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LEARNING OBJECTIVE

Gifts and Entertainment

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Podcast from



Focus 1 Associates

As a rule, a firm has a fiduciary responsibility to make decisions and provide services in the best interest of its clients. This fiduciary responsibility applies to the giving and receiving of gifts and entertainment and, as the holidays are just around the corner, now is the perfect time to review some guidelines and best practices so as not to create any conflicts of interest this holiday season. While there are no specific rules in the Investment Advisers Act of 1940 (“Advisers Act”) regarding receiving and giving gifts and entertainment, there are guidelines and best practices which can help a firm mitigate any potential conflict of interest that may arise through the giving and receiving of gifts and entertainment.

Industry Definitions

While the Advisers Act and related rules do not define these terms, industry best practice defines:

Gift – A gift is usually thought of as a tangible item, for example, a bottle of wine or a mug with your companies’ logo on it. Though, a gift may also be tickets to events, like a basketball game or conference, a meal at a nice restaurant, or a round of golf for the client.

Entertainment – Much like a gift, entertainment would also include tickets to a basketball game, a meal at a nice restaurant, or a round of golf. The key difference between the two is whether the client is accompanied by an employee or representative of the firm or not. If there is a representative of the firm with the client at the event, then that event would be considered entertainment, as the employee or representative is there to entertain the client. If the client is unaccompanied, then that event is considered a gift.

Best Practice and Guidance

Gifts and Entertainment – Guidelines, Best Practices, and Food for Thought

A bottle of wine, a gift card to a restaurant, or a day out on the golf course may seem like an innocuous gift or entertainment to give or receive, but they all have the potential to create a conflict of interest. One way to prevent a potential conflict from arising is to implement policies and procedures surrounding gifts and entertainment. These policies and procedures could include a gifts and entertainment log,

where the firm will log any gift and entertainment given or received, the requirement of employees to gain pre-approval before giving or receiving any gifts, or a limit on the nominal value of a gift that an employee or firm may give or receive. There is no official limit on the nominal value of a gift or entertainment that an investment adviser may give or receive, but generally, \$100 is thought of as the standard. This value is based on [FINRA Rule 3220](#), which limits the nominal value that broker-dealers may give and receive to \$100, but investment advisers may set the limit even higher, if they choose. As always, if your employees have any questions about a certain gift or entertainment they are receiving or giving, stress the importance of consulting with Compliance and your firm's Codes of Ethics or Compliance Manual to determine if a potential conflict of interest may arise.

Rule 17(e)(1) – Acceptance of Gifts or Entertainment by Advisory Personnel

As part of a 2015 [Guidance Update](#) to the Investment Company Act of 1940, the Staff released a document which reminds advisers of the need for policies and procedures to address specific conflicts of interest that could arise when advisory personnel of a fund are given “gifts, favors or other forms of consideration (gifts or entertainment) from persons doing business, or hoping to do business, with the fund.” The document details how the policies and procedures created by the fund's board of directors can mitigate and prevent any potential conflict of interests through the implementation of a pre-clearance policy for gifts and entertainment, to determine whether they are appropriate or not, or an overall ban on the acceptance or giving of gifts and entertainment. For additional context, please click the link [HERE](#) to a blogpost we wrote, titled *Gifts & Entertainment Guidance Update*, which provides more information surrounding the Guidance Update.