



**National Planning
HOLDINGS, INC.**

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Notice To Members

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President and CEO

May 19, 2005

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Member NASD, SIPC

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

Re: Notice to Members 05-25 New Products Sales Material and Television, Video, and Radio Advertisements

Dear Ms. Sweeney:

National Planning Holdings, Inc (NPH) offers this comment letter on behalf of its member firms:

- Investment Centers of America (ICA) CRD - 16443
- Invest Financial Corporation (IFC) CRD - 12984
- National Planning Corporation (NPC) CRD - 29604
- SII Investments (SII) CRD - 2225

The four fully disclosed retail broker-dealers are registered to conduct business in all domestic jurisdictions, with over 2500 Registered Representatives offering securities services through nearly 400 Offices of Supervisory Jurisdiction. As the President and CEO of NPC and the NPH network, we appreciate the opportunity to submit comments on the issues raised in Notice to Members 05-25.

After careful review of the proposed requirements set forth in Notice to Members 05-25 ("the Notice") we provide the following comments for consideration by the NASD:

Television, Video, and Radio Advertisements

Within the Notice NASD states that "In the past some members used broadcast advertisements that raised regulatory issues...these issues could have been resolved before the advertisement reached numerous retail investors had the advertisements been filed prior to use with NASD". We understand the intent of the proposal, in that television, video, and radio mediums have the capability to release communications in a rapid manner to a broad audience.

NASD's opinion that "these issues could have been resolved before the advertisement reached numerous retail investors had the advertisements been filed prior to use with NASD", seems overstated and may not take the following factors into consideration:

- **NASD Advertising Department Responses** – Although NASD is proposing these types of advertisements to be prefiled at least 10 business days prior to the date of first use or broadcast, this requirement does not prevent the material from being used by the member firm while awaiting NASD's Comment Letter. Based on experiences within our broker-dealer network current response times for NASD Advertising Department generally range from 8-16 weeks (unless expedited filing requested). We suggest that should the material have regulatory issues, its distribution to audiences during this 8-16 week timeframe could potentially be just as damaging as if without a prefile requirement.

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The current response timeframe does not account for the massive increase in volume, which NASD Advertising Department will experience should the rule proposal be approved. Based on these types of constraints, the goal of NASD to eradicate broadcasts, which have regulatory issues, may be difficult to achieve in a timely manner.

Additionally, expenses associated with creating television, video, or radio advertisements are generally relatively high. The proposal of a 10 day prefilling requirement would not prevent a member firm from approving a broadcast advertisement (at times involving detailed packaging elements as with audio business cards, etc) only then to receive the corresponding Comment Letter from NASD Advertising Department stating either the material requires changes and/or may not be used with the public. This type of scenario could potentially result in unnecessary cost to the Registered Representative.

- Advertisement vs. Sales Literature – In accordance with NASD Conduct Rule 2210, only television and radio may truly be defined as advertisements (i.e. an uncontrolled audience). We agree that video presentations, which appear on a Web site or other advertisement mediums would be defined as advertising as one component of the overall content of the Web site or other uncontrolled medium. However, video/CD broadcasts are generally created for use as visual business cards or as reference materials during seminars, which would be considered sales literature (i.e. controlled audience).

The differences between advertising and sales literature should not be overlooked, as they are important. Sales literature offers a much more controlled element, therefore less potential for exposure to the masses. NASD should reconsider the broad grouping of mediums within this Notice pursuant to the definitions and parameters set forth in 2210.

- Type of Medium and Audience Exposure – Even within the medium categories of television, video, and radio there can be vast qualitative differences between broadcasts. For example, a 15 second radio advertisement which is scheduled to air for 4 weeks covering two counties, should have less exposure capability than a national radio advertisement scheduled to air for 6 months.

NASD proposal that all television, video, and radio advertisements of 15 seconds or longer will require prefilling appears arbitrary. We suggest that the intent of use and content of advertisement should be viewed as the primary factors relevant to the review and submission requirements. Further, the proposed requirement that scripted portions of television and radio shows are prefilled seem to be excessive. We suggest that the same proposed requirement concerning sales literature in which the prefilling requirement is triggered only if a new type of security that the member has not previously offered is part of the script. If the scripted segment of the television or radio show talk about existing securities that the member has previously offered or general financial planning concepts and strategies it seems to be outside the scope of the intent of the notice.

- Filing Fees – Based on the content of the Notice it is not clear if NASD will charge a filing fee for draft and final versions of television and video broadcasts in cases where draft story boards or scripts are provided prior to the final filmed version being submitted within 10 days of use. We suggest that in these instances NASD should only charge one fee associated with the initial filing of the draft materials.

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From a regulatory perspective we recognize that the prospect of additional fees should not weigh on a member's decision whether to support a rule proposal, however we do request NASD consider this issue as it relates to Registered Representatives who ultimately incur costs associated with NASD Advertising filing fees. For those Registered Representatives who currently use any of the aforementioned mediums to facilitate advertising, an increase in these fees may have the potential to impede the submission process entirely, resulting in more instances of broadcasts, which are not submitted to the member firm or NASD in an effort to avoid additional costs associated with submission. This scenario is extreme, but provided merely as an example of one of many possible by-products if a drastic increase in filing requirements and associated fees were to be approved.

In conclusion, we remain committed to the current advertising regulation paradigm, which gives the member firm the responsibility of delegating authority to experienced principals to oversee all advertising, sales literature and correspondence. We respect the spirit and intent of the rule proposal, which seeks to limit the exposure of advertisements, which have the potential to be damaging to the public. However we suggest that NASD may achieve the desired results by further refining elements of NASD Conduct Rule 2210 to provide additional, detailed guidance to member firms regarding acceptable and unacceptable parameters in relation to public communications.

We appreciate the NASD's consideration of our comments and anticipate further communication on this subject.

Sincerely,



M. Shawn Dreffein
President and CEO
National Planning Corporation
National Planning Holdings, Inc.