

Licensing Requirements

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Summary

This session will survey the various federal and state licenses available to tax professionals who wish to expand their practices and other financial services to their clients. The purpose of each license and how to obtain it will be outlined. Attendees will be taught the practical uses of the licenses, as well as the pros, cons, and limitations of each.

Instructor Profile

Monica Haven, E.A., J.D. has a Masters in Taxation (LLM) and decades-long experience as a solo practitioner, Monica routinely shares her expertise in the classroom. She is an alum and former faculty member of the National Tax Practice Institute, a recognized speaker on the “professional” circuit, and a welcome guest lecturer on college campuses and at community organizations. And she is particularly excited to have been welcomed back to the NATP program based on enthusiastic reviews from last year’s students and attendees.

Licensed by the Financial Industry Regulatory Authority (FINRA; formerly FINRA), Monica teaches courses to help students pass licensing exams. She presents her material in a clear and concise manner, offering self-created tips to ensure success. As a practicing financial planner, she brings real-world experiences and humorous anecdotes to class in an effort to make the required material less dry, more memorable, and fun (!).

As an Enrolled Agent, Monica maintains a flourishing tax practice in Southern California. Unable to decide whether she prefers teaching or taxation, she’s in her element when she gets to teach tax!

The information contained herein is for educational use only and should not be construed as tax, financial, or legal advice. Each individual’s situation is unique and may require specialized treatment. It is, therefore, imperative that you consult with tax and legal professionals prior to implementation of any strategies discussed.

Table of Contents

I.	Reasons to offer additional services to clientele	1
II.	Definition of “Personal Financial Planning”	2
III.	The Planning Process	2
IV.	Adjunct Services	4
	• Service Spectrum	
	• Pros & Cons of Full to Minimum Service Options	
V.	Job Titles and Designations Available	7
	• Investment Advisor	
	• Registered Representative	
	• Insurance Agent	
	• Tax Advisor	
	• Estate Planner	
VI.	Federal and State Registration Requirements	9
VII.	FINRA Licensing Exams	11
VIII.	Methods of Compensation: Fee-based versus Commission	11
IX.	10 Steps to a Successful Financial Planning Practice	13
X.	Applicable Rules and Regulations	15
	• Investment Advisors Act of 1940	
	• Investment Advisor Release 1092	
	• ERISA	
	• Uniform Prudent Investor’s Act	
	• Securities Act of 1933	
	• Securities and Exchange Act of 1934	
	• National Securities Market Improvement Act	
XI.	Ethical Standards	18
	APPENDIX A: Documentation Checklist	19
	APPENDIX B: Investment Pyramid	20
	APPENDIX C: State Regulators	21
	APPENDIX D: State Examination Requirements for IAs	23
	APPENDIX E: Taxpayer Consent (Sample Form)	24
	APPENDIX F: Glossary of Terms	25

I. Why should the tax professional offer additional services?

For the benefit of the client

- Dissatisfaction with current investment adviser's results
- Info on internet overwhelming and confusing
- One-stop shopping convenience
- Previously established rapport
- Easy access to the requisite information
- Address tax implications of investment decisions

For the benefit of the practitioner

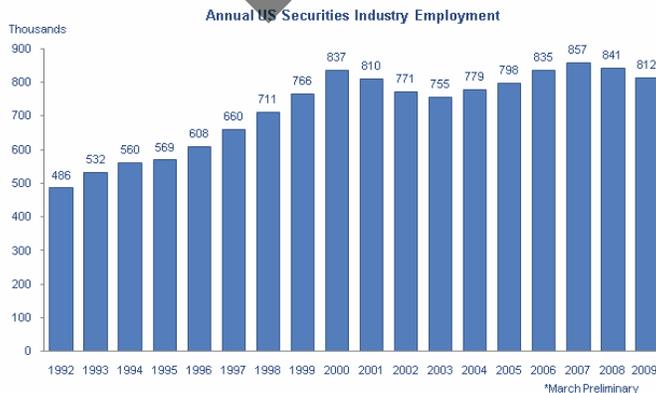
- Maintain competitive edge
- Redefine shrinking tax practice due to:
 - Do-it-yourself options and free preparation is available on the internet
 - Tax "simplification" and threat of potential flat tax
- Follow industry trend
- Diversify and partner-up
- Capitalize on existing synergies
- Generate year-round revenues
- **It's FUN!**

Median Hourly Earnings, May 2006

US Department of Labor, Bureau of Labor Statistics

[available at <http://www.bls.gov/oco/cg/cgs029.htm>, last accessed May 13, 2009.]

Financial managers	\$63.52
Securities, commodities, and financial services sales agents	40.24
Financial analysts	38.97
Personal financial advisors	34.89



National securities industry employment reached a record high of 869,600 jobs in the second quarter 2008, but has since contracted by 6.6 percent. Several economists have predicted that the U.S. economy will begin to recover sometime in the second half of 2009. Although national securities industry employment recovered from the prior downturn, gaining 118,600 jobs in the 57 months following the October 2003 nadir, it remains to be seen whether the current downturn in securities employment will recover similarly. (Securities Industry and Financial Markets Association Industry Report, April 24, 2009).

Source: BLS (Year-end data)

II. Definition of “Personal Financial Planning” (PFP)

PFP is process of developing and coordinating the implementation of a *flexible plan* that uses an individual’s *available resources* to achieve specific *financial goals*.

The three key elements of the financial planning process include:

1. Creation
2. Implementation
3. Modification

Client typically seeks either lifetime guidance or answers to specific concerns and will base his selection of Planner on the following criteria:

- Competency—often confirmed or recognized by a recognized credential
- Expertise—gained through initial and ongoing education and possibly tested on approved examinations
- Experience—should be relevant, but can on occasion be supplemented by a mentor relationship or partnership with others in the field
- Ethics—Practitioner’s willingness to abide by the rules of law and the Codes of Ethics established by various professional organizations as well as past disciplinary proceedings, if any
- Services Offered—including support staff, personalized attention, Planner’s availability and fee structure

Client is best served if he interviews several Planners and obtains references and referrals. Client wants someone to make sense of what he already has, help him determine what he would like to achieve, and then help him to attain those goals.

III. The Planning Process

Although the planning process can be instigated in a variety of ways and is often dependent upon Planner’s expertise as well as his business philosophies and personal ethics, commonly accepted steps everyone should take include:

- A. Establish the scope of the engagement
 - Identify Client’s expectations and *ask questions* (!)
 - Clarify Planner’s expertise, limitations and intent
- B. Gather data
 - Set appointment
 - Help Client to establish and verbalize financial (and life) goals
 - Collect data via questionnaire, client interview, and/or use of a para-planner or assistant
 - Documentation Needed [See *Appendix A* for Document Checklist]
 - Request original and make copies

- Return one copy in binder to be given to Client upon completion of planning process
- C. Develop a preliminary Statement of Financial Condition
- Summarize information gathered
 - Set a baseline
- D. Analyze information
- Needs analysis
 - Health
 - Education
 - Retirement
 - Vacation
 - Large purchase
 - Other
 - Portfolio analysis
 - Allocation
 - Risk/reward trade-off
 - Diversification and risk minimization
 - Tax analysis
 - Future projected income tax liabilities
 - Potential estate tax exposure (for each spouse, if applicable)
 - Help to make Client's goals realistic and achievable by:
 - Changing assumptions about inflation, asset and/or income growth rates
 - Reducing the dollar amounts involved
 - Increasing the time frame
 - Increasing income (re-allocating portfolio or changing employment)
 - Decreasing expenditures (cash flow management and budgeting)
 - Modifying the level of acceptable risk (always educate Client)
 - Consult with experts
 - Develop a network of associates and peers
- E. Formulate the financial plan [See Appendix B for Investment Pyramid.]
- Discuss recommendations with Client
- F. Implement and coordinate Plan
- G. Monitor and update Plan
- Provide periodic reports and updates to Client
 - Communicate intelligently and intelligibly with Client

IV. Adjunct Services which can be offered by the Tax Practitioner

Spectrum of Services



A. Financial Planner (FP)

- Analyze Client's goals, objectives and expectations
- Evaluate Client's current financial situation
- Recommend solutions for:
 - Budgeting and cash flow management
 - Insurance coverage (casualty, health, disability and life)
 - Education costs for Client and/or family members
 - Tax minimization strategies
 - Retirement savings
 - Estate planning needs
- Monitor and adjust plan as needed
- Communicate with Client on an ongoing basis

Typically, FP does not suffer from conflicts of interest. However, he must be prepared to devote himself full-time to the business endeavor.

B. Representative of Financial Planner

- Solicit business on behalf of FP
- Refer Client to FP
- Coordinate the advisory efforts of others
- Offer 2nd opinions and act as a sounding board for Client

Although Representative is relatively free of responsibility and liability for the Plan, his services result in an added level of fees and he may be perceived as incompetent (at worst) or superfluous (at best).

C. Fee-Only Advisor

- Create plan for Client
- Encourage implementation
- Monitor and report to Client
- Oversee portfolio and offer behind-the-scenes management

It is not necessary to be affiliated with a Broker/Dealer (B/D), but certification as an Investment Advisor (IA) is required.

D. Commission-based Broker

- Implement the financial plan (usually created by others)
- Sell securities reasonable and suitable to Client's situation (Rule 405)
- Match Client's needs with characteristics and features offered by specific investments
- Receive payment on a transaction basis

Traditionally, all practitioners operated in this fashion, although the industry today is trending toward fee-based services. The financial rewards (payouts) are often greater, but Broker faces stiff competition and is heavily regulated by the Financial Industry Regulatory Authority (FINRA) and the Securities and Exchange Commission (SEC).

E. Offer 2nd Opinion

- Allow others to establish financial plan and offer implementation solutions
- Assist Client with the following:
 - Prospectus review
 - Statement analysis
 - Understanding trade confirmations
 - Evaluation and comparison of costs and fees
 - Monitoring investment performance
 - Suggesting alternatives
 - Creating a list of questions to address to other advisors

This arrangement does not usually allow Practitioner to establish a long-term relationship with Client.

F. Discretionary Authority

- Make investment decisions on behalf of Client
- Implement suggestions without ongoing consultation

Planner can implement recommendations more quickly and without the inconvenience of continuous conferences with Client, but trades these benefits for the disadvantages of full liability and tremendous record keeping responsibilities.

[See Chart of Pros and Cons, below.]

Service Type	Pros	Cons
A. Financial Planner	<p>No conflict of interest between plan creation and implementation</p>	<p>Full-time attention required (tax practice will have to be phased out or associates and assistants will have to become involved)</p>
B. FP Representative	<ul style="list-style-type: none"> Representative is not responsible for performance of the portfolio 	<ul style="list-style-type: none"> Representative may be perceived as lacking competence if full job responsibility is not assumed Client will be subject to additional fees for 2nd level of advisory services
C. Fee-Only Advisor	<ul style="list-style-type: none"> May prove to be an easy adjunct to a tax practice, at least initially No FINRA license required No B/D affiliation required 	<ul style="list-style-type: none"> Eventually full-time attention will have to be dedicated to clients
D. Commission-Based	<ul style="list-style-type: none"> Broker's payout tends to be higher for the time expended 	<ul style="list-style-type: none"> FINRA license is required Must be affiliated with B/D Will be considered an agent of the B/D Broker may not be able to gain overview of Client's total picture Competition amongst brokers is particularly intense Broker is frequently perceived as being biased toward investments with high commissions and may be tempted to or accused of churning the account Subject to additional compliance requirements Cannot give advice unless it is incidental to the business and cannot charge fees for any advice or time spent Even outside business activities are subject to supervision
E. 2 nd Opinion	<ul style="list-style-type: none"> Offers Client peace of mind 	<ul style="list-style-type: none"> May be unable to establish long-term relationship with Client
F. Discretionary Authority	<ul style="list-style-type: none"> Offers Client convenience and the ability to remain uninvolved in day-to-day management of his financial situation Can frequently time purchases and sales better as the need for Client consultation is minimized 	<ul style="list-style-type: none"> Advisor assumes great liability May be accused of making unsuitable trades on behalf of Client Subject to additional paperwork and record keeping requirements

V. Official Job Titles

A. Investment Advisor

1. Registered Investment Advisor (RIA)

Gives advice regarding investments for a fee. Entity must be registered under the Investment Advisor's Act of 1940 with either the SEC or the State Securities Administrator¹, unless exempt:

- Less than 15 clients/12-month period
- Does not hold himself out to be an Investment Advisor

However, the SEC forbids Planner from simply using the 3-letter "RIA" abbreviation in any written form, since it might falsely imply that it is a credential of competence rather than a registration required under the law. It is, however, acceptable to spell out the entire title.

2. Advisory Affiliate

Individual who refers business to the RIA entity unless otherwise excluded from the anti-fraud provisions of the 1940 Act. Affiliate can be **excluded** if he is an attorney, accountant, engineer, or teacher and the advice given is incidental to the job.

3. Investment Advisor's Representative (IAR)

Individual who refers business to the RIA and works for the Advisory Affiliate. The Representative must register in each state where business will be solicited and may have to pass an exam, depending on state regulatory requirements. While there is no uniform national requirement, most states require that the applicant pass the NASAA's² Series 63 Uniform Securities Agent State Law and Series 65 Uniform Investment Advisors exams with a score of 70% or better.³

B. Registered Representative (RR)

Agent of the employing firm known as the Broker/Dealer (B/D). Often referred to as a "stockbroker," he may also be known as a Financial Analyst, Financial Advisor, Financial Consultant, Financial Planner, Investment Consultant, or

¹ While still subject to regulatory control of the SEC, Investment Advisor who manages less than \$25 million must register with the State Securities Commission in the state of domicile and with each state where business is solicited.

² North American Securities Administrators Association.

³ Previously licensed employees of brokerage firms who already hold a Series 7 license may become registered upon passing the Series 66 in lieu of the Series 63 and 65 combo.

Wealth Manager—these generic titles may be used by investment professionals who do not otherwise hold a specific designation. However, FINRA's Rule of Conduct 2210 prohibits affiliated brokers from referencing non-existent degrees or mis-referencing legitimate designations in a misleading manner.

NOTE: Because the RR is an agent of his employing firm, he must place his employer's interests above those of his clients; whereas, the IA is legally and ethically required to place his clients' interests first. In other words, the IA is held to the *fiduciary standard* and must act with undivided loyalty to the client.⁴ As a result, the IA may not:

- Issue securities or recommend unregistered securities
- Fail to disclose available fee discounts to his client
- Contractually limit his liability or his clients' options regarding the right to sue or arbitrate
- Borrow from or lend money to his clients

In the past, brokerage firms and their representative were exempt from the fiduciary standard under the Merrill Lynch Rule (the Rule) since brokers traditionally did not offer financial advice but merely helped clients to engage in stock purchases and sales. But, as the industry evolved, brokerage firms allowed their employees to hold themselves out as financial advisors and consultants, thereby implying that these individuals provided services similar to the IA, leading to consumer confusion.⁵

While brokers are held to a *suitability standard*, requiring them to understand their clients' needs and recommend only those investments that are suitable, they are not required to disclose fee structures and conflicts of interest. The Rule was intended to protect only those brokers who gave advice that was "incidental" to stock and bond transactions but, over time, the line was blurred and the "solely incidental" restriction became meaningless where brokerage firms were charging fees and commissions. In March of 2007, the U.S. Appeals Court struck down the Rule, requiring brokers to provide additional disclosure. Nevertheless, it is important to note that the broker's loyalty still remains with his employer, not the client.

⁴ The Retirement Corp. of America has estimated that more than 650,000 people provide some form of financial services in the US but only 10% of these individuals are legally required to act as fiduciaries!

⁵ A TD Watercourse study concluded that 58% of investors incorrectly believed that stock brokers and advisors both had the same fiduciary responsibility to the client, 63% incorrectly believed that both groups of professions had the same disclosure requirements regarding potential conflicts of interest, and 85% expected that all fee-based advisors should provide these protections.

C. Insurance Agent

Must be state-licensed to sell life, health, property, or casualty insurance. Must be FINRA-licensed (Series 6 or 7) if Agent sells variable annuity or life products.

D. Tax Advisor

Either state-licensed as a Certified Public Accountant (CPA) or federally credentialed as an Enrolled Agent (EA), this individual is primarily a tax expert.

E. Estate Planner

Although any of the above can provide advice regarding estate taxes and other issues, only an attorney can prepare wills, trusts or other legal documents.

VI. IA Registration Requirements

National Securities Markets Improvement Act of 1996 (effective July 1997) attempted to coordinate federal and state registration requirements and regulatory oversight.

A. Federal

1. Form ADV must be filed with the SEC if > \$25 million assets under management
 - Part I provides information about the applicant (there are no minimum educational standards)
 - Part II provides disclosure regarding IA's business practices
2. Registration becomes effective 45 days after filing
3. Brochure Rule 204-3 (Investment Advisor's Act of 1940)

IA may use ADV-Part II in lieu of brochure, but must deliver one or the other to the client at least 48 hours before signing of the contract, but no later than at the time of the contract if Client is then given the right of rescission for 5 days.

In 2008, the SEC renewed its proposal—first submitted in 2000—to replace the previously accepted check-the-box format with a narrative in plain English. The intent is to provide sufficient information to clients, without overwhelming them with minutia.

B. State [See Appendix C for Listing of Administrators.]

1. Registration required if < \$25 million under management or > 5 clients in-state and Advisor has a place of business in-state.

2. Most states now require a combination of the FINRA Series 7 AND the 65, OR the Series 66 by itself. [See *Appendix D* for State Examination Requirements.]
3. Some states exclude the following from registration requirements:
 - Certified Financial Planner (CFP)
As certified by the CFP Board of Standards, an independent non-profit organization which requires a bachelor's degree, a rigorous exam (since inception in 1991, only 57% of all exam takers have passed the 10-hour exam given over two days on 106 topics ranging from insurance and estate planning to income tax), experience and ethics. Continuing education requirements mandate 30 hours every 2 years.
(800) 487-1497 or www.CFP-Board.org
 - Chartered Life Underwriter (CLU)
This designation is the oldest (created in 1927) and is traditionally pursued by agents who wish to specialize in life insurance for business or estate-planning purposes. *No exam required.*
(888) 263-7265 or www.theamericancollege.edu
 - Chartered Financial Analyst (CFA)
As accredited by the Chartered Financial Analyst Institute which offers a self-study program of 11 topics and requires passing 3 exams.
(800) 247-8132 or www.cfainstitute.org
 - Chartered Financial Consultant (ChFC)
Introduced in 1982 as an alternative to the CFP, this 8-course self-study program is offered by the American College of Bryn Mawr and *does not require an exam.* Continuing education requirements introduced after 1989.
(888) 263-7265 or www.theamericancollege.edu
 - Personal Financial Specialist (PFS)
As accredited by the American Institute of Certified Public Accountants (AICPA) which requires that CPA's (only) pass a 6-hour exam and have 250 hours of experience. Continuing education is required.
(888) 777-7077 or <http://pfp.aicpa.org>

The afore-mentioned require competency and knowledge of all areas of financial planning. Other schools and programs are available as well. In fact, there are over 110 educational institutions listed with the CFP Board!

VII. FINRA Licensing Exams

Exam Series	Exam Title	Number of Questions	Time Limit	Licensee is eligible	Hours of Pre-Study	In-Class Time
6	Investment Company & Variable Contracts Limited Representative	100	2 ¼ hours	To sell mutual funds, variable annuities and variable life products (if also state insurance licensed)	30-50	2-3 days
7	General Securities Representative	250	6 hours	To solicit and sell all securities except commodities	40-100	5 days
24	General Securities Principal	150	3 ½ hours	To manage and supervise investment banking and securities sales activities	20-30	2 days
63	Uniform Securities Agent State Law	60	1 hour	To sell securities in each state one is registered (if one is also Series 6 or 7 licensed)	10-15	Self-study or included in Series 6 or 7
65	Uniform Investment Advisor Law	130	3 hours	To offer investment advisory and financial planning services in most states (Series 7 and 63 are typically not required)	40-50	1 ½ days
66	Combined State Law	100	2 ½ hours	To offer investment advisory and financial planning services in most states (must also be Series 7 and 63 licensed)	30-40	1 day

Licensed individuals must comply with the following continuing education requirements:

- Regulatory Element—must complete computer-based training program 2 years after licensing and every 3 years thereafter
- Firm Element—must complete annual training program as established by employing broker-dealer to keep current with job- and product-related subjects

VIII. Types of Compensation

In a poll conducted by InvestmentAdvisor.com, 30% of all IAs derived their income from fees alone. Only 18% derived their income from commissions alone; with the remaining 52% deriving most of their income from fees or transitioning from commissions to fees.

A. Fee Only

- Hourly—a maximum amount should be set
- Flat or fixed charge per plan
- Minimum/maximum range
- Based on assets under management (if state regulations allow)—but *not* performance-based, and *no* rebates for under-performance allowed
- Referral fees
- Wrap Accounts
 - Mutual Fund Wraps: B/D allocates assets in a variety of in-house funds and charges 1 to 1.5% to monitor the portfolio and rebalance the account, if necessary.
 - Consultant Wraps: B/D refers Client's account to an independent manager who then charges 2.5 to 3% to hold and manage Client's assets.

- Proprietary Consultant Wraps: B/D refers Client's account to an in-house manager.
- Fee-Based Programs: B/D charges about 1% and then allows Client to manage his own portfolio without incurring further transaction costs or commissions.

Pros	Cons
Industry trend	No follow-up or implementation assured
No conflicts of interest (→ objectivity)	Asset-based Planner may have incentive to simply gather assets
Asset-based Planner is tied to Client's portfolio size (→ motivation)	Client may be charged additional fees for implementation of recommendations
Asset-based fees can be billed automatically (→ ease and simplicity for Client)	Client may feel abused or discouraged from contacting Planner for fear of incurring hourly fees
Planner can build an income-stream as his book grows and fees continue to accumulate	Flat-fee Planner cannot bill for additional time expended
	Recommendations are typically limited to no-load mutual funds

B. Commission only

Pros	Cons
Client may obtain "free" advice	"Free" advice is often perceived as having no value
Time is highly leveraged as the same research and advice can be re-used	Advice is subjective and tied to the commission schedule of the investment vehicle recommended
	Advice is often implemented elsewhere



The industry trend favoring fee-based versus commission-based compensation is evident in these charts. Based on current job postings as tracked by indeed.com, Investment Advisor salaries (typically fee-based) are increasing, whereas Stock Broker compensation (typically commission-based) is declining.

C. Fee plus Commission

- Set a flat fee and then reduce it by the amount of any commissions earned

D. Caveats

- Always *disclose* fee arrangement in advance
- Document disclosure and get Client's prior *written consent*
- Educate and *communicate* with Client
- Develop rapport and *establish trust* with Client
- Build a *long-term relationship*

IX. Steps to implement when establishing a financial planning practice

- Create a business plan
- Strengthen personal financial planning skills
- Register as an Investment Advisor with the SEC or the state
 - Get licensed, if required
 - File documentation and submit registration fee. Form ADV (including instructions) is available at www.sec.gov/divisions/investment/iard/iastuff.shtml
 - SEC must notify applicant within 45 days after filing.
- Develop Investment Advisor Agreement (get legal advice!)
 - Provisions to include:
 - Specify parties to the contract (personalized by name)
 - Outline services to be provided
 - Include a compensation clause
 - Establish Client's responsibilities
 - Arbitration clause
 - State that the contract may be terminated verbally and/or in writing
 - Provide brochure (or ADV-Part II) to Client 48 hours in advance and get a signed receipt
 - Get written consent (signed and dated) from Client to use tax data gleaned from 1040 for financial planning purposes—Reg. 301.7216-3(3) [See *Appendix E* for Sample Consent Form.]

Benefits of a well-written and executed Agreement include:

- A solid foundation upon which future courses of action can be based
- An outline of an investment philosophy enabling Advisor to adhere to it in a disciplined fashion
- A discussion of alternative procedures in the event situations, needs and/or parties to the contract change
- A stepping stone encouraging further action
- A deterrent to potential litigation since it provides evidence of at least a one-time agreement between Client and Advisor

- Retainers
 - These will be construed as “taking custody” if > \$500/Client AND more than 6 months in advance and thus subject to stringent regulatory oversight
 - Section 206 of the Investment Advisors Act of 1940 requires that Client must be allowed to withdraw his authority for direct debits at any time
- Trading Authority/Discretion
 - Identify scope
 - Disclose potential conflicts of interest
 - Identify who will vote proxies
 - State that Planner reserves the right to assign the contract to another Advisor
- Research investment alternatives and products to be offered
- Select financial planning software to be used, if any
- Become affiliated with a broker/dealer, if necessary
 - Types of B/D’s
 - Wire-house (NYSE)
 - Independent (FINRA): National versus Regional
 - Discount: Low-Fee versus Internet
 - Factors to consider when selecting a B/D:
 - B/D’s compliance record and reputation
 - Training offered to Representative
 - Service and support offered
 - Manager’s personality and firm’s culture
 - Branch atmosphere
 - Employee satisfaction and retention
 - Marketing and advertising provided (name recognition)
 - Financial soundness of B/D and historical record
 - SIPC and private insurance coverage
 - Customer statements and attention
 - Proprietary products
 - Representative’s payout
 - Reference Materials
 - *Financial Planning’s* Annual Broker-Dealer Survey (available at www.financial-planning.com, click on “BD Scorecard”)
 - Career and broker/dealer info available from *Registered Representative Magazine* (available at www.registeredrep.com)
- Obtain liability (E & O) insurance to protect Advisor against:
 - Unrealistic client expectations
 - Unsuitable investment recommendations
 - Potential conflicts of interest

- Economic or market setbacks
- Human error
- Inadequate systems or insufficient time

Factors to consider when selecting a policy:

- Limits of coverage
- Scope of coverage, including definition of professional services, geographic limitations and prior acts—policies are often written on a claims-made basis.
- Exclusions from coverage
- Premiums
- Solvency of insurer
- Customer service and claims handling

Alternatively, consider establishing a legal defense fund to self-insure and avoid:

- The potentially prohibitive expense of insurance
- Possibly entering into an adversarial relationship with the insurer when a claim is filed
- Encouraging frivolous legal actions because Client believes Practitioner has deep-pockets

Of course, it is always best to practice ethically to avoid potential problems altogether. Additionally, the adoption of these sound business practices can limit liability exposure:

- Preface all planning engagements with a *written contract* and adhere to its terms
- *Screen clients* carefully and decisively “fire” potential problem cases
- *Disclose* more, rather than less
- *Document* every conversation, decision and action

Establish a network of professional associates and advisors

Execute, monitor and revise the business plan, as needed

X. Regulatory Oversight

Financial Planner is considered a fiduciary:

- Has power and/or **discretion** over another’s interest
- Is in a position of **trust** and confidence

Planner’s own common sense and good judgment is complemented by a profusion of regulations, some of which are listed below:

A. Investment Advisors Act of 1940

Amended in 1960; interpreted in 1981 and again in 1987 [See *Investment Advisor Release 1092* below.]

Provisions include:

- Outline of responsibilities of IA
- Record keeping and reporting requirements
- Restrictions on allowable fee arrangements
- Protections against fraud and malpractice
- Penalties for failure to comply

The act requires IAs to operate under an Investment Agreement (or contract), but it does not have to be in writing.

B. Investment Advisor Release 1092 of 1987

Provides further clarification of the definition of Investment Advisor. All three of the components listed below must be present:

1. Advice (or analysis) must be *concerning securities*, both specific or general, and could include the following:
 - Market valuations
 - Asset allocation charts
 - Recommendation of, referral to and evaluation of an Investment Advisor
 - Suggestion of tax advantaged investments such as municipal bonds or variable annuities

Assets which do not qualify as securities include real estate, commodities, collectibles and precious metals

2. Advice must constitute a *business activity* carried on with some regularity and generally might qualify if:
 - Advisor holds himself out to the public by use of a business card, brochure, other advertisement, or even by word-of-mouth as giving investment advice, providing financial planning services and/or managing money
 - Or, Advisor receives a discernable fee or commission for offering advice
 - Or, Advisor offers advice on a basis which is neither rare, isolated or non-periodic
3. Advisor is *compensated* when he receives anything of economic benefit from any source (directly or indirectly)—possibly even fees received for accounting services or referral fees

NOTE: Accountants may be excluded if the advisory activities do not escalate to a level of business which can be construed as being separate and distinct from the practice of accounting and the advice given is solely incidental to the business. Factors used to determine if activities are solely incidental are:

- If Accountant holds himself out to the public as an IA
- If the services provided are not in connection with and reasonably related to accounting
- If the fee charged for investment advice is not based on the same factors as those used to compute the accounting fees

C. Employee Retirement Income Security Act (1974)

ERISA requires that a retirement plan has a stated investment policy, but it need not be in writing.

D. Uniform Prudent Investor's Act (1994)

Has been adopted by >30 states.

- Each investment should not be considered merely individually, but as a part of the whole portfolio
 - The trade-off between risk and potential reward should be considered
 - No type of investment is specifically prohibited
 - Portfolio must be diversified
 - Fiduciary may delegate his duties and responsibilities
1. Prudent Man Rule (Harvard College v. Amory, 1830)
Court opinion requires fiduciary to "observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested". The rule's focus is on income and capital preservation.
 2. Prudent Investor Rule
Although different in each state, the rules generally encourage the investment planner to apply Modern Portfolio Theory and consider total returns, total portfolio performance and the impact of inflation and deflation.

E. Securities Act of 1933

The primary purpose is to provide full and fair disclosure. It mandates the registration of new issues (1° offerings).

F. Securities and Exchange Act of 1934

The Act regulates the securities markets, the extension of credit (margin trading), insider trading and the conduct of people. It established the SEC and led to the eventual creation of the FINRA.

G. National Securities Markets Improvement Act (1996)

Also known as the Coordination Act, it delineates the regulatory responsibilities of federal and state authorities.

XI. Ethical Standards

A. Rule 405: Recommendations must be *reasonable* and *suitable*

B. CFP Board of Standards: Has established 7 practice standards to protect the public and advance the profession. IA must:

- Define the *scope* of the engagement
- Determine *client's needs*, priorities, personal and financial goals
- Obtain *quantitative information* and documentation
- Analyze* and evaluate the client's information
- Identify and evaluate financial planning *alternatives*
- Develop financial planning *recommendations*
- Present* the financial planning recommendations

APPENDIX A

Documentation Checklist

PERSONAL DOCUMENTS

Tax Returns

- 3 years' Income Tax
- Fiduciary, if filed
- Gift & Estate Tax, if applicable

Estate Information

- Will
- Trust Instrument
- Letters of Instruction

3. Insurance Coverages

- Health
- Long-term Care
- Auto
- Homeowner's or Renter's
- Umbrella or Extended Liability
- Life
- Disability

4. Items of Personal Nature

- Power of Attorney
- Durable Power of Attorney for Healthcare
- Birth Certificate
- Death Certificate
- Divorce Agreements
- Pre-nuptial Agreements
- Guardian Nominations

5. Contracts

- Rental Agreements and Leases
- Loan Documents
- Deed
- Mortgage

6. Employment Information

- Employee Benefit Plan Descriptions and Alternatives
- 401(k) Statements
- Most Recent Pay-stub
- Stock Option Information

7. Investment Details

- Most Recent 3 months' Bank Statements
- Brokerage Statement
- Mutual Fund Statements
- Prospectuses and all K-1's for Limited Partnerships
- Retirement Account Statements

8. Financial Data

- List of Assets and Liabilities
- Last Month's Cash Flow Statement—1 year, if available
- Projected Budget

9. Other

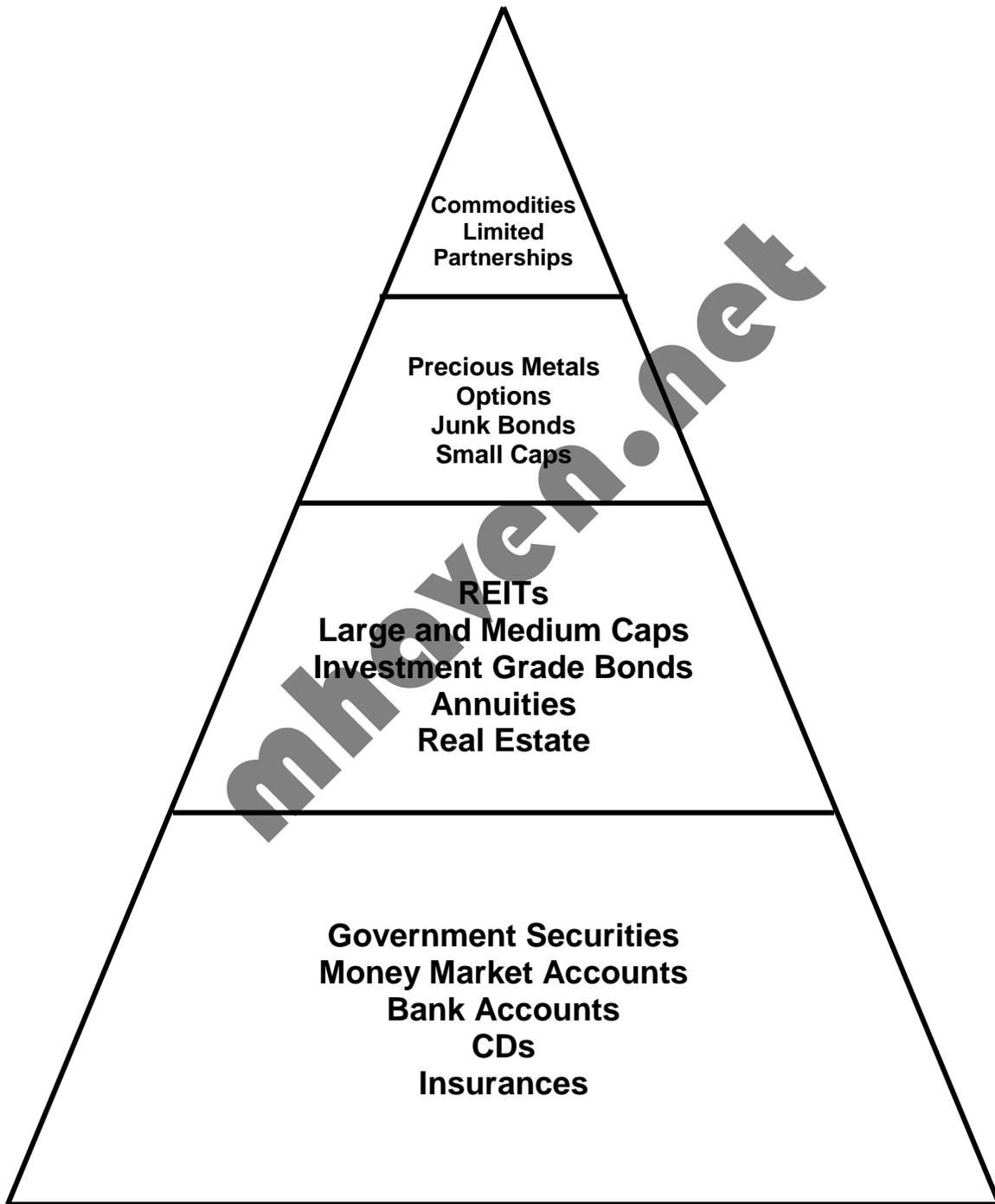
- Appraisals
- Patents, Copyrights or Royalty Information
- Business Information [See below]

BUSINESS DOCUMENTS

- Tax Returns Filed
- Financial Statements
- Bank Statements
- Employment Agreement
- Employee Benefits Booklet
- Pension Plan Information
- Business Formation Papers
- Merger or Acquisition Agreement
- Buy/Sell Agreements
- Insurance Policies
- Payroll Documentation
- Other

APPENDIX B

Investment Pyramid



APPENDIX C

Contact Information for State Administrators

Alabama

Securities Commission
770 Washington Ave., Suite
570
Montgomery, AL 36130-4700
Toll free: 1-800-222-1253
www.asc.state.al.us/

Alaska

Division of Banking and
Securities
Department of Commerce
PO Box 11807
150 3rd Street, Suite 217
Juneau, AK 99811-0807
Toll free: 1-888-925-2521
www.commerce.state.ak.us

Arizona

Securities Division
Arizona Corporation
Commission
1300 West Washington, 3rd
Floor
Phoenix, AZ 85007
Toll free: 1-866-VERIFY9
(837-4399)
www.azinvestor.gov

Arkansas

Arkansas Securities
Department
Heritage West Bldg., Suite
300
201 East Markham,
Little Rock, AR 72201
Toll free: 1-800-981-4429
www.securities.arkansas.gov

California

Department of Corporations
1515 K St., Suite 200
Sacramento, CA 95814-4052
Toll free: 1-866-275-2677
www.corp.ca.gov

Colorado

Division of Securities
Department of Regulatory
Agencies
1560 Broadway, Suite 900
Denver, CO 80202
303-894-2320
www.dora.state.co.us/security
[es](#)

Connecticut

Department of Banking
Gvt Relations and Consumer
Affairs
260 Constitution Plaza
Hartford, CT 06103-1800

Toll free: 1-800-831-7225
www.ct.gov/dob

Delaware

Division of Securities
Department of Justice
State Office Bldg.
820 North French St., 5th
Floor
Wilmington, DE 19801
302-577-8424
www.state.de.us/securities

District of Columbia

Dept. of Insurance, Securities
and Banking
810 First St., NE, Suite 701
Washington, DC 20002
202-727-8000
disb.dc.gov

Florida

Division of Securities
Office of Financial Regulation
200 East Gaines St.
Tallahassee, FL 32399-0370
Toll free: 1-800-848-3792,
opt. 2
www.flofr.com

Georgia

Div of Securities and
Business Regulation
Office of the Secretary of
State
Suite 802, West Tower
2 Martin Luther King, Jr.
Drive, SE
Atlanta, GA 30334
Toll free: 1-888-733-7427
www.sos.ga.gov/securities

Hawaii

Business Registration Division
Dept of Commerce and
Consumer Affairs
335 Merchant St., Room 201
2nd Floor
Honolulu, HI 96813
808-586-2744
www.hawaii.gov/dcca

Idaho

Department of Finance
800 Park Blvd., Suite 200
PO Box 83720
Boise, ID 83712
Toll free: 1-888-346-3378
finance.idaho.gov

Illinois

Securities Department
Secretary of State

300 W. Jefferson St, Suite
300A
Springfield, IL 62702
Toll free: 1-800-628-7937
www.sos.state.il.us
Indiana
Securities Division
Office of the Secretary of
State
302 W. Washington, Room E-
111
Indianapolis, IN 46204
Toll free: 1-800-223-8791
www.state.in.us/sos

Iowa

Securities and Regulated
Industries Bureau
340 Maple St.
Des Moines, IA 50319-0066
Toll free: 1-877-955-1212 (IA)
www.iid.state.ia.us

Kansas

Office of the Securities
Commissioner
618 South Kansas Ave., 2nd
Floor
Topeka, KS 66603-3804
Toll free: 1-800-232-9580
www.ksc.ks.gov

Kentucky

Division of Securities
Department of Financial
Institutions
1025 Capitol Center Dr., Ste.
200
Frankfort, KY 40601-3868
Toll free: 1-800-223-2579
www.kfi.ky.gov

Louisiana

Securities Division
Office of Financial Institutions
8660 United Plaza Blvd., 2nd
Floor
Baton Rouge, LA 70809
225-925-4660
www.ofi.state.la.us

Maine

Office of Securities
121 State House Station
Augusta, ME 04333-0121
Toll free: 1-877-624-8551
(ME)
[www.maine.gov/pfr/securities/
index.shtml](http://www.maine.gov/pfr/securities/index.shtml)

Maryland

Securities Division
Office of the Attorney General

200 Saint Paul Place
Baltimore, MD 21202-2020
Toll free: 1-888-743-0023
(MD)
E-mail:
securities@oag.state.md.us

Massachusetts

Securities Division
Office of the Secretary
One Ashburton Pl, 17th Floor,
1701
Boston, MA 02108
Toll free: 1-800-269-5428
(MA)
www.sec.state.ma.us/sct

Michigan

Securities Division
Financial and Insurance
Regulation
611 W. Ottawa St., 3rd Floor
PO Box 30220
Lansing, MI 48909
Toll free: 1-877-999-6442
www.michigan.gov/ofis

Minnesota

Department of Commerce
Division of Securities and
Registration
85 Seventh Place East, Suite
500
St. Paul, MN 55101
Toll free: 1-800-657-3602
www.commerce.state.mn.us

Mississippi

Securities Division
Business Regulation and
Enforcement
700 North Street
PO Box 136 (Zip 39205)
Jackson, MS 39202
Toll free: 1-800-256-3494
www.sos.state.ms.us

Missouri

Commissioner of Securities
PO Box 1276
Jefferson City, MO 65102
Toll free: 1-800-721-7996
www.sos.mo.gov

Montana

Securities Division
State Auditor
840 Helena Ave.
Helena, MT 59601
Toll free: 1-800-332-6148
www.sao.mt.gov

Nebraska

Bureau of Securities
Department of Banking &
Finance
1230 "O" Street, Suite 400
PO Box 95006
Lincoln, NE 68509-5006
402-471-3445
www.ndbf.org

Nevada
Securities Division
Office of the Secretary of
State
555 East Washington Ave.
Suite 5200
Las Vegas, NV 89101
702-486-2880
www.sos.state.nv.us

New Hampshire
Bureau of Securities
Regulation
Department of State
107 N. Main Street
State House, Room 204
Concord, NH 03301-4989
603-271-1463
www.sos.nh.gov/securities

New Jersey
Bureau of Securities
Department of Law and Public
Safety
PO Box 47029
153 Halsey St., 6th Floor
Newark, NJ 07102
973-504-3600
www.njsecurities.gov

New Mexico
Securities Division
Regulation & Licensing
Department
2550 Cerrillos Road
PO Box 25101
Santa Fe, NM 87505
Toll free: 1-800-704-5533
www.rld.state.nm.us

New York
Bureau of Investor Protection
and Securities
Office of the Attorney General
120 Broadway
New York, NY 10271
212-416-8200
www.oag.state.ny.us

North Carolina
Securities Division
2 South Salisbury St.
Raleigh, NC 27601
Toll free: 1-800-688-4507

www.sosnc.com

North Dakota
Securities Department
State Capitol -- 5th Floor
600 E. Boulevard Ave.
Bismarck, ND 58505-0510
Toll free: 1-800-297-5124
www.ndsecurities.com

Ohio
Division of Securities
77 South High St., 22nd Floor
Columbus, OH 43215-6131
Toll free: 1-800-788-1194
www.securities.state.oh.us

Oklahoma
Department of Securities
First National Center
120 North Robinson, Suite
860
Oklahoma City, OK 73102
405-280-7700
www.securities.ok.gov

Oregon
Division of Finance and
Corporate Securities
Consumer & Business
Services
350 Winter St., NE
PO Box 14480
Salem, OR 97309-0405
Toll free: 1-866-814-9710
dfcs.oregon.gov

Pennsylvania
Securities Commission
Office of the Secretary
Eastgate Office Building, 2nd
Floor
1010 North Seventh St.
Harrisburg, PA 17102-1410
Toll free: 1-800-600-0007
www.psc.state.pa.us

Puerto Rico
Commissioner of Financial
Institutions
Centro-Europa Building -
Suite 600, 1492 Ponce de
Leon Avenue
PO Box 11855
San Juan, PR 00907
Toll free: 1-800-981-7711
www.cif.gov.pr

Rhode Island

Securities Division
Dept. of Business Regulation
1511 Pontiac Avenue
Building 69-1
Cranston, RI 02920
401-462-9500
www.dbr.state.ri.us

South Carolina
Securities Division
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549
803-734-9916
www.scattorneygeneral.com//securities/index.html

South Dakota
Division of Securities
445 East Capitol Ave.
Pierre, SD 57501-3185
605-773-4823
www.state.sd.us/dcr/securities

Tennessee
Securities Division
Dept of Commerce and
Insurance
Davy Crockett Tower, Suite
680
500 James Robertson Pkwy.
Nashville, TN 37243
Toll free: 1-800-863-9117
www.state.tn.us/commerce/

Texas
State Securities Board
208 East 10th - 5th Floor
PO Box 13167
Austin, TX 78711-3167
512-305-8300
www.ssb.state.tx.us

Utah
Division of Securities
Department of Commerce
160 East 300 South, 2nd
Floor
PO Box 146760
Salt Lake City, UT 84114-
6760
Toll free: 1-800-721-7233
www.securities.utah.gov

Vermont
Securities Division
Department of Banking,
Insurance
89 Main Street
Montpelier, VT 05620-3101
802-828-3420

www.bishca.state.vt.us/SecuritiesDiv/securindex.htm

Virginia
Div of Securities & Retail
Franchising
State Corporation
Commission
PO Box 1197
Richmond, VA 23218
Toll free: 1-800-552-7945
(VA)
www.scc.virginia.gov/srf

Washington
Securities Division
Department of Financial
Institutions
PO Box 9033
Olympia, WA 98507-9033
Toll free: 1-877-746-4334
www.dfi.wa.gov

West Virginia
Securities Commission
State Auditor's Office
State Capitol Bldg 1, Room
W100
Charleston, WV 25305
Toll free: 1-888-368-9507
www.wvsao.gov/securities/securities.asp

Wisconsin
Division of Securities
Department of Financial
Institutions
345 W. Washington Ave., 4th
Floor
PO Box 1768
Madison, WI 53701-1768
Toll free: 1-800-47-CHECK
(WI)
www.wdfi.org

Wyoming
Compliance Division
Office of the Secretary of
State
State Capitol Bldg.
200 West 24th St.
Cheyenne, WY 82002-0020
307-777-7370
E-mail:
compliance@state.wy.us
soswy.state.wy.us

APPENDIX D

NASD Examination Requirements for IA on a State-by-state Basis

Please verify current requirements with State Administrators [See Appendix C]

State	Exam Requirements
Alabama	Series 1, 2, 24, 40, 65
Alaska	IAR: Series 65
Arizona	Series 65
Arkansas	Series 65
California	Series 65
Colorado	Series 65
Connecticut	Series 65
Delaware	Series 65
District of Columbia	Series 65
Florida	Series 65
Georgia	Series 65
Hawaii	Series 65
Idaho	Series 65
Illinois	Series 65
Indiana	Series 65
Iowa	Series 65
Kansas	Series 65
Kentucky	Series 65
Louisiana	Does not register IAR
Maine	Series 65
Maryland	IA Designated Principals: Series 65 IAR: Series 65
Massachusetts	Series 65
Michigan	Does not register IAR
Minnesota	Does not register IAR
Mississippi	Series 65
Missouri	Series 65

State	Exam Requirements
Montana	Series 65
Nevada	Series 65
Nebraska	Compliance Principal & IAR: Series 65
New Hampshire	Series 65
New Jersey	Good cause for waiver from Series 65
New Mexico	Series 65 IA Designated Supervisor: Series 24
New York	Series 65
North Carolina	Series 65
North Dakota	Series 65
Ohio	Series 65
Oklahoma	Series 65
Oregon	Series 65
Pennsylvania	Series 65
Rhode Island	Series 65 IA: Designated supervisors: Series 24
South Carolina	Series 65
South Dakota	Series 65
Tennessee	Does not register IAR
Texas	Series 65
Utah	Series 65
Vermont	Series 65
Virginia	Series 65
Washington	Series 65
West Virginia	Series 65
Wisconsin	Series 65
Wyoming	Does not register IAR

APPENDIX E

Sample Form

TAXPAYER CONSENT

I hereby give my consent to Monica Haven, E.A. to use the information contained in my tax return for the purposes of financial planning. I understand that my situation, portfolio, needs and objectives may be reviewed and evaluated. Sound financial planning principles will be applied and recommendations may be given regarding:

- Tax minimization strategies
- Portfolio analysis
- Estate and insurance planning

Monica Haven is a licensed securities broker. If recommendations should be implemented by Client, securities may be sold through Securities Services Network, Inc. (SSN)—a member of the SIPC and FINRA.

Client's tax return and information therein may not be disclosed nor used by Enrolled Agent for any other purpose except that which has been stated above and permitted by Internal Revenue Code 7216(a)-2.

Client Signature: _____ **Date:** _____

Print Client's Name: _____

Spouse Signature: _____ **Date:** _____

Print Spouse's Name: _____

Monica Haven. E.A., J.D., L.L.M.

1534 South Edris Drive * Los Angeles, CA 90035

(310) 286-9161

e-mail: mhaven@pobox.com

APPENDIX F

GLOSSARY OF TERMS

Acronym	Term	Definition
AAMS	Accredited Asset Management Specialist	Accredited by the AIMR
ADV	Form ADV	Application and disclosure required of RIAs
AICPA	American Institute of Certified Public Accounts	Professional association for CPAs and PFS's
AIMR	Association of Investment Management and Research	Offers credentials for AAMS, CMFC, CRPC and CRPS
B/D	Broker/Dealer	Firm specializing in the sale of securities
CFA	Chartered Financial Analyst	Accredited by the AIMR
CFP	Certified Financial Planner	Successfully passed the exam administered by the CFP Board
ChFC	Chartered Financial Consultant	Accredited by the American College
CIC	Chartered Investment Counselor	Accredited by the Investment Counsel Association of America
CMFC	Chartered Mutual Fund Consultant	Accredited by the AIMR
CPA	Certified Public Accountant	State-certified tax and accounting specialist
CRPC	Chartered Retirement Planning Counselor	Accredited by the AIMR
CRPS	Chartered Retirement Plans Specialist	Accredited by the AIMR
EA	Enrolled Agent	Enrolled with the US Dept. of Treasury to represent taxpayers in all matters of taxation
FINRA	Financial Industry Regulatory Authority	Founded in July 2007 when the NASD and NYSE merged. Responsible for regulatory oversight of all securities firms that do business with the public; professional training, testing and licensing of registered persons; and arbitration and mediation.
FP	Financial Planner	a.k.a. Advisor or Practitioner (as used in the course)
IA	Investment Advisor	Gives advice regarding investments for a fee
IAR	Investment Advisor Representative	Affiliated with and refers Client to IA
NASD	National Association of Securities Dealers	Self-regulatory organization established in 1938 to govern securities industry
NASAA	North American Securities Administrators Association	Established in 1919 to protect investors by educating the public, investigating violations of state and provincial law, and filing enforcement actions.
NYSE	New York Stock Exchange	Founded in 1792, it is the oldest and largest stock exchange in the US
PFP	Personal Financial Planning	Creation, implementation and modification of a plan designed to help Client meet his objectives
PFS	Personal Financial Specialist	Accredited by the AICPA
RIA	Registered Investment Advisor	Entity registered with either federal or state authorities to provide investment advice
RR	Registered Representative	NASD-licensed sales representative for a B/D
SEC	Securities and Exchange Commission	Created in 1934 to oversee securities markets and investment advisors