

February 21, 2006

**Via Electronic Mail (pubcom@nasd.com)**

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

**Hines**

Re: **NASD Notice to Members 06-06**

**Comment In Response to Proposed Interpretive Material IM-3060  
Addressing Gifts and Business Entertainment**

Dear Ms. Sweeney:

This letter is provided in response to the request for comments regarding the proposed interpretive material ("IM") addressing gifts and business entertainment discussed in NASD Notice to Members 06-06.

We applaud and appreciate the effort to issue interpretive material regarding permitted business and entertainment practices, which we think is necessary to alleviate universal uncertainty of what constitutes permissible entertainment as opposed to prohibited non-cash compensation. We respectfully submit, however, that the proposed IM provides no practical guidance to members in this regard.

The proposed IM compels each member to make its own determination as to the level of entertainment and gifts that will likely cause, or could in hindsight "be reasonably judged to have" caused, the recipient to "act in a manner that is inconsistent with the best interests of a customer." In requiring each NASD member to formulate policies and procedures based on the member's speculation as to what form of entertainment or gift might corrupt employees of its customers, the IM lacks concrete direction upon which the members can rely. Thus, rather than providing guidance, the IM's ambiguity perpetuates and even further exacerbates the current environment of *ad hoc* determinations of what constitutes compliant entertainment and gift policies.

Worse than not providing concrete guidance, is the fact that the enactment of vague interpretive material, such as that proposed in NTM 06-06, does nothing to alleviate, and may in fact increase, the current risk that a member will be the victim of a hindsight determination by the NASD of a non-cash compensation violation.

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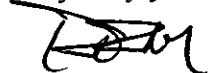
We can conceive of a situation where a recipient of entertainment or a gift has a very low threshold for corruption. Although a policy or procedure would be reasonable as to the vast majority of recipients, a single situation would permit the NASD to second guess the member's policy and bring enforcement proceedings as a result.

Lastly, the approach taken by the NASD in the IM places members that take a conservative approach with respect to entertainment policies at a clear competitive disadvantage to members willing to be more aggressive in the establishment and enforcement of entertainment and gift policies. This is certainly an unintended, but as a practical matter will undoubtedly be a very real, consequence of the proposed IM. Although competitive considerations should have no place in the process of establishing compliant entertainment and gift policies, they are a practical result of such ambiguous guidance.

For these reasons, we urge that the IM not be formally adopted and that the NASD provide explicit direction to the membership so that compliant entertainment and gift policies may be formulated. In this regard, we propose that comments be solicited from the NASD membership, and that from those comments, the NASD establish specific and concrete rules that all members will be required to follow regarding what constitutes appropriate and inappropriate entertainment, including rules respecting venues, nature, frequency, types and class of accommodation and transportation in connection with business entertainment, and dollar amounts of business entertainment or specified dollar thresholds requiring advance supervisory approval. NASD members should not be left in the position of having to continue to guess at their peril as to these matters.

We appreciate the opportunity to provide comment on this issue.

Very truly yours,



Robert F. Muller, Jr.  
President, Hines Real Estate Securities, Inc.

RFM:kam