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November 2, 2006

Mr. Preston DuFauchard, Commissioner
California Department of Corporations
320 West 4th Street
Suite 750
Los Angeles, CA 90013-2344

RE: **Mortgage Planning Marketing Schemes Breed Home Equity Predators**

Dear Commissioner DuFauchard:

MIFSP (www.mifsp.org) is writing mortgage regulators in all fifty states due to its concern about the proliferation of mortgage-investment marketing schemes, which we at MIFSP refer to as “tag team mortgage planning schemes.” It’s a business referral arrangement with a two-prong marketing approach whereby the mortgage originator, under the guise of being a “mortgage planner,” convinces the consumer that the equity in their home is earning a zero rate of return so it should be pulled out and invested, once the money is pulled out the consumer is referred to a product oriented financial representative who persuades the homeowner to put the equity into investments. In other words, the mortgage (brokerage/lender) side feeds off of the investment side and vice versa. Mortgage originators also act independently in promoting this kind of scheme. MIFSP’s concern is that many financial representatives and mortgage originators may inappropriately recommend that homeowners pull equity from their homes, and use it to make risky investments without any determination of the suitability of this mortgage-investment model.

We see this as a recipe for calamity that could lead to a growing opportunity for fraud and misrepresentation. Consumers may not realize risk differentials or potential pitfalls of investing “other people’s money,” which is what a mortgage, including home equity lines represent. With the expected continuing decline in mortgage origination, this type of marketing scheme will likely grow. We ask that you search the Internet for “mortgage planner” to see numerous examples of this type marketing done by mortgage originators.

MIFSP is a provider of training to mortgage brokers, loan officers, financial planners, and other real estate and financial services professionals in the provision of residential mortgage planning and advisory services. In an effort to fulfill our mission, MIFSP offers a professional education program via a unique course of study that scientifically unifies the major concepts, objectives and practices associated with financial planning, mortgage origination, ethics and fair business practices into the provision of independent fee-only services in a fiduciary capacity outside of a loan transaction and without subjecting the consumer to marketing pressures or other undue influences.

Along with urging regulators to get ahead of this potential disaster rather than waiting for the fallout, MIFSP is promoting ethics and professional standards among qualified mortgage planners and is doing what it can to increase consumer awareness and understanding of what true mortgage planning is, what a qualified mortgage planner does, and what the benefits of consulting with a qualified mortgage planner should be. As it relates to the mortgage planning schemes described in this letter, we believe there is an inherent conflict that should be disclosed to the consumer, especially when this kind of advice is given by one who is providing the consumer both mortgage services and investment services or who holds an interest in companies that are providing both kinds of services to the customer. Consumers are already being harmed.

In March 2004, the National Association for Securities Dealers (NASD) issued a press release announcing that it had charged several securities brokers with suitability violations for making unsuitable recommendations to customers, urging them to purchase investments using proceeds obtained from cash-out home mortgage refinancing. NASD also issued an *Investor Alert* to help highlight the dangers associated with mortgaging a home to fund investments. Mary L. Schapiro, NASD's current Chairman & CEO, stated, "A recommendation by a securities firm or a broker that an investor mortgage his home to buy securities raises all kinds of regulatory red flags." She also stated, "NASD will always ask whether it is appropriate to recommend that you risk your home to seek investment returns."

Some in the financial services industry are passing on to consumers ill conceived and illogical residential mortgage advice in hopes of reaping a profit from a mortgage transaction, the sale of a financial product, or from asset management fees. Unfortunately, it may be some time before the actual number of consumers harmed becomes readily apparent and if consumers are filing complaints with various state and federal agencies the count may take even longer. If it's any indication of the number of consumers who are being asked to consider these types of proposals, some promoters of these business models tout that they have tens of thousands of people from the mortgage and financial planning industry providing this type of "mortgage planning" service.

It's commonly recognized that a home is the primary store of wealth for most consumers. According to the 2006 annual report, *The State of the Nation's Housing*, released by the Joint Center for Housing Studies of Harvard University, home equity still amounts to about 56 percent of the aggregate value of primary residences; half the net wealth of those with incomes between \$20,000-\$50,000 is in the form of home equity; and at last measure in 2004, 94 percent of homeowners had equity of 10 percent or more and 87 percent had equity of 20 percent or more. Thus creating a very lucrative market for that kind of sales pitch. Consequently, it's attracting many mortgage originators and investment sales people who are willing to exploit this pocket of consumer wealth.

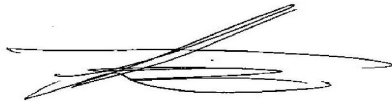
Consumers need clear and adequate disclosure of the risks they are assuming and of any conflicts of interest the mortgage originator or investment adviser may have. To better protect mortgagors and investors, there needs to be disclosure of the potential devastation they may face when and if the investment-mortgage advice backfires. We urge you to move forward with an initiative to implement disclosure requirements and to require a determination of suitability when mortgage originators make such claims to generate mortgage business. Existing state laws on mortgage advertising can be tightened to prohibit any kind of advertising that combines mortgage solicitation with any kind of investment advice or opinion unless the licensee is qualified to offer investment advice.

We applaud the efforts of all federal and state regulators when it comes to establishing consumer protections. Therefore, we are sure you will agree that the potential devastation of these kinds of marketing schemes requires the concerted effort of all relevant state and federal regulators along with the support of the mortgage and financial services industry. What should concern all of us is that there are limited, if any, requirements for determining suitability when a mortgage originator advises a homeowner to access home equity through a cash-out refinance, a home equity line of credit or loan, or a zero down loan for purposes of making investments. There are no requirements for disclosure of the differential in risks and objectives between a mortgage loan on the primary residence and the investment.

Being that mortgage fraud is at its highest, foreclosures remain high, consumers remain confused about the complexities of non-traditional mortgage products, property values are stabilizing or declining in some areas, these kinds of equity predators could be the final straw. There is a legitimate place for mortgage planning, however, the kind of marketing described in this letter undermines its beneficial characteristics and legitimacy. In its truest form, mortgage planning can do anything from improving the quality of service provided by mortgage originators to becoming a viable stand-alone profession. It can also provide the mortgage industry a way to police itself without the need for more costly regulation. Without a doubt, when used ethically, mortgage planning can make a valuable contribution to society and to protecting the financial strength of the American family. Thus lastly, we urge you to recognize the Residential Mortgage Planner® professional and Qualified Mortgage Planner (QMP) professional, promoted by MIFSP, as objective independent sources for consumers who want guidance separate from a mortgage transaction without the need for regulation of these professionals.

MIFSP thanks you for the opportunity to address these matters and we look forward to assisting you in any way deemed appropriate in the very near future.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Leon L. Morris', with a horizontal line drawn through it.

Leon L. Morris, RFC, CLU, ChFC, RMP, FFSI
Executive Director
MIFSP