



**VIA ELECTRONIC MAIL**

April 17, 2009

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

**Re: Comment Letter – SR-FINRA-2009-008 Proposed Rule Change Relating to Changes to Form U4 and U5**

Dear Ms. Murphy:

National Planning Holdings, Inc. ("NPH") offers this comment letter on behalf of its subsidiary broker-dealers, all of which are Financial Industry Regulatory Authority (FINRA) member firms:

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

The four NPH Broker-Dealers have over 3000 Registered Representatives offering investment services to clients in all domestic jurisdictions. We appreciate the opportunity to submit comments on the issues raised in filing SR-FINRA-2009-008 regarding the proposal to amend Forms U4 and U5. The thoughts and comments provided in this letter have been reviewed by members of senior staff of our Firms, including the respective Presidents and Chief Compliance Officers, and represent the collective view of the NPH Broker-Dealers.

In reviewing filing SR-FINRA-2009-008 there are two primary amendments being proposed that we wish to provide comment.

**Proposed Amendment:**

FINRA is proposing revising questions on Forms U4 and U5 to allow FINRA and other regulators to identify more readily individuals and Firms subject to statutory disqualification on the basis of "willful violations" defined by the Exchange Act.

**Comments:**

- In the spirit of protecting both the member firms and their clients, we appreciate FINRA's increased scrutiny related to persons who are statutorily disqualified. However, the term "willful violation" in relation to the questions being proposed in Form U4 and U5, must be further defined to prevent confusion and subjectivity in the assessment of the appropriate response to these questions. For example, Black's Law Dictionary provides in part, "Willful is a word of many meanings, its construction often influenced by its context" and goes on to provide several definitions in various circumstances. To the extent possible, plain English standards should be applied to the Form U4 and U5 to promote clear and accurate reporting of all answers from persons and member Firms.

- FINRA has acknowledged the administrative burden to member firms related to filing Form U4 amendments for all of their registered persons related to new and amended questions on the Form U4. Therefore, FINRA is proposing a timeframe of 120 days from the effective date to allow firms to submit all required Form U4 amendments. We appreciated that FINRA recognizes the challenges firms will face in attempting to comply with this rule amendment should it become effective. However in an effort to further streamline this process, we propose any combination of the following:
  - FINRA's previous proposal related to this issue, which was circulated for comment April 24, 2008, stated a timeframe of 180 days in relation to the allotted time firms would be provided from the effective date to file necessary amendments. To allow firms with ample time to comply with this process, we respectfully request FINRA consider reinstating the 180 day period versus the current proposed timeframe of 120 days
  - FINRA allow a negative consent or system default to "No" answers, such that Firms will not be required to affirmatively respond to each new or amended question. This will allow member firms to focus on persons that appear to have "Yes" answers versus creating unnecessary filing requirements for all Form U4 persons;
  - To allow member Firms necessary flexibility, the CRD system should not require a Form U4 amendment during the 120 day window, should the firm be amending a different aspect of a person's Form U4.

It is our opinion that these types of process enhancements will greatly increase the effectiveness and timeliness related to the Form U4 amendment process for the new and amended questions regarding "willful violations".

**Proposed Amendment:**

FINRA is proposing revising questions on Forms U4 and U5 regarding disclosure of customer complaints, arbitrations or civil litigation to elicit reporting of allegations of sales practice violations made against a registered person in which that person was not specifically named as party and to clarify when such items must be reported.

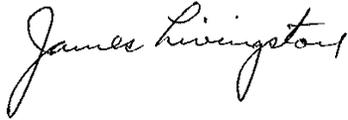
**Comments:**

- In relation to this proposed amendment, FINRA states the new questions on Form U4 and U5 "...would indicate that the applicant or registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in or could be reasonably identified from the body of arbitration claim or civil litigation as a registered person who was involved in one or more of the alleged sales practice violations." Our concern is that the phrase "or could be reasonably identified", may be too general in nature, and subject to subjectivity standards by the body of arbitration claim or civil litigation.
- FINRA states "A firm would be required to report a "yes" answer only after it has made a good faith determination after a reasonable investigation that the alleged sales practice violation(s) involved the registered person." Again, our concerns are with the terms "good faith determination" and "reasonable investigation". These terms are general in nature and subject to interpretation from one member Firm to another. This appears to place undue burden on member Firms to substantiate and defend the manner in which they define these terms, which FINRA may ultimately determine to be inadequate in retrospect.

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In summary, the NPH Broker-Dealers reiterate their support of FINRA's rule consolidation process. We have great appreciation for the time and effort involved in such an enormous undertaking and believe that member input into the process is critically important. However, we respectfully request that the Securities and Exchange Commission consider the issues we have outlined related to filing SR-FINRA-2009-008, which may have unintended consequences to the member firm community.

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/Chief Executive Officer  
National Planning Holdings, Inc.