

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015047177001**

TO: Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: National Planning Corporation, Respondent
Member Firm
CRD No. 29604

Investment Centers of America, Inc., Respondent
Member Firm
CRD No. 16443

SII Investments, Inc., Respondent
Member Firm
CRD No. 2225

IFC Holdings, Inc. (a/k/a) INVEST Financial Corporation, Respondent
Member Firm
CRD No. 12984

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondents National Planning Corporation (“NPC”), Investment Centers of America, Inc. (“ICA”), SII Investments, Inc. (“SII”), and IFC Holdings, Inc. (a/k/a) INVEST Financial Corporation (“IFC”) (collectively the “National Planning Firms” or “Respondents”) submit this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the National Planning Firms alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** The National Planning Firms hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA:

BACKGROUND

National Planning Corporation has been registered with FINRA since 1992. NPC is headquartered in Los Angeles, CA and is a full-service broker-dealer that sells a variety of securities products to its customers, including products issued by affiliated and unaffiliated companies. During the period of January 2013 through December 2014, NPC generated approximately 19% of its annual revenue through the sale of variable annuities. As of May 2018, NPC had 42 registered persons and three branch offices.¹

Investment Centers of America, Inc. has been registered with FINRA since 1985. ICA is currently headquartered in Appleton, WI and is a full-service broker-dealer that sells a variety of securities products to its customers, including products issued by affiliated and unaffiliated companies. During the period of April 2013 through April 2015, ICA generated approximately 19% of its annual revenue through the sale of variable annuities. As of May 2018, ICA had 40 registered persons and one branch office.

SII Investments, Inc. has been registered with FINRA since 1968. SII is currently headquartered in Appleton, WI and is a full-service broker-dealer that sells a variety of securities products to its customers, including products issued by affiliated and unaffiliated companies. During the period of April 2013 through April 2015, SII generated approximately 30% of its annual revenue through the sale of variable annuities. As of May 2018, SII had 40 registered persons and one branch office.

IFC Holdings, Inc. (a/k/a) INVEST Financial Corporation has been registered with FINRA since 1982. IFC is currently headquartered in Appleton, WI and is a full-service broker-dealer that sells a variety of securities products to its customers, including products issued by affiliated and unaffiliated companies. During the period of January 2013 through December 2014, IFC generated approximately 30% of its annual revenue through the sale of variable annuities. As of May 2018, IFC had 40 registered persons and one branch office.

NPC, ICA, SII and IFC were each wholly-owned subsidiaries of National Planning Holdings, Inc.

RELEVANT DISCIPLINARY HISTORY

The National Planning Firms have no relevant disciplinary history.

¹ The National Planning Firms were acquired by another FINRA Member Firm subsequent to the conduct at issue, and the majority of its registered persons moved to the new member firm. During the time periods relevant to this matter, NPC had approximately 1,800 registered persons, ICA had approximately 600 registered persons, SII had approximately 800 registered persons, and IFC had approximately 550 registered persons.

OVERVIEW

Between January 2013 and June 2015 (the “Relevant Period”), NPC, ICA, SII, and IFC failed to establish, maintain and enforce a supervisory system and written procedures, and develop and document specific training reasonably designed to ensure that representatives’ recommendations of variable annuities complied with applicable securities laws and regulations, and FINRA Rules. As a result, the National Planning Firms violated FINRA Rule 2330(d) and (e), NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010. NPC, SII and IFC also failed to detect red flags in their principal review and approval of the sale of certain multi-share class variable annuities. As a result, NPC, SII and IFC violated FINRA Rule 2330(c), NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010.

In addition, between April 1, 2010 and March 30, 2015, ICA and SII failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to ensure that customers received sales charge discounts on all eligible purchases of Unit Investment Trusts (“UITs”), in violation of NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

During the Relevant Period, the National Planning Firms each failed to establish, maintain and enforce a supervisory system and written procedures reasonably designed to supervise representatives’ recommendations of variable annuities.

Variable Annuities

Variable annuities are complex products that permit customers to choose among a variety of contract features and options. Due in part to the complexity of these products and the inherent risk of sales practice violations they present, FINRA issued Rule 2330 to require that firms enhance their supervisory systems, and provide more comprehensive and targeted protection to investors who purchase or exchange variable annuities. Among other things, Rule 2330 requires a registered representative, when recommending a variable annuity, to inform the customer of the features of the annuity, including applicable surrender charges, tax penalties, fees and costs.

L-Share Contracts

During the Relevant Period, the National Planning Firms sold variable annuity contracts with the option of different share classes, including B-share contracts (the most commonly sold share class) and L-share contracts.

L-share contracts, in particular, raise suitability concerns. L-share contracts have relatively short surrender periods – generally three to four years. Insurance companies specifically design L-share contracts so that customers pay a higher fee in exchange for the increased liquidity

provided by the shorter surrender period. Consequently, the annual fees associated with L-share contracts are often between 35 and 50 basis points higher than most B-share contracts.

Because L-share contracts generally charge higher fees for the life of the contract than comparable B-share contracts, L-share contracts raise suitability concerns when sold to customers with long-term time horizons.² These concerns are even more pronounced where an L-share contract is combined with a long-term rider such as a Guaranteed Minimum Income Benefit Rider (GMIB) or Guaranteed Minimum Withdrawal Benefit Rider (GMWB) because these riders often require the customer to hold the variable annuity for five years or longer (*i.e.*, longer than the contract's surrender period) in order to obtain the full benefit.

Respondents' Failed to Reasonably Supervise the Sale of Multi-Share Class Variable Annuities

NASD Rule 3010(a) required member firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD [and now FINRA] Rules." NASD Rule 3010(b) required member firms to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [and now FINRA]." FINRA Rule 3110, which superseded NASD Rule 3010 effective December 1, 2014, contains the same requirements.

In addition to the general supervisory requirements of NASD Rule 3010 and FINRA Rule 3110, FINRA Rule 2330(d) specifically requires that member firms "establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in [Rule 2330]." Among the standards set forth in Rule 2330(b) is the requirement that no member or associated person recommend the purchase or exchange of a variable annuity unless the member or person has a reasonable basis to believe that:

- (1) "the customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty . . . ; mortality and expense fees . . . ; potential charges for and features of riders . . . ;"
- (2) "the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit;" and
- (3) "the particular deferred variable annuity . . . and riders and similar product enhancements, if any, are suitable . . . for the particular customer."

² Some L-Share contracts have a specific provision, commonly called a "persistence credit," which reduces the annual fees so they are comparable to a B-share contract after the product is held for a period of time, generally seven to ten years.

Between January 2013 and June 2015, the National Planning Firms failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that their representatives complied with the requirements of Rule 2330(b). For example, none of the Respondents' procedures addressed suitability issues pertaining to the fees and costs or surrender periods of different variable annuity share classes. Similarly, none of the firms' procedures addressed the suitability concerns raised by the sale of an L-share contract when combined with a long-term rider or to a customer with a long-term investment time horizon. Also, FINRA Rule 2330(c) requires that a firm principal review all recommendations to purchase or exchange a variable annuity to determine whether the recommendation is suitable for the customer in light of the factors outlined in Rule 2330(b). Yet, the National Planning Firms' written supervisory procedures failed to address when additional scrutiny may be warranted by a reviewing principal because of suitability concerns about the variable annuity share class that was selected for the transaction.

Prior to June 2015, the National Planning Firms also failed to provide sufficient training to their registered representatives and reviewing principals to ensure that they understood the material features of variable annuities, as required by Rule 2330(e). Specifically, the variable annuity training provided by the National Planning Firms was not designed to ensure that Respondents' registered representatives and reviewing principals understood the suitability considerations raised by the sale of an L-share contract with a long-term income rider or to a customer with a long-term investment time horizon.

The National Planning Firms' failure to have these supervisory systems and procedures in place was unreasonable given the substantial volume of variable annuities sales, particularly L-share contracts, at each of the National Planning Firms during the Relevant Period:

- Between January 2013 and December 2014, NPC received over \$152 million from the sale of variable annuities, including approximately \$56 million from the sale of L-share contracts. During this period, NPC sold approximately 10,200 L-share contracts.
- Between April 2013 and April 2015, ICA received over \$45 million from the sale of variable annuities, including approximately \$4.6 million from the sale of L-share contracts. During this period, ICA sold approximately 800 L-share contracts.
- Between April 2013 and April 2015, SII received over \$117 million from the sale of variable annuities, including approximately \$26 million from the sale of L-share contracts. During this period, SII sold approximately 3,700 L-share contracts.
- Between July 2013 and December 2014, IFC received over \$118 million from the sale of variable annuities, including approximately \$19 million from the sale of L-share contracts. During this period, IFC sold approximately 9,600 L-share contracts.

At each of the National Planning Firms, many of the customers who purchased L-share contracts indicated that they had a long-term investment horizon. Also, almost 12,000 of the L-share variable annuities sold at the National Planning Firms were purchased with long-term riders.

Given the large volume of L-share variable annuities sold at each of the National Planning Firms, their failure to establish, maintain and enforce a supervisory system and written supervisory procedures addressing various suitability considerations associated with the sale of multi-share class variable annuities was unreasonable. Moreover, NPC, SII and IFC failed to identify the pattern of red flags presented by the sale of L-share variable annuities with long-term riders and failed to investigate the suitability of these potentially incompatible recommendations.

As a result of the foregoing, the National Planning Firms violated FINRA Rule 2330(d) and (e), NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010. In addition, NPC, SII and IFC also failed to detect red flags in its principal review and approval of the sale of certain multi-share class variable annuities. As a result, NPC, SII and IFC violated FINRA Rule 2330(c), NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010.

ICA and SII Failed to Reasonably Supervise the Application of UIT Sales Charge Discounts

A UIT is an SEC-registered investment company that issues securities, typically called “units,” representing undivided interests in a relatively fixed portfolio of securities. UITs are generally issued by a sponsor that assembles the UIT’s portfolio of securities, deposits the securities in a trust, and sells units of the UIT in a public offering. UIT units are redeemable securities that are issued for a specific term, and entitle an investor to receive his or her proportionate share of the UIT’s net assets on redemption or at termination.

UIT sponsors offer investors a variety of ways to reduce the sales fee charged on a UIT purchase. The two most common methods to reduce the fee are “breakpoints,” which allow investors to reduce the sales fee by increasing the size of their UIT investments, and discounts on “rollovers” and “exchanges” (collectively “sales charge discounts”).

On March 31, 2004, FINRA issued Notice to Members 04-26, *Unit Investment Trust Sales*, which reminded broker-dealers that they should develop and implement procedures to ensure customers receive available sales charge discounts for UITs. The Notice further stated that UIT transactions must take place “on the most advantageous terms available to the customer” and that it is the firm’s responsibility to “take appropriate steps to ensure that they and their employees understand, inform customers about, and apply correctly any applicable price breaks available to customers in connection with UITs.”

From April 1, 2010 through March 30, 2015, ICA and SII both failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to ensure that customers received available sales charge discounts on all eligible UIT purchases. ICA and SII relied primarily on their registered representatives to ensure that customers received appropriate UIT sales charge discounts, despite the fact that the firms did not effectively inform and train representatives and their supervisors to identify and apply such sales charge discounts. Furthermore, ICA and SII’s written procedures regarding sales charge discounts failed to set forth any procedures regarding the identification of UIT transactions eligible for sales charge

discounts. Finally, ICA and SII failed to adopt any controls to detect instances in which registered representatives failed to provide available UIT sales charge discounts.

As a result of these supervisory deficiencies, ICA and SII failed to identify and apply sales charge discounts to certain customers' eligible purchases of UITs. Specifically, ICA failed to apply sales charge discounts to 753 eligible UIT purchases resulting in customers paying excessive sales charges of approximately \$61,000. SII failed to apply sales charge discounts to 1,959 eligible UIT purchases resulting in customers paying excessive sales charges of approximately \$242,000. ICA and SII have paid restitution to all affected customers.

As a result of the foregoing, ICA and SII violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014) and FINRA Rule 2010.

B. The Respondents consent to the imposition of the following sanctions:

NPC consents to the imposition of the following sanctions:

- A censure and a \$650,000 fine.

ICA consents to the imposition of the following sanctions:

- A censure and a \$115,000 fine.

SII consents to the imposition of the following sanctions:

- A censure and a \$325,000 fine.

IFC consents to the imposition of the following sanctions:

- A censure and a \$600,000 fine.

NPC, SII and IFC each also agree to comply with the following undertakings:

1. Customer Payments for L-share variable annuities ("VAs") with Long-Term Income Riders: Within 120 days of the date this AWC is accepted by FINRA, NPC, SII and IFC are each ordered to provide restitution to NPC, SII and IFC customers who (1) purchased from NPC, SII and IFC registered representatives L-share contracts with Long-Term Income Riders and no persistency credits from February 1, 2013 through June 30, 2015 and (2) who currently hold those contracts at any affiliate of the National Planning Firms or the FINRA member firm which acquired the National Planning Firms (the "Restitution VA Contracts"), according to a Plan not unacceptable to FINRA in an amount that will total not less than \$6 million, including interest through May 31, 2018.

- a. Within 45 days of the date this AWC is accepted, NPC, SII and IFC shall provide in writing to FINRA the factors and methodology it intends to use to identify the Restitution VA Contracts and to calculate the amount due to customers. In the event FINRA objects to the factors, methodology or amount, NPC, SII and IFC will have an opportunity to address FINRA's objections and resubmit the plan within 30 days. FINRA will discuss its objections with NPC, SII and IFC. A failure to resubmit to FINRA a plan that is reasonably designed to meet the specific requirements and general purpose of the undertaking will be a violation of the terms of this AWC.
- b. Within 45 days of the date NPC, SII and IFC's factors and methodology is approved by FINRA, NPC, SII and IFC shall provide, in writing, a schedule of all customers identified as eligible for payment. The schedule shall include the details of the qualifying purchases and the total dollar amounts of payment to be provided to each customer.
- c. Payments shall be paid to customers via a check payable to the owner of the Restitution VA Contract and sent to the contract owner's address of record on file with NPC, SII and IFC or its affiliates, or to the extent the customer no longer has an account with NPC, SII and IFC or its affiliates, to the last known address of record.
- d. The check shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and providing additional disclosures and information about the difference between L-share and B-share variable annuities. The letter must make clear the payment is being made pursuant to a settlement with FINRA and as a term of this AWC. The letter also may not request a waiver of, or otherwise limit, any rights the customer has to pursue an action to obtain restitution or other remedies for grievances related to the customer's variable annuity.
- e. A registered principal of NPC, SII and IFC shall submit satisfactory proof of payment to customers, or of reasonable and documented efforts undertaken to effect such payment, to Penelope Brobst Blackwell, Senior Director, FINRA Department of Enforcement, 12801 N. Central Expressway, Suite 1050, Dallas, Texas 75243 either by letter that identifies NPC, SII and IFC and the case number or by email from a work-related account of the registered principal of NPC, SII and IFC to EnforcementNotice@FINRA.org. This proof shall be provided to

the FINRA staff member listed above no later than 120 days after the acceptance of the AWC.

- f. If, for any reason, NPC, SII and IFC cannot locate a customer to whom payment is owed after reasonable and documented efforts within 120 days from the date this AWC is accepted, or such additional period provided for under applicable state unclaimed property laws or otherwise agreed to by a FINRA staff member in writing, NPC, SII and IFC shall forward any undistributed amount to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. NPC, SII and IFC shall provide satisfactory proof of such action to the FINRA staff member identified above, and in the manner described above, within 14 days of forwarding the undistributed compensation to the appropriate state authority.
- g. NPC, SII and IFC shall pay all costs and expenses associated with the administration of the payments described herein.
- h. The imposition of this compensation order or any other monetary sanction herein, and the timing of such ordered payments, and the acceptance of compensation by the customer shall not preclude customers from pursuing a separate action to obtain restitution or other remedies.

FINRA staff may, in its discretion, upon a showing of good cause and upon written request, extend the dates for compliance with any of the terms of the undertakings.

Respondents agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondents have each submitted an Election of Payment form showing the method by which each Respondent proposes to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that Respondents are unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on the date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against them;
- B. To be notified of the 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
- D. To appeal any such decision to the National Adjudicatory Council (“NAC”) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

Respondents understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against them; and
- C. If accepted:
 - 1. this AWC will become part of Respondents’ permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA’s public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. 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 finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondents': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondents 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of NPC, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that NPC has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

7/19/18
Date (mm/dd/yyyy)

National Planning Corporation
Respondent

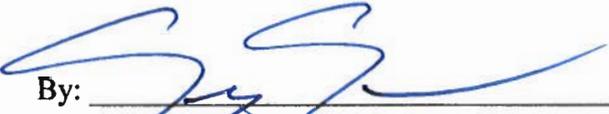
By: _____


Gerry Gunderson
SVP Regulatory
General Counsel

The undersigned, on behalf of ICA, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that ICA has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

7/19/18
Date (mm/dd/yyyy)

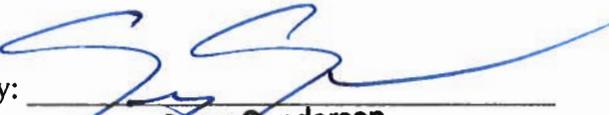
Investment Centers of America, Inc.
Respondent

By: 
Gerry Gunderson
SVP Regulatory
General Counsel

The undersigned, on behalf of SII, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that SII has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

7/19/18
Date (mm/dd/yyyy)

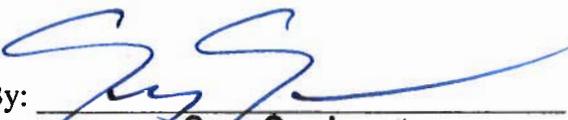
SII Investments, Inc.
Respondent

By: 
Gerry Gunderson
SVP Regulatory
General Counsel

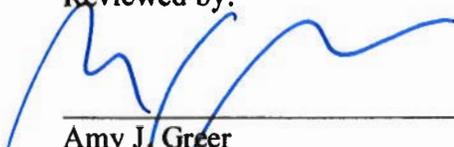
The undersigned, on behalf of IFC, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that IFC has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

7/19/18
Date (mm/dd/yyyy)

IFC Holdings, Inc. a/k/a Invest Financial
Corporation
Respondent

By: 
Gerry Gunderson
SVP Regulatory
General Counsel

Reviewed by:



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*Counsel for National Planning Corporation,
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SII Investments, Inc., and Invest Financial Corporation*

Accepted by FINRA:

July 24, 2018

Date

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



Penelope Brobst Blackwell
Senior Director
FINRA Department of Enforcement
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