

2002

# Jefferu Ford v. American Express Financial Advisors, Inc. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JERRY FORD, MARK RUSSELL,  
ROBERT P. WELCH, TRAVIS KELL,  
J. MATHEW ZUNDEL, DAVID K.  
EATON, JOHN D. FORD, ROBERT  
AAMODT, D. SCOTT BUNNELL,  
individuals, and others similarly  
situated,

Plaintiffs and Appellees,

vs.

AMERICAN EXPRESS FINANCIAL  
ADVISORS, INC., a Minnesota  
Corporation,

Defendant and Appellant.

Supreme Court No. 20020550-SC  
District Court No. 000905126  
Priority No.

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APPELLANT'S BRIEF

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On Appeal as a Matter of Right from the Judgment and Incorporated Orders Entered by  
The Honorable Stephen L. Henriod, Third District Court, Salt Lake County

---

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## **PARTIES**

The parties are set forth in the caption.

## **JURISDICTION**

The Supreme Court has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2(3)(j), as amended.

## **ISSUES FOR REVIEW**

- A. Whether the district court erred in holding, as a matter of law, that a company contribution toward an individual's welfare benefits in a future year, which was to be made only if the individual continued to work for the company pursuant to the contract, was a vested right that survived termination of the contract.

### Standard of Review

This Court reviews a district court's grant of summary judgment for correctness. *Progressive Cas. Ins. Co. v. Dalglish*, 2002 UT 59, ¶ 11, 52 P.3d 1142.

### Preservation

This issue was presented in the Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment and in Support of Defendant's Motion for Summary Judgment, R. 318-37.

- B. Whether, in the circumstances of this case, the district court erred in rejecting the defense that the parties entered into a substituted contract that extinguished any obligation under the original contract.

Standard of Review

This Court reviews a district court's grant of summary judgment for correctness. *Progressive Cas. Ins. Co. v. Dalglish*, 2002 UT 59, ¶ 11, 52 P.3d 1142.

Preservation

This issue was presented in the Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment and in Support of Defendant's Motion for Summary Judgment, R. 337-44.

- C. Whether, if the substituted contract defense was not established as a matter of law, Defendant was entitled to present issues of disputed fact regarding substituted contract to the jury.

Standard of Review

This Court reviews a district court's grant of summary judgment for correctness. *Progressive Cas. Ins. Co. v. Dalglish*, 2002 UT 59, ¶ 11, 52 P.3d 1142. Facts and inferences are viewed in a light most favorable to the nonmoving party. *SME Indus. v. Thompson, Ventulett, Stainback & Assocs.*, 2001 UT 54, ¶ 9,

28 P.3d 669. The trial court's interpretation of a contract presents a question of law, which is reviewed for correctness. *Bishop v. GenTec, Inc.*, 2002 UT 36, ¶ 8, 48 P.3d 218.

### Preservation

This issue was presented in the Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment and in Support of Defendant's Motion for Summary Judgment, R. 337-44; *see also* R. 1453, at 36-48.

- D. Whether the district court erred by excluding all of Defendant's evidence showing that Plaintiffs' damages were offset by other aspects of their compensation package.

### Standard of Review

This Court reviews a district court's decision to remove the issue of offset to damages from jury consideration for correctness. *See John Call Eng'g v. Manti City Corp.*, 795 P.2d 678 (Utah Ct. App. 1990). This Court grants no deference to a lower court's method of calculation of damages. *See Lysenko v. Sawaya*, 2000 UT 58, ¶ 23, 7 P.3d 783; *Anesthesiologists Assocs. v. St. Benedict's Hosp.*, 884 P.2d 1236, 1237-38 (Utah 1994).

### Preservation

Defendant moved for partial summary judgment on requiring an offset to damages, which was denied. R. 642-69; R. 862-63 [Addendum (“AD”) 01-02]. Before trial, Plaintiffs filed a motion in limine to exclude all evidence relating to the offset of damages, which was granted. R. 989-91; R. 1056-57 [AD 08-09]; *see also* Def’s Mem. in Opp. to Mot. in Limine, R. 1001-29. After trial, AEFA filed a motion for a new trial on the issue of offsetting damages, which the trial court denied. R. 1337-38; R. 1403-04 [AD 14-15].

### **STATEMENT OF THE CASE**

This appeal arises from a claim for breach of contract, brought by a nationwide Plaintiff class of financial planners against Defendant American Express Financial Advisors (“AEFA”). Prior to trial, the Honorable Stephen L. Henriod, Third District Court, Salt Lake, denied AEFA’s motion for partial summary judgment seeking to require an offset of damages. R. 862-63 [AD 01-02]. Subsequently, on January 2, 2002, the district court denied AEFA’s motion for summary judgment on liability, and granted partial summary judgment on liability in favor of Plaintiffs. R. 904-07 [AD 04-07]. The court then granted Plaintiffs’ motion in limine to exclude all evidence related to offsetting benefits in an order dated April 2, 2002. R. 1056-57 [AD 08-09]. Following a trial limited to the issue of damages, the jury returned a verdict assessing damages against AEFA in the sum of \$14,109,068.82. The district court entered judgment on the verdict on May 1, 2002. R. 1334-35 [AD 11-12]. AEFA filed a timely motion for new trial,

which the court denied on June 20, 2002. R. 1337-38; R. 1403-04 [AD 14-15]. AEFA now appeals from the district court's judgment and all orders incorporated therein.

## STATEMENT OF THE FACTS

### I. INTRODUCTION

*"When you come to a fork in the road, take it."* – Yogi Berra

Plaintiffs in this case are sophisticated financial planners who came to a fork in the road, took one path, and now want to go back and assert that they are entitled to the benefits associated with the other path.

Plaintiffs provided services to Defendant American Express Financial Advisors ("AEFA") under written contracts. Planners who reached certain sales production levels in a calendar year were eligible to receive contributions from AEFA toward their medical, dental and life insurance benefits (hereinafter "welfare benefits") in the next year. Effective March 22, 2000, AEFA restructured its sales force and offered its planners a choice between two alternative relationships. Under the first, planners could become employees of AEFA and receive contributions to their welfare benefits like all other employees. Under the second, planners could become independent contractor "franchisees." This independent relationship came with a different compensation package, in which the planners would receive a higher rate of commissions but would not receive subsidies for their welfare benefit premiums. Since it was not economically possible for AEFA to both pay the higher commissions and subsidize benefits, great care

was taken to make it clear to the planners, before they made their election, that AEFA would no longer contribute to their welfare benefits if they became franchisees.

Plaintiffs represent a nationwide class of approximately 3700 financial planners who chose the franchisee arrangement. Having made that choice, they are now enjoying a significant increase in their commission level. However, they have sued claiming that they remain entitled to contributions from AEFA for their welfare benefits during 2000. Despite language in their franchise agreements disclaiming any compensation related to the prior contracts and other evidence that the parties had deliberately substituted a new contract, the district court entered summary judgment on liability for the Plaintiff class. Its perfunctory order includes no factual findings, cites no case law, and contains no analysis. As a result of this order, no jury has ever considered what terms the parties intended to include in the restructured contracts.

The district court held a jury trial with respect to damages. Defendant AEFA proposed to show that any loss of the benefits subsidies was offset by the higher level of commissions. While the district court initially held that this posed a factual issue, on the eve of trial it granted a motion in limine and thereby prevented the jury from considering the offsetting impact of any of the benefits that class members received in exchange for discontinued subsidies. The jury awarded the plaintiff class \$14,109,068.82 in damages. If the evidence of offsetting benefits had been admitted and credited, this award would have been no more than \$4,826,842.

The judgment thus rests on a sequence of legal errors, including both liability and damages. If left standing, it would saddle AEFA with an enormous liability that it does

not owe, and hamper the ability of other businesses to offer new and different compensation packages.

## **II. THE FINANCIAL PLANNERS AGREEMENT (“FPA”)**

Prior to March 22, 2000, a Financial Planners Agreement governed the relationship between Defendant American Express Financial Advisors and its financial planners. *See* R. 1450, Dep. Ex. 10, at AX002000-07, AX002411-12, AX002297-98, AX002723-24, AX002817-18, AX003052-53; R. 1450, Dep. Ex. 17, at AX001974-81 [AD 16-23] (examples of FPA).

One aspect of the compensation provided under this contractual relationship was the “Star Quest” program. *See* R. 1449, Dep. Ex. 3, at AX000548-49; R. 1450, Dep. Ex. 8, at AX001623 [AD 24].<sup>1</sup> Under this program, a measure of the planner’s sales performance—known as Total Weighted Production (“TWP”)—was calculated after the end of the calendar year. *See* R. 1449, Dep. Ex. 3, at AX000548-49. Based on TWP, the “Star Quest” framework placed a planner at one of seven levels, also called Star Levels, for the next year. R. 1450, Dep. Ex. 8, at AX001623 [AD 24]. The principal significance of a Star Level was that it determined the rate at which a planner earned commissions and awards for sales. These were known as Professional Performers’ Commission (“PPC”) and Special Incentive Award (“SIA”), and were paid after the end of the year in which they were earned. R. 1449, Dep. Ex. 3, at AX000606-07. At the lowest level, Star Level

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<sup>1</sup> The FPA’s compensation scheme included the “rules, policies and schedules as amended and published [by AEFA] from time to time.” R. 1450, Dep. Ex. 17, at AX001974 [AD 16].

1, a planner earned no PPC/SIA at all. R. 1450, Dep. Ex. 8, at AX001623 [AD 24]. At Level 2, a planner received \$3.00 in PPC/SIA per 1,000 TWP. *Id.* This commission rate increased incrementally for each Star Level. *See id.*

A planner's performance also was used for another purpose. Qualification for the lowest level on the Star Quest chart was a minimum threshold for a planner to be eligible to receive AEFA contributions toward welfare benefits. *See id.* AEFA made a company contribution toward the benefits premiums of planners at virtually all Star Levels. *See* R. 1450, Dep Ex. 6, at AX001233. All a planner had to do to receive the contribution was to qualify for *some* Star Level—*i.e.*, to meet the minimum TWP required of all Financial Planners. *See id.* (“Financial Planners must meet at least the minimum TWP requirement . . . to be eligible to receive a company contribution toward the cost of medical, dental, and life insurance coverage.”). New planners received these benefits subsidies without qualifying in their first year, and continued to receive them at a minimum through the end of their second year. *See* R. 1450, Dep. Ex. 22, at AX001750 [AD 90].

Merely meeting the threshold for eligibility, however, did not by itself create an entitlement to a benefit contribution in the next year. To receive a contribution, the planner had to continue to work under the FPA, elect to participate in the benefit plan, and pay the non-AEFA portion of the benefit cost. *See, e.g.*, R. 1450, Dep. Ex. 6, at AX001235-36 (coverage terminates if beneficiary ceases to be member of eligible class; if personal cost contribution not made; or if coverage not elected); *see also* R. 1433, at 138-40. If the planner's relationship under the FPA terminated, all company contributions towards benefits plans ceased at the end of the month of contract



termination. *See* R. 355, Klegon Aff., at 2; *see also* R. 1450, Dep. Ex. 6, at AX001235 (health benefits coverage terminates on the last day of the month in which active work ceases). Moreover, the planner did not receive any payment for the value of benefits subsidies after the FPA relationship terminated. *See* R. 1450, Dep. Ex. 6, at AX001235, AX001239-40; *see also* R. 1442, Aamodt Dep., at 77-78; R. 1442, Bunnell Dep., at 12-13; R. 1442, John Ford Dep., at 93-94; R. 1442, Kell Dep., at 101-02; R. 1442, Zundel Dep., at 101-02.

Thus, a planner's overall compensation included very different kinds of payments—retrospective commissions and awards, which were forms of deferred compensation paid after they were earned, and ongoing benefits subsidies paid on behalf of planners at all Star Levels as they continued to work and earn them. AEFA's accounting for benefits contributions was consistent with this fact. AEFA set aside funding for commissions as they accrued. *See* R. 1450, Dep. Ex. 22, at AX001750 [AD 90]; R. 1450, Dep. Ex. 24, at AX001772. Benefits contributions, on the other hand, were not accounted for as a cost for the year in which the planner met the TWP threshold for Star Quest eligibility, but rather in the following year when the planner worked at the Star Level and received the contribution. *See* R. 1450, Dep. Ex. 24, at AX001772.

At the highest level of Star Quest—the Platinum Team—planners did not receive any contribution to their welfare benefits. Planners who were appointed to the Platinum Team no longer received a company contribution to their benefits; the earnings of Platinum Team members were increased to allow these planners to pay the full amount of their own benefits premiums. *See* R. 1450, Dep. Ex. 6, at AX001234-35.

Finally, there was no ambiguity about the effect of the termination of the FPA on any entitlement to payments under that contract. The FPA provided that “When this Agreement terminates, you will not, except as provided by the Sales Compensation Plan, be entitled to . . . [a]ny further commissions, fees, overwriting or compensation.” R. 1450, Dep. Ex. 17, at AX001977 [AD 19]. The Sales Compensation Plan was specifically defined to mean “the rules, policies and schedules as amended and published from time to time” by AEFA, thereby reserving the right to amend. R. 1450, Dep. Ex. 17, at AX001974 [AD 16]; *see also* R. 1449, Dep. Ex. 3, at AX000544 (AEFA “reserves the right to make compensation changes without prior notice”). It is undisputed that the Financial Planners Agreement terminated on March 21, 2000.

### **III. THE ANNOUNCEMENT OF NEW ARRANGEMENTS**

In 1999, AEFA announced its plan to restructure its relationship with its financial planners. AEFA developed a model with two alternative “platforms”—one in which financial planners could choose to become employees (“Platform 1”) and the other in which they would become franchisees (“Platform 2”). AEFA offered planners the choice of either of the two alternative relationships, effective March 22, 2000.

Under Platform 1, financial planners would sign an employment agreement and become AEFA employees. Under this arrangement, a planner would receive the same company contribution toward medical, dental, and life insurance benefits provided to all AEFA employees. R. 1450, Dep. Ex. 14, at AX001627 [AD 67]. While AEFA subsidized the majority of the cost of these benefits, the employee had to elect benefits coverage and make his or her own employee contribution. *Id.* at AX001627-28. If an

employee did not elect benefits and make the employee contribution, AEFA did not make any payment to the employee in lieu of the subsidy. *See* R. 1450, Dep. Ex 23, at AX003145. Planners who had qualified for Star Quest in the prior year and who chose to become employees in 2000 did not get double benefits subsidies or other payments. *See* R. 355.

Under the second alternative, Platform 2, planners would choose to enter into a Business Franchise Agreement (“BFA”) and become franchisees known as “Independent Advisors.” R. 1450, Dep. Ex. 28, at P000426 [AD 29]. In place of the deferred compensation provided under Star Quest program, the new Platform program was based on Gross Dealer Concession (“GDC”) and contained more compensation paid currently. *See* R. 1450, Dep. Ex. 22, at AX001748 [AD 88]; R. 1451, Lennick Dep., at 11-13. Consistent with the independent status of franchisees, planners who chose this arrangement received a compensation package that replaced company subsidies for employees’ benefits contributions with a higher rate of cash commission. R. 1450, Dep. Ex. 21, at AX001769. Substituting cash for benefits subsidies allowed planners to choose whether to apply the cash to benefits premiums, or to use it for other purposes. *See* R. 1451, Lennick Dep., at 21.

The discontinuation of benefits subsidies for Platform 2 franchisees was the subject of extensive disclosure and discussion with the planners. An early draft of the BFA was distributed to all financial planners in May 1999. *See* R. 1451, Punch Dep., at 45. AEFA explained that it had eliminated the benefits contribution and raised the commission rate to 85% of Gross Dealer Concession. Without the elimination of the benefits contributions, commissions would have been 83% of GDC. *See, e.g.,* R. 1450,

Dep. Ex. 13, at AX001340; R. 1450, Dep. Ex. 21, at AX001769; R. 1450, Dep. Ex. 22, at AX001750 [AD 90]. In consultations starting in the Spring and Summer of 1999, hundreds of planners expressed a preference for direct compensation over payment of welfare benefits. *See* R. 1451, Lennick Dep., at 57. For all but the lowest paid planners, the higher rate of payment of GDC more than compensated for the loss of the benefits contributions.

AEFA discussed the BFA with the Advanced Advisor Board, a group of planners who provided input on corporate decisions affecting their interests. *See* R. 1450, Wallenta Aff., at 4. AEFA went through the BFA almost line-by-line with the Advanced Advisor Board, and made changes to the Agreement in response to concerns those planners expressed. *See* R. 1451, Punch Dep., at 43-49. The Board members helped to structure the platforms, and in so doing they “went to bat for the group” to “work the best deal they could.” R. 1451, Aamodt Dep., at 87.

Planners continued to receive repeated, explicit notice about the differences between these alternative platforms for compensation. They were specifically told that planners who chose Platform 2 would not receive contributions to benefits at any level. For example, in June 1999, the following Question and Answer appeared on the Advisor Connect Platform, an electronic site available to all planners: “Q. When will benefits end for P2 Advisors and their staff? A. P2 benefits will end on 3/31/2000.” R. 1450, Dep. Ex. 12, at AX003152. In July 1999, planners received a Platform Resource Kit, which stated:

The company intends to make nonsubsidized (*i.e.*, without a company contribution) medical coverage available . . . to

Platform 2 independent financial advisors . . . beginning April 1, 2000. *Those who elect HMO coverage in this Platform will pay the full cost of the coverage.*

R. 1450, Dep. Ex. 14, at AX001636 [AD 76] (emphasis added). Similarly, in September 1999, the company issued what it called an “Important Notice Regarding Benefits and the Platforms Rollout,” which stated: “If you are hired into Platform 1, you will generally be offered the same coverage the Company offers to other employees, with the usual employee contributions.” R. 1450, Dep. Ex. 11, at AX001159 [AD 85]. However, “*If you choose to become a Platform 2 independent financial advisor . . . you will pay the entire premium beginning April 1, 2000, without a company contribution.*” *Id.* at AX001158 n.\* [AD 84] (emphasis added). At the end of September, the company issued a Bulletin to all non-first-year advisors in which it explained:

In Platform 2, funding previously allocated for Star Quest benefit awards has been incorporated into the 85% payout rate. Therefore, there will be no additional reimbursement to advisors for benefits that would have been earned under the Star Quest program.

R. 1450, Dep. Ex. 21, at AX001769. It followed up with a Field Bulletin two weeks later, which again stated:

For Platform 2 advisors, funding previously allocated to Star Quest benefit awards has been incorporated into the 85% payout rate . . . . Company contributions toward medical and dental benefits are being discontinued on March 31 . . . . If the benefit equivalent worth were paid to advisors in 2000, the Platform 2 payout would have been lowered to 83%.

R. 1450, Dep. Ex. 22, at AX001750 [AD 90].

The financial planners receiving these notices were sophisticated in financial matters; their role was to provide financial analysis and advice to AEFA customers

choosing between different economic alternatives. Planners were also able to project their own compensation arrangements. Prior to Rollout, AEFA distributed software that enabled planners to run projections of their income under Platform 2. *See* R. 1451, Bunnell Dep., at 163; R. 1451, Russell Dep., at 74. Before signing the BFA, many of the plaintiffs did calculations projecting that they would likely be much better off under Platform 2 than they would have been under the FPA and Star Quest. *See, e.g.*, R. 1451, Bunnell Dep., at 162-63; R. 1451, Kell Dep., at 157; R. 1451, Russell Dep., at 76; R. 1451, Zundell Dep., at 29.

Nevertheless, AEFA urged financial planners to obtain legal advice before making their platform election. *See, e.g.*, R. 1450, Dep. Ex. 26, at P000275. The Advanced Advisor Board received advice of counsel regarding the Business Franchise Agreement, and several planners also created an informal group for the purpose of obtaining legal representation to review the agreement. *See* R. 1451, Aamodt Dep., at 87, 88-90.

#### **IV. THE NEW BUSINESS FRANCHISE AGREEMENT (“BFA”)**

The BFA made clear that it replaced the prior relationship, including any benefit arrangements. In this regard, it included an “Entire Agreement” clause stating that the Agreement and its amendments “constitute the entire Agreement between AEFA and Independent Advisor concerning the subject matter hereof, *and supersede all prior and contemporaneous agreements, negotiations and representations (written and oral)*, no other representations having induced Independent Advisor to execute this Agreement.” R. 1450, Dep. Ex. 28, at P000458 [AD 61] (emphasis added).

The BFA also contained a “Disclaimer of Benefits” stating that the Manuals—the bulletins, manuals, and other written policies published by AEFA on paper or electronically<sup>2</sup>—“constitute the complete list of the compensation and benefits owed” to the Independent Advisor resulting from the Agreement or the Advisor’s relationship with AEFA. *Id.* at P000431 [AD 34]. The BFA then provided that an Independent Advisor had no claim to any other compensation or benefit plan “unless such plan, policy or benefit plan specifically references Independent Advisors in their role as Independent Advisors.” *Id.*

Plaintiffs clearly understood that the previous contract, the FPA, would terminate on Platform Rollout and that the BFA would be a substitute contract for the FPA. For example, named Plaintiff Aamodt testified at his deposition: “Q. So with the platform rollout, the business franchise agreement, it actually replaced this contract, did it not? A. That’s my understanding, yes.” R. 1451, Aamodt Dep., at 136. Named Plaintiff Ford similarly testified: “Q. You understood your prior contracts were being terminated and this agreement was being substituted, correct? A. Correct.” R. 1451, John Ford Dep., at 192.

## **V. BENEFITS TO ADVISORS AND CLASS-ACTION LITIGATION**

Plaintiffs and the class they represent are financial planners who chose the franchisee arrangement. The Plaintiff class has benefited substantially by opting for the

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<sup>2</sup> R. 1450, Dep. Ex. 28, at P000437 [AD 39].

high levels of compensation offered under Platform 2. For example, the lead plaintiff in this litigation and one of two who testified at trial, Jerry Ford, saw his compensation increase roughly \$30,000 from \$341,562 in 1999 to \$371,574 in 2000, even though his actual production dropped by 28%.<sup>3</sup> As a whole, the named plaintiffs did even better. On average, they received \$52,985 more in compensation in 2000 than they received in 1999—an increase of 37%—even though their aggregate production did not increase at all.<sup>4</sup> By contrast, the average amount of the AEFA benefit contribution for class members was about \$3,733. *Cf.* R. 1334-35 [AD 11-12] (amount of verdict per class member).

Despite the Plaintiffs' informed decision to enter into the BFA, the clear notice as to what this choice entailed, and the benefits they received as a result of this choice, on June 22, 2000, Plaintiffs brought this lawsuit on behalf of themselves and a nationwide class, seeking continued company contributions for benefits coverage under the FPA. Plaintiffs invoked Minnesota law, because the FPA and BFA included clauses electing

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<sup>3</sup> Compare R. 467 (earnings of \$341,582 in 1999), with R. 474 (earnings of \$371,574 in 2000); compare R. 469 (TWP of \$8,235,335 in 1999), with R. 476 (TWP of \$5,884,998 in 2000). In fact, in 2000, plaintiff Ford received \$127,463 more under the BFA than he would have received under the FPA.

<sup>4</sup> In 1999, these nine individuals earned, on average, \$142,506, whereas in 2000 they earned \$195,401. Their aggregate production remained flat. Earnings and production numbers for these individuals appear in the record at R. 384-86, 395-97 (Aamodt); 418-20, 425-27 (Bunnell); 440-42, 448-50 (Eaton); 467-69, 474-76 (Jerry Ford); 491-93, 501-03 (John Ford); 514-16, 523-25 (Kell); 547-49, 556-58 (Russell); 567-69, 583-85 (Welch); 593-95, 601-03 (Zundel). This evidence was presented to the district court through the Bergeson Affidavit, R. 378-81, and summarized for the court in Defendants' Reply Memorandum, R. 1453, at 48 n.27.



Minnesota law. The district court certified this nationwide class in an order filed March 5, 2001. R. 209-15.

Plaintiffs moved for partial summary judgment on the issue of AEFA's alleged breach and liability for damages, arguing that the discontinuation of benefits subsidies constituted a breach of the FPA. R. 179. AEFA cross-moved for summary judgment on the issue of liability, arguing that the FPA did not give the Plaintiffs an irrevocable entitlement to benefits subsidies after its termination. R. 318-37; *see also* R. 1453, at 2-4, 17-36. AEFA also argued that the BFA was a substituted contract that extinguished any such right. R. 337-44; *see also* 1453, at 5-8, 36-48. At the close of oral argument, Judge Henriod stated that Plaintiffs' motion would be granted.

Plaintiffs submitted to the Court a proposed Order which included no fewer than eighteen separate grounds for decision—grounds which essentially duplicated the headings in Plaintiffs' memorandum seeking summary judgment. R. 869-872. AEFA objected to the form of this order and respectfully requested that the Court enter its own Order identifying the grounds for its decision. R. 865-867. AEFA also objected to the failure of the Order to state that no material facts were in dispute, which was a necessary predicate to granting partial summary judgment. *Id.* In response, Plaintiffs submitted a Second Amended Proposed Order, which retained all eighteen previous grounds for decision, and added a nineteenth, based on illusory contract doctrine. R. 906 [AD 06]. It also added a bare statement that there were no material issues of fact in dispute with respect to liability. *Id.* On January 2, 2002, Judge Henriod signed Plaintiffs' Second Amended Proposed Order, without any amendment. R. 904-07 [AD 04-07]. On January 22, 2002, AEFA sought permission to bring an interlocutory appeal of the district court's

summary judgment decision to this Court, which was denied by order dated March 6, 2002.

## **VI. PROCEEDINGS ON DAMAGES**

AEFA also moved for summary judgment on the issue of offsetting damages, on the ground that, even if the FPA contract had been breached, any damages should be offset by the corresponding benefits that Plaintiffs received as a result of that breach. R. 642-69. On November 8, 2001, the district court denied AEFA's motion for summary judgment on this damages issue, ruling that there were questions of fact to be resolved as to whether Defendant's breach of Star Quest contract directly conferred a benefit on advisors, whether the benefit was proximate, and whether it would be reasonable for advisors to receive both GDC and benefits contributions. R. 862-63 [AD 01-02].

In light of this ruling, AEFA planned to show at trial that the savings associated with the benefits contributions had been used to increase the payout to Platform 2 Independent Advisors from 83% to 85% of GDC. On March 18, 2002, however, Plaintiffs moved *in limine* to exclude all evidence on the issue of offset. R. 989-91. The district court, putting aside its prior ruling that there were disputed issues of fact related to the availability of offset, granted Plaintiffs' motion in a minute entry dated April 2, 2002. The district court excluded all evidence of offset. R. 1056-57 [AD 08-09]. As a result of this ruling, AEFA was unable to present at trial expert testimony showing that class members received an additional \$9,282,226.71 because of the change in benefits contribution policy. *See* R. 1361.

A jury trial on the issue of damages took place from April 15-18, 2002. No offset evidence was permitted. At the conclusion of trial, the jury returned a verdict assessing damages against AEFA in the sum of \$14,109,068.82. Judgment for the Plaintiffs was signed by Judge Henriod on April 30, 2002, and entered in the Registry of Judgments on May 1, 2002. R. 1334-36 [AD 11-13]. On May 10, 2002, AEFA moved for a new trial, limited to the issue of offsetting damages. R. 1337; *see Page v. Utah Home Fire Ins. Co.*, 15 Utah 2d 257, 261, 391 P.2d 290, 293 (1964) (new trial limited to particular issues). The district court entered an order denying the motion on June 20, 2002. R. 1403-04 [AD 14-15]. AEFA filed a timely notice of appeal to this Court. R. 1419-20.

### SUMMARY OF ARGUMENTS

Multiple errors by the trial court, each of which would separately require reversal, have resulted in a gross miscarriage of justice. At the outset, the court erred in concluding that Plaintiffs had a vested right to benefits contributions in 2000. By reaching a Star Quest level in 1999, Plaintiffs had simply assured that they would be eligible in the following year for such contributions, assuming that they continued to work under the FPA and assuming that the terms of that Agreement were not modified. Of course, neither assumption proved true; they began work in March 2000 under a different agreement and the FPA was terminated. Under well established case law, a nonvested benefit does not survive termination of an agreement.

Second, even if they had become vested in future benefit subsidies, Independent Advisors who signed the Business Franchise Agreement knew and agreed that all benefits subsidies would end after March 30, 2000. The BFA, which included an integration

clause, so stated. As a result, the District Court should have ruled as a matter of law that the BFA was a substituted contract extinguishing the prior obligations.

In addition, Plaintiffs were repeatedly advised in writing that the company would not pay these subsidies if they elected the more independent arrangement for compensation under the BFA. The Plaintiffs themselves testified as to their understanding that the BFA substituted for the FPA. Thus, at a minimum, there was parol evidence demonstrating the existence of a substituted contract that should have been presented to a jury. In rejecting the substituted contract defense on summary judgment, the court wrongly resolved issues of material fact that Defendant had disputed.

Finally, the foregoing legal errors were exacerbated when the trial court kept from the jury any evidence regarding the increase in compensation that Plaintiffs received as a result of the discontinuation of company subsidies, and any issue of whether an offset to damages was appropriate. The jury should have been permitted to consider whether the substantial increase in commissions that Plaintiffs received was a direct and proximate result of the discontinuation of benefits subsidies, and to weigh for itself whether it is reasonable for Advisors to receive both continued benefits subsidies and a commission increase at the same time.

By finding liability as a matter of law and barring jury consideration of relevant evidence on damages, the district court essentially dictated the result in this case. Its rulings were erroneous, prejudicial to the Defendant, and profoundly unwise, for the risk that other plaintiffs will claim compensation under both old and new contracts will discourage other companies from restructuring their compensation arrangements.

## ARGUMENT

### **I. THE FPA DID NOT CREATE AN UNQUALIFIED ENTITLEMENT TO BENEFITS CONTRIBUTIONS**

The trial court committed reversible error by ruling that Plaintiffs had “earned” a nonforfeitable right to continued benefits contributions under the FPA. Both the FPA itself and the Star Quest schedule made clear that qualifying for a given Star Level created nothing more than an eligibility for benefits contributions. This eligibility was subject to additional conditions that planners were required to satisfy in order to obtain AEFA contributions, and no provision of the contract gave planners a guaranteed right to payments irrespective of whether they continued working under the FPA. As a result, when the FPA terminated on March 21, 2000, so did any eligibility Plaintiffs had for benefits contributions. Regardless, the trial court granted summary judgment to Plaintiffs on the ground that they had “earned their benefits contributions,” and “[e]arned benefits cannot be taken away.” R. 905 [AD 05]. This holding ignored the law and failed to give effect to the plain terms of the FPA.

Minnesota courts have consistently held that post-termination entitlements arise only if they are based in the terms of the contract. In *Knudsen v. Northwest Airlines, Inc.*, 450 N.W.2d 131 (Minn. 1990), for instance, the Minnesota Supreme Court rejected a claim that a Northwest manager had a vested right to purchase stock options under an agreement with the company. Like the FPA’s termination of benefits contributions, Knudsen’s contract provided that his purchase option ended when his employment as a Northwest manager did. *Id.* at 133. Relying on this provision, the Minnesota high court ruled that the contract, not an implied duty of good faith, controlled: “[Knudsen] agreed

to the condition that his management role could be terminated for any reason and in the event that it was, the option expired.” *Id.* at 133-34; accord *Wulffenstein v. Deseret Mut. Benefit Ass’n*, 611 P.2d 360 (Utah 1980).<sup>5</sup>

Likewise, the Minnesota Court of Appeals held in *Sonneman v. Blue Cross & Blue Shield of Minnesota*, 403 N.W.2d 701, 705 (Minn. Ct. App. 1987), that a medical insurance policy provision establishing the policy’s “aggregate maximum” for the insured did not create an entitlement to additional payments after the policy ended. Reminding that contracts must be construed in their entirety, the court reasoned that inferring an entitlement from the “aggregate maximum” provision would both “render meaningless” the contract’s termination clause and “create an administrative nightmare” for courts charged with construing agreements. *Id.* at 706, 707.

Most recently, the federal district court for Minnesota has ruled that welfare benefits do not vest unless the contract governing the relationship expressly says so. In *Hughes v. 3M Retiree Med. Plan*, 134 F. Supp. 2d 1062, 1064 n.4 (D. Minn. 2001), *aff’d*, 281 F.3d 786 (8th Cir. 2001), the plaintiffs asserted that a benefits provision guaranteeing post-retirement, “lifetime” medical benefits precluded 3M from changing what percentage of the premium plaintiffs could be required to pay. The court held that the contract, which, like AEFA’s contract, also included a provision allowing 3M to

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<sup>5</sup> See also *Hamilton v. Travelers Ins. Co.*, 752 F.2d 1350, 1351 (8th Cir. 1985) (applying rules of contract interpretation to benefit plan provision in breach of contract lawsuit and ruling plaintiff did not meet criteria for continuation of benefits); *Janssen v. Janssen*, 331 N.W.2d 752, 753 (Minn. 1983) (pension vests only when it is no longer “subject to a condition of forfeiture if the employment relationship is terminated before retirement”).

unilaterally amend the plan, simply did not create a right to an unalterable insurance premium cost structure: The plaintiffs' claim was "not rooted in specific vesting language," and 3M's "unambiguous reservation" of its right to amend the plan was "fatal to a claim that rights ha[d] vested." *Id.* at 1071.<sup>6</sup> These principles control here.

The FPA contains no "specific vesting language." *Id.* Indeed, the FPA's plain terms establish that Star Quest advisors were eligible for benefit contributions, not entitled to them. The Star Quest schedule provided:

To remain *eligible* for a company contribution to group benefits, advisors must meet the minimum weighted production requirement in any given year.

R. 1450, Dep. Ex. 8, at AX001623 n.\*\* [AD 24] (emphasis added). Similarly, the FPA's benefits handbook stated that planners must fulfill the Star Quest production requirements "to be *eligible* to receive a company contribution toward the cost of medical, dental and life insurance coverage." R. 1450, Dep. Ex. 6, at AX001233 (emphasis added). The term "eligible" means: "[f]it and proper to be chosen; qualified to be elected." *Black's Law Dictionary* 521 (6th ed. 1990). "'Eligible' . . . expresses the idea of potentiality rather than of realization. It looks to the future and signifies a present

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<sup>6</sup> *Hughes* is an especially strong precedent because it involved welfare benefits that were subject to the federal Employee Retirement Income Security Act ("ERISA"), which is specifically designed to "promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983); *see also* 29 U.S.C. § 1001(b) (2000). Even under that statute, courts uniformly hold that medical and other welfare-type benefits do not vest unless the plaintiffs "carry the burden of showing an [employer] agreement or other demonstration of employer intent to vest benefits." *Barker v. Ceridian Corp.*, 122 F.3d 628, 634 (8th Cir. 1997), *cert. denied*, 529 U.S. 1109 (2000); *see also, e.g., Anderson v. Alpha Portland Indus.*, 836 F.2d 1512, 1516 (8th Cir. 1988); *Hutchins v. Champion Int'l Corp.*, 110 F.3d 1341, 1345 (8th Cir. 1987).

qualification to enjoy prospective rights and benefits contingent . . . upon something else which must be done preliminary thereto.” *Hughes v. Kerfoot*, 263 P.2d 226, 229 (Kan. 1953); *see also Monroe v. Foreman*, 540 A.2d 736, 740 & n.6 (D.C. 1988); *Schroeder v. Meridian Improvement Club*, 221 P.2d 544, 548 (Wash. 1950). Thus, Plaintiffs’ performance under Star Quest in one year allowed them to qualify for AEFA contributions toward their benefits premiums in the next only if they chose to satisfy additional prerequisites.

The prerequisites were clear. The FPA’s compensation scheme unambiguously dictated that in order to receive company benefits contributions, planners not only had to meet the minimum production levels established by Star Quest in the prior year, they also had to elect insurance coverage, pay their own portion of the premium, and, most importantly, continue to work under the FPA. *See* R. 1450, Dep. Ex. 6, at AX001235-36; *see also* R. 1433, at 138-40. In this regard, the FPA repeatedly explained that the agreement’s termination ended all claims a planner had to benefits contributions. Section III of the contract declared:

When this agreement terminates, you will not, except as provided by the Sales Compensation Plan, be entitled to . . . any further commissions, fees, overwriting or compensation.

R. 1450, Dep. Ex. 17, at AX001977 [AD 19]; *see also* FPA § VI, *id.*, at AX001980 [AD 22] (“If the Agreement ends, you have no claim for profits, anticipated profits or earnings other than the commissions, fees or overwriting that you are entitled to receive under the terms of this Agreement.”).

No part of the Sales Compensation Plan created an unqualified right to contributions that survived contract termination. In fact, Plaintiffs have never mustered



more than a single textual reference in support of their position: compensation manual language saying that “[a]t Star level 1, you earn a company contribution to your group benefits. From Star Levels 2 through 7, you receive the company contribution” plus PPC. R. 181 (quoting 1997 Advisors Compensation Manual at 81). This language simply says that a planner who is “at” Star Level 1 (*i.e.*, has already reached it by virtue of his or her performance in the prior year) will earn benefits contributions through work at that Star Level. But this language does not say that a planner *has already earned* AEFA-sponsored subsidies merely by qualifying for placement at a Star Level. Consequently, this language cannot negate the FPA’s other provisions requiring planners to elect a benefit plan, pay his or her share of the premium, and remain active under the FPA to receive a benefits subsidy. This is particularly true given that the Star Quest schedule itself—which this language purports to *summarize*—promised only that planners who met the production minimums would be “eligible” for company payments toward their benefits. R. 1450, Dep. Ex. 8, at AX001623 n.\*\* [AD 24] (emphasis added).

In any event, Plaintiffs’ claim falls before the rule that an “unambiguous reservation of rights to amend or terminate a plan is fatal to a claim that rights have vested.” *Hughes*, 134 F. Supp. 2d at 1071, *aff’d*, 281 F.3d at 792-93. The FPA’s Benefits Handbook proclaimed:

[AEFA] makes no promise to continue these benefits in the future and has the right to amend or terminate any coverage for active plan participants or retired covered individuals at any time. Rights to future benefits will never vest.

R. 1450, Dep. Ex. 6, at AX001386. This disclaimer warned that AEFA advisors had no vested right to future benefits contributions. It is “fatal” to Plaintiffs’ claim. *Hughes*, 134 F. Supp. 2d at 1071.<sup>7</sup>

Accordingly, the trial court’s determination that Plaintiffs “earned” benefits contributions from AEFA by performing under Star Quest during 1999 has no basis in the FPA. R. 905 [AD 05]. Plaintiffs established only their eligibility for AEFA contributions in 1999, and that eligibility ended when the FPA did. The FPA terminated *before*, not “after the benefits . . . were earned,” as the trial court ruled. *Id.* Indeed, the FPA’s own terms stated that termination rendered Plaintiffs “not . . . entitled” to “any further” compensation. R. 1450, Dep. Ex. 17, at AX001977 [AD 19]. By ruling to the contrary, the trial court contravened the FPA’s clear terms. The court erred by granting summary judgment to Plaintiffs rather than to AEFA.

## **II. THE BFA IS A SUBSTITUTED CONTRACT THAT REPLACED ITS PREDECESSOR FPA**

The trial court also erred by refusing to recognize that the BFA was a substitute contract that extinguished any right to compensation Plaintiffs could have had under the FPA. Plaintiffs in this case had a choice: They could become AEFA employees and collect the same benefits contributions all AEFA employees received, or they could

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<sup>7</sup> AEFA does not agree that the contract must be construed in favor of Plaintiffs. These were relatively sophisticated parties with access to legal counsel and financial planning capabilities, so that this was not an “adhesion” contract. However, it is not necessary for this Court to reach that issue, since the language of the contract unambiguously requires AEFA’s interpretation.

become AEFA franchisees and relinquish benefits contributions in favor of obtaining a more profitable commission structure. Plaintiffs made their choice. They decided to sign the BFA, which explicitly terminated all agreements they had previously entered into with AEFA, made them franchisees of the company, and allowed them access to higher commissions. The trial court's refusal to recognize the BFA's express purpose and effect was legal error.

Under the doctrine of substituted contract, a new contract that replaces the terms of a prior agreement "discharges" all duties arising under the original agreement. *Restatement (Second) of Contracts* § 279(2) (1990). Thus, when the substituted contract doctrine applies, parties may sue only to enforce the substitute agreement and not its predecessor. *Id.* The doctrine has four elements: "(1) the existence of a previous valid contract; (2) the parties agreed to a new contract; (3) the parties formed a valid new contract; and (4) the parties intended to extinguish the old contract and substitute the new." *Nat'l Am. Ins. Co. v. Hogan*, 173 F.3d 1097, 1105 (8th Cir. 1999) (footnote omitted); *see also, e.g., Badger Equip. Co. v. Brennan*, 431 N.W.2d 900, 903-04 (Minn. Ct. App. 1988).

The BFA is a textbook example of a substituted contract. The BFA spells out in specific detail the respective obligations of the parties and entirely replaces the terms that governed their previous relationship. Indeed, Plaintiffs have never contended that the first three elements of the substitute contract doctrine are lacking here, only that *Plaintiffs* did not intend the BFA to substitute for the FPA. *See* R. 196-97; R. 1452, at 50-52. But Plaintiffs cannot now rescue the trial court's baseless summary judgment order by claiming that they never meant to agree to terms to which they specifically assented. It is

well-settled that courts must determine contractual intent not from one party's subjective mental state, but from "the express words of the parties or . . . the facts and circumstances attending the transaction." *Nat'l Am. Ins.*, 173 F.3d at 1107; *see also, e.g., Vacura v. Haar's Equip., Inc.*, 364 N.W.2d 387, 392 (1985); *WebBank v. Am. Gen. Annuity Serv. Corp.*, 2002 UT 88, ¶¶ 18-19, 54 P.3d 1139; 5 *Williston on Contracts* § 681, at 267-68 (3d ed. 1961). In this case, both the express terms of the BFA and the circumstances surrounding its execution unmistakably demonstrate that its purpose was to restructure Plaintiffs' contractual relationship with AEFA, terminating the predecessor FPA.

**A. The Express Terms of the BFA Unambiguously Extinguished the FPA and Its Compensation Scheme**

The question of whether a new agreement is a substitute contract turns on intent. *Bradshaw v. Burningham*, 671 P.2d 196, 199 (Utah 1983). In ascertaining contractual intent, the writing itself is dispositive unless its terms are ambiguous. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979); *Jones v. ERA Brokers Consol.*, 2000 UT 61, ¶ 12, 6 P.3d 1129. Here, the terms of the BFA itself make clear that the parties intended to end the FPA and replace its compensation package with the BFA's franchise arrangement and accompanying commissions structure.

Under Section 4 of the BFA, entitled "Fees and Compensation," every Independent Advisor specifically agreed to accept the compensation package provided by the BFA as the entire amount of remuneration, including benefits payments, due as a result of the advisor's affiliation with AEFA. The "Disclaimer of Benefits" provision in Section 4 states:

Independent Advisor acknowledges that the Manuals,  
including the Compensation Schedule contained therein,

constitute the *complete* list of the compensation and benefits owed Independent Advisor resulting from this Agreement *or Independent Advisor's relationship with AEFA*.

R. 1450, Dep. Ex. 28, at P000431 [AD 34] (emphasis added). Similarly, every Independent Advisor further agreed to renounce all claims to benefits contributions not provided by the BFA in order to gain access to that agreement's more lucrative commissions structure. The "Disclaimer of Benefits" continues:

Independent Advisor acknowledges that Independent Advisor has *no claim* to any other compensation or *benefit plan, program or policy* of or sponsored by AEFA unless such plan, policy or benefit plan specifically references Independent Advisors in their role as Independent Advisors as an eligible group under such plan, program or policy . . . .

*Id.* (emphasis added). Together, these two provisions remove any doubt that Independent Advisors are not entitled to benefits payments beyond what the BFA allows. The first provision declares without limitation that the BFA's compensation package constitutes the "complete" amount of both "compensation" and "benefits" to which the advisor is entitled—not only for his or her work as an Independent Advisor, but also for the advisor's entire "relationship with AEFA." *Id.* The second provision reinforces the exclusive nature of the BFA's compensation scheme. It affirms that an Independent Advisor can receive additional benefit contributions from AEFA only if the plan providing for the benefits "specifically references Independent Advisors as an eligible group." *Id.*

Crucially, the benefits contribution plan created by Star Quest never referenced Independent Advisors as an eligible group, "specifically" or otherwise. *See* R. 1450, Dep. Ex. 8, at AX001623 [AD 24]; *see also* R. 1449, Dep. Ex. 3, at AX000548-56. Indeed, Star Quest could not have referenced Independent Advisors "in their role as

Independent Advisors,” R. 1450, Dep. Ex. 28, at P000431 [AD 34], because that term was created and defined by the BFA for the narrow purpose of identifying the group of planners who elected to become AEFA franchisees. *See* R. 1450, Dep. Ex. 28, at P000426 [AD 29] (defining “Independent Advisor” as the advisor entering into the BFA). Before Plaintiffs made the choice to become franchisees, “Independent Advisors” simply did not exist in the AEFA corporate structure.

Likewise, the Manuals referenced by the BFA’s “Disclaimer of Benefits” did not continue Star Quest benefit contributions as part of the BFA’s compensation package. The published policies and bulletins that constituted the Manuals clearly eliminated the benefits subsidies that had existed under the FPA, and established a fundamentally modified commissions scheme—one that, unlike the FPA, based commissions on GDC instead of TWP. *See* R. 1450, Dep. Ex. 22, at AX001750. Accordingly, Plaintiffs’ express agreement that the BFA’s compensation package constitutes the “complete” amount of “benefits” owed by AEFA does not affirm the Star Quest contributions Plaintiffs seek. R. 1450, Dep. Ex. 28, at P000431 [AD 34]. It unambiguously excludes them.

The BFA’s other provisions only confirm that this new agreement supplants the FPA by reformulating the planners’ affiliation with AEFA to one of franchisees. For example, Section 4 of the BFA requires Independent Advisors to pay AEFA quarterly franchise fees, *see id.* at P000430 [AD 33], and Section 6 establishes a list of requirements that each Independent Advisor must satisfy in “opening [its] franchised business.” *Id.* at P000434 [AD 37]. Most significantly, the BFA contains a sweeping integration clause. This clause clarifies that the BFA extinguishes not only all previous

negotiations concerning the BFA but also every predecessor agreement between Independent Advisors and AEFA: The clause plainly states that the BFA and its incorporated documents “supersede all prior and contemporaneous agreements.” *Id.* at P000458 [AD 61]. This unqualified elimination of all prior agreements between Plaintiffs and AEFA is precisely the type of language that “clearly evinces the intent to create a substitute contract.” *In re Worldwide Direct, Inc.*, 268 B.R. 69, 72 (D. Del. 2001) (construing an integration clause in a severance agreement to create a substituted contract between an employee and his former employer).

Thus, the trial court’s order does not square with its obligation to construe the BFA according to its plain language. *See State ex rel. Humphrey v. Delano Comm. Dev. Corp.*, 571 N.W.2d 233, 236 (Minn. 1997); *St. Paul Fire & Marine Ins. Co. v. Nat’l Computer Sys., Inc.*, 490 N.W.2d 626, 631 (Minn. Ct. App. 1992); *accord WebBank*, 2002 UT 88 at ¶¶ 18-19. “Courts must apply the clear provisions of an agreement or contract as they find it.” *Anderson v. Twin City Rapid Transit Co.*, 84 N.W.2d 593, 600 (Minn. 1957). But allowing for continued Star Quest benefits contributions under the BFA would require inserting language into the contract that simply is not there. The BFA explicitly states that its compensation package “constitute[s] the complete list of the compensation and benefits owed Independent Advisor resulting from . . . Independent Advisor’s relationship with AEFA,” not that it “constitute[s] the complete list of compensation and benefits, *excluding Star Quest benefits for which the Independent Advisor attained eligibility in 1999.*” R. 1450, Dep. Ex. 28, at P000431 [AD 34]. Likewise, the BFA’s integration clause announces that it “supersedes all contemporaneous and prior agreements” between Independent Advisors and AEFA, not

that it “supersedes all contemporaneous and prior agreements, *excluding the Star Quest benefits contribution provision of the FPA.*” *Id.* at P000458 [AD 61]. Courts uniformly refuse to read exceptions that do not exist into a contract’s terms. *E.g., Anderson*, 84 N.W.2d at 599; *Browning v. Equitable Life Assurance Soc’y*, 94 Utah 570, 574-78, 80 P.2d 348, 351-52 (1938); *see also City of Hildale v. Cooke*, 2001 UT 56, ¶ 36, 28 P.3d 697. By ruling that the BFA “supports the view that AEFA is obligated to pay Star Quest benefits,” the trial court’s summary judgment order violated this bedrock principle. R. 906 [AD 06].

Indeed, reading the BFA to provide for continued Star Quest benefit payments would breach the judicial duty to “construe [the] contract as a whole” and “attempt to harmonize” all of its clauses together. *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990); *accord Jones*, 2000 UT 61 at ¶ 12. The only fair reading of the BFA’s franchise, integration, and Disclaimer of Benefits clauses together achieves a result that is clarified by the BFA’s overall objective of restructuring the parties’ relationship. Under this reading, the clauses appropriately harmonize in a single purpose: They create a franchise relationship that replaces the parties’ former contractual arrangement and exchanges a new compensation package for the old one. *See* BFA §§ 4, 24, R. 1450, Dep. Ex. 28, at P000431, P000458 [AD 34, 61]. Under a reading of the BFA that allows for Star Quest benefits to continue, however, the contract becomes disjointed and the Disclaimer of Benefits is made superfluous. This reading creates a new relationship without bothering to end the old, and it allows additional Star Quest benefit payments despite the Disclaimer’s explicit proviso that the advisors have “no claim to any other . . . benefit plan.” R. 1450, Dep. Ex. 28, at P000431 [AD 34]. Courts



must avoid contractual interpretations that “render a provision meaningless.” *Chergosky*, 463 N.W.2d at 526. The trial court’s summary judgment order here breached this duty by brushing aside the Disclaimer of Benefits provision without explanation or reason.

Despite the clarity with which the BFA installed the new franchise arrangement in place of the FPA, the trial court ruled on summary judgment that “[t]he Franchise Agreement is not a substituted contract.” R. 906 [AD 06]. This conclusion, which the court failed to support with any analysis whatsoever, cannot stand. The BFA’s plain language establishes a substituted contract that specifically and unambiguously precludes payment of “any” benefits that do not arise under the BFA. R. 1450, Dep. Ex. 28, at P000431 [AD 34]. The lower court’s refusal to grant AEFA summary judgment on substituted contract grounds was error.

**B. Even If the BFA’s Terms Did Not Unambiguously State the Parties’ Intent to Create a Substituted Contract, Granting Summary Judgment for Plaintiffs Was Improper**

In any event, the trial court erred when it granted summary judgment to Plaintiffs on liability. Although the express terms of the BFA clearly demonstrate the parties’ intent to create a substitute contract, summary judgment for Plaintiffs was improper even if the BFA’s terms were unclear. At the bare minimum, those terms created a factual dispute that required jury consideration of parol evidence regarding the parties’ intent in forming the BFA. The court’s failure to order a trial on this issue is an independent ground for reversal.

Summary judgment is appropriate “only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *SME*

*Indus. v. Thompson, Ventulett, Stainback & Assocs.*, 2001 UT 54, ¶ 9, 28 P.3d 669; *see* Utah R. Civ. P. 56(c). When a contractual term is “capable of more than one reasonable interpretation,” *John Call Eng’g, Inc. v. Manti City Corp.*, 743 P.2d 1205, 1207 (Utah 1987), a factual question exists and “‘failure to resolve the parties’ intent from parol evidence is error.’” *SME Indus.*, 2001 UT 54 at ¶ 14 (quoting *Plateau Mining Co. v. Utah Div. of State Lands & Forestry*, 802 P.2d 720, 725 (Utah 1990)); *accord Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990); *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966). AEFA’s contention below that the BFA created a substitute contract by precluding “any” compensation not allowed under the BFA and superseding “all” prior contracts between AEFA and advisors was a reasonable interpretation that differed from the one adopted by the trial court. R. 1450, Dep. Ex. 28, at P000431, P000458 [AD 34, 61]. It was founded in the text of the contract itself, and it gave effect to all of the BFA’s terms when read together. *See supra* Section II.A.

AEFA’s interpretation was also supported by the unrefuted parol evidence submitted to the trial court on summary judgment. AEFA gave Plaintiffs specific, repeated notice that they would not receive any additional Star Quest benefits contributions if they chose to sign the BFA. More than six months before the BFA took effect, AEFA distributed a notice to planners concerning the platform rollout. *See* R. 1450, Dep. Ex. 11, at AX001158 [AD 84]. This document, which warned that planners should “read it carefully” since it contained “important information” regarding “benefits and the platforms rollout,” stated explicitly:

If you choose to become a Platform 2 independent financial advisor . . . , you will pay the entire premium beginning April 1, 2000, without a company contribution.

*Id.* at AX001158 & n.\* [AD 84]. Likewise, in a “Platform Resource Kit” circulated to Plaintiffs on July 19, 1999, AEFA gave further notice that Star Quest benefit contributions would not be made under the BFA. This notice explained, “The company intends to make nonsubsidized (*i.e.*, without a company contribution) medical coverage available . . . to Platform 2 independent financial advisors . . . . Those who elect HMO coverage in this Platform will pay the full cost of the coverage . . . .” R. 1450, Dep. Ex. 14, at AX001636 [AD 76]; *see also* R. 1450, Dep. Ex. 11, at AX001160 [AD 86]. And a September 22, 1999 bulletin that addressed “discontinuation of compensation programs . . . as a result of Platform rollout” could not have been more clear about the BFA’s elimination of Star Quest benefit payments. R. 1450, Dep. Ex. 21, at AX001765. That bulletin cautioned:

In Platform 2, funding previously allocated for Star Quest benefit awards has been incorporated into the 85% [BFA commissions] payout rate. Therefore, *there will be no additional reimbursement to advisors for benefits that would have been earned under the Star Quest program.*

*Id.* at AX001769 (emphasis added); *see also* R. 1450, Dep. Ex. 13, at AX003140.

Given these repeated notices, Plaintiffs’ after-the-fact claim that the BFA’s compensation package did not substitute for the FPA’s rings hollow. These notices were classic examples of evidence manifesting the parties’ intent in forming a contract. *See Donnay*, 144 N.W.2d at 716 (holding that where terms are ambiguous, “negotiations may be considered in order to determine the meaning and intent of the parties”); *see also Emerick ex rel. Howley v. Sanchez*, 547 N.W.2d 109, 112 (Minn. Ct. App. 1996); *Winegar v. Froerer Corp.*, 813 P.2d 104, 108 (Utah 1991); *Radley v. Smith*, 6 Utah 2d 314, 316, 313 P.2d 465, 466-67 (1957). They expressed AEFA’s clear intent for the BFA

to end benefit contributions, and they established a factual circumstance central to understanding the planners' choice: The planners were aware when they decided to become Independent Advisors that AEFA intended the BFA to fully extinguish the FPA's compensation scheme, including any "additional reimbursements . . . under the Star Quest program." R. 1450, Dep. Ex. 21, at AX001769.

Thus, the trial court was wrong when it found that "[a]ny communication by AEFA . . . did not affect the Advisors' rights." R. 906 [AD 06]. Plaintiffs' own statements confirmed that the company's notices were effective in alerting planners that the new contract would replace the first. At least two of the named Plaintiffs conceded below that the BFA extinguished the FPA. In deposition testimony submitted to the trial court on summary judgment, Plaintiff Aamodt averred:

Q. So with the platform rollout, the business franchise agreement, it actually replaced this contract, did it not?

A. That's my understanding, yes.

R. 1451, Aamodt Dep., at 136. Plaintiff John Ford similarly admitted: "Q. You understood your prior contracts were being terminated and this agreement was being substituted, correct? A. Correct." R. 1451, John Ford Dep., at 192.

The evidence presented by AEFA plainly precluded the lower court from determining, as a matter of law, that the BFA "is not a substituted contract." R. 906 [AD 06]. AEFA offered the court a "tenable, reasonable, and supportable" interpretation of the BFA rooted in the agreement's own terms. *WebBank*, 2002 UT 88 at ¶ 27; *see also SME Indus.*, 2001 UT 54 at ¶ 15; *Grow v. Marwick Dev., Inc.*, 621 P.2d 1249, 1252 (Utah 1980). Moreover, this interpretation—unlike the reading adopted by the lower court—was supported by both the "facts and circumstances" attending the BFA's formation and

the Plaintiffs' own understanding of the agreement. *Winegar*, 813 P.2d at 108; *see also Nat'l Am. Ins.*, 173 F.3d at 1107; *Donnay*, 144 N.W.2d at 716. Even if this unrefuted evidence did not warrant summary judgment in favor of AEFA, it raised a factual question of the parties' intent that could have been "resolved only by the trier of fact after consideration of parol or extrinsic evidence." *WebBank*, 2002 UT 88 at ¶ 28; *see also Plateau Mining*, 802 P.2d at 725. At a minimum, the grant of summary judgment in favor of Plaintiffs must be reversed and remanded so that a jury may properly determine the parties' intent as required by longstanding Utah procedure. *See WebBank*, 2002 UT 88 at ¶ 28; *see also, e.g., Cent. Fla. Invests. v. Parkwest Assocs.*, 2002 UT 3, ¶ 12, 40 P.3d 599; *SME Indus.*, 2001 UT 54 at ¶ 15; *Plateau Mining*, 802 P.2d at 725.

### **III. THE TRIAL COURT ERRED IN EXCLUDING ANY EVIDENCE OF OFFSETTING BENEFITS FROM JURY CONSIDERATION**

Compounding the errors of law that underlay its summary judgment on liability, the trial court then made a further error that emptied the trial on damages of any content. The district court ruled that AEFA would have no opportunity to present to the jury any evidence as to how the Plaintiff class may have benefited from their new franchise agreements. This ruling was inconsistent with its own prior ruling and with governing case law. *Compare* R. 862 [AD 01], *with* R. 1056-57 [AD 08-09]. The jury should have been permitted to consider whether losses arising from the defendant's alleged breach of contract were offset by higher commissions made possible by the new arrangement.

This record contains abundant evidence that the higher levels of commissions under the BFA were made by possible in part by the absence of any contributions to

welfare benefits. Consequently, AEFA initially requested an order requiring an offset for the higher level of commissions. R. 642-69.

On November 8, 2001, the trial court denied AEFA's motion for summary judgment on that issue. R. 862 [AD 01]. Reciting three elements common in offset analysis, the court ruled that questions of fact existed as to whether Defendant's breach of Star Quest contract directly conferred a benefit on the planners; whether the benefit was proximate; and whether it would be reasonable for planners to receive both GDC and benefits contributions. *Id.* Thus, the trial court properly recognized that, even if AEFA had not established as a matter of law that it was entitled to offset any damages to Plaintiffs by the gains Plaintiffs derived, the elements of offset were for AEFA to prove at trial.

In the wake of that ruling, AEFA was prepared to prove at trial that the parties' agreement to a contract that did not include benefits contributions permitted a payout rate on commissions of 85% rather than 83%. AEFA's witnesses would have testified, consistent with its documents, that if benefits contributions were made in 2000, "that would have reduced the first year payout in platforms to about 82-83% instead of 85%." R. 1450, Dep. Ex. 19, at AX000164; R. 1450, Dep. Ex. 24, at AX001772; R. 1354 [AD 93]; *see also* R. 1451, Lennick Dep., at 44 (economics of the business prevented paying both 85% of GDC and benefits subsidies). AEFA would have established, "In Platform 2, funding previously allocated for Star Quest benefits awards has been incorporated into the 85% payout rate." R. 1450, Dep. Ex. 21, at AX001769. Further, AEFA had prepared expert testimony showing that the higher commission rate left some class members with no net loss at all and others with a greatly reduced loss. On the basis of the testimony of

its expert, AEFA would have argued that an offset of \$9,282,226.71 was appropriate. *See* R. 1361.

Nevertheless, on April 2, 2002, the district court granted Plaintiffs' motion to exclude all of this evidence from consideration by the jury. The district court reasoned that "[t]he offsetting benefits theory applies only where 'the defendant's breach obviates the necessity for the Plaintiff's own performance or some part of it,'" and that the offset theory does not apply in this case because Plaintiffs were not relieved of any performance under the original contract. R. 1056 [AD 08] (quoting 3 Dan B. Dobbs, *Handbook of the Law of Remedies—Damages, Equity and Restitution* 124 (2d ed. 1993)).

The trial court's ruling rested on an error of law. Where a breach of contract provides a Plaintiff with an opportunity for profits that exceed his losses from the breach, the Plaintiff has not been damaged, and may not recover. *See Barron G. Collier, Inc., v. Women's Garment Store, Inc.*, 189 N.W. 402-404 (Minn. 1922). And where the Plaintiff's profit from the breach does not exceed his loss, the defendant is entitled to offset Plaintiff's gains against the losses from the breach. *See Macon-Bibb County Water & Sewerage Auth. v. Tuttle/White Constructors, Inc.*, 530 F. Supp. 1048, 1055 (M.D. Ga. 1981); Dan B. Dobbs, *Handbook of the Law of Remedies—Damages, Equity and Restitution* § 3.6, at 181 (1973). Indeed, while *Dobbs* supports the proposition that offset is appropriate in a relief-of-performance situation, that treatise cannot properly be read to restrict the availability of offset *only* to such a situation as the trial court held. What *Dobbs* says is that when defendant's breach causes damages "but also operates directly to confer some benefit upon the Plaintiff, the Plaintiff's claim for damages may be diminished by the amount of the benefit." *Dobbs, supra*, at 181 (1973); *see also King*

*Grain Co. v. Caldwell Mfg. Co.*, 820 F. Supp. 569, 573-74 (D. Kan. 1993); *Macon-Bibb*, 530 F. Supp. at 1055; *Tel-Ex Plaza, Inc. v. Hardees Rest., Inc.*, 255 N.W.2d 794, 796 (Mich. Ct. App. 1977); *Lee v. Yang*, 987 P.2d 519, 523 (Or. Ct. App. 1999). As courts uniformly hold, damages in a breach of contract claim cannot place the nonbreaching party in a “better position than he would have been in had the contract been fully performed.” *Soules v. ISD No. 518*, 258 N.W.2d 103, 106 (Minn. 1977); *Anesthesiologists Assoc. v. St. Benedict’s Hosp.*, 884 P.2d 1236, 1238 (Utah 1994).

The district court’s ruling cannot be squared with cases such as *Buono Sales, Inc. v. Chrysler Motors Corp.*, 449 F.2d 715 (3d Cir. 1971). In *Buono*, the defendant discontinued the DeSoto line of automobiles for economic reasons, breaching a contract with the Plaintiff distributor. At the same time, as a result of its decision to discontinue the DeSoto, the defendant greatly expanded the Plymouth line automobiles available to the Plaintiff. The court emphasized that it was “very doubtful that plaintiff would have benefited from this wide choice of Plymouths in recent years if defendant were still marketing the DeSoto.” *Id.* at 720. The court ruled that, in calculating the damages for a breach of contract, the compensating advantage derived by the Plaintiff as a result of the breach must be subtracted from the Plaintiff’s losses from the breach. *Id.*; *see also Macon-Bibb*, 530 F. Supp. at 1055 (offset theory available where means necessary for plaintiff to have obtained profit or savings from subsequent contract would be unavailable if the original contract had been performed); *King Grain*, 820 F. Supp. at 573-74 (offset of insurance proceeds required even though they flowed from a party other than the defendant); *Deinhart v. Waukesha Brewing Co.*, 124 N.W.2d 664, 671 (Wis. 1963) (defendant employer entitled to offset unemployment compensation plaintiffs had



received against back pay damages because “the extensive unemployment benefits to Plaintiffs did embody an element of cost to [defendant]”).

In the face of this well established law, Plaintiffs make the factual claim that “the Advisors could have entered into a Business Franchise Agreement paying 85% GDC irrespective of AEFA’s breach.” R. 995. This assertion is factually disputable for two reasons.

First, since the two contracts were mutually exclusive, Advisors could not have entered into the BFA at all if they had continued providing services under the FPA. As demonstrated in Section I of the argument, *supra*, the payment of welfare subsidies under Star Quest was conditioned on the Advisor continuing to work under the FPA. *See, e.g.*, R. 1450, Dep. Ex. 6, at AX001235-36; R. 1450, Dep. Ex. 8, at AX001623 [AD 24]; *see also* R. 1433, at 138-40. Thus, even if full performance by Plaintiffs presented an obstacle to offset, Plaintiffs could not have fully performed all of the requirements for payment of subsidies under the FPA, once they had entered into the BFA and terminated their FPA.

Second, even if Plaintiffs could have received benefits under both contracts simultaneously, it also mattered whether AEFA would have been able to provide both benefits simultaneously; to the extent this was disputed, it was a question for the jury to decide. This aspect of offset analysis is entirely independent of the question whether Plaintiffs had “earned” the subsidies under the FPA. Here, it is AEFA’s ability to set the GDC at 85% instead of 83%—not the Plaintiffs’ performance—that controls. *See Buono*, 449 F.2d at 721; *Deinhart*, 124 N.W.2d at 671. There was abundant evidence from which a jury would have concluded that, within the platform design parameters, the 85%

GDC payout was available *only because* of the asserted breach. Significantly, AEFA did not argue that the *entire* difference in compensation between the old contract and new contract should be offset, but only that portion that contemporaneous company documents identified as directly attributable to the discontinued contributions (*i.e.*, the difference between 83% and 85%).

AEFA should have been allowed to present this evidence to the jury. The essential dispute was whether “the benefits accruing to the plaintiff are sufficiently proximate to the contract to warrant reducing the plaintiff’s damages.” *Macon-Bibb*, 530 F. Supp. at 1055; *see also Louisiana Sulphur Carriers, Inc. v. Gulf Res. & Chem. Corp.*, 53 F.R.D. 458, 462 (D. Del. 1971); *Dobbs, supra*, at 181 (1973). Proximate causation is a question for the jury. *See, e.g., Mahmood v. Ross*, 1999 UT 104, ¶ 22, 990 P.2d 933 (“Proximate cause is generally determined by an examination of the facts, and questions of fact are to be decided by the jury.”); *see also Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995); *Harline v. Barker*, 912 P.2d 433, 439 (Utah 1996).

The same is true of the last element of offsetting damage analysis originally cited by the trial court: whether it was unreasonable for the Plaintiffs to receive the substantially higher compensation that resulted from the compensation formula of the BFA, and still claim damages for discontinued subsidies. In 2000, the nine named Plaintiffs earned on average an additional \$52,985 as a result of the transition from Star Quest to the Business Franchise Agreement. *See supra* note 4 and accompanying text. This increased their compensation by an average of 37%. *See id.* Whether it is reasonable for the Plaintiff class to receive the aggregate benefits of the BFA, and at the

same time to recover damages for subsidies under the FPA, is again an issue the jury was entitled to weigh.<sup>8</sup>

Thus, even if there had been a breach of the FPA, the trial court erred in depriving the jury of any ability to consider whether any damages from this breach should have been offset by the benefits that advisors received as a result of the discontinuation of welfare benefits subsidies.

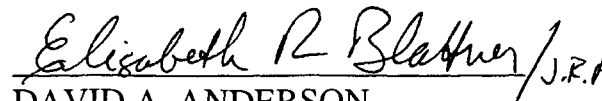
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<sup>8</sup> In this regard, it may have been worth considering that the net benefit to the Plaintiff class was far greater even than the nine million dollar figure cited above. For example, for purposes of computing the offset for the named plaintiffs, only the amount of additional compensation corresponding to the amount of the claimed lost benefits contribution—not the full amount of the \$52,985 gain—was included in the nine million dollar figure.

## CONCLUSION

In view of the clear language in the contractual documents in this case, the grant of summary judgment to Plaintiffs on liability should be reversed, and judgment should be entered for the defendant. If there is any doubt about the meaning of that language, the case should be remanded to the trial court for trial on liability. In the event that any possibility of liability is found, the case should be remanded for a trial on damages at which evidence relating to offset can be introduced.

DATED this 26<sup>th</sup> day of November, 2002.

  
\_\_\_\_\_  
J.R.P.  
DAVID A. ANDERSON  
ELISABETH R. BLATTNER  
PARSONS BEHLE & LATIMER

  
\_\_\_\_\_  
PAUL J. ONDRASIK  
CHARLES G. COLE  
MORGAN D. HODGSON  
STEPTOE & JOHNSON LLP

Attorneys for American Express  
Financial Advisors, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of November, 2002, I caused to be hand delivered a true and correct copy of the foregoing APPELLANT'S BRIEF to:

John P. Ashton  
Robert G. Wing  
James W. McConkie III  
PRINCE, YEATES & GELDZAHLER  
175 East 400 South, Suite 900  
Salt Lake City, Utah 84111



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## **ADDENDUM TO APPELLANT'S BRIEF**

THIRD DISTRICT COURT SALT LAKE COURT  
SALT LAKE COUNTY, STATE OF UTAH

-----  
**D. SCOTT BUNNELL, et al,**  
**Petitioner,**

vs.

**AMERICAN EXPRESS FIN. ADV.,**  
**Respondent.**

:

:

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:

**MINUTE ENTRY**

**CASE NO. 000905126 CN**

**JUDGE STEPHEN L. HENRIOD**


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Defendant's Motion for Partial Summary Judgment on the issue of damages is denied because material factual questions exist.

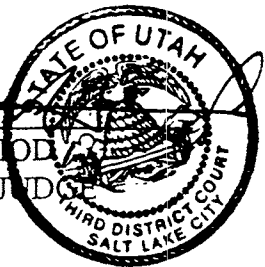
A benefits package may not be amended to take away previously earned benefits. Defendant admits that it amended the dental and life insurance plans concurrent with Platform Rollout to eliminate Platform 2 advisors. Prior to the amendment the advisors were qualified for eligibility.

As to defendants claim of offset, questions of fact exist as to whether or not defendants breach of the Star Quest contract directly conferred a benefit on the advisors exceeding the value of the Star Quest benefits, whether or not the benefit was proximate, and whether or not it would be unreasonable for advisors to receive both GDC and benefit contributions.

Counsel for plaintiffs shall prepare an order denying the motion.

Dated this 8 Day of ~~October~~<sup>Nov</sup>, 2001.

  
STEPHEN L. HENROD  
DISTRICT COURT JUDGE



AD 02



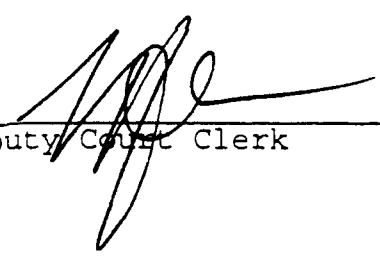
CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 000905126 by the method and on the date specified.

METHOD NAME

|      |   |
|------|---|
| Mail | DAVID A. ANDERSON<br>ATTORNEY DEF<br>201 South State Street #1800<br>SALT LAKE CITY, UT 84111                     |
| Mail | JOHN P. ASHTON<br>ATTORNEY PLA<br>CITY CENTRE I, #900<br>175 EAST FOURTH SOUTH<br>SALT LAKE CITY UT 841110000     |
| Mail | ELISABETH R BLATTNER<br>ATTORNEY DEF<br>201 SOUTH MAIN<br>P.O. BOX 45898<br>SALT LAKE CITY UT<br>84145-0898       |
| Mail | JAMES W III MCCONKIE<br>ATTORNEY PLA<br>City Centre I, Suite 900<br>175 East 400 South<br>Salt Lake City UT 84111 |
| Mail | ROBERT G WING<br>ATTORNEY PLA<br>CITY CENTRE I, SUITE 900<br>175 EAST FOURTH SOUTH<br>SALT LAKE CITY UT 84111     |

Dated this 9 day of Nov., 2001.

  
\_\_\_\_\_  
Deputy Court Clerk

JAN 8/2 2001

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

JERRY FORD, MARK RUSSELL, :  
 ROBERT P. WELCH, TRAVIS KELL, :  
 J. MATHEW ZUNDEL, DAVID K. :  
 EATON, JOHN D. FORD, ROBERT :  
 AAMODT, D. SCOTT BUNNELL, :  
 individuals, and others similarly :  
 situated, :

Plaintiffs, :

vs. :

AMERICAN EXPRESS FINANCIAL :  
 ADVISORS, INC., a Minnesota :  
 corporation, :

Defendant. :

**SECOND AMENDED  
 PROPOSED ORDER**

Civil No.000905126

Judge Henriod

On October 15, 2001, at 2:00 p.m. this Court heard the Motion for Partial Summary Judgment brought by the Class of Plaintiffs. It also heard Defendant's Motion for Summary Judgment with respect to liability and Defendant's Motion for Summary Judgment on Damages. Plaintiffs were represented by John P. Ashton, Robert G. Wing and James W. McConkie, III of Prince, Yeates & Geldzahler. Defendant was represented by Elisabeth R. Blattner and David A. Anderson of Parsons Behler & Latimer. The motions were extensively briefed. After careful consideration of the Memoranda and the argument of counsel at oral argument, and good cause appearing, it is hereby ORDERED:

1. Plaintiff's Motion for Partial Summary Judgment is granted. The Court has

AD 04

determined that there are no material issues of fact in dispute with respect to the issue of liability. Defendant breached its contract with the Class of Plaintiffs as set forth and for the following reasons:

A. The Star Quest program constituted an express contract between AEFA and its Advisors. It was a contract of adhesion.

B. Under binding Minnesota precedent, AEFA could not modify its Star Quest contract with its Advisors once the Advisors began or tendered performance. As a matter of law, part performance negates the right to modify a contract. AEFA did not terminate Star Quest until after the benefits contributions were earned.

C. AEFA received the benefit of a full year's performance by the Advisors, and cannot now refuse the burden of payment.

D. Even if more than a tender of performance were required, the Advisors earned their benefits contribution. Earned benefits cannot be taken away.

E. Even if AEFA could have unilaterally amended Star Quest during 1999, it did not do so. AEFA terminated Star Quest on March 22, 2000, and not before.

F. The language of the contract does not allow the benefits contribution to be taken away.

G. The termination provisions of the Financial Planner's Agreements do not diminish the Advisors' rights to benefits contributions.

H. Star Quest is enforceable even though it was not signed by an AEFA

officer.

I. Any communication by AEFA that it was discontinuing benefits contributions did not affect the Advisors' rights.

J. The Advisors were active within the meaning of the contract.

K. The Advisors are entitled to a benefits contribution whether or not that contribution was "vested".

L. The Advisors were at all times "eligible" for benefits contributions.

M. The integration clause of the Franchise Agreement does not affect the Advisors' rights under Star Quest.

N. The disclaimer language of the Franchise Agreement supports the view that AEFA is obligated to pay the Star Quest benefits contribution.

O. The Franchise Agreement is not a substituted contract.

P. The Advisors are entitled to benefits contributions whether Star Quest is viewed as a unilateral or bilateral contract.

Q. Any ambiguities in the contracts must be construed against AEFA.

R. To the extent that the contracts are interpreted as a forfeiture of benefits contributions, they are ineffective.


S. To the extent that the contracts are interpreted to permit amendment of the Star Quest program at AEFA's discretion, they are illusory.

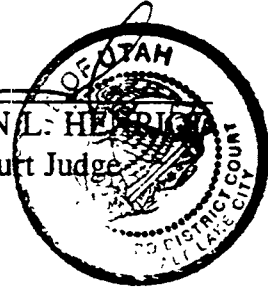
2. Defendant's Motion for Summary Judgment is denied for the same reasons.

3. The Court takes under advisement Defendant's Motion for Summary Judgment on Damages.

Dated this 2 day of January, 2002.

BY THE COURT:

  
HONORABLE STEPHEN L. HENDRICK  
Third Judicial District Court Judge



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APR 03 2002

THIRD DISTRICT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

SALT LAKE COUNTY

Deputy Clerk

JERRY FORD, MARK RUSSELL,  
ROBERT P. WELCH, TRAVIS KELL,  
J. MATTHEW ZUNDEL, DAVID K.  
EATON, JOHN D. FORD, ROBERT  
AAMODT, D. SCOTT BUNNELL,  
individuals and others  
similarly situated,

Plaintiffs,

v.

AMERICAN EXPRESS FINANCIAL  
ADVISORS INC., a Minnesota  
corporation,

Defendant.

MINUTE ENTRY

CASE NO. 000905126

JUDGE STEPHEN L. HENRIOD

This matter is before the above entitled Court on plaintiffs' Motion In Limine requesting the exclusion of all evidence relating to defendant's claim of offset. Oral arguments on the motion were heard on April 1, 2002. Having considered both the oral arguments and written submissions of the parties, the Court rules as stated herein.

The offsetting benefits theory applies only where "the defendant's breach obviates the necessity for the plaintiff's own performance or some part of it." DAN B. DOBBS HANDBOOK OF THE LAW OF REMEDIES-DAMAGES, EQUITY AND RESTITUTION vol 3, 124 (2d ed., 1993). In other words, the offset rule only applies if plaintiffs are free to perform a second contract, thereby saving the cost of performance on the breached contract. In this case it is undisputed that defendant's breach did not occur until after plaintiffs fully performed their obligations under the contract. Thus, because

Ford v  
Am. Express

page 2


Minute Entry

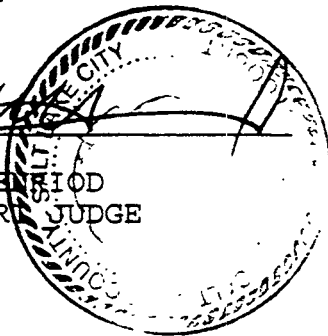
plaintiffs were not relieved of any performance under the original contract, the theory of offset does not apply.

Accordingly, Plaintiff's Motion In Limine is hereby granted.

Dated this 2 day of April, 2002.

BY THE COURT:

  
STEPHEN L. HENRIOD  
DISTRICT COURT JUDGE



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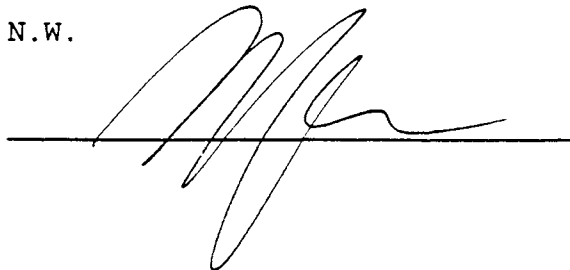
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order, to the following, this 3 Day of April, 2002:

John Ashton  
Robert Wing  
James McConkie  
Prince, Yeates & Geldzahler  
175 East 400 South Suite 900  
Salt Lake City, Utah 84111

David Anderson  
Elisabeth Blattner  
Parsons, Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111

Morgan Hodgson  
Mark Hulkower  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

A handwritten signature in dark ink, appearing to be 'M. Hulkower', is written over a horizontal line.



FILED DISTRICT COURT  
Third Judicial District

APR 30 2002

*[Signature]*  
Deputy Clerk

John P. Ashton (0134)  
Robert G. Wing (4445)  
James W. McConkie III (8614)  
PRINCE, YEATES & GELDZAHLER  
Attorneys for Plaintiffs  
175 East 400 South, Suite 900  
Salt Lake City, Utah 84111  
(801) 524-1000

IN THE THIRD JUDICIAL DISTRICT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

JERRY FORD, MARK RUSSELL,  
ROBERT P. WELCH, TRAVIS KELL  
J. MATTHEW ZUNDEL, DAVID K.  
EATON, JOHN D. FORD, ROBERT  
AAMODT, D. SCOTT BUNNELL,  
individuals, and others similarly  
situated.

Plaintiffs,

vs.

AMERICAN EXPRESS FINANCIAL  
ADVISORS, INC., a Minnesota  
corporation,

Defendant.

J U D G M E N T

ENTERED IN REGISTRY  
OF JUDGMENTS

DATE

05/01/02

Civil No. 000905126

Judge Henriod

This action came on for trial before the court and a jury, Honorable Stephen L.  
Henriod, District Judge, presiding, and the issues having been duly tried and the jury  
having duly rendered its verdict,


PRINCE, YEATES  
& GELDZAHLER  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City  
Utah 84111  
(801) 524-1000

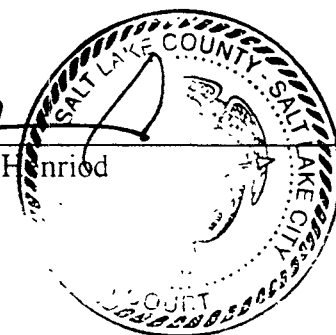
Judgment @J  
  
000905126 JD2392134  
AMERICAN EXPRESS JD

It is **Ordered and Adjudged** that the class of plaintiffs recover from defendant the sum of fourteen million one hundred nine thousand sixty-eight dollars and eighty-two cents (\$14,109,068.82) as of 4/18/02, with interest accruing at the rate of two thousand one hundred thirteen dollars and fifty-seven cents (\$2,113.57) per day thereafter until the date of entry of judgment, plus court costs in the amount of \$12,059.96 as set forth in the Verified Memorandum of Costs.

DATED this 30 day of April, 2002.

BY THE COURT:

  
Honorable Stephen L. Henriod  
District Court Judge



APPROVED AS TO FORM:



Elisabeth Blattner

PARSONS BEHLE & LATIMER

and

STEPTOE & JOHNSON

Counsel for American Express Financial Advisors, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of April, 2002, I caused a true and correct copy of the conformed Judgment to be mailed, first-class postage prepaid thereon, to the following:

David A. Anderson  
Elisabeth R. Blattner  
PARSONS, BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111

Morgan D. Hodgson  
Mark J. Hulkower  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

  
Clerk of the Court

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John P. Ashton (0134)  
Robert G. Wing (4445)  
James W. McConkie III (8614)  
PRINCE. YEATES & GELDZAHLER  
175 East 400 South, Suite 900  
Salt Lake City, Utah 84111  
(801) 524-1000

**FILED DISTRICT COURT**  
Third Judicial District

JUN 20 2002.  
SALT LAKE COUNTY  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

JERRY FORD, MARK RUSSELL, :  
ROBERT P. WELCH, TRAVIS KELL, :  
J. MATHEW ZUNDEL, DAVID K. :  
EATON, JOHN D. FORD, ROBERT :  
AAMODT, D. SCOTT BUNNELL, :  
individuals, and others similarly :  
situated, :

Plaintiffs, :

vs. :

AMERICAN EXPRESS FINANCIAL :  
ADVISORS, INC., a Minnesota :  
corporation, :

**ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL**

Civil No.000905126

Judge Henriod

This matter is before the Court on Defendant's Motion for New Trial dated May 10, 2002. The matter was briefed by Plaintiffs and Defendant. Therefore, being fully advised and for good cause showing, the Court


HEREBY ORDERS, ADJUDGES AND DECREES as follows:

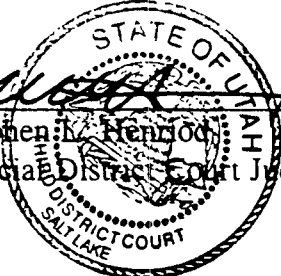
The issues raised in Defendant's motion were thoroughly considered in the context of Plaintiffs' prior Motion in Limine. No new argument or persuasive law has been

**CE, YEATES  
& GELDZAHLER**  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City  
Utah 84111  
(801) 524-1000

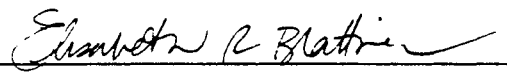
offered in this motion. Defendant's Motion for New Trial is DENIED.

ENTERED this 25 day of June, 2002.

  
Judge Stephen L. Henrich  
Third Judicial District Court Judge



APPROVED AS TO FORM:

  
Elisabeth R. Blattner  
PARSONS, BEHLE & LATIMER  
and  
STEPTOE & JOHNSON L.L.P.  
Counsel for Defendants

# IDS Financial Services Inc.

## Personal Financial Planner's Agreement

This is an Agreement, made at Minneapolis, Minnesota, by and between IDS Financial Services Inc. (formerly IDS Marketing Corporation) and you.

William Mark Russell  
(Print Full Name)

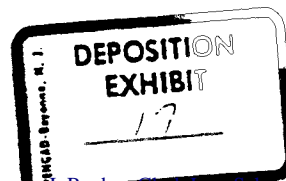
executed and effective as of the date shown on the last line of this Agreement. It defines your relationship with IDS as a Personal Financial Planner. Both you and IDS promise to comply with the terms of this Agreement and any properly executed Riders to this Agreement.

### Section I - Definitions

1. For purposes of this Agreement, the terms listed below have the special meanings shown.

- (a) "IDS" means IDS Financial Services Inc. (formerly IDS Marketing Corporation).
- (b) "IDSL-NY" means IDS Life Insurance Company of New York.
- (c) "Affiliate" means any partnership, business trust, company or corporation affiliated with IDS at any time while this Agreement is in effect.
- (d) "Personal Financial Planner or Planners" means Personal Financial Planner and Sales Representative.
- (e) "Service Date" is 9/27/95
- (f) "Certificates" means the face amount Certificates of IDS Certificate Company and contractual plan Certificates of any other contractual plan.
- (g) "Stock" means the capital Stock of registered investment companies.
- (h) "Services" means financial planning, advisory, securities brokerage, tax or other financial services.
- (i) "Products" means Certificates, Stock, other securities or investments, leading products, life insurance and annuity policies and contracts, and other insurance products.
- (j) "Issuer" means the company or entity that issues a Product or Service distributed or offered by IDS itself or by IDS as the agent of another company or as the branch manager of IDSL-NY.
- (k) "Records and Materials" means all records, files, manuals, blanks, forms, materials, supplies, stationery, literature, seminar materials, computer software, licenses, papers and books that IDS, an Affiliate or an Issuer furnishes or leases to you for use, with or without charge, or that you create or prepare, including notes, memos and works of authorship, in connection with the performance of this Agreement.
- (l) "Service Period" means any two-week period coinciding with IDS' regular biweekly commission period for Personal Financial Planners.
- (m) "Training Period" means the time while you are being trained by IDS. It begins on your Service Date. Unless IDS extends your Training Period, it ends after completion of the 26th Service Period following your Service Date—or at the termination of this Agreement, if that occurs first. IDS may disregard any time that you are disabled in determining the end of your Training Period.
- (n) "Sales Compensation Plan" means the rules, policies and schedules as amended and published from time to time that are related to items (1), (2) and (3) below and to other matters:
  - (1) The assignment or reassignment of territory or Client accounts;
  - (2) The payment of commissions, assignment fees, service fees, Training Period salaries and expense allowances, and other fees or compensation; and
  - (3) The imposition of assignment fee and service fee penalties and charge backs.

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(o) "Basic Earnings Requirements" means any requirements you must meet to remain on salary during the Training Period, as they appear in the Sales Compensation Plan

(p) "Client" means a person or entity who (1) purchases or holds a Product or Service acquired from or through IDS or an Affiliate or one of their Planners with the consent of IDS or the Affiliate, or (2) authorized IDS, an Affiliate or one of their Planners to make personal financial planning presentations to it or its employees or members, or (3) is a member of a Client's household

#### Section II A — Appointment

- 1 Through this Agreement, IDS appoints you to seek applications for insurance policies and annuities designated by IDS and applications and Clients for the Products and Services distributed or offered by IDS in the territory assigned to you, but without exclusive rights in that territory. You also are appointed to collect payments on those Products and Services. You accept this appointment and will
  - (a) Before seeking any applications or any Clients for Products and Services, obtain any licenses or registrations required by law or IDS and a surety or fidelity bond satisfactory to IDS and will maintain them in force until this Agreement is terminated
  - (b) In dealing with Clients or prospective Clients, explain the terms of Products or Services fully; make no untrue statements and state all relevant facts
  - (c) Comply with all laws, ordinances, regulations and company policies that apply to your activities under the Agreement
  - (d) Promptly deliver premium receipts and policies or contracts originating from applications solicited for life insurance and annuities, but only when applicant appears to be in good health and the initial premium (if required) has been duly paid, and other receipts and policies or contracts as required by IDS or Issuer
  - (e) Collect and immediately report and remit to IDS or Issuer any initial premiums or any payments you receive for Products or Services and any other money or property you receive on behalf of IDS
  - (f) Send the payments, money or property you collect to IDS without commingling it with your own money or property
  - (g) Pay all expenses and fees you incur while carrying out the terms of this Agreement
- 2 You cannot alter or change the provisions of any Product or Service distributed by IDS or through the IDS field force. You also cannot incur any liability or expense on behalf of IDS or any Issuer
- 3 Any application for a Product or Service and any business that you submit is subject to acceptance or rejection by the home office of IDS in Minneapolis, Minnesota and the Issuer
- 4 In states where IDS is authorized to conduct business as an insurance agent, you must follow IDS' rules and policies for seeking applications for annuity contracts and insurance policies
- 5 If you are registered in Wisconsin, you will be considered an "agent" as defined in Section 551.02(2) of the Wisconsin statutes, regardless of any provisions of this Agreement to the contrary
- 6 This Agreement authorizes you, during the Training Period only to solicit applications for insurance policies or annuities issued by IDSL-NY if you have executed a separate Rider hereto authorizing such activity or if you are assigned to a division office in the State of New York and, in either case, are licensed as an agent of IDSL-NY. Even if you meet those conditions, you cannot solicit applications for insurance or annuities of IDSL-NY, other than annuities which are registered under the Federal Securities Laws, unless you qualify as a "new agent" within the meaning of Regulation 50 of the New York Insurance Department. If you do not so qualify, you have entered into a separate independent contractor Planner's agreement with IDSL-NY. If you qualify as such a "new agent", you will enter into an independent contractor Planner's agreement with IDSL-NY effective at the end of your Training Period, unless this Agreement has already been terminated

#### Section II B — Employee Status During Training Period

- 1 During your Training Period, you are an IDS employee. You agree to devote all of your working time and effort, to the best of your abilities, to performing your duties under this Agreement for IDS and any agreement with an Affiliate. You also agree not to engage in any other employment, occupation or business enterprise unless it is with an Affiliate
- 2 As long as your Training Period continues, you will carry out your duties and responsibilities in line with instructions and directions from IDS. You will be required to
  - (a) Attend any training school, weekly training classes and sales meetings at the time and places set by IDS, and complete the training courses IDS designates

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- (b) Seek applications and Clients for the Products and Services that IDS distributes or offers in the territory assigned to you, but without the exclusive rights to that territory.
  - (c) File daily work plans, weekly activity reports and any other reports IDS designates.
  - (d) Perform any other duties IDS assigns.
3. As long as you are an IDS employee during the Training Period, you authorize IDS to use the cumulative method of federal income tax withholding. This provision also applies during any time you are employed by IDS as a field trainer or provide other occasional services as an employee of IDS.

#### Section IIC — Independent Contractor After Training Period

1. When your Training Period ends, you are no longer an employee and unless this Agreement has already been terminated, you are engaged by IDS as an independent contractor to seek applications and Clients for the Products and Services distributed by IDS in the territory assigned to you without exclusive right therein.
2. From time to time, IDS may ask you to perform other special services as an independent contractor. You will be paid for those special services in accordance with the rules and policies that IDS establishes periodically.
3. After the Training Period ends, you are an independent contractor, rather than an employee, for all purposes, including but not limited to state or federal income tax, Social Security, worker's compensation, unemployment compensation or similar laws.
4. You must not take any position that is contrary to your status as an independent contractor. Nothing in this Agreement can be interpreted as creating an employer-employee relationship between any IDS representative and you or between any learner and you or, except as provided in Sections IIB and IID, between IDS and you. You agree to accept any responsibilities placed on an independent contractor by any statute, regulation, rule of law or otherwise.
5. You decide whom to choose as business prospects and when and where to conduct your working activities. You acknowledge that you set your business hours.
6. As an independent contractor, you are responsible for paying all taxes, duties, assessments and other government charges that are related to items (a) and (b) below. This provision applies to taxes, duties, assessments and other government charges imposed now or in the future by any government authority or agency.
  - (a) Carrying out your obligations under this Agreement; or
  - (b) Any payment IDS makes to you in connection with this Agreement.

#### Section IID — Additional Services as an Employee

1. From time to time, IDS may employ you as a field trainer or for other occasional services as an employee. These services must be carried out at the times and places IDS designates, under IDS direction and control. You will be paid for your services as an employee in line with the terms of the Sales Compensation Plan.

#### Section III — Compensation

1. "Salary"
  - (a) During that part of the Training Period beginning on or after the effective date of this Agreement, you will be paid a biweekly salary and expense allowance and other compensation, if any, in line with this Agreement and the Sales Compensation Plan. Payment is made at the end of each Service Period, unless the Basic Earnings Requirements set forth in the Sales Compensation Plan apply to you, and your salary is discontinued because your performance falls below the Basic Earnings Requirements. If you are paid for less than a full Service Period, your salary and expense allowance will be prorated.
2. "Commissions and Fees"
  - (a) After the Training Period ends, IDS will pay you commissions, fees and overwriting in accordance with the provisions of this Agreement, any Riders to this Agreement and the Sales Compensation Plan. Except as otherwise provided by the Sales Compensation Plan or Riders to this Agreement, no commissions or fees are paid, during or after the Training Period, for any applications or business obtained by you, if:
    - (1) You obtain it outside the territory assigned to you; or
    - (2) The Client's account is assigned to some other Personal Financial Planner of IDS or an Affiliate.

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(b) Any commissions, fees or overwriting paid or credited to you for business accepted by IDS may be charged back to you if those commissions are due to:

(1) A dishonored check or draft; or

(2) An uncompleted plan for the systematic payment on or for the purchase of Products and Services.

(3) In the case of securities brokerage accounts, any transaction in which the Client's obligations are not met.

(c) When this Agreement terminates, you will not, except as provided by the Sales Compensation Plan, be entitled to:

(1) Any commissions, fees or overwriting on payments made after the termination for any Product or Service; or

(2) Any further commissions, fees, overwriting or other compensation.

### 3 "Assignment of Commission"

(a) You irrevocably sell, assign and transfer to IDS all commissions (and overwriting, if any) on any insurance policy or annuity contract that is sold by you and issued by a company which is not an Affiliate. The only exception is if IDS acts as an insurance agent for the insurance company issuing the policy or contract. This assignment applies unless that insurance company has an agreement with IDS allowing IDS Planners to seek applications for its insurance and annuities.

(b) The provisions in (a) apply in any state or jurisdiction in which such an assignment is required, now or in the future, for an unlicensed corporate insurance agency to receive commissions. Any future application of this provision will be effective on whichever of these dates comes later: the date the state in question requires the assignment or the effective date of this Agreement.

(c) This assignment does not apply to any commission or overwriting due on an insurance policy or annuity contract sold or acquired prior to the effective date of this Agreement, unless a prior separate agreement was in existence to this effect.

(d) This assignment does not apply to commissions or overwriting due on any policies from an insurance company that requires a separate form of assignment.

### 4. "Charges and Payment"

(a) If IDS or an Issuer believes it is appropriate to make an adjustment or take back or cancel a Product or Service and return any part of a payment or premium, no commission, fee or overwriting will be paid on the payment or premium returned on that Product or Service. You will be required, on demand, to repay IDS for any commission, fee or overwriting already paid on the payment or premium returned.

(b) Based on its business judgment, IDS may make a settlement with a Client on a sale you have made and refund all or any part of any payment that a Client has made. When the settlement or refund is made, IDS is entitled to charge you for items (1) and (2) below. IDS may make the charge whether or not the Client claims misrepresentation.

(1) All or any part of its loss because of the settlement or refund; and

(2) Any part of a related commission, fee or other amount paid or credited to you or that you have obtained.

(c) If any of the events listed below should occur, IDS may withhold any amounts that you are entitled to receive or may become entitled to receive:

(1) Any claims of misrepresentation or of the use of unfair or inequitable methods in the sale of Products or Services.

(2) Your failure to send any payments you collect to IDS or Issuer.

(3) Any controversy between you and IDS.

(4) You violate this Agreement, or

(5) You are suspended while IDS investigates whether cause for terminating this Agreement exists.

IDS may withhold such amounts to the extent it believes necessary. The withholding may continue until the violation has been corrected or the situation has been resolved.

(d) If you are found to be guilty of wrongdoing, IDS may retain or charge you for the following amounts as damages: the amount of its loss, plus the expenses it incurred in connection with the loss, including the costs of investigation.

AX001977

(e) You will not be entitled to receive any commissions, assignment fees or other amounts you would otherwise have been entitled to receive if you engage in "unfair competition" while this Agreement is in effect or thereafter. For purposes of this provision, you are considered to be engaging in unfair competition if, without the consent of IDS, you commit any of the following acts, directly or indirectly, while an IDS Planner or within one year thereafter in any territory where you sought applications for Products or Services under this or any other agreement with IDS or an Affiliate:

(1) Offer for sale, sell or seek an offer to buy any Product or Service issued by any company to or from a Client. This provision applies to any Client that you contacted or dealt with or learned about because you represented IDS or an Affiliate or Issuer.

(2) Try to encourage anyone to terminate an agreement with IDS or an Affiliate or Issuer.

(3) Disclose any trade secret or other proprietary information of IDS or an Affiliate or Issuer or use any trade secret or other proprietary information in competition with IDS or an Affiliate or Issuer.

(f) You understand and agree that information about Clients, including Client identities, is confidential information and a trade secret. This Client information is the sole and exclusive property of IDS and its Affiliates or Issuers.

(g) In addition to other appropriate legal remedies, IDS has the right to apply any amount payable to you by IDS against any debt you owe IDS or an Affiliate or Issuer.

(h) IDS may charge you and your compensation and commission account for any amounts advanced to you, any amounts paid on your behalf or any amounts charged to you under this Agreement.

(i) When this Agreement ends, you must pay, on demand, any debt you owe IDS, including any amount owed in your compensation or commission account. Payment is required whether the debt is for charges made before or after Agreement termination.

#### 5 "Assignment of Debt"

(a) You agree to and authorize the assignment of any debt you owe IDS to any Affiliate. You also agree to repay any assigned debt to the assignee.

#### 6 "Commission Statements"

(a) Except for clerical error and undisclosed material facts, the regular compensation or commission statement IDS issues to you is considered to be an accurate and complete record of:

(1) All the amounts IDS owes you, and

(2) All accounts between you and IDS purporting to be covered by that statement.

(b) Settlement on the basis of these regular statements constitutes full satisfaction and agreement between you and IDS about the amounts and accounts defined just above. The only exceptions occur in the case of a claim to the contrary made within 120 days after the statement is issued, clerical error or undisclosed material fact.

### Section IV — Restrictions on Your Activities

#### 1 "Using Information You Acquire"

(a) You must not, without the written consent of IDS, use any information you acquired while this Agreement was in force in a manner adverse to the interests of IDS, an Affiliate or an Issuer. You also must not:

(1) Encourage or induce anyone to terminate an agreement with IDS, an Affiliate or Issuer without IDS' consent;

(2) Encourage or induce any Client to stop carrying out any action related to a Product or Service it acquired from or through IDS—systematic purchase payments, for example;

(3) Promote or make unwarranted claims against IDS or an Affiliate or Issuer;

(4) Encourage or induce any Client to sell, surrender or redeem any Product or Service distributed or offered by IDS or an Affiliate or Issuer without IDS' consent.

(b) All of the above provisions apply while the Agreement is in effect and after it ends.

(c) All Records and Materials are the property of IDS, an Affiliate or an Issuer. All rights to Records and Materials that you prepare or create in connection with the performance of this Agreement are hereby assigned to IDS. You agree that you will not reproduce or allow the reproduction of the Records and Materials in any manner whatsoever, except pursuant to written policy or consent of IDS.

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- (d) You are responsible for the safekeeping of these items. Such Records and Materials are open to inspection by IDS at any time during your normal business hours. You must return them and all copies of them to IDS at any time on request. When this agreement ends, all of these items remain IDS property. You must return all of them, together with any licenses you have or control, without demand or compensation.
- (e) While this Agreement is in effect and after it ends, you agree that you will not reveal the contents of any IDS property or allow them to be revealed, except in connection with carrying out your duties under the Agreement. You will not reveal the names and addresses of IDS Clients or any other information about them, including financial information. You also will not reveal any of this information about potential Clients to whom a presentation has been made by an IDS Planner, who might reasonably be expected to do business with IDS or an Affiliate or Issuer. You will not allow any of this information about Clients or potential Clients to be revealed.
- (f) You agree that the identity of Clients and potential Clients is confidential information. For one year after this Agreement ends, you agree not to use any such information in connection with any business in competition with IDS or an Affiliate or Issuer.
- (g) For one year after this Agreement ends, you agree that you will not, in the territory where you sought applications for Products or Services under this or any other agreement with IDS or an Affiliate, directly or indirectly offer for sale, sell or seek an application for any Product or Service issued or provided by any company to or from a Client you contacted, dealt with or learned about while you represented IDS or an Affiliate or Issuer or because of that representation. You are excepted from this restriction only if you carry out these activities as a Planner or manager of IDS or with the written consent of IDS.

## 2. "Using the IDS Name and Logo"

- (a) As long as this Agreement is in effect, you have a limited license to use the IDS name and logo in advertising and in telephone directories or listings to indicate your association with IDS as a Personal Financial Planner. You must use the name or logo in line with IDS rules and policies. IDS is not obligated for any costs connected with your use of the name or logo.
- (b) When this agreement ends, IDS has the exclusive right either to use or cancel the service of any such telephone number listed or to become listed in any directory or in any advertising that would associate the telephone number with IDS. You are responsible for executing and delivering to IDS the documents needed to transfer or cancel the service, without demand and without compensation.

## 3. "Violation of These Restrictions"

- (a) You agree that:
  - (1) The violation of the provisions in this section will result in damage to IDS that cannot be determined exactly and for which IDS has no adequate remedy under the law; and that
  - (2) IDS has the specific right to enforce these provisions; and that
  - (3) IDS is entitled to an injunction to keep you from violating the provisions or to enforce them.
- (b) If a dispute involving this Agreement is submitted for arbitration under the Code of Arbitration Procedure of the National Association of Securities Dealers or otherwise, you agree that IDS is entitled to an injunction from a court of competent jurisdiction to keep you from violating these restrictions while the arbitration is pending.

## Section V — Other Restrictions

- 1. You must have written approval from IDS or an Affiliate before you issue or use in any way any material about Products and Services distributed by IDS or an Affiliate or Issuer, or about them.
- 2. You must not make any agreement for the repurchase or resale of IDS Products or Services distributed or offered by IDS, an Affiliate or Issuer. You also must not seek or purchase (except from IDS or an Affiliate or Issuer) or traffic in any security of IDS, an Affiliate or Issuer. You must not resort to "trafficking" in or "switching" of the securities of any other companies, of insurance policies or of governmental obligations.
- 3. As noted earlier, you must not interview business prospects; seek business; act as an insurance agent; or negotiate, obtain or seek business or applications for Products and Services until you have the licenses, registrations and agent appointments required by law or IDS and have obtained a surety or fidelity bond satisfactory to IDS.
- 4. You must not make any settlement with a Client without written approval from IDS. You also must not make any refund to a Client without written approval from IDS.
- 5. You must not do anything to damage the goodwill of IDS, an Affiliate or Issuer.

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#### Section VI – Termination

1. During the Training Period, either you or IDS may terminate this Agreement without cause, with written notice. The termination takes effect on the date specified in the notice. For cause, IDS may terminate the Agreement immediately without written notice.
2. After the Training Period ends, the Agreement may be terminated without cause with 15 days' written notice. For cause, it may be terminated immediately without written notice.
3. If IDS believes it may have the right to terminate this Agreement for cause, IDS can notify you that it is investigating whether cause for termination exists. This suspension can be given instead of terminating the Agreement, in order to provide time for determining the facts. Until the notice is retracted, it has the same effect on your rights as a notice of termination for cause. When the investigation has been completed, if not before, IDS will notify you whether your suspension is lifted or the Agreement is terminated for cause. If the Agreement is terminated, the termination takes effect on the date you received the notice of suspension.
4. This Agreement shall terminate upon your failure to meet any Basic Earnings Requirements (if such Basic Earnings Requirements are applicable to you) imposed by the Sales Compensation Plan for Planners in the Training Period if such requirements are not met for a period of time during the Training Period as established by the Sales Compensation Plan.
5. This Agreement terminates in the event of:
  - (a) Your death or retirement
  - (b) Your total and permanent disability. You shall be deemed to be disabled if, by reason of a physical or mental condition, you are unable to perform this Agreement. Whether such disability is considered temporary or total and permanent will be determined by IDS in its sole discretion.
  - (c) Cancellation or non-renewal of any license, registration or bond you are required to have by the terms of this Agreement.
  - (d) A violation of any provision of this Agreement. If you violate any part of the Agreement, you will not be entitled to receive any payment from IDS that you otherwise would have been entitled to receive.
  - (e) You have entered into or will enter into Planner's Agreements with some or all of the following:
    - (1) IDS Life Insurance Company
    - (2) IDS Life Insurance Company of New York
    - (3) IDS Insurance Agencies

If any of the above agreements are entered into and later terminated, this Agreement terminates on the same date, unless IDS waives the termination of this Agreement. Duplicate notice of termination is not required.
6. If the Agreement ends, you have no claim for profits, anticipated profits or earnings other than the commissions, fees or overwriting that you are entitled to receive under the terms of this Agreement. You also have no claim for a refund or reimbursement of any funds you have advanced or expenses you have paid or incurred in connection with your responsibilities under this Agreement or for any other reason. The only exception occurs if IDS specifically authorizes reimbursement, in writing, before termination of the Agreement.


#### Section VII – Amendment and Miscellaneous Provisions

1. This Agreement may be amended only in writing. The amendment must be signed by you and an authorized officer of IDS. This Agreement terminates and supercedes any agreement between the parties which was in effect immediately prior to the effective date of this Agreement. However, this provision does not impair your right to any commissions or overwriting payable under such an agreement for business written under that agreement or your right to any compensation earned and unpaid under that agreement. You may not assign this Agreement or any payment or benefit you become entitled to receive under it without IDS' written consent.
2. This Agreement is a Minnesota contract, governed by Minnesota law. All of the payments you make to IDS are payable in Hennepin County, Minnesota. You expressly waive any privileges contrary to this provision. You agree to the jurisdiction of State of Minnesota courts for determining any controversy in connection with this Agreement.
3. If IDS waives any provision of this Agreement, the waiver applies only to that provision, not to any other parts of the Agreement. A waiver is effective only when it is in writing and signed by an authorized IDS officer.
4. If the laws of any state prohibit any provision of this Agreement, the laws apply only to that provision. They do not invalidate the remaining portion of the Agreement.

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5. Any notice to IDS under this Agreement must be given to the home office of IDS in Minneapolis, Minnesota. Any notice given to you under this Agreement is considered to have been given if it is delivered to you in person or mailed to your last known address on file with the IDS home office in Minneapolis.
6. You and IDS both acknowledge that no oral or written representations were made about this Agreement or about the relationship between you and IDS that are not set forth in this Agreement. Your rights and IDS' rights are governed only by this Agreement and by any other subsequent written agreements or riders between you and IDS that are signed by an authorized officer of IDS.
7. You understand that you and your spouse and your children under age 21 who are members of your household may buy Stock of Issuers for whom IDS acts as distributor at net asset value. You agree that none of the Stock you or eligible family members buy at net asset value will be resold unless it is presented to the Issuer for redemption.
8. "Compliance with Law"
  - (a) You represent and warrant that:
    - (1) You will comply with all the laws and regulations of the territory assigned to you.
    - (2) In carrying out your responsibilities under this Agreement, you will not directly or indirectly make or promise any illegal payments or engage in any illegal conduct in order to:
      - a. Obtain or keep business.
      - b. Influence Clients or governmental entities (including their officers or employees) to perform their official function improperly, not perform that function at all, or influence legislation.
  - (b) IDS may believe that it should disclose the existence of this Agreement and its terms and conditions if a governmental authority or agency should make a proper inquiry or in other situations. You authorize any disclosure IDS may make in its discretion.
9. "Greater Force"
  - (a) If an act or condition beyond your or IDS' reasonable control prevents, restricts or interferes with fulfilling the terms of this Agreement, the obligation to fulfill the Agreement will be suspended to the extent appropriate. State or government action and national disaster are examples of acts or conditions beyond reasonable control.
  - (b) For suspension of the Agreement to occur, the party affected must:
    - (1) Notify the other party promptly about the act or condition and its effect.
    - (2) Make its best effort to avoid or remove the cause of the suspension.
    - (3) Promptly continue fulfilling the terms of the Agreement when the cause of the suspension is removed.

In witness of the provisions of this Agreement as described above, you and IDS have entered into this Agreement with the understanding that it becomes effective on 9/23 19 95

  
 Planner

IDS Financial Services Inc.

By \_\_\_\_\_  
 Assistant Secretary

D.O. Number 177

Planner Number 96766-1

**AX001981**

(To be executed in duplicate—one copy to be returned to Planner.)

# YOUR 1999 ADVISOR STAR QUEST PROGRAM

## Qualification levels and payouts

| Star level | Minimum TWP<br>(millions) | Total rate per 1,000<br>net eligible TWP | Award plan<br>allocation | Value at the<br>minimum TWP |
|------------|---------------------------|--|--------------------------|-----------------------------|
| 7          | 11.3                      | \$10.25                                  | PPC 80%                  | \$ 92,660                   |
|            |                           | Gold Team Advisor<br>(in good standing)  | SIA 20%                  | 23,165                      |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$119,970</b>            |
| 6          | 8.9                       | \$6.25                                   | PPC 80%                  | \$ 56,500                   |
|            |                           |  | SIA 20%                  | 14,125                      |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 74,770</b>            |
| 5          | 6.7                       | \$8.00                                   | PPC 80%                  | \$ 56,960                   |
|            |                           | Gold Team Advisor<br>(in good standing)  | SIA 20%                  | 14,240                      |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 75,345</b>            |
| 4          | 5.3                       | \$6.00                                   | PPC 80%                  | \$ 42,720                   |
|            |                           |  | SIA 20%                  | 10,680                      |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 57,545</b>            |
| 3          | 3.8                       | \$6.75                                   | PPC 80%                  | \$ 36,180                   |
|            |                           | Gold Team Advisor<br>(in good standing)  | SIA 20%                  | 9,045                       |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 49,370</b>            |
| 2          | 2.9                       | \$5.75                                   | PPC 80%                  | \$ 30,820                   |
|            |                           |  | SIA 20%                  | 7,705                       |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 42,670</b>            |
| 1          | 2.0**                     | \$5.25                                   | PPC 80%                  | \$ 22,260                   |
|            |                           |  | SIA 20%                  | 5,565                       |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 31,970</b>            |
| 0          | 2.0**                     | \$4.00                                   | PPC 80%                  | \$ 12,160                   |
|            |                           |  | SIA 20%                  | 3,040                       |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 19,345</b>            |
| -          | 2.0**                     | \$3.00                                   | PPC 80%                  | \$ 6,960                    |
|            |                           |  | SIA 20%                  | 1,740                       |
|            |                           |  | Benefits*                | 4,145                       |
|            |                           |  |                          | <b>\$ 12,845</b>            |
| -          | 2.0**                     | N/A                                      | Benefits*                | \$ 4,145                    |

\* Based on the 1999 average company contributions to medical, dental and life insurance benefits for those who elect benefits. (See your *Benefits Manual for Members of the Field Organization*, Form 513, for details.)

• Medical .....\$3,767 • Dental .....\$289 • Life Insurance .....\$89

\*\* To remain eligible for a company contribution to group benefits, advisors must meet the minimum weighted production requirement in any given year. For details, refer to Section C of your *Benefits Manual for Members of the Field Organization*, Form 513.

Machine-generated OCR, may contain errors.



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**AMERICAN EXPRESS FINANCIAL ADVISORS INC.  
INDEPENDENT ADVISOR BUSINESS  
FRANCHISE AGREEMENT**

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American Express Financial Advisors Inc.  
Franchise Agreement 10/25/99

CONFIDENTIAL

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**P000425**

## AGREEMENT

THIS IS AN AGREEMENT, made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between American Express Financial Advisors Inc. ("AEFA") at its principal place of business at IDS Tower 10, Minneapolis, Minnesota 55440, and you, \_\_\_\_\_ ("Independent Advisor").

### RECITALS:

A. Through its time, skill, effort, and money, AEFA has developed a distinctive system that offers, through financial advisors, a variety of financial services to individuals and/or business owners (the "System"). The financial services include financial planning, investment advice and consulting services, securities products, insurance products, brokerage services, , including individual securities, tax services, lending services, and other related products & services provided or procured through AEFA and/or its affiliates or third parties (collectively, "Products & Services").

B. The distinguishing characteristics of the System include a well recognized brand; distinctive products & services; high level of securities and regulatory compliance; the highest standards of customer service and quality advice, including financial planning; administrative procedures providing superior customer service, including consolidated statements; orientation programs; advertising and promotional programs; and direct marketing services, telemarketing and on-line services directed to clients; all of which may be changed, improved, and further developed by AEFA from time to time.

C. The System is identified by trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, the mark "American Express," (the "Proprietary Marks");

D. Independent Advisor desires to contract with AEFA to operate a business offering Products & Services under the System and using the Proprietary Marks (the "Independent Financial Advisor Business"), and to receive the services provided by AEFA in consideration for the covenants contained herein; and

E. Independent Advisor understands and acknowledges the importance of all the Independent Financial Advisors operating their Independent Financial Advisor Businesses in a manner which meets AEFA's high standards of quality of advice and customer service, to protect the value and integrity of the System and all the Independent Financial Advisor Businesses.

THEREFORE, Independent Advisor and AEFA agree as follows:

1. GRANT

A. Independent Financial Advisor Business.

- AEFA and Independent Advisor agree upon the terms and conditions in this Agreement, for Independent Advisors to establish and operate the Independent Financial Advisor Business.

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American Express Financial Advisors Inc.  
Franchise Agreement - 10/25/99

- Independent Advisor agrees to operate the Independent Financial Advisor Business only at the location specified in Schedule A (the "**Location**") in the market group (as described in the Uniform Franchise Offering Circular) (the "**Market Group**") Independent Advisor agrees to not relocate the Independent Financial Advisor Business outside the Market Group without prior written approval by AEFA, which approval will not be unreasonably withheld
- AEFA will only compensate an appropriately licensed individual Accordingly, Independent Advisor agrees to operate the Independent Financial Advisor Business, as described in this Agreement, as an individual business and shall not conduct such business as a corporation, partnership, limited liability company, sub-chapter S company or any other similar organizational structure. This shall not prevent Independent Advisor from operating other related businesses as described in Section 5, under the heading Use of Premises, and in the Manuals.
- Independent Advisor agrees to have the right during the term of this Agreement to solicit Clients for Products & Services as more fully described in Section 5 and in the Manuals For purposes of this Agreement, "**Client**" shall mean a person or entity that acquires any Products & Services from or through Independent Advisor, AEFA, AEFA's affiliates, or an advisor operating under the System
- Independent Advisor acknowledges that the System may be supplemented, improved, and otherwise modified from time to time by AEFA; and Independent Advisor agrees to comply with all reasonable requirements of AEFA in that regard

**B Non-Exclusive Agreement**

- **INDEPENDENT ADVISOR EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIS INDEPENDENT FINANCIAL ADVISOR BUSINESS IS NON-EXCLUSIVE, AND THAT THIS AGREEMENT DOES NOT GRANT OR IMPLY ANY PROTECTED AREA, TERRITORY, OR CLIENTS FOR THE INDEPENDENT FINANCIAL ADVISOR BUSINESS. BY WAY OF EXAMPLE, OTHER INDEPENDENT ADVISORS, AEFA, AND ITS AFFILIATES MAY OR WILL CONTINUE TO MARKET, AT INDEPENDENT ADVISOR'S LOCATION, THROUGH EMPLOYEES, AGENTS, DEALERS, DIRECT MARKETING, TELEMARKETING, AND ON-LINE SERVICES.**
- AEFA and its affiliates reserve the following rights:
  - a To offer financial products and services, including Products & Services, directly or indirectly to any client or business (including the Clients), or license others to offer Products & Services under any proprietary marks (including the Proprietary Marks) at any location, through other Independent Advisors, employees, direct marketing, telemarketing, on-line services, third-party marketers and any other distribution method,
  - b To own and/or operate, and license others to operate, businesses that offer Products & Services using the System and Proprietary Marks, at any location, and

- c. To own and/or operate, and license others to operate, businesses that offer other investment opportunities and financial services and products, using proprietary marks other than the Proprietary Marks or other systems, whether such businesses are similar to or different from the Independent Financial Advisor Business, at any location.
- Independent Advisor acknowledges and agrees that AEFA and certain of AEFA's affiliates and designees (including other Independent Advisors of AEFA, AEFA employees, third-party dealers, persons associated with such persons, and mail orders services) now sell, and shall continue to have the right to sell, Products & Services, to clients located in the same or close proximity to Independent Advisor's Location; and that AEFA and such affiliates and designees shall be direct competitors of Independent Advisor.
- AEFA expressly reserves any and all rights not explicitly granted to Independent Advisor by the terms and conditions of this Agreement.

## 2. TERM AND RENEWAL

- Three-Year Term. This Agreement shall be in effect upon its execution by AEFA and, except as otherwise provided herein, the term of this Agreement shall be three (3) years from the date of execution by AEFA.
- Renewal. This Agreement will automatically renew for additional terms of three (3) years, subject to satisfaction of the following conditions:
  - a. The premises of the Independent Financial Advisor Business under Independent Advisor's control and supervision (the "**Premises**") shall meet reasonable professional standards and the requirements set forth in the Manuals regarding signage and the use of Proprietary Marks;
  - b. Independent Advisor agrees to not be in default of any provision of this Agreement, any other agreement between Independent Advisor and AEFA or its affiliates, or any standards applicable to Independent Advisor as set forth in the Manuals; and Independent Advisor agrees to have substantially complied with all the terms and conditions of such agreements and standards;
  - c. Except as otherwise allowed by AEFA, Independent Advisor agrees to have satisfied all monetary obligations owed by Independent Advisor to AEFA and its affiliates, and shall have timely met those obligations throughout the term of this Agreement.
- Terminating the System. In the event of changes in regulatory, market or industry conditions, AEFA may make a policy decision to terminate or dissolve the System upon ninety (90) days' written notice to Independent Advisors. In the event AEFA terminates or dissolves the System, AEFA shall make available to Independent Advisor a new form of agreement, which will be substantially similar to the terms of this Agreement.

### 3. DUTIES OF AEFA

- Compensation. Within thirteen (13) business days of the end of each Accounting Period (defined below), AEFA agrees to prepare a statement (i) containing a summary of Independent Advisor's financial activity for Products & Services during such Accounting Period (the "**Commission Statement**"), (ii) detailing the Compensation as defined in Section 4 below; and (iii) containing certain confidential Client information. With each Commission Statement, AEFA agrees to remit Independent Advisor's share of the Compensation. AEFA may provide the Commission Statement by providing Independent Advisor with limited access to AEFA's computer system for the purpose of downloading the Commission Statement. "**Accounting Period**" means each of the two week accounting periods in a calendar year, as determined by AEFA.
- Offering and Servicing Products and Services. AEFA, except as otherwise provided herein, shall provide those Products & Services distributed or offered by AEFA and/or its affiliates consistent with the standards set forth in the Manuals. AEFA agrees to perform such bookkeeping, processing, and related functions as described in the Manuals. AEFA agrees to process all applications from Clients for Products & Services. AEFA retains the right to reject any application for Products & Services that does not meet the qualifications, specifications, or standards set forth in the Manuals. AEFA agrees to provide Clients with consolidated statements as provided in the Manuals. AEFA agrees to provide Independent Advisor with certain forms, brochures, prospectuses, and sales literature required to process the Independent Financial Advisor Business as part of the Association Fee. AEFA will provide to Independent Advisor certain other forms, brochures, and sales literature related to Products & Services for a fee.
- Advertising and Promotions. AEFA agrees to provide national advertising, as provided in Section 12 below, as part of the Association fee. AEFA may make available for a fee American Express Cardmember leads to Independent Advisors who meet criteria described in the Manuals. AEFA may develop promotional programs and sales campaigns for Products & Services, the nature, duration, and geographic scope of which shall be determined by AEFA.
- Compliance. AEFA agrees to provide regulatory compliance training and corporate compliance oversight as part of the Association Fee. AEFA agrees to conduct, as it deems advisable and consistent with its regulatory and supervisory obligations, inspections of Independent Advisor's operation of the Independent Financial Advisor Business for the purpose of establishing Independent Advisor's compliance with this Agreement and with all federal, state, local and NASD (and other self-regulatory organizations) laws, rules, and regulations requirements, including licensing requirements, and all of AEFA's policies and practices in the Client Relations Manuals (hereinafter referred to as "**Compliance Rules**").
- Orientation and Training. As provided in Section 7 below, AEFA agrees to (i) provide an initial orientation program as part of the Initial Franchise Fee to Independent Advisor, and (ii) offer continuing education programs as it deems necessary for a fee.

- Premises. AEFA agrees to make available signage specifications to Independent Advisor as part of the Association Fee. AEFA may provide for a fee on-site pre-opening and opening assistance to ensure the orderly opening of an office as Independent Advisor requests.
- Manuals. AEFA agrees to provide Independent Advisor, on loan, one copy of AEFA's Confidential Manuals (the "**Manuals**"), as more fully described in Section 9 hereof. The Manuals shall also include AEFA's Quality of Advice Standards, Client Satisfaction Standards and Client Relations Manuals.
- Other Optional Services. AEFA agrees to offer optional services to Independent Advisor for a fee, as described in the Manuals.
- Independent Advisor acknowledges and agrees that any duty or obligation imposed on AEFA by this Agreement may be performed by a Branch Manager (as defined below), any independent contractor, designee, employee, or agent of AEFA, as AEFA may direct.

#### 4. FEES AND COMPENSATION

- Initial Franchise Fee. In consideration of the franchise granted herein, Independent Advisor has paid to AEFA an initial franchise fee of One Thousand Five Hundred Dollars (\$1,500), receipt of which is hereby acknowledged, and which is non-refundable. Independent Advisor is paying this fee in consideration of administrative and other expenses incurred by AEFA in entering into this Agreement.
- Association Fee. During each Accounting Period (but not in the third Accounting Period of any month that has three Accounting Periods), Independent Advisor authorizes AEFA to deduct the association fee of One Hundred Ninety-Five Dollars (\$195) for national advertising, accounting, payroll, compliance and fidelity bond coverage and errors and omissions program participation as set forth in the Manuals (the "**Association Fee**") from the portion of the Compensation due to Independent Advisor. During any Accounting Period in which Independent Advisor is not entitled to a portion of the Compensation or Independent Advisor's share of the Compensation is less than the Association Fee, Independent Advisor agrees to promptly pay to AEFA the Association Fee as provided in the Manuals.
- Compensation. As long as this Agreement is in effect and Independent Advisor is not in default hereunder or under Special Regulatory Supervision (as defined below), AEFA agrees to (i) retain a percentage of the Compensation for each Accounting Period as set forth in the compensation schedule which is in the Manuals; (the "**Compensation Schedule**") (ii) pay to Independent Advisor's branch manager (the "**Branch Manager**") in accordance with the branch agreement (the "**Branch Agreement**") the specified amount of the Compensation for each Accounting Period, (iii) pay to Independent Advisor after deducting the Association Fee, any other fees, interest, or other monies due to AEFA for Services authorized by Independent Advisor and/or other deductions provided for in this Agreement, the balance of the Compensation for each Accounting Period in accordance with Section 3.

As used in this Agreement, "Compensation" which is further defined in the Manuals, is the compensation from a product sale as specified in the Compensation Schedule, based on what Products & Services the Advisor sells.



- Method of Payment AEFA agrees to have the right to make the payments to Independent Advisor due under Section 4 by telegraphic transfer, auto-draft arrangement, electronic fund transfer, or by other means AEFA may specify from time to time, to a bank account designated by Independent Advisor, in accordance with procedures in the Manuals provided, however, that if Independent Advisor requests payment under Section 4 in the form of a check, AEFA may charge a reasonable fee to Independent Advisor for providing payment via check
- Uncollected Payments If there are any uncollected payments (i) for Products & Services that Independent Advisor failed to remit to AEFA, (ii) an error occurs and Independent Advisor receives an overpayment, (iii) a payment has been made to Independent Advisor for any canceled or returned Products & Services, (iv) there is a loss, refund or payment due to a settlement or claim related to Products & Services purchased by a Client that Independent Advisor serviced, and/or (v) Independent Advisor owes AEFA pursuant to Section 21 below, AEFA may deduct such amount from the percentage of Compensation due to Independent Advisor in any Accounting Period following the event
- Incentive Programs AEFA may offer incentive programs, such as awards and conferences as described in the Manuals
- Disclaimer of Benefits Independent Advisor acknowledges that the Manuals, including the Compensation Schedule contained therein, constitute the complete list of the compensation and benefits owed Independent Advisor resulting from this Agreement or Independent Advisor's relationship with AEFA. Independent Advisor acknowledges that Independent Advisor has no claim to any other compensation or benefit plan, program or policy of or sponsored by AEFA unless such plan, policy or benefit plan specifically references Independent Advisors in their role as Independent Advisors as an eligible group under such plan, program or policy and Independent Advisor meets all conditions for eligibility set forth in such program

## 5 ONGOING DUTIES OF INDEPENDENT ADVISOR

- Independent Advisor shares AEFA's and the other Independent Advisors' commitment to high standards of financial planning, quality advice and customer service to increase the demand for Products & Services offered by all Independent Advisors operating under the System, and to protect the reputation and goodwill of AEFA and the Proprietary Marks through regulatory compliance and related policies Consistent with this commitment, Independent Advisor agrees
  - a. Compliance To maintain all required licenses and regulatory compliance standards consistent with the standards set forth in Section 15 and the Manuals, including Client Relations Manuals and Compliance Rules as defined in this Agreement
  - b. Financial Planning To produce a minimum of five (5) financial plans or Three Thousand Dollars (\$3,000) in fees during the year 2000 AEFA reserves the right to increase this minimum on an annual basis and will provide written notice of any such increase 60 days prior to the beginning of each year During the first three year term, the maximum requirement AEFA may impose is seven (7) plans or Four



Thousand Two Hundred Dollars (\$4,200) in fees per year. AEFA may make exceptions to these requirements on an individual Independent Advisor basis, provided that the branch office where the Independent Advisor is located has an average on a per advisor basis of the current minimum number of plans or the current minimum dollar amount. The definition of "financial plan" and the definition of "fee" shall be as described in the appropriate AEFA financial planning ADV brochure, and specifically excludes services or fees described in the wrap fee program ADV brochures.

- c. Quality of Advice. To maintain a Quality of Advice standard of at least level three (3), as more fully described in the Manuals.
  - d. Client Satisfaction. To maintain Client Satisfaction Standards of at least seventy percent (70%), as more fully described in the Manuals.
  - e. Premises and Signage. To maintain, at Independent Advisor's expense, an office with the fixtures, furnishings, and equipment necessary to maintain professional standards for the operation of the Independent Financial Advisor Business. Independent Advisor agrees to purchase and install signs as provided in the Manuals.
  - f. Products and Services. To offer, provide, and market the Products & Services to Clients.
- Use of Premises. Independent Advisor agrees to use the Premises to operate the Independent Financial Advisor Business and any other activities for which Independent Advisor has obtained written consent from AEFA or provided notice to AEFA as specified in the Manuals, or for other uses which do not require consent or notice as explained in the Manuals; and shall refrain from using or permitting the use of the Premises for any other purpose at any time without first obtaining written consent from AEFA or providing notice to AEFA as specified in the Manuals, or unless the use is permitted without obtaining consent or providing notice as specified in the Manuals.
  - Client Service. As provided in the Manuals, Independent Advisor agrees to: (a) promptly submit complete and accurate applications for Products & Services and other financial information required by AEFA to comply with legal, regulatory, underwriting or AEFA's internal processing requirements; (b) promptly forward all payments received from Clients for Products & Services to AEFA; and (c) preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards as AEFA may establish from time to time in the Manuals.
  - Territory. Independent Advisor will operate the Independent Financial Advisor Business at the Location and in the Market Group. Independent Advisor will not relocate the office of the Independent Financial Advisor Business outside the Market Group without prior written approval from AEFA. AEFA recognizes that Independent Advisor may desire to actively seek prospects outside the Market Group, and in order to do this, Independent Advisor agrees to obtain the approval of AEFA, which approval shall not be unreasonably withheld, and provided Independent Advisor and the person who performs regulatory supervision for the Independent Advisor have the appropriate licenses. Independent Advisor may also service

unsolicited clients outside the Market Group, provided Independent Advisor and the person who performs regulatory supervision for the Independent Advisor have the appropriate licenses. Independent Advisor may continue to accept referrals from outside the Market Group. AEFA may change Market Group boundaries. Independent Financial Advisor Business will not be adversely impacted by these changes and Independent Advisor will have the benefits of the new Market Group boundaries.

- Computer Hardware and Software. Independent Advisor agrees to purchase or lease a computer system that meets the specifications of AEFA, including such peripheral devices and equipment as AEFA may specify in the Manuals, or otherwise in writing, as reasonably necessary for the efficient management and operation of the Independent Financial Advisor Business and the transmission of data to and from AEFA. AEFA may specify in the Manuals or otherwise in writing the information that Independent Advisor agrees to collect and maintain on the computer system installed at the Independent Financial Advisor Business to satisfy regulatory and processing requirements, and Independent Advisor agrees to provide to AEFA such information as AEFA may reasonably request from the data so collected and maintained. While AEFA does not intend to have access to personal or other non-Independent Financial Advisor Business activities, Independent Advisor agrees to permit AEFA, upon AEFA's request, to access the computer system installed at the Independent Financial Advisor Business for the purpose of obtaining AEFA-related information from Independent Advisor's computer system to satisfy regulatory and business processing requirements. Independent Advisor agrees to acquire from AEFA or, if any, an approved vendor, a license to use software designated by AEFA for the computer system. In order to send messages electronically, AEFA may require Independent Advisor to establish and maintain an e-mail address with an Internet provider. At the request of AEFA, Independent Advisor agrees to obtain such upgrades, or other modifications to the computer system and software to conform to the specifications of AEFA.
- Approved Products & Services. Independent Advisor agrees to obtain all AEFA Products & Services solely from AEFA, or from suppliers approved by AEFA. If Independent Advisor desires to offer products or services, other than those already approved in the Manuals, Independent Advisor agrees to submit to AEFA a written request to approve the proposed products or services and its supplier, together with such evidence of conformity with AEFA's specifications as AEFA may reasonably require. AEFA agrees to have the right to require that its representatives be permitted to evaluate the proposed products or services. AEFA agrees to, within thirty (30) days after its receipt of such request, notify Independent Advisor in writing of its approval or disapproval of the proposed products or services and/or supplier. AEFA reserves the right to (i) deny approval of any proposed products or services and/or supplier, (ii) limit the number of approved products and services and approved suppliers, and/or (iii) condition approval of unapproved products and services on AEFA being the supplier of such products and services. Independent Advisor agrees to not offer for sale or sell any products or services until written approval by AEFA of the proposed product or service or supplier is received. AEFA may from time to time revoke its approval of particular Products & Services or suppliers if AEFA determines, in its sole discretion, that the Products & Services or suppliers no longer meet the standards of AEFA. Upon receipt of written notice of such revocation, Independent Advisor agrees to cease to offer and sell any disapproved Products & Services and/or cease to purchase from any disapproved supplier, although Independent Advisor may continue to service such Products and Services.

- Use of Proprietary Marks Independent Advisor agrees to ensure that all advertising and promotional materials, signs, decorations, stationery, business forms, and other items bear the Proprietary Marks in the form, color, location, and manner prescribed by AEFA. Independent Advisor will use best efforts to uphold the reputation and goodwill of AEFA, and its affiliates.
- Employees of Independent Advisor Independent Advisor agrees to be solely responsible for all employment decisions and all state, federal, and local laws and functions of the Independent Financial Advisor Business, including, without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees. Independent Advisor's employees must be competent, conscientious, and properly trained and licensed. Any licensed employee of Independent Advisor must be approved by and licensed with AEFA.
- No Changes Without Consent Independent Advisor agrees to not implement any material change to the System without the express prior written consent of AEFA. Independent Advisor agrees to notify AEFA in writing of any material change to the System which Independent Advisor proposes to make, and shall provide to AEFA such information as AEFA requests regarding the proposed change. AEFA may, but is not obligated to, compensate Independent Advisor for consulting services regarding a material change to the System proposed by Independent Advisor. Independent Advisor acknowledges and agrees that AEFA shall have the right to incorporate the proposed material change into the System and shall thereupon obtain all right, title, and interest therein without the obligation to compensate Independent Advisor.

## 6 OPENING OF FRANCHISED BUSINESS

- Independent Advisor agrees to furnish and equip the Independent Financial Advisor Business at Independent Advisor's own expense.
- Independent Advisor may use the Premises only for the operation of the Independent Financial Advisor Business and such other authorized activities for which Independent Advisor has obtained written consent or notice from AEFA or has provided notice to AEFA as specified in the Manuals.
- Independent Advisor agrees to be responsible for obtaining, at Independent Advisor's expense, all appropriate permits, certificates, licenses, and training, which may be required by NASD, AEFA, and other governmental and regulatory agencies.
- Independent Advisor agrees to obtain AEFA's written approval prior to opening the Independent Financial Advisor Business, which approval shall not be unreasonably withheld, and shall open the Independent Financial Advisor Business within sixty (60) days after the date of this Agreement.

## 7. ORIENTATION AND TRAINING

- Independent Advisor represents that he or she has the requisite experience, skills and training to operate the Independent Financial Advisor Business in a manner consistent with the high standards of quality of advice and customer service of other Independent Financial Advisor Business operating under the System. Prior to the opening of the Independent Financial Advisor Business, Independent Advisor agrees to attend and complete to AEFA's satisfaction the initial orientation program for Independent Advisors offered by AEFA. Independent Advisor agrees to attend regulatory compliance seminars as set forth in the Manuals. For a fee, Independent Advisor and Independent Advisor's employees may attend optional courses, seminars, and other training programs offered by AEFA.
- AEFA agrees to offer, as AEFA deems appropriate, advanced education programs ("**Advanced Programs**") that may (i) relate to certain Products & Services, (ii) enable Independent Advisor to offer additional Products & Services, (iii) enable Independent Advisor to obtain permits, certificates, and licenses to offer additional Products & Services, (iv) satisfy regulatory requirements, and (v) cover customer service, marketing to Clients, promotion, and other topics related to operation of the Independent Financial Advisor Business. Independent Advisor shall not be required to attend such Advanced Programs, except as necessary to satisfy regulatory requirements. Independent Advisor agrees to pay a fee, if any, specified by AEFA to participate in all Advanced Programs.
- Orientation programs, regulatory compliance programs and Advanced Programs shall be at such times and places or through other methods, such as computer software or websites, as may be designated by AEFA. For the initial orientation program, AEFA agrees to provide, at no additional charge to Independent Advisor, instructors and program materials; and Independent Advisor agrees to be responsible for any and all other expenses incurred by Independent Advisor or its employees in connection with any such program, including, without limitation, the costs of transportation, lodging, meals, and wages.

## 8. PROPRIETARY MARKS

- AEFA represents with respect to the Proprietary Marks that AEFA has the right to use, and to license others to use, the Proprietary Marks
- With respect to Independent Advisor's use of the Proprietary Marks:
  - a. Independent Advisor agrees to use only the Proprietary Marks designated by AEFA, and shall use them only in the manner authorized and permitted by AEFA. If AEFA is no longer authorized to use the Proprietary Marks, Independent Advisor will not be able to continue to use the Proprietary Marks;
  - b. Independent Advisor agrees to use the Proprietary Marks only (i) for the operation of the Independent Financial Advisor Business, (ii) in connections with Products & Services approved in the Manuals for use in connection with the Proprietary Marks, or (iii) in advertising approved by AEFA for the Independent Financial Advisor Business;

- c. Unless otherwise authorized or required by AEFA, Independent Advisor agrees to operate and advertise the Independent Financial Advisor Business only under the Proprietary Marks, and shall use all Proprietary Marks without prefix or suffix in the manner required by AEFA;
  - d. Independent Advisor agrees to identify himself or herself as the owner of the Independent Financial Advisor Business in conjunction with any use of the Proprietary Marks in the manner required by AEFA;
  - e. Independent Advisor's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of rights of AEFA;
  - f. Independent Advisor agrees to not use the Proprietary Marks to incur any obligation or indebtedness on behalf of AEFA;
  - g. Independent Advisor agrees to execute any documents deemed necessary by AEFA to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability; and
  - h. Independent Advisor agrees to promptly notify AEFA of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to AEFA's ownership of, AEFA's right to use and to license others to use, or Independent Advisor's right to use, the Proprietary Marks. Independent Advisor acknowledges that AEFA has the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. AEFA has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. AEFA agrees to defend Independent Advisor against any third-party claim, suit, or demand arising out of Independent Advisor's use of the Proprietary Marks. Independent Advisor agrees to execute any and all documents and do such acts as may, in the opinion of AEFA, be necessary or advisable to protect and maintain the interests of AEFA and Independent Advisor in the Proprietary Marks. Except to the extent that such litigation is the result of Independent Advisor's use in a manner inconsistent with the terms of this Agreement, AEFA agrees to reimburse Independent Advisor for his or her out-of-pocket costs in doing such acts.
- Independent Advisor expressly understands and acknowledges that:
    - a. AEFA and/or its affiliates are the owners of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them, and AEFA has the right to use, and license others to use, the Proprietary Marks;
    - b. The Proprietary Marks are valid and serve to identify the System, the AEFA Distributed Products & Services, and those who are authorized to operate under the System;
    - c. During the term of this Agreement and after its expiration or termination, Independent Advisor agrees to not directly or indirectly contest the validity of, or

AEFA's ownership of, or right to use and license others to use, the Proprietary Marks;

- d. Independent Advisor's use of the Proprietary Marks does not give Independent Advisor any ownership interest or other interest in or to the Proprietary Marks;
- e. Any and all goodwill arising from Independent Advisor's use of the Proprietary Marks shall inure solely and exclusively to the benefit of AEFA, and upon expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with Independent Advisor's use of AEFA's System or the Proprietary Marks;
- f. The license of the Proprietary Marks granted hereunder to Independent Advisor is nonexclusive, and AEFA thus has and retains the rights, among others: (a) to use the Proprietary Marks itself in connection with selling products and services (including Products & Services that Independent Advisor will offer and sell); (b) to grant other licenses for the Proprietary Marks, including to licensees outside of the System; and (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses thereto without providing any rights therein to Independent Advisor; and
- g. AEFA reserves the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder at AEFA's sole discretion.

## 9. MANUALS

- To promote the highest standards of operation under the System, AEFA has prepared Confidential Operations Manuals ("Manual" or "Manuals") which include manuals, bulletins, and other written policies and procedures setting forth the minimum standards regarding Quality of Advice, Client Satisfaction, Client Relations and the Code of Conduct. In addition, the Manuals set forth standards regarding the use of Proprietary Marks, signage, communications, privacy principles, processing procedures and the Compensation Schedule.
- To comply with all applicable laws and regulations and to protect the reputation and goodwill of AEFA and the System, Independent Advisor agrees to operate the Independent Financial Advisor Business in accordance with the professional standards specified in the Manuals, one copy of which Independent Advisor agrees to receive on loan from AEFA for the term of this Agreement upon completion by Independent Advisor of AEFA's initial orientation program to AEFA's satisfaction. In lieu of, or in addition to, providing Independent Advisor with a paper copy of the Manuals, AEFA may provide Independent Advisor with electronic access to the Manuals (or such updates to the Manuals as AEFA may determine).
- Independent Advisor agrees to treat the Manuals, any other materials created for or approved for use in the operation of the Independent Financial Advisor Business, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. Independent Advisor agrees to not copy, duplicate,



record, or otherwise reproduce the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person.

- The Manuals shall remain the sole property of AEFA and shall be kept in a secure place on the Premises.
- To comply with regulatory requirements, AEFA may make reasonable interpretations and revise the contents of the Manuals from time to time. For business changes to the Manuals, AEFA will provide Independent Advisor with reasonable notice. AEFA further agrees to provide Independent Advisor with 90 days' written notice of any non-regulatory changes to the Manuals resulting in a reduction in the GDC (Gross Dealer Concession) Payout Rate as defined in such Manuals. Independent Advisor agrees to comply with the revised Manuals.
- Independent Advisor agrees to ensure that the Manuals are kept current at all times. In the event of any dispute as to the contents of the Manuals, the terms of the most recently communicated Manuals supercede all previous Manuals.

#### 10. CONFIDENTIAL INFORMATION

- Independent Advisor has had and/or may have access to AEFA trade secrets and confidential information that Independent Advisor agrees has great value to AEFA. Independent Advisor agrees that because of such access, Independent Advisor is in a position of trust and confidence with respect to this information. To protect client confidentiality, AEFA goodwill, trade secrets, and other proprietary and confidential business information, Independent Advisor agrees to not, during the term of this Agreement or thereafter, except as permitted under Section 14 regarding transfers of the Independent Financial Advisor Business, communicate, divulge, or use for himself or herself except pursuant to the System, or for the benefit of any other person, partnership, association, or corporation any confidential information, or trade secrets, including, without limitation, Client names, addresses and data and know-how concerning the methods of operation of the System and the business franchised hereunder which may be communicated to Independent Advisor or of which Independent Advisor may be apprised by virtue of Independent Advisor's operation under the terms of this Agreement. Independent Advisor also shall not reveal any information about potential clients to whom a presentation has been made by any Independent Advisor who might reasonably be expected to do business with AEFA. Independent Advisor agrees to divulge such confidential information only to such of his or her employees as must have access to it in order to operate the Independent Financial Advisor Business. Except as otherwise permitted in Section 19, Independent Advisor agrees that, without limitation, Client names, addresses, data and other personal and financial information recorded in Client records are confidential. Confidential information includes compilations and lists of such Client information even if of otherwise public information if such compilations or lists were the result of substantial effort, time and/or money expended pursuant to the System. Independent Advisor further agrees to use this confidential information only in furtherance of this Agreement or in accordance with the Manuals and for no other purpose. Confidential information does not include information which is generally known outside of AEFA other than as a result of a disclosure by Independent Advisor, Independent Advisor's agents or representatives, or any other person or entity in breach of

any contractual, legal or fiduciary obligation of confidentiality to AEFA or to any other person or entity with respect to such information.

- At AEFA's request, Independent Advisor agrees to require any personnel having access to any confidential information of AEFA or information about Clients or potential clients to execute covenants that they will maintain the confidentiality of information they receive in connection with their employment by or association with Independent Advisor in the Independent Financial Advisor Business. Such covenants shall be in a form satisfactory to AEFA, including, without limitation, specific identification of AEFA as a third-party beneficiary of such covenants with the independent right to enforce them.

## 11. ACCOUNTING AND RECORDS

- Independent Advisor agrees to record all sales on a computer system that meets the specifications of AEFA, or on any other equipment specified by AEFA in the Manuals or otherwise in writing. Independent Advisor agrees to prepare, and shall preserve for at least seven (7) years from the dates of their preparation, complete and accurate books, records, and accounts in accordance with the Manuals and Compliance Rules as defined in this Agreement.
- Independent Advisor agrees to, at Independent Advisor's expense, submit to AEFA, in the form prescribed by AEFA, such reports, forms, records, information, and data as AEFA may require to comply with regulatory requirements or to respond to a Client complaint or lawsuit.
- All original books and records containing Client lists and/or information and transactions belong to AEFA and must be returned to AEFA upon termination or expiration of this Agreement, unless Independent Advisor transfers the Independent Financial Advisor Business as provided in Section 14. In order to permit AEFA to fulfill its regulatory requirements, AEFA and its designated agents shall have the right at all reasonable times, with or without notice to Independent Advisor, to examine and copy any books and records, including computerized books and records related to the Independent Financial Advisor Business.

## 12. ADVERTISING AND PROMOTION

### A. AEFA Advertising Fund

- Recognizing the value of advertising and promotion to AEFA and the Independent Financial Advisor Business, and the importance of coordinated advertising and promotion programs to the furtherance of the goodwill and public image of the System, the parties agree as follows:
  - a. AEFA has the right, but not the obligation, to establish the System's advertising fund (the "**Fund**"). Part of the Association Fee paid by Independent Advisors may be used for this Fund.
  - b. If established, the Fund shall be maintained and administered by AEFA as follows:



- (i) AEFA agrees to direct all advertising programs conducted through the Fund, with sole discretion over the concepts, materials, and media used in such programs and the placement and allocation thereof. Independent Advisor agrees and acknowledges that the Fund is intended to maximize general public recognition, acceptance, and use of the System, Products & Services; and that AEFA is not obligated, in administering the Fund, to make expenditures for Independent Advisor which are equivalent or proportionate to Independent Advisor's contribution, or to ensure that any particular advisor benefits directly or pro rata from expenditures by the Fund.
- (ii) The Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet the costs of preparing, directing, conducting, and administering advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which AEFA believes will enhance the image of the System, including, the costs of preparing and conducting media advertising campaigns; direct mail advertising; marketing surveys; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; conducting and administering in-office promotions; and providing promotional and other marketing materials and services to the businesses operating under the System.

B. Regional/Local Advertising Campaigns

- AEFA may designate any geographical area for purposes of establishing a regional or local advertising and promotional campaign ("**Campaign**"), and to determine whether a Campaign is applicable to the Independent Financial Advisor Business. If a Campaign has been established applicable to the Independent Financial Advisor, at Independent Advisor's option and expense, Independent Advisor may become a member of such Campaign. The following provisions shall apply to each Campaign.
  - a. Each Campaign shall be coordinated by AEFA or AEFA's designees (such as AEFA's Group Vice Presidents), and shall commence operation on a date approved in advance by AEFA in writing.
  - b. Each Campaign shall be established and organized for the exclusive purpose of administering regional or local advertising programs and developing, subject to AEFA's approval, standardized advertising materials for use by the members in local advertising.
  - c. No promotional or advertising plans or materials may be used by a Campaign or furnished to its members without the prior approval of AEFA to conform to regulatory requirements and to protect the value of the Proprietary Marks. All such plans and materials shall be submitted to AEFA in accordance with the procedure set forth in this Section.

- d. Each Independent Advisor who is a member of the Campaign agrees to submit to the Campaign, his or her contribution together with such other statements or reports as may be required by AEFA or by the Campaign
- e. Only Independent Advisors who are members of the Campaign will receive the leads resulting from the Campaign

C Independent Advisor Advertising

- All advertising and promotion by Independent Advisor shall be in such media and of such type and format as AEFA may approve, shall be conducted in a dignified manner, and shall conform to such standards and requirements as AEFA may specify to conform to regulatory requirements and to protect the value of the Proprietary Marks. Independent Advisor agrees to not use any advertising or promotional plans or materials unless and until Independent Advisor has received written approval from AEFA, pursuant to the procedures and terms set forth in this Section. Independent Advisor agrees to submit samples of all advertising and promotional plans and materials to AEFA, for AEFA's prior approval if such plans and materials have not been prepared or previously approved by AEFA within the prior one year period. Independent Advisor agrees to not use such plans or materials until they have been approved in writing by AEFA.
- AEFA may make available to Independent Advisor, at Independent Advisor's expense, pre-approved advertising plans and promotional materials, including newspaper mats, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, and similar advertising and promotional materials
- If Independent Advisor has the appropriate licenses and satisfies all regulatory requirements Independent Advisor may obtain listings for the Independent Financial Advisor Business in telephone directories. The content and appearance of any telephone listing shall conform to AEFA's pre-approved format, to conform to regulatory requirements and to protect the value of the Proprietary Marks
- If AEFA believes that any advertising or promotional materials may cause a conflict with protecting the value of the Proprietary Marks, AEFA will initiate a process to review and/or coordinate the advertising or promotional materials and has final approval authority over the materials

D Websites

- Independent Advisor specifically acknowledges and agrees that any Website (as defined below) shall be deemed "advertising" under this Agreement, and will be subject to (among other things) AEFA's approval under this Section. (As used in this Agreement, the term "Website" means an interactive electronic document, contained in a network of computers linked by communications software, that Independent Advisor operates or authorizes others to operate and that refers to the Independent Financial Advisor Business, Products & Services, Proprietary Marks, AEFA, and/or the System. The term Website includes, but is not limited to, Internet and World Wide Web home pages.) In connection with any Website, Independent Advisor agrees to the following

- a. Any Website shall be in the format of AEFA's template for Websites.
- b. Before establishing the Website, Independent Advisor agrees to submit to AEFA a sample of the Website format and information in the form and manner AEFA may reasonably require.
- c. Independent Advisor agrees to not establish or use the Website without AEFA's prior written approval to conform to regulatory requirements and to protect the value of the Proprietary Marks.
- d. In addition to any other applicable requirements, Independent Advisor agrees to comply with AEFA's standards for Websites as prescribed by AEFA from time to time in the Manuals or otherwise in writing. If required by AEFA, Independent Advisor agrees to establish its Website as part of AEFA's Website and/or establish electronic links to AEFA's Website.
- e. If Independent Advisor proposes any material revision to the Website or any of the information contained in the Website, Independent Advisor agrees to submit each such revision to AEFA for AEFA's prior written approval.

13. ERRORS AND OMISSIONS PROGRAM AND INSURANCE

- As part of the Association Fee, AEFA agrees to provide, during the term of this Agreement, participation in AEFA's errors and omissions program protecting Independent Advisor, AEFA, AEFA's affiliates, and their respective officers, directors, partners, agents, and employees against demands or claims arising or occurring in connection with the Independent Financial Advisor Business as a result of errors or omissions as defined in the Manuals. Such program may be provided by AEFA or written by a carrier or carriers approved by AEFA, shall name AEFA and AEFA's affiliates as additional insured parties as specified by AEFA, and shall provide at least the types and minimum amounts of coverages specified in the Manuals.
- AEFA recommends that Independent Advisor procure, prior to the commencement of any operations under this Agreement, and maintain in full force and effect at all times during the term of this Agreement, at Independent Advisor's expense, an insurance policy or policies protecting Independent Advisor against any demand or claim with respect to personal injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring upon or in connection with the Independent Financial Advisor Business, including, but not limited to, comprehensive general liability insurance. For good risk management purposes, AEFA recommends that any insurance policy or policies procured by Independent Advisor with respect to the Independent Financial Advisor Business, also protect AEFA, and AEFA's affiliates, and their respective officers, directors, partners, agents and employees. Independent Advisor acknowledges and agrees that Independent Advisor indemnify AEFA as provided in Section 21.

#### 14. TRANSFER OF INTEREST

- AEFA shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legal entity, and any designated assignee of AEFA agrees to become solely responsible for all obligations of AEFA under this Agreement from the date of assignment. Independent Advisor agrees to execute such documents of acknowledgment or otherwise as AEFA shall request.
- Independent Advisor understands and acknowledges that the rights and duties set forth in this Agreement are personal to Independent Advisor, and that AEFA has granted this franchise in reliance on Independent Advisor's business skill, financial capacity, and personal character. Accordingly, neither Independent Advisor nor any immediate or remote successor to any part of Independent Advisor's interest in this Agreement or in the Independent Financial Advisor Business shall sell, assign, transfer, convey, pledge, encumber, merge, or give away (collectively, "**transfer**") any direct or indirect interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business without the prior written consent of AEFA. Any purported assignment or transfer not having the written consent of AEFA required by this Section 14 shall be null and void and shall constitute a material breach of this Agreement, for which AEFA may immediately terminate without opportunity to cure pursuant to Section 17 of this Agreement.
- Independent Advisor agrees to notify AEFA in writing of any proposed transfer of any direct or indirect interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business at least thirty (30) days before such transfer is proposed to take place. AEFA agrees to not unreasonably withhold its consent to any transfer, provided, however, that (i) the transferee is eligible to enter into and actually executes a franchise agreement, and (ii) AEFA will not consent to a transfer to a corporation, partnership, or limited liability company. Upon a transfer, AEFA may, in its sole discretion, require any or all of the following as conditions of its approval:
  - a. That all of Independent Advisor's accrued monetary obligations and all other outstanding obligations to AEFA and its affiliates related to the Independent Financial Advisor Business have been satisfied;
  - b. That Independent Advisor is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Independent Advisor and AEFA or its affiliates;
  - c. That Independent Advisor agrees to have executed a general release, in a form satisfactory to AEFA, of any and all claims against AEFA and its affiliates, and their respective officers, directors, shareholders, and employees;
  - d. That (i) if the transferee is not an Independent Advisor under the System, the transferee execute, for a term ending on the expiration date of this Agreement and with such renewal term(s) as may be provided by this Agreement, the then-current form of franchise agreement and other ancillary agreements, including the applicable Addendum No. 3, as AEFA may require for the Independent Financial Advisor Business, which agreements shall supersede this

Agreement in all respects or (ii), if the transferee is an Independent Advisor under the System, the transferee enter into a written assignment, in a form satisfactory to AEFA, assuming and agreeing to discharge all of Independent Advisor's obligations under the terms of the transferee's existing franchise agreement with AEFA;

- e. That the transferee demonstrate to AEFA's satisfaction that it meets AEFA's educational, managerial, and business standards; possesses a good moral character and business reputation; has the aptitude and ability to operate the Independent Financial Advisor Business (as may be evidenced by prior related business experience or otherwise); has all appropriate permits, certificates, licenses, and training which may be required by AEFA, NASD, and governmental and regulatory agencies; be in compliance with the minimum requirements to be in good standing with this Agreement as set forth in Section 5 and has adequate financial resources and capital to operate the Independent Financial Advisor Business;
  - f. That Independent Advisor remain liable for all of the obligations to AEFA in connection with the Independent Financial Advisor Business which arose prior to the effective date of the transfer and execute any and all instruments reasonably requested by AEFA to evidence such liability;
  - g. That the transferee, as part of the Association Fee, complete any orientation programs then in effect for Independent Advisors upon such terms and conditions as AEFA may reasonably require; and
  - h. That Independent Advisor pay a transfer fee of One Thousand Dollars (\$1,000) to reimburse AEFA for its costs and expenses associated with reviewing the application to transfer and administration of the transfer.
- Independent Advisor agrees to not grant a security interest in the Independent Financial Advisor Business or in any of the assets of the Independent Financial Advisor Business, without the prior written consent of AEFA, which consent will not be unreasonably withheld.
  - If Independent Advisor desires to accept any *bona fide* offer from a transferee to purchase the Independent Financial Advisor Business, Independent Advisor agrees to notify AEFA as provided in this Section, and shall provide such information and documentation relating to the offer as AEFA may require. If, prior to the actual date of a proposed transfer, Independent Advisor has entered into a continuity of practice agreement with the transferee, AEFA has the right to approve the transferee under the conditions of Section 14, paragraph 3, subsection (e) of this Agreement both at the time the continuity of practice agreement was entered into and at the time of the proposed transfer. If Independent Advisor has entered into a continuity of practice agreement with a transferee, AEFA shall have the right and option, exercisable within thirty (30) days of Independent Advisor entering into a continuity of practice, agreement to purchase the Independent Financial Advisor Business on the same terms and conditions as described below and consistent with the continuity of practice agreement. If upon AEFA's offer to purchase the Independent

Financial Advisor Business on similar terms and conditions, Independent Advisor chooses not to sell to AEFA, Independent Advisor has the right to withdraw the offer to enter into continuity of practice agreement and continue operating his or her Independent Financial Advisor Business. If ninety (90) days prior to the proposed transfer, Independent Advisor has entered into a continuity of practice agreement and AEFA has not exercised the opportunity to buy or right of first refusal, described below, AEFA agrees to not have a right or option to purchase the Independent Financial Advisor Business at the time of the proposed transfer. In addition, if Independent Advisor has not entered into a continuity of practice agreement at least ninety (90) days prior to the proposed transfer, AEFA also shall have the right and option to purchase the Independent Financial Advisor Business on the same terms and conditions as described below. If AEFA elects to purchase the Independent Financial Advisor Business, closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by AEFA. If AEFA elects not to purchase the Independent Financial Advisor Business, any material change thereafter in the terms of the offer from a transferee shall constitute a new offer subject to the same rights of first refusal by AEFA as in the case of the transferee's initial offer. Failure of AEFA to exercise the option afforded by this Section shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section, with respect to a proposed transfer. In the event the consideration, terms, and/or conditions offered by a transferee are such that AEFA may not reasonably be required to furnish the same consideration, terms, and/or conditions, then AEFA may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the transferee, an independent appraiser shall be designated and mutually agreed upon by AEFA and Independent Advisor, at AEFA's expense, and the appraiser's determination shall be binding.

- AEFA encourages Independent Advisor, for a variety of business reasons, including anticipation of death or mental or physical incapacity, to execute an agreement with another Independent Advisor, consistent with the transfer of interest policies in this Section 14. The Independent Financial Advisor Business will immediately transfer to that Independent Advisor, upon the death or mental or physical incapacity of Independent Advisor. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer. In the event an agreement does not exist, AEFA, for a management fee, will manage the Independent Financial Advisor Business for up to ninety (90) days from the death or mental incapacity of Independent Advisor, until the executor can find a buyer for AEFA to approve. The management fee (further described in the Compensation Manual) is the compensation on the Independent Financial Advisor Business while a buyer is being located and approved. The estate is responsible for all expenses relating to the Independent Financial Advisor Business during this time. If the Independent Financial Advisor Business is not disposed of within ninety (90) days after such death or mental incapacity, AEFA may terminate this Agreement, pursuant to Section 17 hereof.
- AEFA's consent to a transfer of any interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business shall not constitute a waiver of any



claims it may have against the transferring party, nor shall it be deemed a waiver of AEFA's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

15. COMPLIANCE AND INSPECTIONS

- Independent Advisor agrees to comply with the Compliance Rules as defined herein and the Individual Treatment Policy. Compliance with such laws, regulations, policies and procedures is required to ensure that AEFA and Independent Advisor are in good standing with the regulators. Independent Advisor agrees to timely obtain and maintain all licenses with AEFA necessary for the full and proper conduct of the Independent Financial Advisor Business and the offering of Products & Services, including any required NASD, state securities and/or insurance licenses, licenses to do business, state investment advisor registrations, sales tax permits, and/or clearances. Independent Advisor is an associated person of AEFA and agrees to be supervised for regulatory compliance purposes by the OSJ Branch Manager, Field Compliance Director or Field Compliance Supervisor, as described in the Client Relations Manual, and this compliance supervisor must be located in Independent Advisor's Market Group. To ensure a high level of securities and regulatory compliance, Independent Advisor agrees to promptly respond to requests for information and records from OSJ Branch Managers and AEFA employees and agents, and Field Compliance Directors.
- Independent Advisor agrees to, within 24 hours of the occurrence of any of the following events, notify AEFA of any: (i) inspection, investigation, or citation of Independent Advisor or the Independent Financial Advisor Business by NASD, state securities regulators, state insurance commissioners or any other governmental or regulatory agencies; (ii) suspension of any license related to the Independent Financial Advisor Business or the sale of any Products or Services; (iii) alleged violation of any federal, state, local, or NASD laws or regulations related to Products or Services, or to the Independent Financial Advisor Business; (iv) action, suit, disciplinary proceeding or other proceeding, and/or the issuance of any fine, sanction, order, writ, injunction, award, or decree of NASD or any court, regulator, agency, or other governmental instrumentality, against Independent Advisor or which may adversely affect Independent Advisor or the operation or financial condition of the Independent Financial Advisor Business; or (v) Client complaints.
- Independent Advisor agrees to permit AEFA, the OSJ Branch Managers, AEFA's agents, and governmental and regulatory agencies required to have access by law (collectively, the "Inspectors") to enter upon the Premises at any time, with or without notice to Independent Advisor, during normal business hours for the purpose of conducting inspections to confirm compliance with the terms of this Agreement, the Manuals and Compliance Rules; shall cooperate with Inspectors in such inspections by rendering such assistance as they may reasonably request, including access to all books and records, including computerized books and records; and, upon notice from Inspectors, and without limiting AEFA's other rights under this Agreement, shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection within a reasonable time as determined by AEFA.

- In accordance with NASD requirements, AEFA agrees to investigate and resolve complaints and compliance issues involving Independent Advisor. AEFA agrees to provide Independent Advisor with an opportunity to respond to complaints and supply documentation, but AEFA maintains the right to settle these issues. Independent Advisor will have access to an internal appeals process should a dispute on the resolution of a case occur. AEFA may assess applicable settlement costs, subject to whatever offsets, if any, are afforded Independent Advisor by the AEFA errors and omissions program, and fines against Independent Advisor for failure to comply with regulatory requirements and company policies as set forth in the Client Relations Manual. These costs and fines may be deducted directly from Independent Advisor's Compensation or any amounts otherwise due to Independent Advisor by AEFA, however, AEFA agrees to allow either or both to be paid directly to AEFA should the Independent Advisor so choose.

## 6 SPECIAL REGULATORY SUPERVISION

- Upon the occurrence of any of the following events, AEFA may place Independent Advisor on special regulatory supervision for a period of time determined by AEFA ("Special Regulatory Supervision") and place certain restrictions on Independent Advisor and the Independent Financial Advisor Business (the "Terms of Special Regulatory Supervision") which may, at AEFA's option, include (i) terminating some of Independent Advisor's rights to offer Products & Services; (ii) suspending or placing restrictions on Independent Advisor's rights to operate the Independent Financial Advisor Business and/or offer Products & Services; (iii) requiring Independent Advisor to obtain additional training, (iv) imposing heightened supervision of Independent Advisor and the Independent Financial Advisor Business, (v) reducing the payout to which Independent Advisor would otherwise be entitled, and (vi) such other requirements that AEFA may require, effective immediately upon the provision of notice to Independent Advisor (in the manner provided under Section 23 hereof)
  - a If Independent Advisor shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy, or such a petition is filed against and not successfully opposed by Independent Advisor, if Independent Advisor is adjudicated a bankrupt or insolvent; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed), or if Independent Advisor makes a compromise with creditors,
  - b If Independent Advisor is under investigation by NASD or other self-regulatory organizations, state securities regulators, or any other governmental or regulatory agencies,
  - c If there is an allegation (including any allegation by a Client) that Independent Advisor violated any Compliance Rules related to the Independent Financial Advisor Business, or
  - d If Independent Advisor fails to substantially comply with any of the requirements imposed by this Agreement (including, without limitation, those identified in Section 17 below) or failure to carry out the terms of this Agreement in good faith



- Upon notice from AEFA that Independent Advisor has been placed on Special Regulatory Supervision and the Terms of Special Regulatory Supervision, Independent Advisor agrees to immediately comply with the Terms of Special Regulatory Supervision. Independent Advisor's failure to comply with the Terms of Special Regulatory Supervision shall be a default under the "Immediate Termination" provision of Section 17, below.

## 17. DEFAULT AND TERMINATION

- Termination by Independent Advisor. Independent Advisor may terminate this Agreement upon fourteen (14) days written notice to AEFA in the manner provided in Section 23 hereof and, if applicable, Addendum No. 3 hereto. The termination shall take effect on the date specified in the notice or as directed by AEFA.
- Immediate Termination with Cause. Upon the occurrence of any of the following events of default, AEFA may, at its option, terminate this Agreement and all rights granted hereunder, which events shall constitute good cause to the extent permitted by law, without affording Independent Advisor any opportunity to cure the default, effective immediately upon the provision of notice to Independent Advisor (in the manner provided under Section 23 hereof). In the event AEFA believes any law may prohibit the immediate termination of this Agreement, AEFA may immediately suspend Independent Advisor, who shall remain suspended until such time as AEFA either terminates this Agreement or ends the suspension. Any Independent Advisor who is suspended must temporarily cease operations, although such Independent Advisor will receive all Compensation that Independent Advisor is entitled pursuant to the Manuals to receive at the time the suspension is lifted.
  - a. If Independent Advisor fails to locate an approved site or to open the Independent Financial Advisor Business within the time limits provided in Section 6 of this Agreement;
  - b. If Independent Advisor fails to complete the initial orientation program described in Section 7 hereof to AEFA's satisfaction;
  - c. If Independent Advisor at any time ceases to operate or otherwise abandons the Independent Financial Advisor Business, enters into an unauthorized agency agreement with a competitor or imminently plans to do so, or otherwise forfeits the right to do or transact business in the jurisdiction where the Independent Financial Advisor Business is located. However, if, through no fault of Independent Advisor, the Premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within sixty (60) days thereafter or Independent Advisor loses the right to possession of the Premises, then Independent Advisor agrees to have sixty (60) days after such event in which to apply for AEFA's approval to relocate the Independent Financial Advisor Business, which approval shall not be unreasonably withheld;
  - d. If Independent Advisor is charged with, pleads nolo contendere to, or is convicted of a felony, a crime involving moral turpitude or dishonesty, or any other crime or offense that AEFA believes is reasonably likely to have an

adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or AEFA's interest therein;

- e. If Independent Advisor fails to obtain or loses any appropriate licenses which may be required by AEFA, NASD, and governmental and regulatory agencies to operate the Independent Financial Advisor Business or offer Products & Services;
- f. If any purported assignment or transfer of any direct or indirect interest in this Agreement or in all or substantially all of the assets of the Independent Financial Advisor Business is made to any transferee without AEFA's prior written consent, contrary to the terms of Section 14 hereof;
- g. If an approved transfer is not effected within the time provided following death or mental incapacity, as required by Section 14 hereof;
- h. If Independent Advisor fails to comply with the covenants in Section 19 hereof or fails to obtain execution of the covenants required under Sections 10 or 19 hereof;
- i. If, contrary to the terms of Sections 9 or 10 hereof, Independent Advisor discloses or divulges the contents of the Manuals or other confidential information provided to Independent Advisor by AEFA;
- j. If Independent Advisor knowingly maintains false books or records, or submits any false reports to AEFA;
- k. If Independent Advisor is involved in misappropriating monies, fails to timely transmit Client funds or securities to AEFA, or engages in unauthorized activities or violates the Compliance Rules and/or the Individual Treatment Policy.
- l. If Independent Advisor misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impairs the goodwill associated therewith or AEFA's rights therein;
- m. If Independent Advisor refuses to permit an Inspector to inspect the Premises, or the books, records, or accounts of Independent Advisor upon demand;
- n. If Independent Advisor, upon receiving a notice of default under Section 17 hereof entitled "Termination with an Opportunity to Cure Within Thirty (30) Days," fails to initiate immediately a remedy to cure such default;
- o. If Independent Advisor, after curing a default pursuant to Section 17 hereof entitled "Termination with an Opportunity to Cure Within Thirty (30) Days," commits the same default again, whether or not cured after notice;

- p. If Independent Advisor fails to comply with the Terms of Special Regulatory Supervision; or
- q. If Independent Advisor is alleged to have violated Federal or state civil or common law that AEFA believes is reasonable likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or AEFA's interest therein.
- Termination with an Opportunity to Cure Within Thirty (30) Days. Except as otherwise provided in Section 17 entitled "Immediate Termination" and Section 17 entitled "Termination with an Opportunity to Cure within One (1) Year," upon any other default by Independent Advisor, AEFA may terminate this Agreement by giving written notice of termination (in the manner set forth under Section 23 hereof) stating the nature of the default to Independent Advisor at least thirty (30) days prior to the effective date of termination; provided, however, that Independent Advisor may avoid termination by immediately initiating a remedy to cure such default, curing it to AEFA's satisfaction, and by promptly providing proof thereof to AEFA within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Independent Advisor, effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require and AEFA may re-assign any Clients assigned to the Independent Advisor. Defaults which are susceptible of cure hereunder include the following illustrative events:
  - a. If Independent Advisor fails to substantially comply with any of the requirements imposed by this Agreement.
  - b. If Independent Advisor fails, refuses, or neglects promptly to pay any monies owing to AEFA or its affiliates when due, or to submit the financial or other information required by AEFA under this Agreement;
  - c. Except as provided in Section 17 entitled "Immediate Termination," if Independent Advisor fails, refuses, or neglects to obtain AEFA's prior written approval or consent as required by this Agreement; or
  - d. If Independent Advisor engages in any business or markets any service or product under a name or mark which, in AEFA's opinion, is confusingly similar to the Proprietary Marks.
- Termination with an Opportunity to Cure within One (1) Year. Upon the occurrence of any of the following events of default, determined as of the first anniversary of this Agreement and annually thereafter, AEFA may, at its option, terminate this Agreement and all rights granted hereunder, by giving written notice of termination (in the manner set forth under Section 23 hereof) stating the nature of the default to Independent Advisor one (1) year prior to the effective date of termination; provided, however, that Independent Advisor may avoid termination by immediately initiating a remedy to cure such default, curing it to AEFA's satisfaction, and by providing proof thereof to AEFA within such one (1) year period. If any such default is not cured within the one (1) year period, this Agreement shall terminate

without further notice to Independent Advisor, effective immediately upon the expiration of such one (1) year period.

- a. If Independent Advisor fails to maintain Quality of Advice Standards of at least level three (3).
  - b. If Independent Advisor fails to maintain Client Satisfaction Standards of at least seventy percent (70%), as more fully described in the Manuals.
  - c. If Independent Advisor fails to maintain an office with the fixtures, furnishings and equipment necessary to maintain professional standards for the operation of the Independent Financial Advisor Business or if Independent Advisor fails to install signs as provided in the Manuals.
  - d. If Independent Advisor fails to meet the financial planning standards set forth in Section 5.
- Subject to AEFA and affiliated broker-dealer policies, AEFA agrees to allow the Independent Advisor to terminate this Agreement and move to an affiliated broker-dealer, (e.g. Securities America).

#### 8. OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted hereunder to Independent Advisor shall forthwith terminate although Independent Advisor's duties under this Agreement shall continue as specified in this Section 18, and:

- Independent Advisor agrees to immediately cease to operate the Independent Financial Advisor Business, and Independent Advisor agrees to not thereafter, directly or indirectly, represent to the public or hold himself or herself out as a present or former franchisee of AEFA.
- If this Agreement is terminated for reasons outlined in Section 17, AEFA will honor any agreement with another Independent Advisor, consistent with the transfer of interest policies in Section 14, or, Independent Advisor can attempt to locate a buyer for AEFA to approve. AEFA, for a management fee, will manage the Independent Financial Advisor Business for up to ninety (90) days until a buyer can be found and approved. The management fee (further defined in the Compensation Manual) is the compensation on the Independent Financial Advisor Business while a buyer is being located and approved. If a buyer is not found and approved within the ninety (90) days after such termination, the Independent Financial Advisor Business terminates the right to the equity. In the interests of good client relationships, AEFA will assume continuous service to all Clients.
- Independent Advisor agrees to immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Marks; and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Independent Advisor agrees to cease to use.

without limitation, all signs, advertising materials, displays, stationery, forms, products, and any other articles which display the Proprietary Marks.

- Independent Advisor agrees to make such modifications or alterations to the Premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the Premises from that of the Independent Financial Advisor Business under the System, and shall make such specific additional changes thereto as AEFA may reasonably request for that purpose. In the event Independent Advisor fails or refuses to comply with the requirements of this Section 18, AEFA agrees to have the right to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Independent Advisor, which expense Independent Advisor agrees to pay upon demand.
- Independent Advisor agrees to immediately cease using any telephone number used by Independent Advisor in the Independent Financial Advisor Business. AEFA agrees to immediately cease using the telephone number unless the telephone number is for an Area Office or other AEFA-leased space. At AEFA's expense, AEFA reserves the right to add a forwarding message to any such telephone number, indicating the telephone number for AEFA and for the departing Independent Advisor.
- Independent Advisor agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in AEFA's sole discretion, is likely to cause confusion, mistake, or deception, or which, in AEFA's sole discretion, is likely to dilute AEFA's rights in and to the Proprietary Marks. Independent Advisor further agrees not to utilize any designation of origin, description, or representation (including but not limited to reference to AEFA, the System, or the Proprietary Marks) which, in AEFA's sole discretion, suggests or represents a present or former association or connection with AEFA, the System, or the Proprietary Marks.
- Independent Advisor agrees to promptly pay all sums owing to AEFA and its affiliates. In the event of termination for any default of Independent Advisor, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by AEFA as a result of the default.
- Independent Advisor agrees to immediately deliver to AEFA the Manuals and all other original records, including most recent financial plans and recommendations, computer databases and files, correspondence, and instructions containing confidential information relating to the System (and any copies thereof, including electronic or computer generated copies, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of AEFA. To satisfy regulatory requirements, Independent Advisor agrees to immediately deliver to AEFA the originals of all Client records, including records containing Client lists and/or information and transactions belonging to AEFA, unless Independent Advisor transfers the Independent Financial Advisor Business as provided in Section 14.

- Independent Advisor agrees to immediately (i) discontinue use of any computer software developed for the System or AEFA, (ii) deliver to AEFA all such computer software in Independent Advisor's possession or control and any copies made of such computer software, (iii) erase or destroy any of such computer software contained in the computers or data storage devices under the control of Independent Advisor, and (iv) remove such computer software from any other computer programs or software in Independent Advisor's possession or control that incorporates or used such computer software in whole or in part.
- Independent Advisor agrees to comply with the covenants contained in Section 19 of this Agreement.

## 19. COVENANTS

- Independent Advisor covenants that, during the term of this Agreement, Independent Advisor agrees to (i) devote best efforts to the management and operation of the Independent Financial Advisor Business, and (ii) except as otherwise approved in writing by AEFA or after providing notice to AEFA as specified in the Manuals, not be employed or engage in other business activities outside the Independent Financial Advisor Business.
- Independent Advisor specifically acknowledges that, pursuant to this Agreement, Independent Advisor will receive additional substantive rights as a franchisee of AEFA. Independent Advisor also recognizes he or she will receive valuable and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of AEFA and the System. In recognition of and in consideration for these and other benefits, to protect the confidentiality of AEFA's Client information and to protect AEFA's goodwill, Independent Advisor covenants that (a) during the term of this Agreement and (b) for one year after the expiration or termination of this Agreement in the geographic area within which Independent Advisor operates or operated, Independent Advisor agrees to not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or entity:
  - (1) Encourage, assist, participate, induce, or attempt to induce any Client or prospective business or customer to terminate an agreement with AEFA, AEFA's affiliates, Issuers, or any financial advisor business under the System;
  - (2) Encourage, assist, participate, induce, or attempt to induce any Client or prospective business or customer to terminate, surrender, redeem, or cancel any action related to Products & Services acquired or ordered from or through AEFA, AEFA's affiliates, Issuers, or any financial advisor business under the System, except as provided in the Manuals or with AEFA's written approval and consent;
  - (3) Solicit any Clients that Independent Advisor contacted, serviced or learned about while operating under this Agreement to open an account other than an AEFA account or to sell any investment, financial or insurance products or services other than through AEFA with AEFA's written approval and consent; or



- (4) Open an account for, or provide or offer to provide any investment, financial, or insurance products or services to any Clients that Independent Advisor contacted, serviced or learned about while operating under this Agreement.
- b. (1) Employ, or retain as an independent contractor, any person who is at that time employed by AEFA or associated with AEFA as an independent contractor or agent or by any other Independent Advisor of AEFA, or otherwise directly or indirectly induce such person to leave his or her employment, association or independent contractor relationship with AEFA; or
- (2) Disparage AEFA, its affiliates, employees, advisors, and Products & Services.

For purposes of this Section, an "Issuer" is a company or entity that issues Products & Services distributed or offered by AEFA, AEFA's affiliates, or AEFA as the agent of another company.

- Independent Advisor understands and acknowledges that if Independent Advisor terminates this Agreement, AEFA shall have the right to continue to actively offer all Products and Services to Clients the Independent Advisor serviced at AEFA.
- Upon expiration of this Agreement, Independent Advisor may have a right to revenue based on past Products & Services that have been purchased by Clients through the Independent Financial Advisor Business, as provided for in the Manuals, or with AEFA's approval and consent.
- Independent Advisor understands and acknowledges that AEFA shall have the right, in its sole discretion, to reduce the scope or restrictiveness of any covenant set forth above, or any portion thereof, without Independent Advisor's consent, effective immediately upon receipt by Independent Advisor of written notice thereof; and Independent Advisor agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 24 hereof. Independent Advisor agrees and understands that AEFA's exercise of such discretion, as to the Independent Advisor who is the subject of this Agreement, or of any other Independent Advisor, shall not constitute a waiver of any of AEFA's right to enforce this or any other agreements.
- Independent Advisor expressly agrees that the existence of any claims it may have against AEFA, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by AEFA of the covenants in this Section 19.
- At AEFA's request, Independent Advisor agrees to obtain and furnish to AEFA executed covenants similar in substance to those set forth in this Section 19 and, at the Independent Advisor's discretion, Addendum No. 3 (including covenants applicable upon the termination of a person's relationship with Independent Advisor and the provisions of Section 10 of this Agreement) from personnel (identified in the Manuals) employed or retained as an

independent contractor by Independent Advisor or his/her agent. Every covenant required by this Section shall be in a form approved by AEFA, including, without limitation, specific identification of AEFA as a third-party beneficiary of such covenants with the independent right to enforce them.

- Independent Advisor agrees that to the fullest extent permitted by applicable law, AEFA will be entitled to injunctive relief from a court or NASD arbitration should Independent Advisor violate any of the covenants in this Section 19 and in Sections 10 and 18 (the "Sections") of this Agreement. Independent Advisor recognizes that AEFA's remedies solely at law will be inadequate, that AEFA will be irreparably harmed by violations of the provisions in the Sections, and thus that AEFA will be entitled to injunctive relief to prevent future violations of the provisions in the Sections until a full and final resolution of any dispute may be had on the merits. If Independent Advisor has signed Addendum No. 3 but fails to comply with it, AEFA shall be entitled to immediate injunctive relief to enforce at AEFA's option, the covenants in Section 19, including 19(a) (1), (2), (3), and (4) and/or of Addendum 3. AEFA has the right to seek such injunctive relief in a court of competent jurisdiction, which relief shall extend until, and if, a decision on the merits of the same issue is rendered by an NASD arbitration panel. Such election by AEFA to seek judicial relief shall not waive any rights AEFA may have to arbitrate disputes arising under this Agreement, including rights to obtain damages from Independent Advisor in arbitration for violations of this Agreement.
- Nothing in this Agreement will prevent Independent Advisor from engaging in a competitive business consistent with the covenants in this Section 19, including serving as a financial advisor or consultant affiliated with another firm, after this Agreement expires or is terminated. Nothing in this Agreement will prohibit Independent Advisor from soliciting and servicing any Clients that Independent Advisor contacted, serviced or learned about while operating under an agreement with AEFA more than one year after this Agreement terminates or expires, provided that Independent Advisor makes no use directly or indirectly of any confidential or trade secret information, including but not limited to client files and lists obtained from AEFA.
- Upon Independent Advisor's request, AEFA may in its complete discretion release Independent Advisor from any provisions in this Section 19, in whole or in part, for example to exclude specified family members from the provisions in this Section 19. Such requests by Independent Advisor must be in writing and any release to Independent Advisor must be in writing and signed by an officer of AEFA. Any such release shall not act as a waiver of any other of AEFA's rights under this Agreement as such rights apply to any other Independent Advisor.
- AEFA agrees that clients who Independent Advisor purchased a direct or indirect interest in or obtained outside of the AEFA System and transferred to AEFA are not subject to Section 19 (a) (1), (2), (3) and (4).

## 20 TAXES, PERMITS, AND INDEBTEDNESS

- Independent Advisor agrees to promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Independent Advisor in the operation of the



Independent Financial Advisor Business. Independent Advisor agrees to pay to AEFA an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on AEFA with respect to any payments to AEFA required under this Agreement, unless the tax is credited against income tax otherwise payable by AEFA.

- In the event of any bona fide dispute as to Independent Advisor's liability for taxes assessed or other indebtedness, Independent Advisor may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall Independent Advisor permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises of the Independent Financial Advisor Business, or any improvements thereon.

## 21. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- This Agreement does not create a fiduciary duty on behalf of AEFA to the Independent Advisor. Independent Advisor agrees to be an independent contractor, and nothing in this Agreement is intended to constitute AEFA as an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the Independent Advisor for any purpose whatsoever.
- During the term of this Agreement, Independent Advisor agrees to hold himself or herself out to the public as an independent contractor operating the Independent Financial Advisor Business. Independent Advisor agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Premises, the content of which AEFA reserves the right to specify. Nothing in this Agreement authorizes Independent Advisor to make any contract, agreement, warranty, or representation on AEFA's behalf, or to incur any debt or other obligation in AEFA's name; and AEFA agrees to in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall AEFA be liable by reason of any act or omission of Independent Advisor in his or her operation of the Independent Financial Advisor Business or for any claim or judgment arising therefrom against Independent Advisor or AEFA.
- To the extent permitted by law and not covered by the errors and omission program pursuant to Section 13, Independent Advisor agrees to indemnify and hold harmless AEFA and its affiliates, and their respective officers, directors, agents, employees, successors and assigns (the "Indemnitees"), against any and all causes of action, claims, demands, liabilities, losses, damages, actions, litigation or other expenses (including, but not limited to, interest, costs of investigation, settlement costs, and attorneys' fees) arising out of or relating to Independent Advisor's establishment or operation of the Independent Financial Advisor Business, except for any claim based solely on the willful misconduct or gross negligence of AEFA or its officers, agents and employees, or based solely on nonperformance by AEFA of its obligations hereunder. Independent Advisor agrees that with respect to any threatened or actual litigation, proceeding or dispute which could directly or indirectly affect any of the Indemnitees, the Indemnitees shall have the right, but not the obligation, to: (i) choose counsel, (ii) direct, manage and/or control the handling of the matter; and (iii) settle on behalf of the Indemnitees, and/or Independent Advisor, any claim against the Indemnitees in their sole discretion. All vouchers, canceled checks, receipts, receipted bills or other evidence of payments for any such losses, liabilities, costs, damages, charges or expenses of

whatsoever nature incurred by any Indemnitee shall be taken as prima facie evidence of Independent Advisor's obligation hereunder. AEFA may require Independent Advisor to reimburse AEFA for all expenses (including attorneys' fees) reasonably incurred by AEFA to enforce the terms of this Agreement or any obligation owed by Independent Advisor to AEFA under this Agreement or otherwise, including, without limitation, Independent Advisor's indemnification obligations.

## 22. APPROVALS AND WAIVERS

- Whenever this Agreement requires the prior approval or consent of AEFA, Independent Advisor agrees to make a timely written request to AEFA therefor, and such approval or consent must be obtained in writing from an officer of AEFA. AEFA will respond to such requests within a timeframe reasonable under the circumstances.
- AEFA makes no warranties or guarantees upon which Independent Advisor may rely, and assumes no liability or obligation to Independent Advisor, by providing any waiver, approval, consent, or suggestion to Independent Advisor in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.
- No failure of AEFA to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Independent Advisor with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of AEFA's right to demand exact compliance with any of the terms hereof. Waiver by AEFA of any particular default of Independent Advisor shall not affect or impair AEFA's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, forbearance, or omission of AEFA to exercise any power or right arising out of any breach of default by Independent Advisor of any of the terms, provisions, or covenants hereof, affect or impair AEFA's right to exercise the same, nor shall such constitute a waiver by AEFA of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by AEFA of any payments due to it hereunder shall not be deemed to be a waiver by AEFA of any preceding breach by Independent Advisor of any terms, covenants, or conditions of this Agreement.

## 23. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be: personally delivered; sent by facsimile/telecopier (if confirmed by mail); mailed by certified mail, return receipt requested; or dispatched by overnight delivery envelope, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to AEFA:  
American Express Financial Advisors Inc.  
IDS Tower 10  
733 Marquette Avenue  
Minneapolis, Minnesota 55440  
Attn: Unit 1523

**P000457**

Notices to Independent Advisor will be made to the Independent Advisor's preferred business address on record at AEFA.

Any notice by a means which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given and received at the date and time of receipt or rejected delivery.

24. ENTIRE AGREEMENT

This Agreement, the attachments hereto, and the documents referred to herein constitute the entire Agreement between AEFA and Independent Advisor concerning the subject matter hereof, and supersede all prior and contemporaneous agreements, negotiations and representations (written and oral), no other representations having induced Independent Advisor to execute this Agreement. No party is relying on any agreement or representation, or bound by any other agreement or obligation concerning the subject matter of this Agreement that is not expressly set forth herein. Except for those permitted to be made unilaterally by AEFA hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

25. SEVERABILITY AND CONSTRUCTION

- If, for any reason, any section, part, term, provision, and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement.
- Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination, or assignment of this Agreement (regardless of cause for termination) shall survive such expiration, termination, or assignment, including but not limited to Sections 10, 19, 21, and 26.
- Independent Advisor expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court, regulator, or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which AEFA is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court, regulator, or agency order.

26. APPLICABLE LAW

- This Agreement shall be interpreted and construed exclusively under the laws of the State of Minnesota. In the event of any conflict of law, the laws of Minnesota shall prevail, without regard to the application of Minnesota conflict-of-law rules; except that all issues relating to

- Except as provided in Section 19, any claim or controversy arising out of, or related to, this Agreement, or the offer, making, performance, or interpretation thereof, shall be finally settled by arbitration unless otherwise agreed to by the parties. Except as provided in Section 19, arbitration shall be conducted pursuant to the NASD Code of Arbitration Procedure and other applicable rules of the NASD. By agreement of the parties, disputes may be resolved in arbitration conducted by a mutually agreed upon organization.
- No right or remedy conferred upon or reserved to AEFA or Independent Advisor by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- AEFA and Independent Advisor irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.
- AEFA and Independent Advisor hereby waive to the fullest extent permitted by law any right to, or claim of, any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.
- Nothing herein contained shall bar AEFA's right to obtain injunctive relief against conduct or threatened conduct that (i) will cause it loss or damage or (ii) violates the Terms of Special Regulatory Supervision or (iii) is in violation of AEFA's obligation to comply fully with government agency laws or regulations under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.

## 7. ACKNOWLEDGMENTS

- Independent Advisor acknowledges that it has conducted an independent investigation of the Independent Financial Advisor Business, and recognizes that the business venture contemplated by this Agreement involves significant business risks and that its success will be largely dependent upon the ability of Independent Advisor as an independent businessperson. AEFA expressly disclaims the making of, and Independent Advisor acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- Independent Advisor acknowledges that it received a complete copy of this Agreement, the attachments hereto, and agreements relating thereto, if any, at least five (5) business days prior to the date on which this Agreement was executed. Independent Advisor further acknowledges that it received the disclosure document required by the Trade Regulation Rule

of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" at least ten (10) business days prior to the date on which this Agreement was executed.

- Independent Advisor acknowledges that it has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that AEFA has accorded Independent Advisor ample time and opportunity to consult with advisors of Independent Advisor's own choosing about the potential benefits and risks of entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate on the date first above written.

\_\_\_\_\_  
Independent Advisor

\_\_\_\_\_  
American Express Financial Advisors Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Social Security No.: \_\_\_\_\_  
Advisor No.: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
American Express Financial Advisors Inc  
Franchise Agreement - 10/25/99

**SCHEDULE A**

**Independent Financial Advisor office location:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Social Security No.: \_\_\_\_\_  
Advisor No.: \_\_\_\_\_

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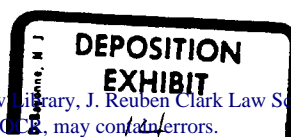
# Platform Resource Kit

Choosing a Branded  
Platform

Benefits

AX001625

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# Table of Contents

This chapter of the *Platform Resource Kit* contains information to guide your market group through the implementation of the Platform design. Refer to the information as needed throughout your transition. If you have questions, ask your leader or refer to the resources listed in this section.

## Platform 1

### Benefits

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## Platform 2

### Benefits

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*The information in this document does not create any contractual rights in any employee or independent contractor. The company reserves the right to make changes in, or discontinue, company policies, compensation plans, benefits and programs as it deems appropriate, and these changes may be implemented even if they have not been communicated in this (or by change to this) document or otherwise. This document describes only certain highlights of some of the company's benefit programs. It does not supersede the actual provisions of the applicable plan documents, which in all cases are the final authority. The applicable plan administrator has the sole authority and discretion in determining eligibility for and in interpretation and administration of the programs.*

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# Benefits

## Platform 1

### General information

In general, what changes will be made to benefits for advisors and leaders in Platform 1?

Platform 1 advisors and leaders will be eligible for generally the same benefits as the company's employee benefits program (with the usual employee contributions). This includes health, welfare and retirement benefits. It's important to note that the same employee benefits also will be available to *employee* leaders (GVPs, FVPs, AVPs and managers) in Platform 2. (See the charts on Pages 11-16 for an overview of benefits and a comparison of current field versus employee benefits.)

When will changes to benefits take place?

Advisors who are covered under any benefit plan at the time of national rollout will continue to participate in field benefits up to Platform rollout. Coverage under medical, dental and vision care plans will terminate on March 31, 2000. All other coverage in the field benefit plans will terminate on March 21, 2000. Platform 1 advisors are eligible to participate in AEFA employee benefits upon conversion to the Platforms. Coverage under AEFA employee benefits for medical, dental and vision care, if elected during national rollout, will be effective April 1, 2000. All other coverage in the employee benefit plans elected by Platform 1 advisors during national rollout will be effective on March 22, 2000.

Platform 1 advisors who previously were eligible but are not currently participating in field benefits also may elect coverage during national rollout. Medical, dental and vision care coverage will be effective April 1, 2000. All other employee benefits will be effective March 22, 2000.

Advisors who are not eligible to participate in field benefits at the time of conversion to the Platforms (i.e., pre-appointed advisors) also will be eligible to elect employee benefits, effective March 22, 2000.

AX001627

**Will I need to re-enroll in the benefits program at the time of national rollout even though I enrolled during the fall annual enrollment period?**

**Yes, you will need to re enroll in the benefits program for the remainder of the year 2000.**

**If you do not return your national rollout enrollment form and associated documentation within the required time period, your benefits for the remainder of the year 2000 will be limited to life insurance coverage equal to one times your annual earnings.**

**AX001628**

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# Benefits

## Platform 1

### Health and welfare benefits

**I currently have the Traditional Indemnity option. Will there be a change to the way I currently am reimbursed for my medical expenses?**

Yes. Under the employee benefits program, the deductible under the Traditional Indemnity option is a percent of your annual earnings (0.5% for individual and 1.0% for family coverage) versus the flat \$250 for individual and \$500 for family coverage that you pay as a member of the field organization. In addition, the annual out-of-pocket maximum (not including annual deductible amount or out-of-pocket prescription drug amounts) is two times the deductible versus the flat \$1,500 you currently pay for individual or \$3,000 for family coverage.

**Will there be any changes for HMO plan coverage in Platform 1?**

No, there won't be any changes specifically as a result of Platform implementation.

**In addition to medical, dental and vision coverage, what are other features of the employee benefits program?**

Under the company's employee benefits program, you will be offered

- Pre-tax deductions for certain benefits (e.g., contributions for medical coverage)
- Life insurance options of up to \$1,000,000 (based on earnings)
- Salary continuation benefits at no cost to you during medical leaves, up to certain maximums
- Long-term disability options of 40% of earnings (a maximum benefit of \$13,333 per month) and 65% of earnings (a maximum benefit of \$21,666 per month)
- Health Care and Dependent Care Reimbursement accounts
- Vacation Purchase Plan (eligible the next calendar year after completing one full year of company service as an employee)
- Paid time off (PTO) benefits

**AX001629**

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**What are the paid time off (PTO) benefits for Platform 1 advisors?**

Your PTO pool includes personal days, vacation days and holidays. The number of PTO pooled days for Platform 1 advisors, accrued throughout the year, will be as follows:

| Length of company service | Number of PTO days |
|---------------------------|--------------------|
| 0-1 years                 | 10 days            |
| 2-9 years                 | 28 days            |
| 10-24 years               | 33 days            |
| 25+ years                 | 38 days            |

\* You will be credited for past service for the time you were an employee (i.e., first year advisor) and be eligible for PTO accordingly.

**What is the PTO schedule for employee leaders in Platform 1?**

Your PTO pool includes personal days, vacation days and holidays. The number of PTO pooled days for Platform 1 (and Platform 2) leaders, accrued throughout the year, will be as follows:

| Length of company service | Number of PTO days |
|---------------------------|--------------------|
| 0-24 years                | 33 days            |
| 25+ years                 | 38 days            |

\* You will be credited for past service with the company for the time you were an employee (and be eligible for PTO accordingly) - i.e., your first year as an advisor and/or years of service as an FVP.

**What does PTO include?**

The schedules above include business-driven holidays, typically six days per year when the office is closed. PTO is for vacation and holidays.

**How are my years of service determined under the PTO policy?**

For PTO purposes, years of service are calculated as full years rather than partial years. On January 1 of each year, your years of service are calculated as if the entire year had passed. That is, your years of service will be recognized on January 1 based on what they will be on December 31 of the current year.

For first-year advisors, you will be eligible for 10 PTO days for your first anniversary year. For your second anniversary year, the number of PTO days you are eligible for will be pro-rated for the remainder of that calendar year. Beginning January 1 of the following year, you then will be eligible for 28 days.

**AX001630**

**What additional information do I need to know about my health and welfare benefit plans?**

Under the Health Insurance Portability and Accountability Act of 1996, the company is required to notify you of the following changes:

- For the American Express Financial Corporation Health Care Coverage Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.
- For the American Express Financial Corporation Dental Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.
- For the American Express Financial Corporation Vision Care Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.

**Where can I get answers to more specific benefits-related questions?**

For more general information about benefits, consult your *Benefits Handbook* or call HRICS at (800) 483-3944 or (612) 671-3051.

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# Benefits

## Platform 1

### Retirement Program

What are the highlights of the Retirement Program for American Express employees?

AEFA employee leaders plus Platform 1 advisors are eligible for the following benefits after completing one year of company service as an eligible employee:

- **The American Express Incentive Savings Plan (ISP)** – As employees, after you have completed one year of service, you may contribute 0-15% of your level income (base salary) on a before-tax basis, after-tax or a combination of both, as long as the combination does not exceed 15% (or other IRS limits). Your before-tax contributions up to 3% of your level income (base salary) will be matched by the company, dollar for dollar. In addition, the company automatically will make company stock contributions equal to 1% of your level income (base salary) to the American Express Stock Fund, and the company may make a discretionary profit sharing contribution of 0-7% of your level income (base salary) depending on total Blue Box performance. Employees are 100% vested immediately in before-tax and after-tax contributions, company matching, company stock contributions plus any earnings as soon as they are deposited into the plan. You become 100% vested in the value of the company's profit-sharing contributions and earnings after five years of service with the company, or if you retire at or after age 65, become disabled or die.
- **The American Express Retirement Plan** – Company allocations are made to a "cash balance" account based on your age, your years of service as an American Express employee and your pensionable earnings.\* Annually, the company will determine a credit rate, similar to an interest rate, which will apply to your account balance. Employees become 100% vested in the plan after five years of service, or if you retire at or after age 65, become disabled or die.

*\*Pensionable earnings for Platform 1 advisors and leaders include level income plus GDC Earnings Bonus, Performance Bonus and/or AIA and Growth Bonus when calculating the Retirement Plan contributions. The ISP considers level income only.*

**Will GVPs and FVPs be able to participate in the Incentive Savings Plan under the Supplemental Retirement Plan (SRP)?**

Effective August 11, 1999, GVPs and FVPs who now participate in the Retirement Plan portion of the Supplemental Retirement Plan (SRP) account also will become eligible to participate in the Incentive Savings Plan portion of the SRP. The SRP is a non-qualified plan with company contributions designed for executives (including field leaders with a level income of more than \$160,000) to replace benefits that cannot be provided under the ISP and Retirement Plan due to IRS limitations.

**Who is eligible to participate to the Retirement Program?**

FVPs and GVPs (along with AEFA support staff) who currently are participating in the American Express Retirement Program will continue to be eligible to participate. Effective March 22, 2000, all AEFA *employee* leaders **plus Platform 1** advisors also will be eligible to participate in the program after one completed year of company service as an eligible employee.

**Will my Retirement Plan and ISP contributions be based on level income only, or will commissions be added? How will bonuses affect this?**

ISP contributions on behalf of a Platform 1 advisor, including salary deferral contributions, company match, company stock, and profit-sharing contributions will be based on level income. The Platform 1 advisors' and leaders' Retirement Plan benefit will be based on level income, plus GDC Earnings, Performance Bonus and/or AIA, and Growth Bonus.

**In summary, what will be new and what will stay the same in the Retirement Program for American Express employees?**

On the next two pages, you'll find a chart with a summary of the Retirement Program for American Express employees. Complete details about the Retirement Program will be provided in an enrollment kit that will be sent to you in January or February 2000.

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## Retirement Program for American Express employees

| Features  | Employees   | FVPs & GVPs            | Platform 1&2<br>Employee Leaders<br>& Platform 1<br>Advisors |
|---|---|------------------------|--|
| American Express<br>Incentive Savings Plan<br>(ISP) | Participation eligibility in the plan begins after the eligible employee completes one year of company service  | Same as AEFA employees | New  |
|   | Employee paid<br><i>401(k) pre-tax savings and or after-tax basis</i><br>1% to 15% of base salary<br>the current 1999 IRS deferral limit of \$10,000<br>Immediately 100% vested   | Same as AEFA employees | New  |
|   | Employer contribution<br><i>401(k) company match</i><br>0% to 3% of base salary<br>(dollar-for-dollar match of employee before-tax contributions up to 3% of base salary) Immediately 100% vested   | Same as AEFA employees | New  |
|   | Employer contribution<br><i>Company stock</i><br>1% of base salary invested in the American Express Stock Fund Immediately 100% vested  | Same as AEFA employees | New  |
|   | Employer contribution<br><i>Profit sharing</i><br>0% to 7% of base salary depending on total Blue Box performance<br>Employee becomes 100% vested in the value of the company profit-sharing contribution, and earnings, after 5 years of company service | Same as AEFA employees | New  |

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# Retirement Program for American Express employees (continued)

| Features                                      | Employees   | FVPs & GVPs            | Platform 1&2<br>Employee Leaders<br>& Platform 1<br>Advisors |
|---|---|------------------------|--|
| American Express Retirement Plan              | Participation eligibility begins after the eligible employee completes one year of company service  | Same as AEFA employees | New  |
|   | Company allocations 2.5% to 10% (determined by age plus years of service) of employee's pensionable earnings, including base salary (level income), plus overtime, shift differential and certain commissions and bonuses (annual incentive awards and growth bonus payments) In addition, the employee's account earns a fixed rate of interest, which varies from year to year Employee becomes 100% vested in the plan after completing 5 years of company service | Same as AEFA employees | New  |
| American Express Supplemental Retirement Plan | Employer allocations to offset benefits excluded from the Retirement Plan due to IRS limits and employee salary/bonus deferrals   | Same as AEFA employees | New  |
|   | Employer contributions to offset benefits excluded from the Incentive Savings Plan (ISP) due to IRS limits and employee salary deferrals  | Same as AEFA employees | New  |

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# Benefits

## Platform 2

### Health and welfare benefit options

**What benefit options will be available to Platform 2 independent financial advisors and branch managers?**

The company intends to make nonsubsidized (i.e., without a company contribution) medical coverage available under certain Health Maintenance Organizations (HMOs) to Platform 2 independent financial advisors/branch managers beginning April 1, 2000. Those who elect HMO coverage in this Platform will pay the full cost of the coverage (deductions will be taken automatically twice a month from your commission statements). You will receive more information about the HMOs that will be offered and the benefits enrollment process in September. (If you later drop your HMO, you will not be able to elect coverage under an HMO again until the next annual enrollment process.)

The Traditional Indemnity option will not be offered to Platform 2 independent financial advisors and branch managers. Because of this, you may want to think about changing to HMO coverage this fall during the annual benefits enrollment process (Sept. 27 to Oct. 18) if you currently have coverage under the Traditional Indemnity option.

**What other health and welfare benefits options are available?**

Other options include:

- Continuation of medical coverage and \$10,000 in life insurance coverage (if currently enrolled) is available to advisors who are at least age 55 and have 10 full years of company service as of March 21, 2000. The company contributes to the cost of the medical coverage based on the number of full years of service each advisor has at the time he or she elects continuation of these benefits. The life insurance coverage is fully paid by the company.
- You may want to research the possibility of obtaining coverage through a spouse/domestic partner. Because you are "losing coverage" through AEFA, a spouse/domestic partner's employer which sponsors a "cafeteria" benefit plan could allow you into that plan mid-year. Each employer will have its own criteria and timeline for this option.

**AX001636**

**AD 76**

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- You may elect COBRA continuation of medical, dental and vision care coverage at 100% of the plan cost plus a 2% administration fee for up to 18 months as you explore other options for medical insurance coverage. When the COBRA continuation coverage ends, some options allow for converting the coverage to an individual policy. (NOTE: COBRA continuation is not available for domestic partner coverage.) Minnesota residents also are eligible for life insurance continuation for up to 18 months.
- You can research options available through individual policies. Evidence of insurability normally is required during the underwriting process. If you qualify, these policies normally have reasonable premiums. A list of carriers, by state, that offer individual medical policies is posted on Advisor Connect.

**Can I earn commissions if I sell myself an approved individual major medical insurance policy?**

Yes, if you qualify for the coverage and are appointed with the insurer. For a list of approved insurance companies, contact (888) 671-3237, option 8, option 1. The document number is 98982 for individual major medical and includes the most current list of products available in each state.

**Can I get other medical insurance now and discontinue my coverage with AEFA before the end of the year?**

Yes. Health care coverage can be discontinued at the end of any month by submitting your request in writing to HRICS, FB11/115.

**If advisors transition to Platform 2 in the future, will they also be able to continue HMO coverage at cost?**

The company expects to continue being able to offer nonsubsidized (i.e., without a company contribution) medical coverage under some of the current HMO plans to Platform 2 independent financial advisors/branch managers. The company reserves the right to make changes in, or discontinue benefits plans and programs as it deems appropriate and these changes may be implemented even if they have not been communicated in this document or otherwise.

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**AD 77**

What options for medical coverage are available to me if I am considered uninsurable and don't have an HMO option available?

If you (or a dependent) are uninsurable, there are three options:

- Every state has a type of medical risk policy available for people who are uninsurable. (See Advisor Connect for a list of states with risk pool coverage for individuals who are uninsurable.) Although coverage is guaranteed, the cost may be quite expensive
- You may be able to obtain coverage through another plan by providing a Certificate of Creditable Coverage. When you elect Platform 2 and your medical coverage through AEFA is terminated, you will automatically receive a Certificate of Creditable Coverage. Generally, time covered under the AEFA medical plan must be credited toward any pre-existing condition exclusion period in a new plan. In addition, insurance companies may not require medical underwriting for eligibility
- You may opt to go into Platform 1. Minimum performance requirements will be waived for one year.

What happens if I elect Platform 2 and don't meet the age and service rules (i.e., age 55 and 10 years of company service) by March 21, 2000, but I will turn 55 or complete 10 years of service later in the year? Can I elect to continue company medical and life insurance benefits at that time?

No. The age and service criteria must be met by March 21, 2000

If I am already 55 and have 10 years of company service by March 21, 2000, can I move to Platform 2 and then later elect to continue company medical and life insurance benefits?

No. Again in this situation, company medical and life insurance benefits must be elected by March 21, 2000

**AX001638**

**AD 78**

I'm close to age 55 with nearly 10 years of service, can I move to Platform 2, elect COBRA continuation coverage, and then elect to continue company medical and life insurance benefits when I meet the qualifications?

What additional information do I need to know about my health and welfare benefit plans?

No. To be eligible, you must have at least 10 full years of service and be at least 55 years of age at the time your relationship with the company as a benefits-eligible participant ends (March 31, 2000). An alternative would be to apply for Platform 1 and remain in that Platform as an employee until the 55/10 requirement is met. The age and service requirements may not be met while on COBRA or in Platform 2.

Under the Health Insurance Portability and Accountability Act of 1996, the company is required to notify you of the following changes:

- For the American Express Financial Corporation Health Care Coverage Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.
- For the American Express Financial Corporation Dental Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.
- For the American Express Financial Corporation Vision Care Plan, American Express Financial Corporation intends to revise the eligibility provisions of the plan. Effective April 1, 2000, advisors that the company considers to be Platform 2 independent financial advisors, Platform 3 registered representatives or Platform 3 independent representatives will not be eligible to participate in the plan.

**AX001639**

**AD 79**

# Benefits

## Platform 2

### Retirement Program implications

**What are the changes to the Retirement Program under Platform 2?** Platform 2 independent financial advisors and branch managers will not be eligible for the company's Retirement Program, effective with national implementation.

**What happens to the balance in the ISP/Retirement Plan for FVPs and GVPs who move to Platform 2?** Current FVPs/GVPs who do not move into an employee or employee leadership role in the Platform environment are no longer eligible to participate in the ISP or Retirement Plan after March 21, 2000. Therefore, they will be eligible to elect a distribution of the vested portion of their account. The FVP/GVP's contribution to the ISP, the portion the employer matched and the company stock contributions are 100% vested immediately, so the FVPs/GVPs will be entitled to the full value of these accounts should they decide to join Platform 2.

The other two components: The Company profit sharing contributions and the Retirement Plan – have a five-year vesting schedule. In other words, FVPs/GVPs must be employed by the company for five years to receive a distribution from those components.

Under the Supplemental Retirement Plan (SRP), the first distribution will be made in April 2001 based on your distribution election.

Contact the American Express Participant Services Line at (800) 477-1800 for information and distribution options.

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**AD 80**

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# Benefits

## Platform 2

### Benefits for support staff

**In Platform 2, how can I estimate my costs in providing benefits to my support staff?**

As an independent contractor you already are reimbursing the company for benefits costs associated with any support staff leased to you by AEFA. Depending on where you live and the specific benefits, this total cost currently may range anywhere from 9%-38% of your leased staff base pay and typically covers benefits such as profit-sharing, 401(k) contributions, employer FICA, medical insurance and unemployment. As a Platform 2 independent financial advisor, you will have the opportunity to review the benefits and costs you currently pay (currently listed under "Miscellaneous Deductions" on your compensation statement) and determine any type of benefits package you may want to offer your employees. (NOTE: Some staff benefits costs such as tuition assistance, domestic partner benefits, salary continuation, workers' compensation and licensing currently are charged to the corporate office and therefore do not appear on your statement.)

**What are some alternative ideas for benefits for my support staff?**

If you choose to employ support staff in Platform 2, you may want to explore the same health and welfare benefits options that were suggested for independent financial advisors, such as coverage through a spouse or domestic partner's plan. Your support staff also may be eligible for continuation of medical and life insurance if they meet age and length of service requirements by March 17, 2000. In addition to those options, you also may choose to have your staff associate with Administaff, Kelly Staff Leasing or a similar firm to receive coverage under their benefits plans and then lease your staff from that company. Information on Kelly Staff Leasing and Administaff benefit plan coverage are posted on Advisor Connect.

**I currently lease support staff through Kelly Staff Leasing. Is there anything I need to do if I move into Platform 2?**

Yes. If you are currently leasing support staff through Kelly Staff Leasing, you will need to establish a separate contract with Kelly on or before March 3, 2000. Contact Kelly at (800) 877-8233 or (800) 846-0125 no later than March 3, 2000.

NOTE: The contract with AEFA expires on March 3. If you fail to sign a separate contract, the employee will not be able to work in AEFA-leased space.

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**Is my support staff eligible for HMO coverage if they pay the cost themselves?**

No. Employees of Platform 2 independent financial advisors are not eligible to elect coverage under the HMOs made available by the company.

**What options for medical coverage are available to my support staff if they (or one of their dependents) are considered uninsurable?**

Support staff members (or a dependent of your support staff) who are uninsurable have two options:

- They may want to contact their state to find out if the state offers a medical risk policy for individuals who are uninsurable. A listing, by state, can be found on Advisor Connect. Although coverage is guaranteed, the cost may be quite expensive.
- They may be able to obtain coverage through another plan by providing a Certificate of Creditable Coverage. When their employment with the company is terminated, and in turn their medical coverage is terminated, they will automatically receive a Certificate of Creditable Coverage. Generally, time covered under the AEFA medical plan must be credited toward any pre-existing condition exclusion period in a new plan. In addition, insurance companies may not require medical underwriting for eligibility.

**If my support staff members are uninsurable, will they be guaranteed positions in Platform 1?**

No. Uninsurability will not be a factor in hiring decisions for Platform 1 support staff. If you currently are leasing support staff from AEFA, they already may be enrolled in AEFA benefits and if they join Platform 1, their benefits will merely continue. However, in Platform 2 your employees are not eligible for AEFA employee benefits.

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**Currently, I am leasing AEFA support staff who will have less than five years of service as of March 17, 2000. Will the company continue to charge me for the profit sharing and Retirement Plan contributions when my employee won't be fully vested in those accounts?**

The company must make ongoing contributions on behalf of the employees even though they may leave the company before completing their five years of service. The company has decided not to pass these costs on to the advisors who are leasing staff beginning Oct. 1, 1999. The advisor charges will either be stopped or credited to their account. Over the next few months, you will receive more information about the refund timeline and process.

**What benefits for my paraplanner will change if I become a Platform 2 independent financial advisor?**

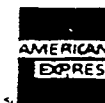
Your staff will no longer be employees of the company and generally will no longer be eligible to participate in either the company's health and welfare or Retirement Program benefit plans.

**Where can I get answers to more specific benefits-related questions?**

Consult your *Benefits Handbook* in print or on line.

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**Important Notice***Important  
Notice Regarding  
Benefits and the  
Platforms Rollout*

This notice contains important information for certain individuals whose status may change as a result of AEFA's Platforms Rollout, scheduled to occur on March 22, 2000. Please read it carefully before making your enrollment elections for coverage effective January 1, 2000.

The coverage elections you make during this annual enrollment period will be in effect until the time of the Platforms Rollout. The coverage options you may have following the Platforms Rollout, and your ability to convert certain coverages to individual policies, will depend on both the coverage elections you make effective January 1, 2000 and which Platform you join.

Enclosed are your personalized enrollment materials for coverage effective January 1, 2000. Since you are affected by AEFA's new Platforms design, the coverage elections you make during this annual enrollment period may not remain in effect for all of 2000, depending upon which Platform you join.

Please take the time to carefully read this notice before you review your personalized enrollment materials. It is designed to:

- **List specific dates when coverages will end**  
As previously communicated, any Medical, Dental and Vision Care Plan coverage you elect effective January 1, 2000 will end **March 31, 2000**. Any other health and welfare coverage you elect effective January 1, 2000 will end **March 21, 2000**.<sup>\*</sup> These dates assume the Platforms Rollout occurs on March 22, 2000.

- **Explain how the Medical Plan election you make effective January 1, 2000 may have an impact on the Medical Plan election you can make, if any, effective April 1, 2000.** The Medical Plan election you make effective January 1, 2000 may determine your future health care options. In addition, other coverage elections you make will affect your ability to convert certain other types of welfare coverage to an individual policy.

- **Provide advance notification about the special enrollment period that will take place during 2000.** A special enrollment period will take place in mid-February 2000 for coverage that will be effective after the Platforms Rollout. Depending on your status after the rollout and the elections you make effective January 1, 2000, you may need to participate in this special enrollment.

<sup>\*</sup> If you choose to become a Platform 2 independent financial advisor, branch manager or OSJ branch manager and you elected Health Maintenance Organization (HMO) coverage effective January 1, 2000, the Company will continue to make this HMO available to you effective April 1, 2000, however, you will pay the entire premium beginning April 1, 2000, without a Company contribution (see page 3).

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## How to Review This Notice

Since you may not know your Platform status until later this year, it's important that you review this entire notice. It will help you understand the impact of your elections effective January 1, 2000 on your future coverage.

**Page 2** Information specific to Platform 1 financial advisors, all employee leaders (GVPs, FVPs, AVPs, and managers), and all other employee staff in the market group (except support staff)

**Pages 3-4** Information specific to Platform 2 independent financial advisors, branch managers, and OSJ branch managers

**Note:** A separate notice is being provided to AEFA support staff.

## Additional Information

In mid-February 2000, specific information will be distributed about benefit coverage that will be available after the Platforms Rollout.

If you will need to participate in the special enrollment period, you will receive details about the options available to you and the associated contribution amounts.

If you have questions about the information in this notice or the enrollment process, please contact HRICS at (800) 483-3944 or (612) 671-3051.

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## Information for Platform 1

Financial Advisors, All Employee Leaders (GVPs, FVPs, AVPs, Managers) and All Other Employee Staff in the Market Group (except support staff)

*The elections you make during this annual enrollment period for coverage that will be effective January 1, 2000 will not have any impact on the elections you can make during the special mid-February enrollment period. However, please read this entire notice so you are aware of the following key items:*

- **When benefit coverage ends.** The Medical, Dental, and Vision Care Plan coverage you elect effective January 1, 2000 will end **March 31, 2000**. All other health and welfare coverage you elect effective January 1, 2000 will end **March 21, 2000**. These dates assume the Platforms Rollout occurs March 22, 2000.
  - **New benefits coverage offered.** If you are hired into Platform 1, you will generally be offered the same coverage the Company offers to other employees, with the usual employee contributions. You will be given the opportunity to pay for certain coverage on a before-tax basis and will be offered a greater variety of options. A brief description of the benefits program was provided in the Platform Resource Kit that was distributed in August. More specific information will be provided during the mid-February enrollment period, described next.
  - **A special enrollment period.** In mid-February 2000, you will automatically receive enrollment materials for health and welfare coverage that will be effective after the Platforms Rollout. *You must make new elections at that time. If you don't make new elections, any Medical, Dental, and Vision Care Plan coverage you elected effective January 1, 2000 will end March 31, 2000, and any other health and welfare coverage you elected effective January 1, 2000 will end March 21, 2000. The only welfare coverage you will automatically receive after Platforms Rollout is Life Insurance coverage equal to one times your annual salary.*
  - **HMO coverage.** Generally, the HMOs offered to you effective January 1, 2000 will be offered to you again effective April 1, 2000 unless your home address changes and you no longer reside in a specific HMO's contracted service area. Keep in mind, every year the Company evaluates all of its HMO offerings, and as a result some HMOs may be discontinued in the future and new HMOs may be added. Note: Advisors who transfer from Platform 1 to Platform 2 after the Platforms Rollout will not be offered an Aetna HMO.
  - **Treatment of Medical and Dental Plan deductibles and other limits.** If you elect to participate in either the Traditional Medical Option or the new Preferred Provider Organization (PPO) Medical Option effective January 1, 2000 and elect to continue in this option effective April 1, 2000, any amounts that were applied toward your annual deductible amount, out-of-pocket maximum amount, or other annual and lifetime plan limits will be carried over. The same is true for Dental Plan annual deductible amounts and other annual plan limits.
- For example, you elect the Traditional Medical Option effective January 1, 2000 and again effective April 1, 2000. In February, you have a total of \$300 in charges that count toward your individual annual deductible amount. Even though the election you made for coverage effective January 1, 2000 actually ends on March 31, 2000, the \$300 that counted toward your annual deductible in February would continue to count toward the annual deductible effective April 1, 2000. Reminder: As previously communicated, Traditional and PPO Medical Option annual deductible and out-of-pocket maximum amounts will be calculated differently effective April 1, 2000. Beginning April 1, 2000, the annual deductible is calculated as a percentage of salary. Details were provided in the Platform Resource Kit that was distributed in August.

## Information for Platform 2

Independent Financial Advisors, Branch Managers, and OSJ Branch Managers

*The elections you make during this annual enrollment period for coverage that will be effective January 1, 2000 will have a significant impact on your coverage following the Platforms Rollout, including the opportunity you have to convert certain coverages to individual policies. Please read this entire section carefully so you are aware of the following key items:*

- **When coverage ends.** Coverage under the Traditional Medical Option, PPO Medical Option, Dental Plan, and Vision Care Plan will end **March 31, 2000**. All other benefit coverage you elect effective January 1, 2000 will end **March 21, 2000**. These dates assume the Platforms Rollout occurs on March 22, 2000. Special medical and life insurance continuation coverage based on age and service is available if you meet specific requirements (see page 4).

- **Medical coverage made available effective April 1, 2000.** The Company intends to make nonsubsidized medical coverage available under certain HMOs, effective April 1, 2000. You will pay the entire premium beginning April 1, 2000, without a Company contribution. Deductions will be taken automatically twice a month from commission statements. The Benefits Statement you may receive during the special mid-February enrollment period will list the HMOs offered to you effective April 1, 2000, if any.

A list of all the HMOs currently offered and the corresponding premium amounts is posted on AdvisorConnect. You can see immediately the amount you will pay for your coverage once the Company contribution ends. To find the HMOs available to you, match up the three-letter HMO codes listed on your enclosed Benefits Statement with the codes on AdvisorConnect. *Note: HMO contribution amounts shown on your Benefits Statement effective January 1, 2000 reflect the portion you pay after the Company has made a substantial contribution toward this coverage. Premium amounts listed on AdvisorConnect reflect the full cost of coverage, which you must pay for coverage effective April 1, 2000.*

If you plan to elect an HMO effective April 1, 2000, it may make sense to do so effective January 1, 2000. Since the Traditional and PPO Medical Options will not be offered to Platform 2 independent financial advisors, branch managers, or OSJ branch managers effective April 1, 2000, it may not be to your benefit to accumulate charges against an annual deductible amount for a three-month period (January – March). HMOs do not require annual deductibles or out-of-pocket maximums for in-network care.

### Impact of your medical election effective January 1, 2000 on your April 1, 2000 options

The chart below shows the impact of your medical election effective January 1, 2000 on your medical coverage if any effective April 1, 2000. It's critical that you review this chart before you make your medical election effective January 1, 2000.

| If your medical election effective Jan. 1, 2000 is...                 | Here's what will happen effective April 1, 2000...  |
|---|---|
| An HMO  | Your HMO election will automatically continue for the remainder of 2000 unless you choose to drop coverage. You will not participate in the special mid-February 2000 enrollment period. Effective April 1, 2000, you may drop your HMO at any time during the year for any reason, but you won't be able to make a new election until the next annual enrollment period (for example the annual enrollment for 2001). Note: If you are participating in an Aetna HMO effective January 1, 2000, you may continue to participate in this HMO effective April 1, 2000. However, in the future, Aetna HMOs will not be offered to Platform 2 independent financial advisors, branch managers, or OSJ branch managers who are not enrolled on January 1, 2000. |
| Traditional or PPO Medical Option when an HMO is available to you     | You may elect an HMO Option (except an Aetna HMO) during the special mid-February 2000 enrollment period. The Traditional and PPO Medical Options under the American Express Medical Plan will not be offered to Platform 2 independent financial advisors, branch managers, or OSJ branch managers at that time. However, you may elect to continue your Traditional or PPO Medical Option coverage through COBRA, effective April 1, 2000 (see page 4).   |
| Traditional or PPO Medical Option when an HMO is not available to you | You may elect to continue your Traditional or PPO Medical Option coverage through COBRA, effective April 1, 2000. COBRA materials will automatically be sent to you.  |
| "No Coverage"   | You will not be allowed to make a new medical election effective April 1, 2000, nor will you be offered COBRA continuation coverage.  |

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**Information for Platform 2 is continued on page 4**

## Information for Platform 2 *continued*

Independent Financial Advisors, Branch Managers, and OSJ Branch Managers

### ■ COBRA continuation of health care coverage.

If you elect coverage under the Traditional Medical Option, PPO Medical Option, Dental Plan, and/or Vision Care Plan effective January 1, 2000, you will be offered COBRA continuation coverage effective April 1, 2000. COBRA continuation coverage can extend for up to 18 months (or longer under certain circumstances). The COBRA premium is equal to the full cost of coverage plus a 2% administrative fee. When COBRA continuation coverage ends, you may be allowed to convert your medical coverage to an individual policy, as most plans offer conversion policies. There is no conversion of Dental or Vision Care Plan coverage available. (Note: COBRA continuation is not available for domestic partner coverage.)

### ■ Converting certain other benefit coverage options. You may have an opportunity to convert certain benefit coverage options once your coverage would otherwise end, as shown below:

**Life Insurance** — If you elect Life Insurance coverage for yourself effective January 1, 2000, you will have an opportunity to convert this coverage to an individual policy offered by Metropolitan Life, effective March 22, 2000. Conversion is also available for Life Insurance you purchase for your spouse. To convert coverage to an individual policy, it is your responsibility to contact HRICS and request the appropriate forms. The conversion must be processed within 31 days of the date coverage would otherwise end.

Any Accidental Death & Dismemberment (AD&D) coverage for yourself or your spouse and Child Life Insurance coverage cannot be converted to an individual policy and will end March 21, 2000. *Correction: It was previously indicated that Minnesota residents with employee status could continue their life insurance coverage for up to 18 months. Since life insurance eligibility is being terminated, this continuation provision is not available.*

If you apply to increase your Life Insurance coverage amount for yourself or your spouse effective January 1, 2000 and evidence of insurability has not been approved by Metropolitan Life on or before March 21, 2000, your prior coverage amount is the amount of coverage you will be allowed to convert.

**Legal Assistance Plan** — If you elect Signature Legal Services effective January 1, 2000, you may elect to convert your coverage to an individual policy, effective March 22, 2000. Coverage through Hyatt Legal Services cannot be converted.

**Note: Long Term Disability and Short Term Disability Plan coverage cannot be converted.**

### ■ Special continuation of medical and life insurance coverage based on age and service.

Continuation of medical coverage is available if you are at least age 55 with 10 full years of Company service\* on March 21, 2000, and you elect continuation coverage no later than March 21, 2000. Company contributions toward continued medical coverage are based on your length of Company service. Life insurance coverage of \$10,000 continues automatically. The Company currently pays the entire cost. Note: There will be a three-year transition period for advisors who do not qualify for continuation of medical benefits on March 21, 2000, but will meet the requirements by March 31, 2003. Those advisors can elect Platform 1 during National Rollout, and then transfer to Platform 2 any time after the first cutoff date following the end of the month in which the requirement is met.

**You must apply for continuation coverage.** If you meet the criteria described above and want to apply for continuation coverage that is based on age and service, you must write a letter to HRICS stating your desire to have medical and life insurance coverage continue effective March 22, 2000.

\* Determining "Company service" for continuation coverage is different before and after the Platforms Rollout. Before the rollout, all service is counted. After the rollout, years of service will count only if they are served in an "employee" status. For example, you have eight years of service before the rollout. You elect Platform 2 and remain there for two additional years; you then move to Platform 1. However, the two years you spent in Platform 2 do not count toward meeting the service requirement for continuation coverage, since they were post National Rollout and not served in an "employee" status. You will, however, be given credit for the eight years of service you had prior to the National Platforms Rollout. After National Rollout, Continuation Coverage is only available for Platform 1 Advisors.

■ **If you cannot obtain medical coverage elsewhere.** If you or one of your family members are denied medical coverage elsewhere ("uninsurable") and don't have an HMO available to you, under certain circumstances you may be allowed to elect Platform 1 and the minimum hiring requirements will be waived until January 1, 2001. (Certain restrictions may apply based on local office practices.) In order to do this, you must provide proof that you were denied coverage elsewhere. You will need to provide a copy of the denial letter from the insurance company. Keep in mind, this process could take up to 12 weeks, so please begin now (if applicable). More information will be distributed at a later date.

*The information in this notice does not create any contractual rights in any employee or financial advisor. The Company reserves the right to make changes in, or discontinue, Company policies, compensation plans, benefits and programs as it deems appropriate, and these changes may be implemented even if they have not been communicated in this notice or otherwise. This notice describes only certain highlights of some of the Company's benefit programs. It does not supersede the actual provisions of the applicable plan documents, which in all cases are the final authority. The applicable Plan Administrator has the sole authority and discretion in determining eligibility for and in interpretation and administration of the programs.*

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## Field Bulletin

### 2000 Advisor Star Quest program and First-Year Advisor Bonus program for all except NY

|               |   |
|---------------|---|
| Issue Date:   | 10/08/99  |
| Last Updated: | 10/08/99  |
| To:           | All members of the field organization except New York |
| Number:       | 3969  |
| Replaces:     |   |
| Category:     | Field Administration                                  |
| Subcategory:  | Compensation  |

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**Summary:** This bulletin announces the discontinuation of the Star Quest and First-Year Advisor Bonus program when national rollout of the Platforms occurs on March 22, 2000.

As communicated in the compensation section of the Platform Resource Kit and Field Administration Bulletin 3992, dated 9/22/99, the Star Quest program is being discontinued when national rollout of the Platforms occurs on March 22, 2000.

Star Quest is an incentive program that is TWP-based and includes components that pay advisors on a deferred basis. Because of the move to the Platforms and a gross dealer concession (GDC)-based compensation structure that contains more time-of-sale (TOS) compensation, the Star Quest program is being discontinued.

The 2000 Star Quest program will be in place from Jan. 1 through March 21, 2000.

#### 2000 Advisor Star Quest overview

For 2000, Star Quest levels and rates are similar to those in 1999. However, because the program is being discontinued during the year, TWP minimums for each star level will be prorated. Refer to Chart 1 for details.

#### About the Star Quest program

Star Quest measures how much business an advisor generates during the calendar year and how much of the

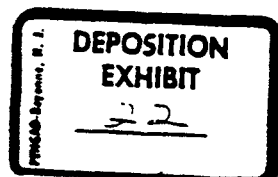
advisor's business remains after two years. It is made up of seven total weighted production (TWP) hurdles called star levels. In 2000, levels 2 - 7 have a corresponding award rate; the higher the level, the higher the rate.

Once an advisor reaches his or her second year, the advisor becomes eligible to participate in the Star Quest program. Second-year advisors, as well as transitioning advisors, qualify for Star Quest on a prorated basis. For advisors in their third year or beyond, star levels will be determined by TWP from Jan 1 to March 21, 2000 (the designated transition date).

For all individuals who qualify for Star Quest, their bonus payout is determined as follows:

- A star level is achieved based on Jan. 1 - March 21, 2000, TWP totals, using one of two prorated schedules (Chart 1 or Chart 2).
- TWP that is below AEFA's persistency standard (if any) is subtracted from the total TWP, giving the advisor a net eligible TWP amount. (For more information about persistency, refer to the "Persistency adjustments" section below.)
- The net eligible TWP amount is multiplied by the rate (for the star level achieved) to determine the award payout. (Note: Persistency adjustments will not drop you a star level; however, the adjustments will lower the total TWP amount multiplied by the rate for the star level achieved.)

Formerly, Star Quest was made up of two programs: Special Incentive Award (SIA) and Professional Performers' Compensation (PPC). One of the steps toward implementing the Platform design was the announcement in Field Administration Bulletin 3914, dated 5/14/99, that effective for the 1999 Star Quest program, 100% of the Star Quest award would be allocated to PPC. Thus, the SIA program was



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eliminated. As a result, the 2000 Star Quest award is made up of 100% Professional Performers Compensation (PPC).

PPC is a cash-payout program. The payout starts on the second cutoff in May on (May 16, 2000) and will continue on the first cutoff of each month after that through April 2001. If you terminate your sales agreement with AEFA for reasons other than retirement, total and permanent disability or death, your PPC will be discontinued.

For more details about Star Quest and the PPC award programs, refer to your Advisor Compensation Manual, Section 3. For more information on the redirection of funds to PPC from SIA, refer to Field Administration Bulletin 3914, dated 5/14/99.

#### Transitions

As noted above, individuals will qualify for a Star Quest bonus on a prorated basis. For 2000, there are two prorated schedules. One for individuals in their third-year and beyond (Chart 1) and another for individuals in any of the following situations during the first six service periods of 2000 (Chart 2):

- Advisors in their second service year
- District managers who become advisors
- Field vice presidents who become advisors
- Persons re-appointed with AEFA as second-year advisors and beyond
- Persons with an inactive status during a portion of the year
- Advisors who transition to become district managers

**Note that only TWP generated while the individual is in the role of advisor is used to determine the Star Quest award.** See the attached prorated schedules for a description of the qualification rules governing advisor transitions to other positions or transitions from other positions to advisor.

#### Persistency adjustments

As stated above, any persistency adjustments are subtracted from an advisor's TWP to determine the net eligible TWP. However, persistency adjustments will not drop an advisor to a lower Star Quest level or rate; they will simply lower the amount of TWP by which the rate is multiplied. Advisors will have a persistency adjustment if their persistency ratios for particular products fall below the persistency standard.

The persistency ratio is calculated by dividing the 1999 weighted production amount remaining on the books for a given product line at the end of the 2000 measurement period (May 2) by the production that was on the books at the end of the 1999 measurement period (Feb. 29). The accounts measured for persistency will be detailed on the back pages of Quarterly Progress Reports.

For example, if an advisor had 2.1 million in production from 1999 Life Protection Plus (LP+) insurance sales remaining at the end of the 2000 (as measured on May 2, 2000), and the 1999 amount originally measured (as of Feb. 29, 2000) was 2.5 million, the persistency ratio for LP+ would be  $2.1 / 2.5 = 84\%$ .

This persistency ratio is then compared to the persistency standard for LP+, which is 87% (see chart below). Because the LP+ persistency ratio in this example is lower than the LP+ persistency standard, all weighted production from 2000 LP+ sales will be subtracted from the 2000 TWP to determine the net eligible TWP.

Here are the persistency standards for each product line measured for persistency:

| Product line                              | Persistency standard |
|---|----------------------|
| Universal and variable universal life LP+ | 87%                  |
| Term and whole life                       | 87                   |

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|  |    |
|--|----|
| Installment annuities                      |    |
| • Nonqualified                             | 79 |
| • TSA (403b) and govt -deferred comp (457) | 84 |
| Disability income insurance                | 85 |
| Long-term care insurance                   | 85 |

#### Benefits and the 2000 Star Quest program

Qualification for company health and welfare benefits contributions is not a part of the 2000 Star Quest program. Following Platform rollout, Platform 1 advisors will receive benefits as part of the Platform 1 design. For Platform 2 advisors, funding previously allocated for Star Quest benefit awards has been incorporated into the 85% payout rate. Because benefits are no longer included in Star Quest star level 1 - company contributions to benefits - no longer exists. Instead, effective Jan 1, 2000, Star Quest award levels begin at star level 2.

Company contributions toward medical and dental benefits are being discontinued on March 31. Many advisors asked why the average equivalent cost of benefits listed in past Star Quest bulletins is not being paid to advisors. The reasons are as follows:

First, while the company sets aside, as it accrues, the funding for Professional Performers Compensation (PPC) in the previous year, the benefits contribution is treated as a current expense. If the benefit equivalent worth were paid to advisors in 2000, the Platform 2 payout would have been lowered to 83% for the first year.

In addition, advisors received a company contribution for benefits beginning in their first year with AEFA and continuing at a minimum through the end of their second year without any Star Quest qualification requirement.

#### TWP adjustments

AEFA reserves the right to adjust Star Quest awards on individual sales that exit prematurely. The company also reserves the right to adjust TWP and to take appropriate action if the system is manipulated.

If an account becomes inactive after May 2, for any reason including a cancellation, withdrawal, no-take, decline, or 10- or 30-day free look, 2000 Star Quest will be recalculated and adjustments will be made to PPC. Should such an event occur, it could cause changes in award and possibly result in a charge-back of PPC payments if the award distribution has begun.

#### First-Year Advisor Bonus program for 2000 appointments

First-year advisors are not eligible for Star Quest. However, the First-Year Advisor Bonus rewards advisors who do exceedingly well in their first year and generate weighted production at star level 2 or higher. Along with Star Quest, this program is being eliminated at national rollout of the Platforms. The calculation and payment of the final bonus will depend on the first-year advisor's appointment date.

- First-year advisors appointed on or before Dec 29, 1999, will have the first-year bonus calculated into the best basis calculation. Refer to the first-year program discontinuation and transition bulletin, Field Administration Bulletin 3996, dated 9/24/99, for details. The best basis will be paid at the end of each individual advisor's first year.
- First-year advisors appointed after Dec 29, 1999, will receive a prorated first-year bonus based on TWP as of March 21, 2000 (refer to the attached prorated schedule - Chart 3). It will be paid to active first-year advisors on May 2, 2000.

For additional information about the First-Year Bonus, refer to your Advisor Compensation Manual, Section 2.

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**Year-end Star Quest reports and investigations**

1999 year-end Star Quest reports (which include all 1999 business through the Jan. 11 cutoff) will be mailed to area offices the week of Jan. 13. All requests for Star Quest investigations must be received in writing by the Field Administration Compensation team by Friday, Feb. 18. This deadline is set to provide Field Administration time to investigate all questions about missing production and persistency and to make corrections before the final reports are issued. No extension to this deadline will be granted.

More information about Star Quest reports for the period Jan. 1 through Mar. 22, 2000 and the investigation process will be provided later.

**Questions**

If you have questions, call the Field Administration Compensation Team at (800) 943-9000, Option 2, Option 2.

**Attachments**

- 2000 Prorated Star Quest qualification charts (Chart 1 and 2). SQ Chart 2 for National2 ;
- 2000 Prorated first-year bonus qualification chart (Chart 3) First-Year Bonus Prorated Schedule-ec

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**Chart 1**  
**Prorated Star Quest levels for advisors who were independent contractors before Jan. 1, 2000**

The prorated chart below is used to determine star level qualification for advisors who have been of independent contractor (IC) status for the time period Jan. 1, 2000 - March 21, 2000. YTD TWP generated while an IC advisor is used to determine an advisor's star level and the corresponding bonus rate. The bonus rate is then applied to the YTD TWP to calculate the advisor Star Quest bonus.

| Transition Date | Number of svcs pds as advisor | TWP in 1,000s                                    |  |  |  |  |  |
|-----------------|-------------------------------|--|--|--|--|--|--|
|                 |                               | To qualify for Star Level 2<br>\$3,000/1,000 TWP | To qualify for Star Level 3<br>\$4,000/1,000 TWP | To qualify for Star Level 4<br>\$5,250/1,000 TWP | To qualify for Star Level 5<br>\$6,750/1,000 TWP<br>\$6,750/1,000 TWP (GT) | To qualify for Star Level 6<br>\$8,000/1,000 TWP<br>\$8,000/1,000 TWP (GT) | To qualify for Star Level 7<br>\$10,250/1,000 TWP<br>\$10,250/1,000 TWP (GT) |
| Mar. 22         | 6                             | 669  | 877  | 1,223  | 1,546  | 2,054  | 2,608  |

**Chart 2**  
**Prorated Star Quest levels for advisors who were *not* independent contractors as of Jan. 1, 2000**

The prorated chart below is used to determine star level qualification for advisors who became independent contractors after Jan. 1, 2000, but before March 21, 2000. TWP generated while an IC advisor is used to determine an advisor's star level and the corresponding bonus rate based on the chart below. The bonus rate is then applied to TWP generated while an IC advisor to calculate the advisor Star Quest bonus.

| Period in 2000 which advisor became an independent contractor | Number of svcs pds as IC advisor | TWP in 1,000s                                    |  |  |  |  |  |
|---|----------------------------------|--|--|--|--|--|--|
|   |                                  | To qualify for Star Level 2<br>\$3,000/1,000 TWP | To qualify for Star Level 3<br>\$4,000/1,000 TWP | To qualify for Star Level 4<br>\$5,250/1,000 TWP | To qualify for Star Level 5<br>\$6,750/1,000 TWP<br>\$6,750/1,000 TWP (GT) | To qualify for Star Level 6<br>\$8,000/1,000 TWP<br>\$8,000/1,000 TWP (GT) | To qualify for Star Level 7<br>\$10,250/1,000 TWP<br>\$10,250/1,000 TWP (GT) |
| Apr. 4 - Mar. 22  | 0                                | N/A  | N/A  | N/A  | N/A  | N/A  | N/A  |
| Mar. 21 - Mar. 8  | 1                                | 112  | 146  | 204  | 258  | 342  | 435  |
| Mar. 7 - Feb. 23  | 2                                | 223  | 292  | 408  | 515  | 685  | 869  |
| Feb. 22 - Feb. 9  | 3                                | 335  | 438  | 612  | 773  | 1,027  | 1,304  |
| Feb. 8 - Jan. 26  | 4                                | 446  | 585  | 815  | 1,031  | 1,369  | 1,738  |
| Jan. 25 - Jan. 12   | 5                                | 558  | 731  | 1,019  | 1,288  | 1,712  | 2,173  |
| Jan. 11 - Dec. 28   | 6                                | 669  | 877  | 1,223  | 1,546  | 2,054  | 2,608  |

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## COMPENSATION MANUAL Compensation Manual

All field organization - except New York

Document Number: PL3.1.6

Index of transitioning programs for field organization - except New York advisors

### Benefits and the 2000 Star Quest program

Qualification for company health and welfare benefits contributions is not a part of the 2000 Star Quest program. Following Platform rollout, Platform 1 advisors will receive benefits as part of the Platform 1 design. For Platform 2 advisors, funding previously allocated for Star Quest benefit awards has been incorporated into the 85% payout rate. Because benefits are no longer included in Star Quest, star level 1 - company contributions to benefits - no longer exists. Instead, effective Jan. 1, 2000, Star Quest award levels begin at star level 2.

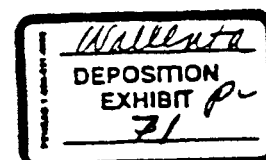
Company contributions toward medical and dental benefits are being discontinued on March 31, 2000. Many advisors asked why the average equivalent cost of benefits listed in past Star Quest bulletins is not being paid to advisors. The reasons are as follows:

First, while the company sets aside, as it accrues, the funding for Professional Performers Compensation (PPC), in the previous year, the benefits contribution is treated as a current expense. If the benefit equivalent worth were paid to advisors in 2000, the Platform 2 payout would have been lowered to 83% for the first year.

In addition, advisors received a company contribution for benefits beginning in their first year with AEFA and continuing at a minimum, through the end of their second year without any Star Quest qualification requirement.

### Related documents:

- [2000 Advisor Star Quest transition introduction](#)
- [2000 Advisor Star Quest overview](#)
- [About the Star Quest program](#)
- [Transitioning the Star Quest program](#)
- [Star Quest and persistency adjustments](#)
- [First-Year Advisor Bonus Program](#)
- [Star Quest and TWP adjustments](#)
- [Year-end Star Quest Reports and investigations](#)
- [2000 prorated Star Quest charts and first-year qualification chart](#)



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