

# Financial Planners Standards Council

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April 23, 2007

CFP Board

Attn: Ethics Task Force

1670 Broadway, Suite 600

Denver, CO 80202

Dear Ethics Task Force:

Firstly, we thank CFP Board for its thoughtful consideration of the various comments received for its first exposure draft on its new standards. We welcome the changes in the revised draft and offer the following comments based on the proposed new standards.

Overall we are pleased that, in our opinion, the proposed changes do maintain and will serve to enhance the integrity of the existing standards. We are particularly pleased with a number of improvements to the standards. These include:

**Duty of Care:** Rule of Conduct 1.4 specifically states that a certificant must at all times “place the interest of the client ahead of his/her own”. This implies a greater duty of care than the former Code of Ethics Rule 202 that states that the certificant must “act in the interest of the client”. This is also taken one step further in the event of a financial planning engagement where the certificant owes a fiduciary duty to the client. We fully support this higher duty of care.

**Terms of Engagement – in Writing:** When performing financial planning, the certificant must discuss the responsibilities and obligations of each party in the engagement and outline them in *writing* in addition to other required disclosures, such as parties to the agreement, dates, duration and other client disclosures. Although disclosure has always been required, it had not been explicitly stated that it was in writing. Again, we fully support this higher standard.

In FPSC’s opinion, however, this requirement could be further strengthened if the certificant were required to disclose to the client, in writing, when they are *not* undertaking a financial planning engagement in instances where it could be reasonably construed as financial planning by the client. Such disclosure of a non-financial planning engagement would still set out the scope and terms of the services to be provided so they are clearly understood by both parties.

Since we believe that the most difficult aspect in the enforcement of the Rules of Conduct lies in the determination of whether or not the engagement is financial planning and, as such, subject to further disclosure requirements and a fiduciary duty of care, we would suggest that Rule 1.3 regarding disclosure could have a broader scope. In fact, we

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would suggest that Rule 1.3 be required for all engagements that could be reasonably construed as financial planning by the client. Once the engagement is determined to be financial planning, or not, the expectations for the remainder of the engagement would be clear.

The proposed changes made to strengthen the standards regarding the “Duty of Care” owed to a client and the disclosure of the terms of the engagement to a client in writing will both contribute to enhancing the perception of financial planning as a profession. However, to be effective, there must be a clear definition of what constitutes a “financial planning engagement” (or element of financial planning) and a willingness to ensure that certificants do not “opt out” of the additional Rules of Conduct that apply only to financial planning engagements.

With respect to the restructuring of the standards, it is not clear to FPSC why the Rules of Conduct have been “re-organized” to reflect the steps of a financial planning engagement with a client. It is our opinion that the reordering of the Rules of Conduct in a manner that reflects the steps of a financial planning engagement has blurred the distinction between the Rules of Conduct and the Practice Standards. As it is currently restructured, certificants may now give less credence to the Practice Standards, since many of them will appear to already be covered in the Rules of Conduct.

Our greatest concern with the proposed standards is that the efforts to enhance our ability to promote financial planning as a profession through the above noted standards will be compromised in two areas.

Firstly, the “Rules of Conduct”, although intended to describe the level of professionalism required, are prescriptive in areas which seem to be, by definition, inherent in the actions of a professional. Most specifically, our concerns relate to Section 5 – Obligations to Employers – and Section 6 – Obligations to CFP Board. Perhaps they would be better presented as a section entitled “Other Professional Obligations”.

Secondly, a fundamental premise underlying any profession is its ability to self-regulate its professional community. We are concerned that the new Rules of Conduct do not include the obligation of the CFP certificant in upholding the integrity of the profession through self-policing. Although Rule of Conduct 6.4 sets out that a certificant should not engage in conduct that reflects adversely on his/her integrity or fitness as a certificant, upon the CFP marks or upon the profession, there is no longer a rule that requires a certificant to report unprofessional, fraudulent or illegal conduct of another CFP certificant. The impact of this omission could be twofold. It may weaken the reputation of the CFP community as a profession that is policed from within, and may reduce the ability of the CFP Board to enforce the Rules of Conduct in an effective manner.

Once again we appreciate the CFP Board’s thoughtful reconsideration of its standards. We kindly urge the CFP Board to consider our remaining concerns in order to further improve the standards for CFP certificants.

Yours truly,



Cary List, CA, CFP  
President & CEO  
Financial Planners Standards Council