

BY E-MAIL

August 17, 2009

Kenneth L. Hojnacki
Director of Professional Registration & Compliance
Wisconsin Department of Financial Institutions
Division of Securities
PO Box 1768
Madison, WI 53701-1768

Re: Proposed New NASAA Model Rules Pertaining to Investment Adviser Solicitors

Dear Mr. Hojnacki:

The Financial Planning Association® (“FPA®”)¹ welcomes the opportunity to comment on the proposed model rules pertaining to persons who solicit on behalf of investment advisers. We applaud your efforts to closely track the language in the Securities and Exchange Commission’s (“SEC”) rule on investment adviser solicitors, Rule 206(4)-3 under the Investment Advisers Act of 1940. To further that uniformity we urge you to take advantage of the SEC’s no-action positions and include additional language in the model rule covering certain entities that provide referral services for their members.

Specifically, we would suggest you add the following language to the Model Rule:

- (f) Notwithstanding the above, an entity that provides referral programs to help members of the public locate pre-screened investments advisers shall not be deemed to be a solicitor pursuant to this rule provided that:*
- (1) The public is directed to the pre-screened investment advisors based on criteria selected by the member of the public rather than being directed to a specific investment adviser;*
 - (2) The investment advisers are charged a flat fee for the service without regard to the number of referrals they may receive; and*
 - (3) The entity responsible for the referral program is recognized by the IRS as a non-profit organization as defined by 26 USC 501(c)3 or 26 USC 501(c)6 of the Internal Revenue Code.*

¹The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms, with approximately 25,000 individual members. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission or state securities administrators, and approximately 58 percent hold insurance licenses. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colorado.

The first two criteria are from SEC no-action letters that have dealt with the issue of referral programs and the definition of solicitor.² I added the third criteria to help assure that the organizations running the referral programs are indeed legitimate and directed toward helping the public make an informed decision rather than merely acting as business agents for their members.

As you know, one of our predecessor organization, the International Association of Financial Planners (the "IAFP"), was concerned with the general language in the federal rule. It believed that the rule was not intended to include programs such as its referral program within the definition of solicitation. In 1998, the IAFP sought and obtained a no action letter from the SEC providing that the SEC would not take enforcement action against the IAFP for running its referral program if certain conditions were followed.³ IAFP's successor, FPA, now runs a referral program, PlannerSearch, that is, in all material respects, identical to the IAFP referral program. The program is provided as a benefit to members that join our organization. It is a general program for consumers that does not solicit clients for a specific adviser. Members pay a flat fee without regard to how many referrals or clients. These are the factors that the SEC focused on in their no-action letters.⁴

It is my understanding that NASAA did not intend to include organizations which maintain legitimate referral programs, such as the FPA, in its definition of solicitor. As such we would propose adding the proposed language to the model rule to ensure that we are not mistakenly included.

Thank you for extending us the opportunity to comment on these rules. If you have any questions, or if FPA can provide any additional information, please do not hesitate to contact me at (202)449-6342 or david.cohen@fpanet.org

Sincerely,

David A. Cohen
Assistant Director of Government Relations

cc: Patricia D. Struck
Kelvin M. Blake
Hugo Mayer
David Finnigan
Lindsay DeRosia
Paul Schwartz
David Smith
David Swafford
Jackie L. Walter
Steve Hall

² See *International Association for Financial Planning*, SEC Staff No-Action Letter (June 1, 1998), *Excellence in Advertising*, SEC Staff No-Action Letter (December 15, 1986) and *National Football League Players Association*, SEC Staff No-Action Letter (January 25, 2002)

³ *International Association for Financial Planning*, SEC Staff No-Action Letter (June 1, 1998)

⁴ See footnote 2.