

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0400780002

Re: National Planning Corporation Inc., CRD 29604, Respondent
Investment Centers of America, Inc., CRD 16443, Respondent
SII Investments, Inc., CRD 2225, Respondent
IFC Holdings, Inc. d/b/a
INVEST Financial Corporation, CRD 12984, Respondent

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondents submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondents alleging violations based on the same factual findings.

Respondents understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against them; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against them;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary records;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. Respondents may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. *Nothing in this provision affects Respondents' testimonial*

obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

Respondents also understand that their experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC.¹

National Planning Corporation Inc. ("NPC"), CRD #29604, has been a member of NASD since September 1992. The firm's main office is located in Santa Monica, California and it has 485 branch offices across the country. It has no relevant disciplinary history within the past five years.

Investment Centers of America, Inc. ("ICA"), CRD #16443, has been a member of NASD since November 1985. The firm's main office is located in Appleton, Wisconsin and it has 388 branch offices across the country. It has no relevant disciplinary history within the past five years.

SII Investments, Inc. ("SII"), CRD #2225, has been a member of NASD since August 1968. The firm's main office is located in Appleton, Wisconsin and it has 299 branch offices across the country. It has no relevant disciplinary history within the past five years.

IFC Holdings, Inc. d/b/a INVEST Financial Corporation ("INVEST"), CRD #12984, has been a member of NASD since December 1982. The firm's main office is located in Tampa, Florida and it has 1096 branch offices across the country. It has no relevant disciplinary history within the past five years.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

¹ All four Respondent firms are direct or indirect subsidiaries of National Planning Holdings, Inc., which is not an NASD member.

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission ("SEC") and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

A. Findings

Respondents hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

Summary

1. This matter involves violations of NASD Rule 2830(k), which prohibits, among other things, member firms from favoring or disfavoring the sale or distribution of mutual fund shares on the basis of brokerage commissions received by the firm, and prohibits member firms from recommending the purchase of mutual fund shares on the basis of brokerage commissions received or expected to be received by the firm from any source.
2. Each of the Respondent firms maintained a shelf space (or revenue sharing) program between January 2001 and December 2003 pursuant to which, in return for a fee, mutual fund complexes participating in the firms' Premier Sponsor Program received preferential treatment from Respondents in the marketing of funds and in access to Respondents' retail brokerage sales forces, placement of materials on their web sites, identification as a Premier Sponsor on the Respondents' intranet websites and inclusion of links to the sponsors' websites, and inclusion of the funds in certain marketing materials prepared or distributed internally by Respondents. The program included nineteen non-proprietary mutual fund complexes during the period in question. Nine of the participants in

the program paid some or all of their fees for participating in the program by directing approximately \$12.54 million in mutual fund portfolio brokerage commissions to Respondents through two clearing brokers during the relevant time period. Those payments violated NASD Conduct Rules 2830(k) and 2110.

3. In addition, National Planning Corporation sponsored a non-cash sales promotion open to all of its registered representatives in 2002. Representatives could qualify for a top producers conference or payment of conference expenses by accumulating credits awarded by NPC for the sale of all investment products. For a portion of the time period of the program, NPC awarded double credits for the sale of Premier Sponsor funds and forty-five representatives qualified for a top producers conference or received enhanced payment of conference expenses because they earned double credits from the sale of Premier Sponsor funds. This double credit program violated NASD Conduct Rules 2830(l) and 2110.

The Premier Sponsor Program

4. From 2001 through 2003, each of the Respondent firms maintained a shelf space program referred to as the Premier Sponsor Program. In October 2000, Respondents INVEST and ICA joined then-existing Respondents NPC and SII as subsidiary firms of National Planning Holdings, Inc. ("NPH"). Prior to that time, INVEST, ICA, and NPH (through NPC and SII) maintained their own shelf space programs. Thereafter, the separate revenue sharing platforms combined to form the Premier Sponsor Program, administered centrally at NPH. Under the Premier Sponsor Program, in return for a fee, participants' funds were given preferential treatment over other funds, which could be purchased through the Respondents. The benefits included enhanced access to Respondents' sales forces (including office visits and participation in top producer meetings, training events, and telephone calls to the sales force); broadcast e-mail and conference calls; speaking platforms and prime booth space at the firms' training meetings; a hyperlink from the Respondents' intranet website to the participating funds' websites; identification as a Premier Sponsor on the firms' intranet websites and inclusion in the firms' Fund Focus Lists; waiver of ticket charges imposed on registered representatives for customer purchases of mutual funds in excess of \$5,000; and the ability to place content in each of Respondents' internal newsletter, *Blueprint for Success*. Most of these benefits were not available to non-participating fund complexes.
5. The cost for the mutual fund complexes to participate in the Premier Sponsor Program varied by fund complex. The membership fees consisted of an annual flat fee of 5 - 40 basis points on sales and/or 2.5 -

10 basis points on assets. Some participants were required to pay a minimum amount if the fees based on sales did not reach expected targets.

Use of Directed Brokerage Commissions

6. Mutual fund complexes generally use a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds they distribute and manage. The selection of executing brokers is generally within the discretion of the mutual fund complex advisor, subject to the requirement of obtaining best execution.
7. Nine of the participants in the Premier Sponsor Program paid all or part of their fees for participating in the program through directed brokerage commissions. This allowed the mutual fund distributors or advisors to avoid using their own funds to pay the fees, instead using assets of the mutual funds.
8. In order to pay the directed brokerage amounts, the mutual fund complexes entered into an arrangement with one or both of Respondents' clearing firms. Under that arrangement, the participating fund complexes directed some of their portfolio trade executions to one of the designated clearing firms, and indicated to the clearing firm that the trade was for the benefit of one of the Respondent firms. The clearing firm then provided the designated commission amounts to the Respondent firms.
9. The Respondent firms received approximately \$12.54 million in commissions from the participating fund complexes through these directed brokerage commission payments.² The Respondents did not actually execute any trades for the fund complexes.

Directed Brokerage Violations

10. Conduct Rule 2830(k) is designed to prevent arrangements in which brokerage commissions, which are fund assets, are used to compensate member firms for selling fund shares. The rule is also designed to ensure that execution of portfolio transactions is guided by the principle of "best execution" and not by other considerations.³ The rule provides, in pertinent part:

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage

² In total, NPC received \$4,038,634; ICA received \$1,215,007; SII received \$2,202,001, and INVEST received \$5,082,557.

³ Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 2004); *Notice to Members* 84-40.

commissions received or expected by such member from any source, including such investment company, or any covered account.

* * *

(6) No member shall, ... (B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies... if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source.

11. By virtue of the directed brokerage commission payments described above, involving the use of trading commissions to pay for participation in the Premier Sponsor Program, Respondents violated NASD Conduct Rules 2830(k) and 2110.

NPC's Violative Sales Contest

12. NPC used sales of the Premier Sponsor funds in connection with a sales promotion for representatives of the firm. Between August 1, 2001 and July 15, 2002, NPC held a sales contest to determine who would qualify for a trip to a top producer's conference held by the firm in Dana Point, California. As originally planned, representatives qualified for the trip by meeting a target amount based on sales of all products. However, when it appeared that not enough of the firm's representatives would qualify for the trip, NPC revised the rules for the contest during a four-month period in 2002 – February 1, 2002 through May 31, 2002 – so that representatives who sold shares of funds of the Premier Sponsors were awarded double credits towards their qualification for the incentive trip. Sales of mutual funds that did not participate in the Premier Sponsor Program were not eligible for the double weighted credits. As a consequence of the double credit program, forty-five representatives qualified or otherwise received enhanced payment for conference costs; in the absence of the double credits, they either would not have qualified for the trip or not have been eligible for additional conference benefits. The average value of participation in the conference was approximately \$1000, including registration, travel, lodging, meals, and sponsored entertainment, and other benefits.
13. NASD Rule 2830(l)(5) is intended to control the use of non-cash compensation in connection with the sale of investment company securities.⁴ NASD Rule 2830(l)(5) forbids a member from directly or indirectly accepting or making payments or offers of payments of any

⁴ SEC Approves Rule Change Relating to Non-Cash Compensation for Mutual Funds and Variable Products (Sept. 1998), *Notice to Members* 98-75.

non-cash compensation, except in instances where the non-cash compensation arrangement is based on the total production of associated persons with respect to all investment company securities distributed by the member, and the credit received for each investment company security is equally weighted. The Rule provides, in pertinent part:

No member. . .shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except. . .the following non-cash compensation arrangements are permitted: (D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that: (i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member; (ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted.

14. By providing double credits for the sale of mutual funds included in the Premier Sponsor program, NPC created a product-specific sales contest in which qualification was not based on total production of all investment company securities or on equal weighting of investment company securities. NPC thereby violated NASD Conduct Rules 2830(l) and 2110.

B. Sanctions

Respondents also consent to the imposition, at a maximum, of the following sanctions:

1. A censure;
2. Fines totaling \$3,750,000, assessed as follows among the Respondents:

NPC:	\$1,208,000
ICA:	\$ 363,500
SII:	\$ 658,500
INVEST:	\$1,520,000; and
3. An additional fine of \$100,000 as to NPC.

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents agree to pay any monetary sanctions imposed on them pursuant to the terms of this AWC.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certify on behalf of Respondents that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce them to submit it.

9/9/05
Date

By: M. Shawn Duggan
Name: M. Shawn Duggan
Title: President + CEO
National Planning Corporation Inc.

Date

By: _____
Name: _____
Title: _____
Investment Centers of America, Inc.

III.

OTHER MATTERS

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Date

By: _____

Name: _____

Title: _____
National Planning Corporation Inc.

9/9/05
Date

By: Michael A. Bell

Name: Michael A. Bell

Title: SVP and Chief Legal Officer
Investment Centers of America, Inc.

9-9-2005
Date

By: James P. Miller

Name: JAMES P. Miller

Title: President / CEO
SII Investments, Inc.

Date

By: _____

Name: _____

Title: _____
IFC Holdings, Inc., d/b/a INVEST
Financial Corporation

Reviewed by:

Counsel for Firm

Accepted by NASD:

Date

Department of Enforcement
Signed on behalf of the Director of ODA,
by delegated authority

Date

9/9/05
Date

By: _____

Name: _____

Title: _____

SII Investments, Inc.

By: _____

Name: Michael A. Bell

Title: _____

SVP and Chief Legal Officer
IFC Holdings, Inc., d/b/a INVEST
Financial Corporation

Reviewed by:

Counsel for Firm

Accepted by NASD:

8/23/05
Date

Thomas B. Johnson
Department of Enforcement
Signed on behalf of the Director of ODA,
by delegated authority