



# 1st GLOBAL

*The business development partner to leading wealth management firms*

August 5, 2005

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8150 N. CENTRAL EXPWY.

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

SUITE NO. 500

Re: Comments to NTM 05-40

DALLAS, TEXAS 75206

Dear Ms. Sweeney:

1st Global is pleased to respond to the request for comments on Notice to Members 05-40, which proposes amendments to the rules governing sales contests ("Proposal").

1-800-959-8440

1st Global Capital Corp. ("1st Global") is a fully disclosed retail broker-dealer registered to conduct business in all domestic jurisdictions, with over 1200 Registered Representatives offering securities services through nearly 600 branch and non-branch locations.

PH: (214) 265-1201

As the Chief Executive Officer of 1st Global, I appreciate the opportunity to submit comments on the issues raised in the above captioned proposed rule change by the NASD. 1st Global does not support the proposal as drafted. 1st Global believes that two provisions within the current non-cash compensation rules need to be retained. Without these two provisions, the proposal would not achieve its objective without resulting in significant negative unintended consequences. The first essential provision focuses exclusively on non-cash compensation arrangements between a member firm and its associated persons. The second focuses on handling contributions to a non-cash arrangement by non-affiliated, non-members to a member or vice versa.

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*A. Provision focused exclusively on non-cash compensation arrangements between member firm and its associated persons*

Many independent contractor broker-dealers offer any number of programs during the course of the year that provide important training and educational opportunities not otherwise available for independent contractor representatives. These education programs often include an incentive component in that they reward higher-producing registered representatives by paying all or a portion of the costs of attending the program. In other circumstances, firms hold educational programs for their top producing registered representatives (who usually account for the vast majority of total sales). Because there are incentive aspects to attendance at these programs<sup>1</sup>, they would appear to be prohibited under the proposal.

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<sup>1</sup> Qualifications for these events usually have a dollar dominated total production goal or a goal of finishing within a defined number of top producers taken into account total production.

These educational programs represent important opportunities to offer independent contractor representatives education and training on products, operations, technology, regulatory issues and other topics important to the conduct of their business. In addition, the programs provide these individuals with opportunities to network and exchange ideas. If forced to pay for such programs with their own funds, representatives would be denied the benefits of these valuable programs. .

We believe the NASD should add the following to section (b) of its proposal before adopting the rule.

*(4) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:*

*(A) the member's or non-member's non-cash compensation arrangement is based on the total production of associated persons with respect to all securities distributed by the member;*

*(B) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and*

*(C) the record keeping requirement in paragraph (3)(A) is satisfied.*

This provision will allow member firms to offer programs to their associated persons that include some incentive elements so long as those elements are based on total production rather than any quota based on a specific product or product category. The suggested language would also not subject member firms to the same restrictions that offerors are subject to when conducting programs in compliance with section (b)(3). For example, a member firm would not be (1) prohibited from pre-setting qualification standards (so long as a total production standard is applied), (2) subject to location restrictions, (3) prohibited from including entertainment event tie-ins and (4) prohibited from reimbursing the expenses of guests.

The difference in treatment of member firms versus offerors is warranted based on the roles that each respective party plays in the securities industry vs. registered representatives. It is understandable to restrict an offeror from providing non-cash compensation to representatives who exclusively sell that particular offeror's product(s) since there is at least an appearance of impropriety in such an arrangement. Restrictions on location, entertainment, guests and the like are justifiable. However, a member firm that bases its non-cash incentive awards on the registered representatives' total production does not create an environment where there is either the appearance of impropriety or any negative influence on the registered representative.

#### *1. Qualifications based on total production are appropriate*

The registered representative's only incentive is to sell product or services that fit his client's needs; he is not incented to sell any particular product or service. This is the goal of any for profit business enterprise; to sell goods and services that clients need. Additionally, the ability to provide higher compensation for attaining sales goals is already recognized by the NASD in the context of cash compensation. Most, if not all, member firms pay out commissions based on a production grid. The higher the production, the higher the payout percentage. If paying out additional cash compensation is acceptable for higher production (which is communicated via a

sales target grid<sup>2</sup>), why wouldn't higher compensation in the form of pre-conditioned sales target eligibility for non-cash compensation be equally acceptable? If either form of compensation were to be given more favorable treatment, it would be our opinion that non-cash compensation awards taking the form of broker-dealer sponsored networking events would be preferable to paying additional cash compensation. A broker-dealer should be able to choose whether compensation paid to its registered representatives is paid in cash or through non-cash incentives.

### *2. Restrictions on location do not make any sense*

We are a national broker-dealer with registered representatives in forty-eight of the fifty states. For this reason, we will effectively not have any restriction placed on us by this provision since our programs are always conducted in the United States. However, it will have an anti-competitive effect on small broker-dealers who will be limited in their destination choices because of the locations of their registered representatives. For example, if a small firm and all of its representatives were located in only four states, Arkansas, Mississippi, Alabama and Louisiana, the proposal would prohibit them from having a conference in Dallas, the most logical location for such an event from both a convenience and overall cost standpoint. What possible purpose could this restriction serve? It should not apply to broker-dealer member sponsored events for their own registered representatives.

### *3. Entertainment event tie-in events create team-building opportunities*

Many independent contractor broker-dealers offer programs that combine education and training with team-building functions. No regulatory purpose is served by prohibiting such tie-in events. A broker-dealer should not be prevented from offering such events in connection with a program held for its registered representatives that is primarily focused on training and education.

### *4. Attendance of guests serves a regulatory purpose*

Events that include guests (aka spouses) serve an important goal of building community within a broker-dealer. The events that our firm holds which include guests have fostered a sense of community among our registered representative sales force and with our broker-dealer staff. In many respects, the regular attendees have established a family culture. This family culture has resulted in the formation of behavioral norms focused on serving the best interest of clients. For our firm, the objective facts speak for themselves. We have an extremely low rate of client complaints and of registered representatives conducting themselves in unconstructive non-compliant ways. A broker-dealer should not be prevented from reimbursing the expenses of the guests of its registered representatives when it chooses to include them in programs.

### *B. Retention of certain provisions*

You have requested specific comment on whether certain elements of the current non-cash compensation rule design are no longer relevant. Specifically, (a) contributions by non-affiliated offerors as long as those offerors do not participate in the organization of the program or (b) contribution by the member to non-member incentive programs, such as a broker-dealer's contributing to a bank program.

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<sup>2</sup> NTM 05-40, page 5, "...the rule would allow cash bonuses to registered representatives who attained a higher total production across *all* securities."

These elements should be retained by adding the following provision to section (b) of the proposal before adopting the rule.

*(5) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (4).*

Elimination of these exceptions to the non-cash compensation rules would have severe negative consequences. The NASD's apparent rationale for eliminating these arrangements is that there appears to be no reason to allow the arrangements if product-specific sales incentives were banned. This assumes that offerors only contribute to incentive programs that are based on the sale of their specific product types. This is simply not correct and demonstrates the NASD's lack of understanding. Offerors often contribute to broker-dealer incentive programs that are based on sales of all products, not just those of the type the offeror sponsors. Prohibiting non-affiliated offerors to contribute to a broker-dealer's sale incentive program would have disastrous consequences, particularly for independent contractor broker-dealers.

Many independent broker-dealers would find it extremely difficult without offeror participation to pay for these programs. Various offerors contribute to the programs by providing cash payments, training materials, industry and motivational speakers, product presentations, payment for meals and some entertainment, and other contributions. It is difficult to rationalize how elimination of these programs, when based on total production, would be in the public interest. It would appear that the public interest is, in fact, better served by having their registered representatives attend these programs because of their educational value.

In summary, 1st Global believes that this proposal should be amended to include the provisions suggested above so that there is more latitude provided for non-cash compensation arrangements between a member firm and its associated persons and so that contributions to a non-cash arrangement by non-affiliated, non-members to a member or vice versa are permitted.

Thank you again for providing the opportunity for the industry to participate in the rule-making process.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Batman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen A. Batman  
President and CEO