



FINANCIAL PLANNING STANDARDS BOARD

1700 Broadway, Suite 700
Denver, CO 80290-1700

phone +1-720-917-0005

fax +1-720-917-0001

e-mail info@fpsb.org

web www.fpsb.org

CFP Board Ethics Task Force
c/o Tim Stiefel
1670 Broadway, Suite 600
Denver, CO 80202

23 April 2007

Dear Tim:

Please find below the response from Financial Planning Standards Board Ltd. (FPSB) to CFP Board's second exposure draft of its *Code of Ethics and Professional Responsibility, Rules of Conduct* and *Financial Planning Practice Standards*.

In reviewing the revised documents, it is clear that CFP Board took much of the feedback from stakeholders, including FPSB, into consideration. Thank you for your openness to feedback and for re-issuing the material for additional input. While the second exposure draft presents improved standards for CFP certificants in the U.S., FPSB has additional questions/comments on some of the language and concerns about the understandability/intent of some elements of the documents.

Concerns from FPSB and Affiliates can be generalized as follows:

1. CFP Board has chosen to overlook obligations of CFP certificants that are inherent in any profession (e.g., self-policing by professionals for public benefit, professional obligations of certificants beyond obligations to clients, employers and CFP Board) with a more narrow focus on enforcement of standards over CFP marks holders.
2. Some of the draft Rules of Conduct are not necessarily improvements over previous Rules, as much due to their format – which seems to partially but not fully track the Practice Standards and/or Ethical Principles yet do not smoothly flow from either document – as to the lack of clarity about what is owed to a client versus a prospective client; when is an engagement a financial planning engagement, with a higher duty of care; and whether a written agreement is fundamental to the establishment/recognition of a financial planning engagement or required to establish the scope of the engagement.
3. The Code of Ethics Principles and their explanatory text lack consistency and parallelism, and clarity with regard to whether they are aspirational or directive.

I will present our feedback in the order of the documents you have released. I am glad to discuss any of the issues with you in more detail should you wish.

Sincerely,

Noel Maye
Chief Executive Office



CERTIFIED FINANCIAL PLANNER | CFP

The certification marks above are owned outside the US by Financial Planning Standards Board Ltd. and are awarded to individuals who successfully complete our initial and ongoing certification requirements.

Promoting CFP Certification Worldwide.

Terminology

Certificant's Employer

Would this be clearer to define as "Certificant's Employer/Principal"?

Financial Planning Engagement

The definition of "financial planning engagement" refers to "financial planning services" (which are not defined and would likely make for an exhaustive list if they were). It would be more appropriate for the engagement definition to refer to the "financial planning process," which is both defined/understood and which, by virtue of its implementation, will lead to the delivery of financial planning services.

Is a written agreement a pre-condition of the existence of a financial planning engagement? If so, CFP Board may want to include that here (and also refer to it more clearly in Practice Standard 100-1).

Code of Ethics and Professional Responsibility

The explanatory text for CFP Board's seven ethical principles lacks parallelism and consistency. FPSB recommends revisiting this section. For clarity on our feedback in this area, we will use the following terminology for the various text sections:

- "Principle 2 – Objectivity" is the **Principle**.
- "Provide professional services objectively" is the **Aspiration**.
- "Objectivity requires intellectual honesty and impartiality" is the **Explanation**.
- "Regardless of ... certificants should ..." is the **Directive**.

The Principles

These are consistent and parallel.

The Aspirations

Principles 1-4 and Principles 6-7 are positive statements. Principle 5 is written negatively and should be re-drafted to be consistent with the other six principles. Consider drafting as "Keep client information confidential unless disclosure is authorized by client or required by proper legal process, to defend against wrongdoing, or in connection with a civil dispute."

The Explanations

These feature erratically throughout the principles, in terms of presence and placement. Principle 1 features the Explanation as the second line of text, Principles 2 and 3 lead with the Explanation, Principles 4, 5 and 7 feature only an Explanation (i.e., there is no Directive) and Principle 6 features no Explanation. For consistency, CFP Board should follow each Principle/Aspiration with the one- or two-sentence Explanation.

The Directives

Whether you consider “Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one’s principles” the second sentence of a two-sentence Explanation or the second sentence of a two-sentence Directive, the Directive text in Principle 1 is lacking its directive-ness, replaced by statements of fact (i.e., there is no “certificants should/must...” directive).

Principle 2 contains a Directive – “certificants should...”

Principles 3 and 6 have replaced Directive language with statements of fact “certificants make...,” “certificants behave...” and “certificants cooperate...”

Principles 4, 5 and 7 lack any Directive, containing only Explanations to clarify the Principle and Aspiration.

For consistency, CFP Board should follow each Explanation with a consistent reference to what CFP certificants should, must or actually do.

Since the Principles are meant to be aspirational, it may be more appropriate for CFP Board to shift the Directives from the Principles down to the Rules of Conduct.

Principle 4 – Fairness

The term “handling” in Principle 4’s Aspiration does not add anything; replace with “Be fair and reasonable in all professional relationships. Disclose conflicts of interest.”

What is meant by “professional relationships”? Does this term need to be defined in the terminology section?

Principle 5 – Confidentiality

Does “proper legal process” include the notion “as permitted/required by law/in compliance with legal requirements”? The term seems vague and may need to be clarified or replaced with more specific language.

Principle 6 – Professionalism

The term “Be a Credit to the Profession” seems vague. Maybe replace with “Behave in a Professional Manner.”

Rules of Conduct

The layout of the Rules of Conduct is not intuitive. Readers would logically assume that each of the aspirational Principles should track to underlying enforceable Rules of Conduct. The revised format suggested by CFP Board is not an improvement over the approach by CFP Board in its existing Code of Ethics.

“Material Elements of the Financial Planning Process”

Throughout the Rules of Conduct, CFP Board refers to “financial planning **or** material elements of the financial planning process.” However, the definition of financial planning states that “... Financial planning involves the delivery of all or part of the financial planning process...” Consequently, neither CFP Board’s peer review body nor the Rules of Conduct should make any distinction between services that include “financial planning” **or** “material elements of the financial planning process,” since they are one and the same based on CFP Board’s existing definition of financial planning.

Certificants “Policing” Activity of Other Certificants

FPSB is aware that CFP Board has deliberately omitted this obligation in the new Rules, and is concerned by it. The concept of ‘self policing’ is inherent in professions, and CFP mark holders should be no exception. Moreover, removing this requirement compromises an essential mechanism of CFP Board’s self-regulatory function and therefore limits its ability to meet its mission to benefit and protect the public.

Heading 1. Defining the Relationship with the Client

Consider adding “and Prospective Client” for consistency with headings for Rules 2, 3 and 4, and to reflect reference to potential clients in Rule 1.2

Rules 1.1 and 1.2

These two rules attempt to address the fact that CFP certificants can engage in relationships with clients that include more (or less) than financial planning. However, by referencing “...the client’s personal financial goal(s) that are relevant to the services...” CFP Board may not be making the distinction between financial planning and non-financial planning engagements clear enough. It may not be clear to a reader that Rule 1.1 can involve transactional activities with clients, which in turn may not require the planner to agree with the client on personal financial goals.

The reference to the obligations of a CFP certificant to a prospective financial planning client in Rule 1.2 may confuse since readers of the Rules would logically presume that a client is already engaged and personal financial goals agreed to in Rule 1.1.

If Rule 1.2 requires a written agreement as the basis for a financial planning engagement, the phrase “a written agreement” should be substituted for “an agreement.”

Rule 1.2(a)iii

The "...without changes" portion of this sentence reads strangely. Consider replacing with "... if no change is made by the (prospective) client." Rule 1.2(a)iv Lacks verb compatibility with items (i) through (vi). May want to add "or strategies" after "...actions" since lack of action may also be a viable alternative for the client – a logical follow on from Rule 1.2(a)iii.

Rule 1.2(b)

The Rule finishes with "... relative benefit to the certificant." Benefit of what – a particular plan proposal, the decision taken by the client, or the compensation received by the certificant?

Rule 1.2(d)

Why are firms singled out here for discussion with the (prospective) client? If the certificant uses other "individuals" to meet any of the agreement's obligations, is CFP Board implying that this need not be discussed with the (prospective) client?

Rule 1.3

In this Rule, CFP Board refers to "financial planning services." What does this term mean? Although defined in the terminology as something provided during a financial planning engagement, this term is vaguely used throughout the Rules. Maybe in Rule 1.3, it may be simpler to refer to "services provided during the financial planning engagement" and have the definition of "financial planning engagement", which is circular, refer to the "financial planning process" rather than to vague "financial planning services."

Additionally, since CFP certificants must enter into written agreements with clients for "material elements of the financial planning process," what is the obligation of certificants who are providing ongoing financial planning services to clients with regard to the need to obtain written agreements?

Rule 1.4

FPSB welcomes CFP Board's revision of the fiduciary requirement for CFP certificants when engaged in a financial planning engagement, which has been improved from the first draft. However, the language of the Rules under Heading #4 may not yet be clear with regard to when is a client engaged or when is the certificant delivering financial planning.

Rule 2.1

It seems appropriate to impose a higher standard and, in general, certificants should not mislead their clients. CFP Board should delete the word "materially" throughout this Rule.

Rule 2.2

This Rule speaks to what a CFP certificant shall provide to a prospective client. Reference in Rules 2.2(b)/2.2(c) to a "client" should be for a "prospective client."

Rule 2.2(a)

The language of the Rules of Conduct address what a CFP certificant “shall” do, with presumably sufficient obligation placed on the certificant by use of this term to merit discipline by CFP Board if the certificant fails to meet the obligation of “shall.” What is the obligation of “must” in this particular Rule, “the description must include...” and how does it differ from “shall”?

Rule 2.2(b)

CFP Board’s use of the word “likely” in this Rule to describe the conflicts of interest between the [prospective] client and the certificant that must be summarized by the certificant is interesting. While the term “potential” would require the client to cover all conflicts that might exist between both parties, regardless of their likelihood of occurring, the Rule as written would require the certificant to only discuss those s/he thinks are “likely” to emerge. What is CFP Board’s intent with regard to this lesser disclosure obligation?

Consider replacing “a potential” with “the potential” in the last sentence of this Rule.

Rule 2.2(c)

CFP Board requires certificants to disclose information to a prospective client that “the [prospective] client might reasonably want to know in establishing the scope and nature of the relationship.” Wouldn’t a client want to have this discussion with the planner on this matter during Rule 1.2 and to have it further clarified in the written agreement describe in Rule 1.3? Consider adding reference to this discussion in both Rules.

Rule 3.1

The Rule exempts the certificant from a confidentiality requirement “... as needed to perform the services.” What services? For whom? CFP Board may wish to put this in context.

Rule 3.3

The Rule requires a certificant to obtain the information necessary to fulfill his/her obligations to a prospective client. What, if any, are the information gathering obligations of a certificant to a prospective client?

Rule 3.4

Write as “... take custody or exercise investment discretion or supervision.”

Rule 3.5

The Rule requires a certificant to keep complete records of funds and property of a prospective client that are under the custody of the certificant. Why would a certificant have custody of anything belonging to a prospective client? If throughout the Rules, CFP Board is implying that a client is anyone for whom professional services are rendered but that a prospective client is anyone seeking to engage in a financial planning engagement with the certificant, then these Rules may need to be written more clearly.

Rule 3.6 and 3.7

These Rules read as though, if a certificant has a family member as a client, the certificant is required to lend and borrow money to the family member client. CFP Board may want to modify to read. “A certificant shall not borrow money from a client. Exceptions to this rule include...” and “A certificant shall not lend money to a client. Exceptions to this rule include...”

Rules 3.8 and 3.9

CFP Board’s current Code of Ethics (Rule 103(d)) allows for the commingling of one or more clients’ funds or other property, subject to compliance with applicable legal requirements and provided accurate records are maintained for each client’s funds or other property. CFP Board should explicitly spell out the ability of a certificant to commingle funds subject to law/legal requirements, as agreed to in writing with the client and subject to Rule 4.2.

Rules 3.9

Omit either the word “without” before “sufficient” or the word “both” after “without.”

Rule 3.10

The “agreement” needs to be identified as an “agreement with the client.”

Rules Under 4. Obligations to Clients and Prospective Clients

The Rules under this section seem to be the general catchall area for enforcement of ethical behaviors associated with CFP Board’s ethical Principles. Although Rule 4.5 captures supervisory elements, it is not clear how the Principle of Diligence or the provision of services in “a prompt and thorough manner” with “sufficient planning” on the part of the certificant are captured in the Rules of Conduct.

Rule 4.1

Replace “in a manner that reflects” with the word “with.”

The notion that a certificant must actively maintain his/her competency to keep pace with an evolving profession is lost in this Rule – the obligation is only to provide services/advice in areas of competency, which could steadily diminish over time.

Rule 4.2

Are there any other obligations to regulators such as the need to obtain proper licenses, to cooperate with regulators to minimize misconduct in the financial planning profession, etc. (see current Code Rules 605, 608, etc.)? CFP Board might consider adding a separate section “Obligations to Regulators” (or commingle it with current Rule 6.4 as “Obligations to the Profession”). Currently, it appears as though certificants only have obligations to clients and prospective clients; employers (or principals) and CFP Board. It may be that Rule 4.2 is not broad enough to set a high standard of compliance for CFP certificants.

Rules Under 5. Obligations to Employers

Consider replacing “employee” with “employee/agent” and “employer” with “employer/principal.”

Rules Under 6. Obligations to CFP Board

CFP Board’s existing Rule 101(c) requires certificants to not give the impression that s/he is representing the views of CFP Board or any other group unless authorized to do so and to identify personal opinions as such. CFP Board may wish to maintain this Rule.

Rule 6.4

It may be appropriate to separate and amplify this Rule into its own heading “Obligations to the Profession,” since what is describes goes well beyond a certificant’s obligation to CFP Board.

Practice Standards

100-1

CFP Board is silent about whether the scope of the engagement mutually defined by the certificant and client is defined in writing.

###