

January 31, 2006

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

Dear Ms. Sweeney;

Evolve Securities Inc. thanks the NASD for the opportunity to submit comments regarding the proposed Interpretive Material Addressing Gifts and Business Entertainment (NTM 06-06).

We completely understand and applaud efforts the NASD in trying to detect and prevent abuses in the use of business entertainment, and to mitigate and prevent bad practices in our industry. However, as a small firm, and having been associated with Member firms for over 25 years, I think I can safely say that this is a largely a "big firm" problem. Most small firms do not have the resources to affect decision-making in the way described, and/or with an owner/major shareholder controlling those decisions, most would not lay their reputations on the line. I would suggest to you that all firms with a person with a large vested interest in the operation and success of the firm, or firms with less than 100 employees, and/or less than \$25 million in gross revenue be exempt from this rule. They simply do not have the economic wherewithal to participate in this type of activity, or the capital to pay the large fines if they are caught.

Additionally, subjecting firms of any size to an additional layer of outside verification is extremely burdensome. We are already subject to SEC, NASD, MSRB, and the jurisdiction of every State in which we carry a license. We are required to have outside independent audits of our financial statements, and AML policies and procedures. To add outside verification to this type of activity is extremely costly. The systems needed to effectively track every recipient, determining whether they are a "subject agent client"-that is to say, someone in a position to be influenced, and their employer, and tracking whether or not they are an agent or fiduciary, and the account(s) associated with the activity to every business lunch, sports ticket, (with or without a Member firm associate accompanying them), every attendee to every seminar, and trying to ascertain a "value" is cumbersome, expensive, time-consuming, and derives little value.

We also look at rules written this narrowly as being extremely burdensome. We, as the securities industry, should be asked to supervise our own employees' actions. But other employers also have the same responsibility to supervise their own employees.

This detailed level of recordkeeping, kept in a manner that we could report and police other people's employees, is crushing. It does not recognize the responsibility of employers to supervise their own employees, and places the entire burden back on Member firms. People who want to be influenced, will be influenced. People who do not, will not. They probably learned these values in kindergarten. No amount of paperwork will change them. We find people acting in an agency position who want this type of attention, generally ask for it. They ask for it repeatedly, not occasionally, or annually.

We also find this type of activity to be very localized to firms who have resources to provide multiple venues of entertainment, and who derive significant revenues from individual clients. You will not find this in firms where departments or individuals have a diverse client base. Penalizing all members for the actions of a few does not answer the problem. There will always be "bad guys": just as there are bad doctors, bad lawyers, bad

plumbers, and bad auto repair people. Penalizing an entire industry to find one “Gruttadonia” is a huge penalty for all of us to pay. We have just gone through a huge implementation of extremely burdensome paperwork by NASD, from which most firms are still reeling.

Regulators tend to look at each action in isolation from another. If this were the only regulation we were dealing with, and were it an extremely widespread problem that the entire industry should be focused on, such as Money Laundering, we would be glad to implement very heightened scrutiny of such activities. However, I think most firms would agree that this is not a major problem in their firm. The benefit derived from such a heavy-handed approach to an isolated problem does not justify the cost of its implementation.

There is no other industry, regulated or not, that I know of, which has the burden of policing the behavior of other people’s employees.

Invitation to a single event would rarely influence a good employee to turn his attention from his duties to his employer. It would normally take numerous events over time to make this impression. If that employee is entertained by multiple departments, with possible detection hindered by potential employee turnover at the Member firm, or other factors, the NASD may penalize the wrong party. As I mentioned before, most clients who are subject to this influence make repeated requests for invitations to certain events. Large companies frequently sponsor events, such as golf tournaments, suites at certain sports centers, and other venues. Customers frequently ask for tickets or invitations, especially if they have been included in the past. It is not the occasional request that is the problem. It is the person who repeatedly asks for access to events. Is it the Member firm’s responsibility to police someone else’s employee? When are we to say “no” to a valued employee? Often the principal will make the decision to do business with a particular firm, and the agent just reaps (and milks) the benefit. This does not necessarily make the Member firm culpable.

The NASD would be better served to have supervisors ask their employees if they have had any customer make repeated requests of them for entertainment. This action alone would be the single largest deterrent to such action. Firms need to discuss levels of appropriateness by each business line and situation. There is no magic number that determines a threshold that is appropriate for frequency of meetings. Investment Bankers, for example, may frequently dine with their clients during the period of an engagement, sometimes just out of necessity of a time crunch-this may dwindle substantially between engagements. Retail customers dealing with significant events, such as a death of a family member, may meet frequently on behalf of an estate. Hard and fast numbers, and names on restaurant receipts do not tell a real life situation. However, firms dealing with customers who frequently request “entertainment”, have a good idea that this employee is looking to be influenced. Firms could then implement their own internal policies of how to deal with this information, based on the nature of their clientele.

This activity tends to be take place in large cities, not in rural or small market areas, since there are not regular events to attend in smaller market areas. Does a “one size fits all” regulatory scheme need to be imposed on firms that have very little opportunity to get into these situations?

It is sometimes difficult to determine the actual value to a particular client, the accounting for which can become absurd very quickly. Let’s say a member firm rents out an entertainment facility in a certain location, and invites all clients in that location to come. For illustration, let’s suppose the facility costs \$50,000. If one client comes, is the value \$50,000? Conversely, if 500 clients come, is it worth \$100 each? If the client could buy this on his own for \$75 or \$175, is it worth \$75, \$100 or \$175? (Can we divide by the total number of clients, or just “subject agent clients”?) Is it the “lower of cost or market”? Certainly neither the Member firm, nor their clients can determine or control the amount of “benefit” to each person. If a “Subject agent client” brings a friend or spouse to the event, would it be counted differently than a “subject agent client” who brings a fellow employee

from the client firm? What if the fellow employee has nothing to do with the decision-making process of where accounts are held?

If you hand out golf balls and visors at this event, are these "gifts" or part of the "value" of the event? What if the client can just pick them out of a basket? Some choose none, some choose both? Do "subject agent clients" (do we have them wear name tags, so we can tell a "non-subject customer" from a "subject customer") have to sign a form to possibly report to their employer? If they wear a visor with the Member firm name on it, the firm derives name recognition and advertising value. Is this considered a "gift" or "advertising" or part of the "entertainment value"? Most non-financial companies would consider such promotional "give-aways" as marketing and advertising expense.

How does the NASD propose handling customers of Associated Persons with outside business activities or are independent contractors? If a CPA, who is also associated with a Member firm, invites his clients to an "entertainment event", how does the NASD propose accounting for the "benefit" to a client if he has both an accountancy and an "account" with the client? If the CPA is soliciting an "accountancy" relationship in the Associated person's role as CPA, so does not keep required records, but the customer subsequently opens an "account" relationship, what records would be required, and at what point? Independent contractors are not currently required to submit these types of records to their Member firm. Are you proposing that expense records now be kept by firms who currently have no way of accounting for, retaining, or monitoring these activities, and which could very well be used for a dual, if not unrelated purpose?

We abhor influence peddling, just as we abhor theft, cheating, lying, misleading, misinforming, and a host of other illegal and immoral practices. There are bad elements in all parts of society, we cannot legislate them or regulate them away. Crushing paperwork burdens will not catch this activity, nor change people's minds. Supervisors communicating regularly with their employees about their expectations in simple clear language will help. Hiring outside persons to make sure we have checked boxes, and created new files full of copies of pieces of paper will not.

Some firms in some departments have this problem. Some firms should address it.

Thank you for the opportunity to address this issue.

Sincerely,
Caroline B. Austin