

description of the compensation if non-monetary. The Books and Records Release states that:

The term "non-monetary compensation" includes compensation such as sales incentives, gifts, or trips that would be provided to associated persons if certain sales goals were achieved. Such non-monetary compensation should be recorded if directly related to sales. If sales would be counted toward achieving these goals, then a notation of the sales should be made regardless of whether that goal is actually achieved.⁶

Assume the following fact pattern. A broker-dealer with 100 registered representatives, at the end of each year, reviews the sales performance of all of its registered representatives, and sends the five representatives that have generated the most commission revenues for the firm to Hawaii for a week. Under this sales incentive plan, registered representatives do not receive additional credit for earning commissions on any particular product or type of products. The broker-dealer has created a record pursuant to Rule 17a-3(a)(19)(i) for each associated person listing each transaction that contributed to their achievement of this non-monetary compensation because those persons received monetary commissions for each transaction. Would the firm be required under Rule 17a-3(a)(19)(i) to separately note on the record for each associated person the trip to Hawaii as potential compensation?

Answer #8

In this circumstance, a broker-dealer would be in compliance with Rule 17a-3(a)(19)(i) if it created a single record describing the firm's practice of providing an end-of-year non-cash bonus to a certain number of representatives, a description of the non-cash bonus, the criteria used to select which representatives would achieve such a bonus, a list or description of the representatives eligible to receive the bonus, and the names of the registered representatives that received the non-cash bonus.

Question #9

Rule 17a-3(a)(19)(ii) requires that a broker-dealer maintain a record of agreements pertaining to the relationship between each associated person and the broker-dealer, including a summary of each associated person's compensation arrangements such as commission and concession schedules. Some associated persons do not directly participate in securities transactions with customers. One example is an

attorney who is an associated person and is compensated based on a fixed salary and a discretionary bonus determined by the firm's management based on the profits of the firm as a whole. Another example would be a branch manager who does not generally receive sales-related compensation, but does receive a bonus if the branch achieves a certain yearly sales goal (for instance, \$10 million in annual commissions). Must a broker-dealer create the record required under Rule 17a-3(a)(19)(ii) for the attorney or the branch manager based on the compensation schemes described above where they do not directly participate in securities transactions with customers?

Answer #9

Generally, if an associated person is not directly involved with or compensated based on securities transactions with customers, the broker-dealer would not be required to create the record required pursuant to Rule 17a-3(a)(19)(ii). In the example of the attorney who is compensated based on a salary and discretionary yearly bonus based on the profits of the firm as a whole, the broker-dealer would not be required to create the record required under Rule 17a-3(a)(19)(ii). However, in the example of the branch manager that receives a bonus tied to the yearly sales goal for that branch, the broker-dealer would be required to create the Rule 17a-3(a)(19)(ii) record, even though the branch manager is not directly involved in the customer's securities transactions, because the compensation is intended to reward the branch manager for encouraging sales.

Question #10

New Rule 17a-4(e)(6) requires every broker-dealer to preserve each report that a securities regulatory authority has requested or required the broker-dealer to make and furnish to it pursuant to an order or settlement. Under this rule, is a broker-dealer required to preserve documents or other materials delivered to the Commission in response to a Commission subpoena?

Answer #10

Rule 17a-4(e)(6) does not require a broker-dealer to preserve documents or other materials delivered to the Commission in response to a subpoena. However, if those documents are otherwise required to be created and maintained pursuant to Rules 17a-3 and 17a-4, the broker-dealer must preserve them in compliance with those provisions. In addition, we note that a broker-dealer, under other applicable laws or rules, may have an obligation to

preserve such reports, documents or other materials.

Question #11

Rule 17a-3(a)(1) requires that a broker-dealer make and keep current blotters containing, among other things, an itemized daily record of all purchases and sales of securities and all receipts and disbursements of cash. When purchasing a mutual fund, variable annuity, or a direct participation program a broker-dealer's participation in the transaction may be limited to forwarding the customer's completed application and check to the fund. In other purchase transactions, a registered representative may make a recommendation to a customer and assist the customer in completing the purchase application, but the customer may send the application and check to the fund. With relation to sale transactions, the customer may request that the broker-dealer send the sale instruction to the fund on the customer's behalf. Alternatively, the customer may write or call the fund directly and request that the fund sell those shares and the broker-dealer may not be compensated for participating in the sale. In some instances, the purchase of a variable contract would automatically initiate the sale of another variable contract, such as in a 1035 exchange. When must the broker-dealer record these transactions on its purchase and sales blotter?

Answer #11

Under Rule 17a-3(a)(1), a broker-dealer must record all purchases or sales of mutual funds, variable contracts, or direct participation programs. For example, if the broker-dealer forwards an application and check to the fund on behalf of the customer, sends a purchase or sale instruction to the fund (including an instruction resulting in a 1035 exchange), or calls the fund to place an order on behalf of the customer, the transaction must be recorded on the broker-dealer's purchase and sales blotter, regardless of whether the firm received compensation for the transaction. Further, if the broker-dealer forwarded an instruction regarding a 1035 exchange, the firm must record both the relevant sale and purchase transactions on its blotter.

If a customer wrote or talked to the registered representative or if the registered representative helped the customer fill out the subscription agreement but the customer subsequently took that paperwork when departing from the broker-dealer's office, the broker-dealer generally would not be required to record the transaction

⁶ 66 FR 55818, at 55823 (November 2, 2001).