

January 2, 2009

**Request for Comment:  
Proposed Revisions to Article 2 of  
CFP Board's *Disciplinary Rules and Procedures***

The Board of Directors (Board) of Certified Financial Planner Board of Standards, Inc. (CFP Board) requests comments on proposed revisions to Article 2 of its *Disciplinary Rules and Procedures (Disciplinary Rules)*. The proposed revisions outline the duties of CFP Board's Disciplinary and Ethics Commission (Commission), the body that administers disciplinary hearings, and the relationship of those duties to those of the Board, CFP Board's Chief Executive Officer, and CFP Board's legal counsel.

Comments received during the 30-day public comment period, which ends February 2, 2009, will be posted to CFP Board's Web site and considered by the Board of Directors at its February 2009 meeting.

**Background**

In 2007, the Commission presented the Board with a request for clarification regarding the Commission's authority and accountability. The Board reviewed the Commission's request and reviewed CFP Board's *Bylaws* to determine whether they properly outlined responsibility for Commission appointments and the selection of volunteers who contribute to the Commission's work. In February 2008, the Board amended Section 3.14(c) of CFP Board's *Bylaws* by adding the following third sentence:

Commissions may be composed of CFP® certificants and members of the public. Commissions shall be formed for the purpose of providing decisions related to review and discipline of CFP® certificants. Commission chairs, members and volunteers shall be appointed by the CEO who shall oversee and supervise the Commission's activities.

Following the *Bylaws* amendment, concerns were raised that certain sections of the *Disciplinary Rules* were no longer aligned with the amended Section 3.14(c) of CFP Board's *Bylaws*. In July 2008, the Board sought input from the Commission on proposed revisions to the *Disciplinary Rules* to bring them into alignment with the *Bylaws*. Following that meeting, the Board tasked a working group consisting of current and former Commission members to consider further revisions to the *Disciplinary Rules*.

During the course of several telephonic meetings, the current Commission members proposed further revisions to the *Disciplinary Rules*, then shared their proposed revisions with the other members of the working group. In November 2008, the Commission Chair presented to the Board the Commission's proposed revisions to the *Disciplinary Rules*, and requested that the proposed revisions be published for public comment.



A task force composed of Board members considered the Commission's proposed revisions and request for public comment. While neither CFP Board's Bylaws nor the *Standards of Professional Conduct* require revisions to the *Disciplinary Rules* to be released for public comment, the Board task force thought it important to seek further input from CFP Board's stakeholders and recommended that the current proposal of revisions to the *Disciplinary Rules* be released for comment.

## Proposed Changes

The *Disciplinary Rules* outline CFP Board's procedures for enforcing its *Code of Ethics and Professional Responsibility*, *Rules of Conduct* and *Financial Planning Practice Standards*, which establish standards of ethical conduct for CERTIFIED FINANCIAL PLANNER™ certificants. The proposed revisions are intended to align the *Disciplinary Rules* with changes the Board made in February 2008 regarding oversight of the Commission and to establish stated policies for certain activities related to the Commission that are not specifically addressed in the current *Disciplinary Rules*.

The specific proposals, which the Board developed through discussions with current and past members of the Commission, relate to Article 2 of the *Disciplinary Rules*: "Disciplinary and Ethics Commission." Among the changes under consideration are specific statements that outline:

- The duties of the Commission regarding the selection of prospective Commission members and leadership, evaluation of hearing panel volunteers, and communication with the Board of Directors.
- The duties of CFP Board's Chief Executive Officer regarding appointments to the Commission, selection of hearing panel volunteers, and oversight of the Commission.
- The duties of CFP Board's legal counsel regarding the disciplinary hearing process, including the definition of the separate roles of CFP Board Counsel and CFP Board Advisory Counsel.

If the proposed revisions are implemented, Article 2 of the *Disciplinary Rules* will read as follows:

### **2.1 Function and Jurisdiction of the Commission**

CFP Board's Disciplinary and Ethics Commission (referred to herein as the "Commission"), formed pursuant to and governed by the bylaws of CFP Board, is charged with the duty of reviewing and taking appropriate action with respect to alleged violations of the *Rules of Conduct* and alleged non-compliance with the *Practice Standards* as promulgated by CFP Board and shall have original jurisdiction over all such disciplinary matters.

### **2.2 Powers and Duties of the Commission**

The Commission shall be authorized and empowered to:

- a) Evaluate the performance of the volunteers during the hearings;
- b) Periodically, and no less frequently than annually, report to the Chief Executive Officer and Board of Directors of CFP Board on the operation of the Commission;
- c) Provide input to the CEO on the selection of prospective Commission members. The Commission Chair and Chair-Designee shall provide input to the CEO on the selection of prospective volunteers who serve temporarily on a Hearing Panel;

- d) At its summer meeting each year, the Commission shall recommend to the CEO, subject to the CEO's appointment, the Commission Chair to serve during the following calendar year;
- e) Recommend to the CEO, subject to review and approval of the Board of Directors, amendments to these *Disciplinary Rules and Procedures*;
- f) Recommend, for the CEO's review and approval, proposed rules or procedures relating to the Probable Cause Determination process;
- g) Adopt rules or procedures, subject to review and approval of the CEO, as may be necessary to ensure that the hearings, ratification process and disciplinary decisions are fair to all participants; and
- h) Recommend to the CEO such other rules or procedures as may be necessary or appropriate.

### **2.3 Powers and Duties of the CEO of CFP Board**

The CEO shall be authorized and empowered to:

- a) Appoint the Commission Chair, members and volunteers of the Commission;
- b) Oversee the Commission to ensure it follows the established rules and procedures required to provide a fair process to all participants;
- c) Ensure that each Hearing Panel is comprised of individuals who act in an impartial and objective manner and have no conflicts of interest with the complainant or CFP® certificant subject to the complaint;
- d) Conduct appropriate background investigations of prospective Commission members and volunteers; seek the input of the Board of Directors and the Commission on prospective Commission members; and seek the input of the Commission Chair and Chair-Designee on prospective volunteers.
- e) Report to the Board of Directors the intended appointments to, and activities of, the Commission.

### **2.4 Hearing Panel**

The Hearing Panel shall consist of three persons, two of whom must be CFP® certificants. A Hearing Panel shall be comprised of two Commission members and one volunteer, unless circumstances make it impractical. One member of each Hearing Panel shall serve as Chair of that hearing. The Hearing Panel Chair must be a Commission member. The Chair shall rule on all motions, objections and other matters presented at, or prior to, a hearing.

### **2.5 Disqualification**

Commission members shall refrain from participating in any proceeding in which they, a member of their immediate family or a member of their firm have any interest or where such participation otherwise would involve a conflict of interest or the appearance of impropriety.

### **2.6 CFP Board Counsel and CFP Board Advisory Counsel, and the duties thereof:**

- a) CFP Board Counsel refers to the attorney who presents the case to the Hearing Panel.
- b) CFP Board Advisory Counsel refers to the attorney who acts in an advisory capacity in providing advice on the *Standards of Professional Conduct* and hearing procedures to the Hearing Panel and the Commission during the Ratification Meeting.

- c) No person shall act as both CFP Board Counsel and CFP Board Advisory Counsel during the same set of hearings.

## **2.7 Venue**

Unless otherwise approved by the Board of Directors, CFP Board's headquarters shall serve as a central office for the filing of requests for:

- a) the investigation of certificant or registrant conduct;
- b) the coordination of such investigations;
- c) the administration of all disciplinary enforcement proceedings carried out pursuant to these *Procedures*;
- d) the prosecution of charges of wrongdoing against certificants or registrants pursuant to these *Procedures*; and
- e) the performance of such other activities as are designated by the CEO.

A chart displaying the proposed revisions beside the current text of Article 2 may be reviewed on CFP Board's Web site, [www.CFP.net](http://www.CFP.net).

## **Comment Submission Guidelines**

Any individual or group wishing to comment on the proposed revisions should submit written comments no later than February 2, 2009. Comments may be sent to CFP Board by e-mail to [compliance@CFPBoard.org](mailto:compliance@CFPBoard.org) or by mail to:

CFP Board  
c/o Michael P. Shaw, Esq.  
1425 K St., NW, Suite 500  
Washington, DC 20005

Comments received will be reviewed and considered by CFP Board's Board of Directors and will be posted to CFP Board's Web site in their entirety. If you wish your comment to remain confidential, please omit any personally-identifying information from your comment or include in your comment a clearly-stated request that it not be published.