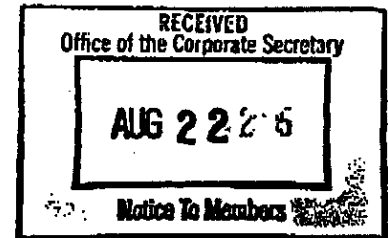


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ProEquities 

August 15, 2005



Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1735 K Street, NW
Washington, DC 20006-1500

Re: Notice to Members 05-40; Proposed Rule
Governing Sales Contests and Non-Cash
Compensation

Dear Ms. Sweeney:

ProEquities, Inc. ("ProEquities" or "the Firm"), a registered broker/dealer firm, wishes to submit these comments on Notice to Members 05-40, which seeks public input on a proposed new rule governing sales contests and non-cash compensation (the "Proposed Rule").

I. Overview

In general, ProEquities agrees with the NASD's concerns about sales contests with respect to proprietary products or to products offered by a particular offeror. Specific concerns about the language of the proposed rule are discussed below. However, the Firm believes that certain "sales contests" regarding specific types of securities should still be permitted, as discussed in more detail below. In addition, and as discussed in more detail below, the Firm strongly recommends that the NASD retain provisions that would permit non-member companies or other members to contribute to certain non-cash arrangements between a member and its associated persons, and would permit contributions by a member to certain non-cash compensation arrangements of a non-member, provided the arrangements satisfied the criteria generally established in proposed Rule 2311 for such non-cash compensation arrangements.

II. Comments on Proposed Rule 2311.

Proposed Rule 2311(a)(2). The Firm suggests deleting the comma after the word "any".

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Proposed Rule 2311(a)(4)(C). The Firm suggests that the phrase "affiliated person" be followed by the phrase "(as defined in Section 2(a)(3) of the Investment Company Act of 1940)" (or such other definition of this term as the NASD may deem appropriate for this purpose).

Proposed Rule 2311(a)(5). The proposed language refers to "a *defined number* of top sellers", while page 4 of NTM 05-40 refers to "a *group* of top sellers"(emphasis supplied). The Rule would be clearer if it specifically stated whether a publicized target of achieving a sales level at a given percentage of the member's registered representative sales force would be permissible. In the Firm's opinion, since most registered representatives know (or could easily determine) how many registered representatives are in a member's sales force, a target of a stated percentage (e.g. the top 10%) could easily have the same effect as a target of a "defined number of top sellers."

The proposed language refers to goals that "associated persons understand in advance." The term "understanding" refers to the associated person's subjective view, and not to the actions that may have led to this "understanding." (For example, an associated person might "understand" that he will receive certain compensation if he is one of the member's top 50 sellers of securities, based on the person's recollection of compensation paid by the member the previous year.) A member can be expected to control its actions, but not necessarily the way those actions are "understood" by associated persons. A better approach would refer to "an arrangement in which associated persons have been advised in advance that they must achieve" certain goals, instead of a rule referring to the associated person's "understanding."

Proposed Rule 2311(a)(6). The term "sales contest" suggests a special, one-time or short-term promotion or program. Furthermore, many members have policies or arrangements that entitle associated persons to increased expense reimbursement, or to eligibility for conferences or meetings, which may not be considered "cash or non-cash prizes" as that term is commonly understood. ProEquities believes that use of a term such as "incentive arrangement" instead of "sales contest" would clarify the intent of the Rule.

The definition of "sales contest" also refers to "cash or non-cash prizes." It is unclear whether the terms "non-cash compensation" and non-cash prizes" are intended to be synonymous, or whether a "non-cash prize" is supposed to be different in some way. In any event, the definition needs to be clarified.

The second sentence of proposed Rule 2311(a)(6) would require the member to keep records of "the names" of the associated persons who participate in a sales contest. Many sales contests are made available to very broad groups of associated persons—for example, any registered representative of the member during a specified time period. The Firm believes the proposed Rule should be clarified to permit the member to record the objective criteria used to determine eligibility for each sales contest, rather than a listing of "names."

Expense Reimbursement. The definition of "cash compensation" (proposed Rule 2311(a)(2)) refers to any "cash prize"; the definition of "non-cash compensation" (proposed Rule 2311(a)(3)) refers to "travel expenses, meal and lodging." It is unclear whether a member's program of reimbursing an associated person for other types of expenses (for example, monthly "service fees", premiums for errors and omissions insurance coverage, or fees for software or computer support) would be cash compensation or non-cash compensation under the Rule as currently drafted. The Firm believes this issue should be clarified in the final Rule.

Securities. Since the proposed Rule now refers to "securities" (instead of specific types of securities, such as variable contracts and investment company securities), ProEquities recommends adding a definition of "security" to proposed Rule 2311(a) (perhaps by reference to Section 3(a) of the Securities Exchange Act of 1934).

Proposed Rule 2311(b). Proposed Rule 2311(b) would generally prohibit any "sales contest" that offered "cash or non-cash prizes." This prohibition would apply to (a) sales contests involving only a particular security (such as a particular stock, variable annuity, or mutual fund), (b) sales contests involving only all securities offered by a particular offeror (such as all variable annuities and variable insurance products offered by a particular insurance company), and (c) sales contests involving only a limited number of types of securities (such as only mutual funds, or only variable annuities and variable insurance products). ProEquities agrees that a small minority of associated persons might be unduly influenced by the types of sales contests described in items (a) and (b) of the previous sentence, and therefore does not object to adoption of these prohibitions. ProEquities also believes it is appropriate to permit a sales contest (for cash or non-cash compensation) that is based on total production of all securities. However, the Firm believes that the prohibition described in item (c) above is too broad and not in the interests of the investing public or the securities business, and urges the SEC to revise it as discussed below.

First, the Firm does not oppose prohibition of sales contests for cash compensation, when the sales contest involves only one type of security (or a limited number of types of securities) and involves payment of cash compensation. However, the Firm does not believe that it is necessary or appropriate to prohibit such sales contests when only non-cash compensation is involved. In the Firm's opinion, there is no evidence that such contests have resulted in abusive sales practices. ProEquities believes that any concerns regarding these programs can be addressed by application of the usual suitability rules. Furthermore, the Firm believes that such a prohibition would severely restrict the ability of members to appropriately reward and recognize successful registered representatives. The Firm does not believe that a non-cash prize of a limited value (perhaps no more than 3% of a registered representative's total production) would motivate improper conduct.

On page 5 of NTM 05-40, the NASD expresses its concerns about "stock of the day" promotions. ProEquities does not conduct this kind of promotion and believes that the current "equal weighting" standards would apply to such promotions in any event.

The NASD also expressed its concerns about "President's Club" memberships. This term of art can be used to describe anything from a mere list of top producers to a program that provides a wide range of varying amounts of cash or non-cash benefits. If the NASD wishes to ban or restrict "President's Clubs" or similar memberships, the Firm requests the NASD to describe, in more detail, the kinds of benefits and features with which it is concerned and the treatment of these benefits and features under the final rule.

Proposed Rule 2311(b)(3)(C). Proposed Rule 2311(b)(3)(C) would impose three new restrictions on the location of training or education meetings: (1) all meetings would have to be within the United States; (2) a regional location would be appropriate "with respect to meetings of associated persons who work within that region"; and (3) meetings dealing with real estate investment trusts or direct participation programs (collectively, "alternative investments") could be held "in a United States location at which a significant asset of the program is located." For the reasons discussed below, ProEquities believes that these provisions need to be eliminated or clarified.

First, the Firm agrees with retention of the requirement that the meeting location be "appropriate", and with retention of the provisions stating that an "office of the offeror or the member holding the meeting" or "a facility located in the vicinity of such office" meets this requirement. Since the meeting location has to be "appropriate", the Firm believes there is no reason to restrict meeting locations to the United States. Many member firms and offerors have foreign offices, and there is no compelling reason to prohibit meetings in these locations if the site is otherwise appropriate. (For example, the Firm believes that a meeting of associated persons at the headquarters of a member firm (or its parent company) outside of the United States would generally be appropriate, since the associated persons could easily interact with Compliance, Marketing, Executive and other departments of the member.) Similarly, the Firm believes there is no reason to restrict meetings at regional locations to meetings of associated persons within the region.

The Firm believes that proposed Rule 2311(b)(3)(C) is intended to permit meetings dealing with alternative investments at any location at which a significant asset of an alternative investment is located, even if the location is not in the vicinity of an office of the member or offeror (or a regional office of the member). As written, however, the proposed Rule could be construed to mean that meetings dealing with alternative investments could *only* be held at a location at which a significant asset of an alternative investment is located. There is no reason for such a restriction, and the Firm recommends that proposed Rule 2311(b)(3)(C) be rewritten to clarify this point.

Certain Non-Cash Compensation Arrangements. As noted at page 6 of NTM 05-40, proposed Rule 2311 would eliminate a current provision that permits non-member companies or other members to contribute to a non-cash arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided the arrangement meets specified requirements. The Firm believes that this provision needs to be retained, with modifications to reflect the proposed ban on product-specific sales contests (if such a ban is adopted in the final rule).

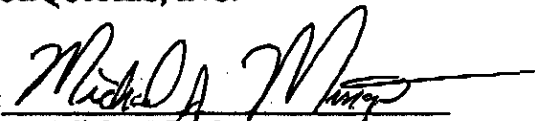
Members, offerors (including, for member firms such as ProEquities, insurance company or investment company affiliates), and other non-members (such as banks whose registered representatives are affiliated with a member) currently rely on these exemptions to facilitate training and educational meetings that might not qualify for exemption under proposed Rule 2311(b)(3). These meetings generally offer associated persons with essential training, educational, and networking opportunities, and are important recruiting and retention tools for members. ProEquities believes that the public interest is best served by permitting members and non-members to participate in these non-cash compensation arrangements. The Firm believes that the current requirements in Rule 2830(I)(5(D) and (E) (and the comparable requirements for products other than investment company securities), including the total production for the type of security in question, and the equal weighting requirement, should be retained. If the NASD decides to prohibit sales contests based on product types, these non-cash compensation arrangements should still be allowed, as modified to reflect this new restriction.

III. Conclusion

ProEquities appreciates this opportunity to comment on the Proposed Rule. If you wish to discuss the Proposed Rule, this letter, or any thoughts, comments, questions or suggestions that you may have, please call me at (205)268-5144.

Very truly yours,

PROEQUITIES, INC.

By: 
 Michael J. Mungenast
 President

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