



VIA E-MAIL DELIVERY

August 5, 2005

Ms. Barbara Z. Sweeney
Office of Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1506

Re: NASD Notice to Members 05-40
Sales Contests and Non-Cash Compensation

Dear Ms. Sweeney:

Securian Financial Services, Inc. ("Securian") appreciates the opportunity to provide comments on proposed Rule 2311, which would expand existing prohibitions concerning non-cash compensation paid in connection with the sale and distribution of certain securities to the sale and distribution of all securities or types of securities, and also prohibit all product-specific cash and non-cash "sales contests" as defined by the proposed rule.

Securian is strongly in favor of NASD's efforts to eliminate incentives that create conflicts of interest between securities customers and registered persons within our industry. We therefore support the provisions within the proposed rule that would expand existing prohibitions relating to the payment of non-cash compensation in connection with certain securities (*i.e.*, direct participation programs, variable insurance contracts, investment company securities, and public offerings of securities) to any security or type of security. For reasons described below, however, we believe that other parts of the proposal will unfairly disrupt well-established non-cash compensation practices in many member firms, particularly firms affiliated with insurance companies that issue variable insurance contracts, that are adequately regulated under existing rules and do not present risk of serious conflicts of interest.

Our concerns relate primarily to the provisions of the proposed rule that would prohibit product-specific sales contests. In Notice to Members 05-40, NASD expresses the view that sales contests that favor one security have the potential to create an incentive to engage in

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sales conduct that may not be in the best interest of customers. This "potential" notwithstanding, we are not aware of any serious problems that have developed in connection with product-specific sales contests covered by existing rules (*e.g.*, variable contract sales contests covered by Rule 2820). The types of sales contest limitations already embodied in paragraph (g)(4)(D) of Rule 2820, for example, requiring that non-cash compensation arrangements involving variable contracts be based on the total production of all variable contracts and that the credit received for each variable contract be equally weighted, have provided adequate customer protection since their adoption. In addition, product-specific sales contests involving variable contracts are an important part of the non-cash compensation arrangements of many member firms affiliated with life insurance companies. Eliminating the ability of firms to conduct product-specific sales contests without evidence of a compelling need to do so, would unfairly affect the ability of many firms to structure compensation arrangements appropriate to their businesses.

NASD's proposal to prohibit product-specific sales contests also fails to take into account the other well-established and effective customer protections against conflicts of interest that already exist within the current regulatory framework, including the obligations of member firms and their associated persons to observe just and equitable principles of trade under Rule 2110 and to have reasonable grounds for believing that a recommendation to buy or sell a security is suitable for a customer under Rule 2310 (proposed Rule 2821 would provide additional suitability protections to customers in connection with recommendations to purchase deferred variable annuities). We believe that proper adherence to these rules provides reasonable assurance that concerns relating to potential conflicts of interest, including potential conflicts that may be associated with product-specific sales contests, are adequately addressed. We also believe that the proposal requiring contests be based on the total production for all types of securities would eliminate an important element of flexibility that currently permits a member firm to minimize the importance of, or exclude entirely, certain types of securities in sales contests where the firm believes that such securities may actually create conflicts of interests (*e.g.*, low-priced securities).

The proposal would also eliminate the current exception for non-cash compensation arrangements involving variable contracts between a non-member company and its sales personnel who are also associated persons of an affiliated member (*see*, Rule 2820(g)(4)(D)). For many member firms affiliated with life insurance companies, the participation of a non-member affiliate is an important component of such firms' overall non-cash compensation arrangements, and, for the reasons described above, a prohibition against participation by non-member affiliates in such arrangements would unfairly penalize those firms. We do not believe that the participation of non-member affiliates in these arrangements has resulted in any loss of protection for customers against conflicts of interest under either Rule 2820 or the other rules cited above. Existing rules governing participation by non-member affiliates in such non-cash compensation arrangements, as well as the protections afforded to customers under those rules, appear to have worked well, while also providing member firms with the flexibility to structure non-cash compensation arrangements that are appropriate to their overall business circumstances. Excluding such arrangements is therefore unnecessary, even if NASD proceeds with its separate proposal to prohibit product-specific sales contests.

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For the same reasons, contributions by a non-member company to an unaffiliated member's non-cash compensation arrangements should also continue to be permitted, subject to the same limitations as exist under current rules (see, Rule 2820(g)(4)(E)).

Proposed Rule 2311 also appears to prohibit the inclusion in sales contests of products that are not "securities." Many firms currently include in their sales contests sales of fixed insurance products, and in some cases sales of investment advisory products and services, by their associated persons. Provided these products are subject to the same rules applicable to securities products included in sales contests, we do not believe that the inclusion of non-securities products in sales contests creates any additional conflicts of interest under either existing rules or the current proposal.

In addition, should NASD proceed to prohibit either product-specific sales contests or the participation by a non-member company in a member-affiliate's non-cash compensation arrangement, we would ask that there be a substantial period of time between the adoption of any new rule and its compliance effective date. The scheduling of accommodations and transportation in connection with non-cash compensation arrangements often occurs years in advance of the actual event. Therefore, we would propose that a compliance effective date for any new rule prohibiting these kinds of arrangements become effective at least two years from its date of adoption, in order to allow member firms adequate time to make alternate arrangements that would be in compliance with the new rule.

Thank you for the opportunity to provide comments on this proposed rule and for your consideration.

Sincerely,


Raymond R. Hessling Jr.
Director, Broker-Dealer Compliance