are subject to just one set of rules or two multiple regulatory regimes, your gifts and gratuities policies must be designed to help you achieve compliance with all applicable requirements.

Firms should have customized policies and procedures that specifically address gifts, gratuities, and entertainment, as well as the potential conflicts of interest inherent in the process. Some firms choose to ban gifts altogether; others establish pre-clearance rules for gifts and entertainment.

Whatever approach your firm takes, consider incorporating the following elements into your policy:

» **Definitions of what constitutes a "gift" and what is considered entertainment**

The distinction between "gifts," "gratuities," and "entertainment" can be a source of confusion among employees. The reality is that if an employee does not understand the policy, they will not be able to comply with it. Your policy should clearly define when something is a gift or gratuity, and when it

could be considered entertainment. For example, tickets to a concert or basketball game when there is nobody from the company “hosting” the event would be a gift. However, those same tickets given when the recipient will be accompanied by the grantor or other representatives from the firm is entertainment instead.

- » **Definition of “nominal” and “promotional”**
Your policy should also define what “nominal” value means. For many firms, this is the \$100 limit taken from FINRA and MSRB rules. If you’re able to provide specific examples in your policy, employees will be better able to comply with the rules.
- » **Expectations and Requirements for Reporting**
You can expect to be asked to provide your gifts and entertainment logs, and to explain

any discrepancies between the logs and firm policies, when the regulators visit your firm. Therefore, your policy should specify any pre-approval requirements and recording/reporting expectations.

- » **Training**
Finally, as with any type of compliance policy and procedure document will be largely ineffective if employees do not understand the rules and don’t know how to comply with them. Many firms include gifts and entertainment training as part of both initial and annual education for employees, as well as providing periodic communications about the reporting process and requirements.

IS YOUR FIRM EQUIPPED TO MEET ITS REGULATORY REQUIREMENTS?

Tracking gifts and entertainment on paper gift logs or using spreadsheets to manually record the giving or receipt of non-cash compensation is unlikely to be effective in any firm with more than one employee. In addition to being difficult to track and maintain, manual processes also raise the risk of rule violations – even when employees report everything. For example, if multiple employees within your firm give \$75 gifts to the same recipient, it may be difficult to identify the violation if your firm relies on manual reporting processes.

Using a RegTech solution to automate the pre-approval process can identify such issues before they arise, helping keep your firm in compliance.



ComplySci is a leading provider of technology solutions that help compliance organizations identify, monitor, manage and report on conflicts of interest arising from employee activities, including personal trading, gifts and entertainment, political contributions, outside business affiliations, and other code of ethics violations. Founded in 2003 by early pioneers in the development of automated compliance management solutions, ComplySci is now trusted by over 1,100 customers, including some of the world's largest financial institutions. Compliance Officers rely on ComplySci's scalable and sophisticated platform to stay ahead of risk.

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