

August 8, 2005

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

**Re: NASD Notice To Members 05-40 – Sales Contests and Non-Cash Compensation**

Dear Ms. Sweeney,

M Holdings Securities, Inc. (“M Securities”) submits this letter in response to the NASD’s request for comments on Notice to Members 05-40 (“Proposed Rule”), which seeks to expand the current non-cash compensation prohibitions to all securities sold or distributed by a member. The Proposed Rule also seeks to prohibit all product-specific and product type-specific cash and non-cash “sales contests” and permit only those contests that include all types of securities that the member offers (“permissible sales contest”). Finally, the Proposed Rule would eliminate the current provision that permits non-member companies to contribute to a member’s internal non-cash compensation arrangement. NASD requests comment on the need to retain such a provision given that the Proposed Rule “would ban product-specific sales contests.” It is upon this third aspect of the Proposed Rule that M Securities generally directs its comments.

**Background**

M Securities is a subsidiary of the M Financial Group (“MFG”), which is one of the nation’s premier financial services distribution companies, serving ultra-affluent individuals and Fortune 1000 companies through an exclusive network of over 100 of the nation’s most successful and innovative independent financial services firms. Per Financial Planning’s 8th Annual Guide to Independent Broker-Dealers, M Securities in 2005 was the 30th largest independent BD in terms of revenues, however, in terms of production, M Securities was ranked 1st among all independents. The majority of M Securities’ business is in variable insurance products, which already are subject to the requirements of NASD Rule 2820 with respect to the receipt of non-cash compensation.

**Comments**

Given M Securities business mix (i.e., weighted heavily towards variable insurance products) and its experience in complying with the requirements of NASD Rule 2820, M Securities generally supports adoption of the first two aspects of the Proposed Rule (i.e., expanding the current non-cash compensation prohibitions to all securities sold or distributed by a member and prohibiting all product-specific and product type-specific cash and non-cash “sales contests” while allowing only permissible sales contests). We believe, however, that the proposal to eliminate the current provision that permits non-member companies to contribute to a member’s internal non-cash compensation arrangement should be reconsidered and that this aspect of the current rule should be retained.

Judging from its location in the NTM and the complete lack of any supporting justification or discussion regarding its removal, it appears to us that this aspect of the Proposed Rule is more of an afterthought than a carefully reasoned decision. Historically, banning product-specific sales contests was a key objective of the original non-cash compensation rules in 1998. NASD effectively banned product-specific sales contests

through those rules (at least for non-cash prizes, such as trips to a lavish resort), by requiring all products of certain product types offered by the member (i.e., mutual funds and variable products) to be included in the sales contest.

Banning product-specific sales contests was, in part, what supported the logic of continuing to permit non-member contributions: because of the requirement to include all products of a specific product type, the member could no longer promote a specific product contest based on the offeror's generous funding of the contest. In addition, permitting offeror contributions was a reasonable trade-off for the non-cash compensation rules' ban on offerors "directly or indirectly participating in" (i.e., organizing and conducting) a non-cash sales contest with a member's registered representatives.

This rationale should continue to apply (to the extent the Proposed Rule is adopted.) Under the proposed definition of "sales contest," product-specific or offeror-sponsored sales contests remain banned for non-cash prizes, and the ban will now be extended to cash prizes. Given this protection against offerors' ability to influence sales contests, in addition to the protections currently contained in Rule 2820(g)(4)(E), prohibiting non-member contributions to a member's permissible sales contest serves no purpose.

Non-member contributions permit selling firms to defray costs of permissible contests and help offerors and selling firms maintain and reinforce long-standing, professional business relationships. Accepting non-member contributions for permissible sales contests should not be prohibited unless NASD can demonstrate that it is harmful, creates insurmountable conflicts of interests, or fundamentally compromises sales suitability obligations. To date, that justification is lacking.

Please do not hesitate to contact me at 503-414-7508 or [steve.youhn@mfin.com](mailto:steve.youhn@mfin.com) if you have any questions.

Respectfully,

Steve Youhn  
Vice President and  
Chief Compliance Officer  
M Holdings Securities, Inc.