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INVEST Financial Corporation

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VIA EMAIL Delivery
Rule-comments@sec.gov

May 12, 2008

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549-1090

RE: PROPOSED AMENDMENTS TO REGULATION S-P
FILE NO. S7-06-08

Dear Ms. Morris:

Please accept this letter from National Planning Holdings, Inc. ("NPH") in response to the proposed amendment to Regulation S-P, issued by the Securities and Exchange Commission ("SEC" or "Commission"). NPH is the parent company of INVEST Financial Corporation, Investment Centers of America, Inc., National Planning Corporation, and SII Investments, Inc. (collectively referred to as the "NPH" Broker/Dealers). The NPH Broker/Dealers are also registered investment advisors.

The NPH Broker/Dealers have approximately 3,000 producing representatives, meeting client needs in all 50 states and Puerto Rico. The NPH Broker/Dealers provide a full-array of financial alternatives to their clients, through our independent contractor representatives, including mutual funds, annuities, stocks, bonds, investment advisory services and insurance products.

The vast majority of our representatives are independent contractors, a business model widely used in the securities industry. The independent contractor model has elements that are unique within the industry. In most cases our representatives own or lease their office space and own the computer equipment used in the office. Indeed, beyond our NPH Broker/Dealer firms, we believe that there are more independent contractor-owned branch offices than those that are owned by brokerage firms. Therefore, the unique impact of privacy and security of client information

should be specifically addressed in the context of this broad segment of the securities industry.

It should also be noted that our firms and many of our representatives are also members of the Financial Services Institute ("FSI"), and as independent contractor modeled broker/dealers we support the efforts of FSI. The FSI will be separately commenting on the proposal and we support the FSI's comment letter on this matter.

The NPH Broker/Dealers are supportive of the Commission's efforts to provide clear standards to firms and representatives on issues relative to client privacy. Given technological development and the mobility of representatives, it is important for the industry to promote and protect client information, and assure client confidence. It is equally important to provide clear and consistent guidance to the firm and representatives on regulatory expectations. As is provided below, we do feel that clarification is required to provide effective guidance to firms.

<u>Information Security and Response Requirements</u>

We believe that the security of the client information is integral to maintaining client trust and for the effective operations of our firms. We also believe that the NPH Broker/Dealers currently exceed the technical security requirements provided by the proposal. The NPH Broker/Dealers have a coordinated information security policy covering items from email security to encryption of computer data to home office access of information.

While we believe that our systems properly address security, we have concerns with the procedural requirements and possible interpretation of proposed section 248.30. Specifically, our concerns include –

- Administrative Burden – we see significant administrative burden and costs associated with several of the procedural requirements of the rule proposal. Given the breadth of the requirements for appointment of employees to coordinate the program, implementations of formalized and documented procedures to assess foreseeable internal and external risks, testing and auditing, training, and evaluation of outside vendors and contractors, the requirements will require additional staffing and thus have a significant cost to the broker/dealers that is more than the SEC staff's preliminary estimates. We recognize that some processes are required to support a policy, but believe that the combination of the requirements will create significant costs to the NPH Broker/Dealers.

- The proposed rule would extend the safeguard requirements to information about the firm's employees. While we believe that employee

information should certainly be protected, we question whether the SEC has statutory authority to include this type of information within the scope of its rule. Moreover, doing so will substantially increase the related compliance cost because the scope of employee-related information and systems is different than customer-related information and systems. We believe the additional cost does not justify the benefit of protecting this information under the rule. Criminals can find many ways of coercing employees into improper conduct without relying upon personal employee information.

- Interpretation – while we appreciate the flexibility, we are concerned that a "reasonably designed" standard will be interpreted subjectively, leaving significant discretion to examiners. Additional guidance about the SEC's expectations for different sized and structured firms would be very helpful to get appropriate protections in place when the rule is adopted, rather than defining this standard through a series of after-the-fact enforcement actions where the systems and procedures did not measure up to the SEC's expectations. For example, while we already have a significant number of knowledgeable employees supporting the NPH Broker/Dealers with internal information technology and computer systems, to what extent will firms be expected to hire outside data security experts to learn about the latest technology-driven scams and threats? Many firms "don't know what they don't know" when it comes to data security risks and would need to turn to outside consultants for guidance.

- Physical Security - the proposal leaves unanswered a number of very practical questions and issues relative to physical security and data access in both the firm's home office and branch offices. For example, questions include –

  - Whether a "clean desk" standard is now required in all of the firm's offices? In all third-party service provider offices?
  - What initial and on-going due diligence and security procedures are required in order for firms to allow third-party cleaning staff or others have access to the facility during or after normal business hours? In independently-owned branch offices?
  - What initial and on-going due diligence and security procedures are required with respect to computer support and repair people used by the home office or by representatives in independently-owned branch offices?

These questions can be significant for independent contractor modeled firms, where the representative owns the facility and the equipment.

- Disposal of Client Information – the NPH Broker/Dealers support proper disposal of client information, whether in paper, electronic or other form. However, we have concern that the proposed rule will require formal documentation of not only the process used to dispose of office equipment and files that may contain client information, but also specific records tracking the disposal of all personal computers, PDAs, cell phones, or hard copies of client files. We see the administrative burden of creating and maintaining records with respect to such disposal requirements as being significant, yet without significant benefit to actually protecting client information.

Incident Response-Section 248-30(a)(4)

The NPH Broker/dealers believe that a standardized approach to incident reporting is necessary. In reviewing the standards of various states, the approach taken varies significantly depending upon the jurisdiction. The SEC has the opportunity with this rule to provide firms with a more standardized response process. However, the lack of preemption over state requirements will result in differing processes and additional burden to firms. Due to the lack of preemption, there is no standardization – only additional requirements imposed by the SEC on top of state requirements.

We do believe that clarification in representative recruiting situations is required. In an independent contract scenario, the representative typically owns, rents, or otherwise directly controls his or her physical office. The branch office files contain client information, including information gathered on new account forms such as Social Security Number, date of birth, and other sensitive information.

In an independent contractor arrangement, the clients typically consider themselves to primarily be a customer of the representative, rather than the firm. Independent contractor firms typically treat the representative as the owner of the relationship with the client, while still providing for reasonable and effective supervision of the representative. Independent representatives typically leave with the client information, used to service the client account at the new broker/dealer, and very seldom with an objection from the client.

Firms need clarity on whether the continued use of client information by a representative who has terminated registration with the firm, constitutes "unauthorized access" of a nature that may result in the requirement of the client notification. Our concern is that firms that are attempting to enforce their self-asserted ownership of client relationships (whether recognized by a

contractual provision such as a non-compete agreement or not) will use the rule as a weapon against any representative who is soliciting a client to move with the representative to a new firm. The rule needs clarity as to when and in what circumstances a representative's use of client information constitutes a "significant risk of substantial harm or inconvenience" of a nature that would require regulatory notification and notice to clients. For example, is there a "significant risk of substantial harm or inconvenience" when a departing representative uses contact information without the old firm's permission to identify and contact their clients?

General Recruiting Issues

We believe that the SEC's current application of Regulation S-P to broker recruiting and transitions will adversely affect competition within the securities industry. Enhancing competitiveness was one of the Congressional underpinnings of the Gramm-Leach-Bliley Act of 1999. The proposed amendment to create a limited information-sharing exception does not recognize the client's interest in knowing when and where their representative is going if he or she changes firms. As proposed, the old firm controls the use of the customer contact information—even in the absence of a contractual right to do so. The old firm can selectively permit or deny the use of customer contact information in any way that serves its competitive advantage. Using the contact information without the old firm's consent would constitute a violation of federal law and the old firm, and the old firm could defame the representative's integrity by notifying clients that the representative has violated federal law in doing so. As proposed, the exception could easily be improperly used to prevent clients from continuing to work with the representative whom they have come to know and trust, while allowing the old firm to give the client's confidential information to a complete stranger within the old firm. By notifying regulators of the representative's privacy violation, the SEC and FINRA would be unwittingly fighting the old firm's competitive battles.

Clients should have the right to know, in advance, what could happen to their accounts in the event that their representative changes firms. This is a material fact that bears directly upon their decision-making in selecting a brokerage firm and representative. The SEC's proposed exception – which requires no client involvement – does not alert clients to a material event that directly affects the servicing of their accounts and could affect access to their account for some period of time. Clients will be injured by increased delays caused in the account transfer process.

To address our paramount concern for protecting clients' interests, the NPH Broker/Dealers have added an opt-out provision to their privacy policies, allowing departing representatives to leave the firm with client information

absent client objection, allowing the representatives to effectively continue to service their clients. We have received very few requests from clients to opt-out of the sharing, since the clients typically view their relationship as being with their representative, and not with the firm. We find this process to be effective for the "out-going representative" situation. However, the new rule proposal does not adequately address the "in-coming representative" situation, and may cause significant concerns.

As is noted above, in the independent contractor model the representative typically owns or leases their office space. If the representative leaves Firm A to join Firm B, the representative does not physically move. He or she simply re-register their office under the new firm, and change their signage to reflect the change of broker/dealer. The Firm A as the old firm may or may not request the return of paper files, but it would be normal for some level of identifiable client information to remain in the office, in the form of electronic files, paper files, old commission statements or other. This information could be from the old firm, or could have been generated at firms prior to the representative's registration with the old firm. This information may also be integrated with information for fixed insurance or outside investment advisors. Additionally, the representative may use firm sponsored third-party services such as contact management systems or data aggregators that may contain certain client information, that is also available at the new firm. Also, representatives may have on-line access for direct positions held at mutual funds or insurance companies.

The impact of the rule proposal on the independent contractor model creates special significant questions, that we feel are not adequately addressed:

- What obligation does the new firm have relative to client information generated at the old firm, or at prior firms? The NPH Broker/Dealers do not take possession of information relative to clients of the old firm at their home office or in their firm systems. However, do we have an obligation relative to the in-coming representative and branch location to determine whether he or she already has possession of client information generated at the old firm?
- Do we then have an obligation to assure that the representative is permitted to maintain the information, by the privacy policy and permission of the old firm?
- If the old firm does not allow the representative to continue to maintain the client information, but the clients have consented to the representative's maintenance of the information, what obligation does the new firm have?
- What role does the new firm have to assure that the requests of the old firm for return or destruction of information be accomplished?

Firms need guidance from the SEC in this rule proposal relative to their obligation in the "in coming" representative scenario. Given that the incident reporting process may be used as a weapon by some firms as is outlined above, additional guidance will help avoid significant legal and regulatory burden and costs in disputes between firms. It should also be noted that while the impact is different as to the independent contractor distribution channel, the questions provided above applies to all channels or business models, whether wirehouse, financial institution, independent contractor or regional firms.

SEC Questions

In response to those specific questions posed by the Commission that are relevant to the concerns of the NPH Broker/Dealers –

- Impact of New Exception – The NPH Broker/Dealers do not believe that the new exception for limited information sharing has any positive impact on its business or operations because it does not give customers a choice. The new exception is so limited in nature, and the qualification requirements are so burdensome, we will not attempt to use the exception for out-going representatives. For in-coming representatives, if the old firm attempts to use the exception, the requirements on the new firm and limited scope of shared information would effectively eliminate any benefit. We see the new exception as solely supporting those wire house operations who have been acting under the Protocol for Broker Recruiting and giving them substantially more leverage over their representatives. As a result, the ability of representatives and their clients wishing to change firms because of the publicly reported misdeeds of their firms will be substantially impeded.

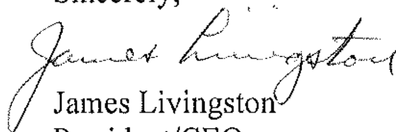
  We do not believe that there is a significant risk to clients for representatives taking client information when leaving an old firm to join a new firm. We do believe that in an independent contractor model a representative or group of representatives leaving a firm to join another firm is the functional equivalent of the transfer of a business unit between firms and, as such, is covered by existing information sharing exceptions for account transfers and servicing customer accounts.

- Suggested Alternatives - The NPH Broker/Dealers believe that the SEC should treat recruiting scenarios as the transfer of a business unit between the firms. Therefore, we urge the Commission to treat recruiting situations as falling within existing Rule 502(e)(7) "in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit." Clearly the recruiting scenarios outlined above fall within this provision, and we urge the Commission to

recognize the applicability of this exception to these scenarios. In situations where the firms and clients recognize the representative owns the relationship with the client, there is every reason to treat the matter as a transfer of a business unit.

We hope that this information is helpful in the Commission's consideration of privacy matters. We believe that the privacy expectations of the clients needs to be considered within the overall relationship of the client, the representative and the firm. In a wirehouse situation, there is a clear expectation that the firm itself exclusively owns the client relationship. In an independent contractor model, the firms, the representatives and the clients see the relationship as primarily being between the client and the representative. We ask the Commission to recognize this key distinction, whether through revision of the rule proposal or proper recognition of the application of Section 502(e)(7) to the representative recruiting scenario.

Sincerely,



James Livingston
President/CEO