

**Securities Industry Association**

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December 14, 1998

Robert J. Smith, Esq.
Assistant General Counsel
NASDR, Inc.
1735 K Street, NW, 9th Floor
Washington DC 20006

Re: NASD Notice to Members 98-75

Dear Mr. Smith:

Our membership is in the process of implementing procedures to comply with the limitations on the receipt of non-cash compensation from offerors in connection with the sale of mutual funds and variable products, as described in Notice to Members 98-75 and the amendments to Conduct Rules 2820 and 2830.

As members have moved through this process, they have noted a number of instances where certain portions of the rules and Notice to Members would benefit from further clarification, or where certain situations are not specifically addressed in the rules or Notice. While the appropriate manner in which to handle such matters seems implicit, given the NASD's objectives of minimizing point of sale incentives and preventing loss of supervisory control, all interested parties would benefit from having a higher level of certainty. In that regard, we have set forth below a number of issues that have arisen, and what we believe is the appropriate manner in which to address them within the framework of the amended rules.

We understand that NASDR has received a number of requests for clarification of various matters pertaining to the rules, and is therefore contemplating issuing a special notice to members addressing such items. We respectfully request that the special notice encompass the matters set forth below.

Among other things, SIA seeks clarification regarding the permissible scope of subparagraphs (h)(4)(C) and (l)(5)(C) of the rules. As amended, these subparagraphs allow, under certain conditions, payment or reimbursement by offerors in connection with training and educational meetings, provided, among other things, that prior approval to attend is not preconditioned "on the achievement of a sales target or any other incentives...." They further provide that "[a]lthough a member may not condition attendance at a meeting on the achievement of a sales

target, this is not intended to prevent a member from designating persons to attend a meeting to recognize past performance or encourage future performance."

We seek confirmation that the amended rules would not preclude payment or reimbursement by an offeror in connection with a training or educational program aimed at a defined number or certain percentage of the member's associated persons during any given time period. It is our view that the rule permits the member, for example, to make payment toward an educational or training program for its top producers or top percentage of its salesforce over a given time period, so long as the associated persons are invited to attend regardless of specific sales numbers obtained. Moreover, it is the Committees' opinion that a member should be able to announce in advance the educational or training seminars and the permissible criteria for attendance by its associated persons for the purpose of encouraging future performance.

More fundamentally we do not believe that the rules are intended to preclude basing attendance at training or education meetings on achieving certain overall targets not exclusively tied to sale of specific mutual funds, such as gathering of a certain level of assets or opening a particular number of new accounts, since such incentive programs do not promote the sale of particular products, i.e. – specified mutual funds or fund families.

We also seek confirmation that subparagraph I(5)(C) of the rule does not preclude a member from taking into account sales of particular funds or fund complexes when selecting personnel who may attend a given training session. While the rule precludes preconditioning attendance on sales targets or other incentive arrangements, a member should be permitted to target its training sessions toward those personnel for whom the training will be most meaningful. It makes little economic sense to train personnel concerning funds that they sell infrequently. Moreover, the other provisions of the subparagraph concerning location, expense limitations, recordkeeping, and purpose provide substantial protection against inappropriate use of such training meetings. So long as attendance is not preconditioned on meeting specific sales targets announced in advance, we respectfully submit that a member should be permitted to focus its training program on those personnel who are most likely to use the information gained.

With respect to holiday parties, receptions and other local events which are not organized specifically for training or educational purposes we believe that local transportation, dinners, and the like may be provided to associated persons by offerors, so long as they fall within the parameters of Rule 2830(I)(5)(A) or (B) which refer to occasional meals, tickets and the like, and gifts of nominal value. We would appreciate NASDR clarifying that our understanding is correct.

We also seek clarification with respect to the recordkeeping requirements under Rules 2820(h)(3) and 2830(I)(3) with respect to the receipt of cash and non-cash compensation from an offeror. Specifically, we request confirmation that where the offeror who provides such compensation to associated persons of a member, is also a member, or is an affiliate of the member whose associated persons receive the compensation, the records required under section (h)(3) or (I)(3) may be maintained by the offeror, provided they are made accessible to the member, and in turn are available to NASDR for examination.

We contemplate that as we develop more experience with the new rules, additional questions may arise, and we trust we may communicate with you in the future to obtain any further

clarification that may be necessary. Meanwhile, we look forward to your responses to the matters set forth herein, either through a special notice to members or directly to SIA. A response to SIA should be forwarded to the attention of Michael D. Udoff. Thank you for providing us with the opportunity to seek clarification on the above matters. Furthermore, if we can provide any additional assistance to you in the drafting of the Special Notice please do not hesitate to contact Mr. Udoff. Please be assured that our industry has every intention of adhering to both the letter and spirit of the new rules.

Sincerely,

Lawrence H. Kaplan
Chairman, Investment Company Committee

R. Gerald Baker
Chairman, Self Regulation Committee

cc: Judy Poppalardo, Esq.
Thomas Selmon
Thomas Pappas
R. Clark Hooper