



ATTORNEY & COUNSELOR OF LAW

August 5, 2005

VIA E-MAIL TRANSMITTAL TO PUBCOM@NASD.COM

Re: Sales Contests and Non-Cash Compensation

Gentlemen:

Once again the experts at NASD Regulation, Inc. are attempting to tamper with the free enterprise system by trying to prohibit registered representatives from receiving compensation from all product specific sales contests and to ban non-cash compensation in the sale of all securities.

This is one more attempt to curb human nature in the sales process through a complex set of rules. First, let's set out some simple truths:

1. People don't buy securities; they are sold securities. If people simply bought securities and they were not sold, there would be no need to employ salesmen. Mere order takers would suffice and in this age of the Internet, the order taker could be replaced by an electronic device.
2. If you agree with the premise securities are actually sold by people who receive commissions for such sales, why ban sales contests and forms of non-cash compensation? If a commission is okay, what makes a sales contest not okay? The idea that sales efforts exist in a vacuum, and that a salesman will sell all products with the same verve and gusto defies logic and common sense.
3. Legislating morality, whether by NASD rules or otherwise, does not work. You cannot legislate a perfectly level playing field.
4. Passage of the proposed rule or rules will again drown the industry in recordkeeping minutia and will result in nitpicking violations, which are a continual source of unhappiness with all regulatory schemes.
5. Proper disclosure will solve the problem of the unwary investor. Perhaps every confirmation should include a warning which reads "You have been sold a security. A commission will be paid on

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the sale, and your sales person might win a prize or receive non-cash compensation.”

6. If the warning in paragraph 5 sounds too politically incorrect or too stupid, don't use it, but the best way out of the trap is don't adopt the rule.
7. Life is fraught with hazards. Buying securities is also fraught with hazards. We cannot eliminate all of them. In this case, don't even try.
8. The NASD staff needs to quit assuming investors are fools. They are not. They realize they are being subjected to a sales process, and they accept it, along with its normal accouterments, including sales contests and non-cash compensation.
9. A final word. If the regulatory system isn't broke, don't fix it. In this instance there is no hue and cry to ban sales contests and non-cash compensation, so the system isn't broke, and it doesn't need fixing.

I have been active as a securities attorney for 41 years and have represent hundres of issues of securities. Modern business in America needs fewer regulations, not more. This is a good example of a situation that doesn't need fixing.

Let's give up the pretense that investors are not sold securities. They are sold, everyday, and the investor understands that.

Sincerely,



Richard M. Hewitt

RMH/bw