



**VIA ELECTRONIC MAIL**

July 28, 2009

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street  
Washington DC 20549-1090

**RE: Custody of Funds or Securities of Clients of Investment Advisers;  
File Number S7-09-09**

Dear Ms. Murphy:

I am sending this letter as the President and CEO of National Planning Holdings, Inc. ("NPH"), which is the parent company of the following four companies (collectively referred to as the "NPH Firms"):

- INVEST Financial Corporation
- Investment Centers of America, Inc.
- National Planning Corporation
- SII Investments, Inc.

The NPH Firms are registered with the Securities and Exchange Commission ("SEC" or "Commission") as investment advisers and as securities broker/dealers, and conduct business in all fifty states through 3,300 representatives. The NPH Firms are also members of the Financial Service Institute ("FSI") and support the advocacy activities of the FSI.

The NPH Firms appreciate the ability to submit this letter commenting on the SEC's proposal on custodial arrangements for investment advisers. The proposal impacts the NPH Firms on two levels – as investment advisers who have direct relationships with clients through managed brokerage accounts maintained at clearing firms ("Managed Accounts") and as investment advisers who maintain relationships with other investment advisers who provide custody and investment management services as third party asset managers ("TPAM Accounts"). Under the Managed Accounts scenario, the NPH Firms do have the ability to withdraw funds from client accounts to cover the costs of advisory fees. In both the Managed Accounts and TPAM Accounts scenarios, the NPH Firms believe that customer confidence and the integrity of custodial services are of the utmost importance. Customers must have confidence that assets represented on statements are real and verifiable.

Relative to TPAM accounts, the NPH Firms and our Due Diligence Department have assessed various options to attempt to verify assets and assure that TPAM represented assets are accurate. For these arrangements, when the TPAM is providing a turn-key custodial and management program, referring firms have limited ability to verify assets in a meaningful manner through normal due diligence processes. As such, the NPH Firms generally feel that the proposal's enhanced controls over custodied assets are sound and will help to supplement efforts by referring firms to seek to verify assets.

### **Substantive Comments**

The NPH Firms have the following specific substantive comments and concerns related to the proposal:

1. **Narrow Focus.** Changes are clearly required based upon regulatory weaknesses that were identified in several well-publicized cases, such as Madoff and Stanford. However, the focus of the proposal should be on risks discovered in these cases. We do recognize that in some situations, where other checks and balances may not be in place, a common or affiliated custodial arrangement may cause risk of collusion, rule violations, and illegal activities. As noted above, in TPAM accounts management and custody are provided under a single turnkey plan to the client. The NPH Firms support proposals that would place additional requirements on custody arrangements with TPAMs where assets are either self-custodied or custodied at an affiliated entity. However, we do not believe that a prohibition of common control is appropriate and we support the SEC's determination in the proposal not to seek to prohibit self-custody or affiliated custody.
2. **Ability to Deduct Fees Should Not Trigger Rule.** Under the Managed Accounts program, NPH Firms establish brokerage accounts for clients that are managed under an investment advisory agreement. The NPH Firms contract with two clearing firms to custody these assets – Pershing LLC and National Financial Services LLC. Clients directly receive brokerage statements from the clearing firms that outline all activities, including deduction of management fees and other deductions from the accounts. There are no omnibus accounts at the NPH Firm level; rather each client has a separate account with the clearing firm. The NPH Firms do have the right to deduct their fees from the Managed Accounts.

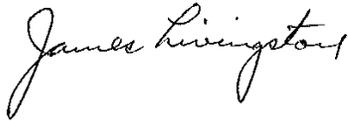
Under the proposed rule, the ability to withdraw fees from client accounts would trigger the requirement for a separate independent surprise audit. This audit would be in addition to the normal audits of the NPH Firms serving as broker/dealers and the audits of the clearing firms. Since the NPH Firms do not custody client assets (other than through the automatic billing situation described above), and use only two reputable and nationally recognized clearing firms, and clients have separate brokerage accounts, we do not feel that our Managed Accounts program poses a risk to the integrity of custody arrangements. The ability to withdraw funds to pay for fees does not cause an independent risk, in our opinion, sufficient to justify the requirement of a surprise audit.

3. **Marshalling of Compliance Assets.** The FSI has cautioned that the requirements in this proposal may unduly impact smaller firms. While the NPH Firms are well capitalized and commonly owned with or by nationally and globally recognized firms, we recognize that funds dedicated to compliance and audit functions are a finite resource for all firms. We urge the Commission to consider the impact of this proposal in total with other regulatory requirements. Mandating the surprise audit requirement for all firms, simply due to the ability to directly deduct client fees, will require the firms to allocate resources to an area with limited risk. Since the ability to deduct client fees has not been directly cited relative to the Ponzi schemes that triggered the proposal, the Commission should focus on the custodial arrangements involving closely held, non-public entities. The Commission should not mandate the allocation of compliance resources and funds to surprise audits, solely due to the ability of the firm to deduct fees from a client's account. Firms should be allowed to assess, on their own, whether the ability to deduct fees poses risks that require retaining outside auditors.
4. **Costs to Clients.** Firms operate on limited budgets and ultimately attempt to push out any additional or new costs to clients. The proposal may have the impact of increasing costs to

clients. Therefore, the NPH Firms again urge that the Commission not require outside audits of client assets simply because of the ability of a firm to deduct client fees.

In summary, the NPH Firms support the proposals of the Commission that are aimed at detecting or avoiding future Ponzi schemes, similar to the Madoff matter. We believe that the integrity of the custodial process is critical, especially where there is a close relationship between the investment adviser and the custodian in a closely held, non-public company scenario. We feel strongly, however, that the proposal of the Commission which would require a surprise audit solely due to the ability to withdraw funds to pay for advisory fees does not address the concerns created by the Ponzi schemes, while using valuable resources and potentially increases the clients' cost of investing. We urge the Commission to weigh the concerns outlined in this letter and by other industry members in finalizing the rules on this matter.

Sincerely,

A handwritten signature in cursive script that reads "James Livingston". The signature is written in black ink and is positioned above the typed name and title.

James Livingston  
President/CEO  
National Planning Holdings, Inc.