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AUSTIN, TEXAS 78711-3167

*Texas State Securities Board*

DAVID A. APPLEBY  
MEMBER

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208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
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ALAN WALDROP  
MEMBER

**SOAH DOCKET NO. 312-12-1296  
SSB DOCKET NO. IC11-REV-09**

IN THE MATTER OF  
THE AGENT AND  
INVESTMENT ADVISER  
REGISTRATIONS OF  
RICHARD HENRY ELIZONDO

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§  
§  
§

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

TO: Richard Henry Elizondo  
21937 Amistad Road  
Harlingen, TX 78550

**NOTICE OF HEARING**

This is your OFFICIAL NOTICE that a hearing will be held at the State Office of Administrative Hearings, in the William P. Clements Building, 300 W. 15th Street, 4th Floor, Austin, Texas 78701, before an Administrative Law Judge on **November 30, 2011 at 9:00 AM Central Time** for the purpose of determining whether the registrations of Richard Henry Elizondo ("Respondent") as an agent and an investment adviser representative with the Securities Commissioner of Texas ("Securities Commissioner") should be REVOKED and for the purpose of determining whether Respondent should be ASSESSED AN ADMINISTRATIVE FINE of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

This hearing will be held pursuant to The Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (West 2010) ("Texas Securities Act"); the Rules and Regulations of the State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. (Supp. 2011) ("Board Rules"); the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 et seq. (West 2008 & Supp. 2010); and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (Supp. 2011) ("SOAH Rules").

**IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE**

**OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

**THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE STATE SECURITIES BOARD AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.**

**IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

**CONTACT INFORMATION**

Clinton T. Edgar, Attorney  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-7363  
Facsimile: (512) 305-8340

Docketing Office  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 504  
Austin, Texas 78701  
Telephone: (512) 475-3445  
Facsimile: (512) 475-4994

Pursuant to § 105.9 of the Board Rules, all documents filed by any party, other than business records and transcripts, and all documents issued by the Administrative Law Judge must be contemporaneously served upon the Securities Commissioner's representative as identified below:

Kara Kennedy  
General Counsel  
Securities Commissioner's Representative  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8336

Legal authority and jurisdiction for this matter exist under Sections 14 and 23-1 of the Texas Securities Act, Section 2003.021(b) of the Texas Government Code, and Section 155.51 of the SOAH Rules.

The Staff of the Texas State Securities Board ("Staff") will present evidence in support of its request that the Respondent's registrations with the Securities Commissioner be REVOKED and that Respondent be ASSESSED AN ADMINISTRATIVE FINE of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). The evidence presented by the Staff will prove the following:

1. Respondent is a natural person whose last known residential address, as filed with the Securities Commissioner, is 21937 Amistad Road, Harlingen, Texas 78550, and whose last known business address, as filed with the Securities Commissioner, is 1221 East Harrison, Harlingen, Texas 78553.
2. On or about March 27, 1998, Respondent registered with the Securities Commissioner as an agent of Planmember Securities Corporation ("Planmember"). This registration is currently effective.
3. On or about March 17, 2006, Respondent registered with the Securities Commissioner as an investment adviser representative of Planmember. This registration is currently effective.

### **Sale of National Life Settlement Notes**

4. From in or about May 2008 through in or about January 2009, Respondent engaged in sales of a note agreement ("Note Agreement") and the Immediate Income Investment Plan ("I<sup>3</sup>") issued by National Life Settlements ("NLS") to Texas residents ("Investors").
5. The Note Agreement was purportedly backed by life insurance policies and typically guaranteed a 10% simple interest return for a five (5) year period of time.
6. The I<sup>3</sup> consisted of a five (5) year note, purportedly backed by life insurance policies, and a five (5) year fixed bi-weekly income account.
7. The Note Agreement and I<sup>3</sup> (collectively, the "NLS Agreements") constitute "securities" as the term "securities" is defined by Section 4.A of the Texas Securities Act.

### **Unregistered Activity**

8. On or about December 20, 1997, Respondent passed the Series 6 written qualification examination.
9. The Series 6 written qualification examination is a limited examination offered in lieu of an examination on general securities principles and restricts agents to deal exclusively in securities issued by open-ended investment companies.
10. The NLS Agreements were not securities issued by open-ended investment companies.
11. Section 12.A of the Texas Securities Act prohibits the sale of a security by an agent without such agent first being registered with the Securities Commissioner as provided by the Texas Securities Act.

12. Respondent's sales of the NLS Agreements were outside the scope of his registration with the Securities Commissioner and were therefore in violation of Section 12.A of the Texas Securities Act.
13. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent's sales of the NLS Agreements in violation of Section 12.A of the Texas Securities Act are bases for the revocation of Respondent's registrations with the Securities Commissioner.
14. Pursuant to Section 23-1 of the Texas Securities Act, Respondent's sales of the NLS Agreements in violation of Section 12.A of the Texas Securities Act are bases for the assessment of an administrative fine against Respondent.

#### **Participation in Unapproved Outside Business Activities**

15. Planmember's written supervisory procedures required Respondent to obtain prior approval from Planmember by completing an Outside Business Activity Disclosure Form before engaging in any business activity outside the scope of Respondent's employment with Planmember.
16. On or about April 14, 2008, Respondent signed an independent contractor agreement with NLS prior to obtaining approval from Planmember to engage in such outside business activity.
17. On or about May 10, 2008, Respondent submitted to Planmember an Outside Business Activity Disclosure Form requesting authorization to engage in the sales of the NLS Agreements.
18. After reviewing Respondent's Outside Business Activity Disclosure Form, Planmember returned the form to Respondent marked "Not Approved."
19. Respondent continued to act as an independent contractor to NLS after the Outside Business Activity Disclosure Form was returned to Respondent marked "Not Approved."
20. Further, Respondent engaged in and received commissions for the sales of the NLS Agreements after the Outside Business Activity Disclosure Form was returned to Respondent marked "Not Approved."
21. Pursuant to Section 14.A(3) of the Texas Securities Act, Respondent's failures to obtain prior written approval from Planmember for Respondent's receipt of commissions for the sales of the NLS Agreements and agreement to act as an independent contractor to NLS, as required by Planmember's written supervisory procedures, constitute inequitable practices in the sale of securities and are bases for the revocation of Respondent's registrations with the Securities Commissioner.

### **Misrepresentations to Planmember**

22. During the period of time in which Respondent was selling the NLS Agreements, Respondent represented to Planmember within Section 3: Outside Activities/Accounts of the 2008 Annual Compliance Questionnaire that Respondent had not engaged in any private securities transactions.
23. During the period of time in which Respondent was selling the NLS Agreements, Respondent represented to Planmember that Respondent did not “offer or sell Viatical Settlements or Life Settlements” within Section 10: Securities Products Offered – Section C Variable Insurance Products of the 2008 Annual Compliance Questionnaire.
24. Respondent’s representations to Planmember, described above, were misrepresentations of a relevant fact and constitute fraudulent business practices and are bases for the revocation of Respondent’s registrations with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.
25. Respondent’s representations to Planmember, described above, were misrepresentations of a relevant fact and constitute fraudulent practices in connection with the sale of a security and are bases for the assessment of an administrative fine against Respondent pursuant to Section 23-1 of the Texas Securities Act.

### **Failure to Update Filing with Securities Commissioner**

26. On or about July 5, 1999, and pursuant to §115.2(a)(2) of the Board Rules [formerly §115.2(a)(1)], Respondent filed a Uniform Application for Securities Industry Registration and Transfer (“Form U-4”) with the Securities Commissioner in connection with his application to become registered with the Securities Commissioner as an agent of Planmember.
27. Item 13 of the Form U-4 requires the disclosure of any other business conducted by the agent, either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise.
28. Board Rule 115.9(a)(6) required Respondent to report, on the Form U-4, any change in information previously disclosed to the Securities Commissioner on an application form or filing within thirty (30) days of the occurrence of such change.
29. Respondent did not update his Form U-4 within thirty (30) days of beginning to sell the NLS Agreements.

30. Respondent's failure to update Respondent's Form U-4 within thirty (30) days of beginning to sell the NLS Agreements constitutes a violation of §115.9(a)(6) of the Board Rules, and is a basis for the revocation of Respondent's registrations with the Securities Commissioner pursuant to Section 14.A(6) of the Texas Securities Act, and is a basis for the assessment of an administrative fine against Respondent pursuant to Section 23-1 of the Texas Securities Act.

Pursuant to § 105.14 of the Board Rules, the Staff respectfully requests that the State Office of Administrative Hearings order that all costs charged to the Texas State Securities Board by any court reporting service involved in this matter be assessed against Respondent.

You are invited to appear personally, with, without, or through counsel, and to present any and all evidence relating to the matters set forth in this Notice.

Signed this 10<sup>th</sup> day of October, 2011.

  
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Ronak V. Patel  
Director  
Inspections & Compliance Division

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent via certified mail to the parties listed below, and to the Securities Commissioner's Representative by hand-delivery, done on this, the 10<sup>th</sup> day of October, 2011.

Richard Henry Elizondo  
21937 Amistad Road  
Harlingen, TX 78550

VIA CERTIFIED MAIL # 9171082133393797002979

Richard Henry Elizondo  
1221 East Harrison  
Harlingen, Texas 78553

VIA CERTIFIED MAIL # 9171082133393797002962

Kara Kennedy  
Securities Commissioner's Representative  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8336

VIA HAND DELIVERY



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Clinton T. Edgar  
Attorney  
Inspections & Compliance Division