Comments on new proposed rules for “Sales Contests and Non- Cash Compensation”

Yet another more stringent rule that requires more record keeping. The NASD, in its continuing effort to put small firms out of business wants to extend their current over burdensome regulations to encompass all securities. As usual this new rule requires yet another new layer of unnecessary record keeping.
Their flawed logic behind this new rule is: “The NASD views any sales contest that favors one security (e.g. a proprietary investment company) or one type of security (e.g. investment companies stocks) as having the potential to create an incentive to engage in sale conduct unrelated to the best interests of customers.” The NASD believes that a brokers behavior is governed by the compensation he receives from the products he sells. If this were the case brokers would only sell those products that produced the highest level of compensation.

Dissimilar variable annuities compensate brokers at different rates. If the NASD’s logic were true, they should also create a new rule making all variable annuities pay the same level of compensation. That way they could eliminate “the incentive to engage in sales conduct unrelated to the best interests of customers ” even more. Dissimilar investments compensate brokers at different rates also. Maybe it would be wiser for the NASD to make compensation on all products the same, eliminating even more the possibility to create “an incentive to engage in sales conduct unrelated to the best interests of customers.” Better yet, lets make it against the rules to even earn compensation, that way we could eliminate all possibilities of conflict, and make every firm a carbon copy Ameritrade and Vanguard.

If compensation were the only issue that governs behavior then I believe that the NASD should look at itself with suspicion. They are a private organization who’s only source of revenue is collecting fees and fines from its members. In their recent publication “NASD 2004 Year In Review” they state “In 2004 we collected $103 million in disciplinary fines-our highest total ever...” I can only imagine what the NASD would do to a broker for making a similar statement. It seems to me that a private agency whose sole source of revenue is from assessing fees and fines upon its members and brags about having “our highest total ever” is engaging in conduct unrelated to the best interests of its customers.

We at Mutual Trust Co. Of America Securities believe that the NASD bureaucrats “engaged in conduct unrelated to the best interests of its customers.” I also believe, as a member, that in order to remove any conflicts of interest the NASD should be forced to disgorge their entire $103 million windfall in the form of a member distribution.

Jed Bandes
727-799-9922 Office
727-799-3869 Fax