

Summary of Comments on Proposed Revisions to Article 2 of CFP Board's *Disciplinary Rules and Procedures*

Overview

On January 2, 2009, the Board of Directors (“Board”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”) requested comments on proposed revisions to Article 2 of its *Disciplinary Rules and Procedures*. During the comment period, which ran from January 2, 2009 through February 2, 2009, CFP Board received letters from 34 commenters.¹ Many commenters were supportive of CFP Board’s efforts to reconcile Article 2 of CFP Board’s *Disciplinary Rules and Procedures* with the organization’s bylaws, as amended in February 2008. In addition to their expression of support for the Proposed Revisions, commenters raised a number of questions, which are summarized in this document. The summary is generally organized by each section of Article 2, as proposed by CFP Board.

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¹ Of the 34 comments, nine were not responsive to CFP Board’s Request for Comment on the Proposed Revisions. The non-responsive comments included: (1) Comments concerned that additional conduct rules will lead to increased regulatory burdens for certificants; (2) Comments concerned about the staff’s investigatory process, which is not contained in the *Disciplinary Rules and Procedures*; and (3) Comments requesting or stating the need for changes to CFP Board’s revised *Standards of Professional Conduct*, which is not relevant to the Request for Comment on the Proposed Revisions.



Expression of Support for the Proposed Revisions

A significant number of comments were supportive of CFP Board's efforts to align Article 2 of the *Disciplinary Rules and Procedures* with the organization's bylaws. Comments expressing this view were received from various parties including the Financial Planning Association, attorneys, individual CFP® certificants and advisory firms. Comments in support of the proposed revisions include the following:

- The changes as proposed create a more transparent system of duties and obligations on the Disciplinary and Ethics Commission ("Commission") and CFP Board Staff ("Staff").
- The proposal clarifies the governance structure of the Commission and policies not previously addressed in the *Disciplinary Rules and Procedures*.
- Communication among the Chief Executive Officer ("CEO") of CFP Board, Commission and CFP Board's Board of Directors is now better organized through the Chief Executive Officer reporting directly to the Board of Directors.
- The composition of the hearing panels is more transparent and clear.

Expression of Concern over the Proposed Revisions

Other comments received were not supportive of the changes to the *Disciplinary Rules and Procedures*. Generally, these commenters raised questions about the necessity of amending the rules governing a hearing process that appears to be functioning as it was intended. Specific comments received, which are discussed in detail later, include the following:

- The changes expand the role of the CEO in the selection and appointment of members to the Commission.
- The authority of investigating a case has been removed from the function of the Commission and it is now unclear who investigates allegations of non-compliance with the *Standards*.
- The proposed amendments do not clarify how the changes to the disciplinary process would benefit the public or how they would preserve the equitable treatment of certificants coming before the Commission.
- The distinction between Counsel and Advisory Counsel is not clear. Further, having any counsel present during the ratification process may compromise the process.

Article 2.1: Function and Jurisdiction of the Commission

There were several comments about the function and jurisdiction of the Commission. Several commenters discussed the removal of the Commission's duty to investigate.² Some expressed concern that if the Commission does not investigate allegations of non-compliance with the *Standards*, then no one would investigate these allegations. One comment urged CFP Board to respond to commenters expressing

² See, for example, letters received from Patrice Horner, CFP®, FPA, Shel Brandenburger, CFP®, Steven F. Wertime, CFP®, and LaBrecque, CFP®.

concern about the removal of the Commission's duty to investigate. Another requested that CFP Board clarify who will be conducting investigations of alleged misconduct by certificants.

Powers and Duties of the Commission

Article 2.2 generated several questions regarding the scope of the Commission's authority and its ability to be a counter-balance to the CEO's expanded duties.³ Some agreed with the increased transparency under the Proposed Revisions of the Commission's role in the disciplinary process. Others expressed concern that the Commission would be required under the Proposed Revisions to report directly to the CEO and the Board of Directors rather than solely to the Board of Directors, as is the case currently. Others expressed concern about removing the Commission's authority to select those who serve on the Commission, the Commission Chair and volunteer hearing panelists, as well as limiting its authority to provide input to the CEO. One comment suggested that the role of the Commission to provide input and recommend to the CEO the selection of Commission members, chair and volunteers should be reversed in order to have the CEO report to the Board of Directors any problems the CEO would have regarding the Commission's selection. Other comments suggested language changes to the Proposed Revisions.

Powers and Duties of the CEO of CFP Board

Article 2.3 generated the most comments.⁴ Generally, the comments expressed concern over the expanded role of the CEO in the disciplinary process. Most of these concerns articulated that the CEO's role would be unchecked or would be checked by the limited role of the Board of Directors, which has oversight of the CEO. One comment suggested that the Proposed Revisions would permit the CEO to interpret the Code of [Conduct][sic]. Another comment proposed that by having control over the selection process, the CEO would be able to structure appointments and processes in such a way as to compromise the value of the oversight process. Some comments suggested more clarity regarding the CEO's reporting duties to the Board of Directors. Others suggested language changes to the Proposed Revisions, again for purpose of achieving greater clarity.

³ See, for example, letters received from Keith J. Soressi, Esquire, Dan Moisand, CFP®, FPA, William L. Raddatz, M.S., CFP®, Guy Kraines, Paul Doak, Karin Peterson Labarge, CFP®, Grace M. Worley, CFP®, Shel Brandenburger, CFP®, R. Gordon Threlfall, MBA, CFP®, Leon LaBrecque, CFP®.

⁴ See, for example, the comments of Keith J. Soressi, Esquire, Patrice Horner, CFP®, Dan Moisand, CFP®, FPA, Dexter Ward, CFP®, William L. Raddatz, M.S., CFP®, Jim Williams, CFP®, Larry Peterson, Paul Doak, Karin Peterson Labarge, CFP®, Mike Guess, CFP®, Michael W. Balderson, CFP®, Grace M. Worley, CFP®, Mark Barrett, CFP®, Shel Brandenburger, CFP®, R. Gordon Threlfall, MBA, CFP®.

Composition of the Hearing Panel⁵

CFP Board received a number of favorable comments regarding Article 2.4 of the *Disciplinary Rules and Procedures*. Most comments encouraged the approach that CFP Board is taking as providing inclusivity, clarity and transparency over the current Article 2.3 of the *Disciplinary Rules and Procedures*. One commenter expressed concern over possible human bias in the hearing panel. Another commented that the hearing panel should include more non-certificants as volunteers and Commission members. Another suggested that the use of volunteers in the disciplinary process as hearing panel chair may not be appropriate.

Other Changes Proposed

There were relatively few comments regarding the duties of Counsel and Advisory Counsel, and the venue of disciplinary investigations. Comments on the duties of Counsel and Advisory Counsel included favorable remarks on the separation of these functions both during and after a hearing. Some comments expressed concern over having Advisory Counsel present during the ratification process which, under the current procedures, is conducted without Advisory Counsel present. Other comments proposed language changes to clarify Article 2.6.

Commenters also raised concerns about venue. Specifically, one commenter asked for clarification regarding who decides the place for hearings or investigations and who conducts investigations. One comment indicated that the Proposed Revisions should have pointed out that there were no substantive changes to the current Articles 2.4 and 2.5. No comments were received about the disqualification of Commission members.

⁵ See, for example, letters received from Dan Moisand, CFP®, FPA, William L. Raddatz, M.S., CFP®, Daniel A. Gieseke, CFP®, CRPC®, Ralph J. Feith, CFP®, Mark Barrett, CFP®, Shel Brandenburger, CFP®.

List of Commenters (34 Total)

CERTIFICANTS

Michael W. Balderson, CFP®	Kathleen B. Leipprandt, CFP®
Louis J Balogh, CFP®	George E. Mattingly, CFP®
Mark Barrett, CFP®	Daniel Moisand, CFP®
David Bernard, CFP®	Harold Neville, CFP®
Shel Brandenburger, CFP®	Larry Peterson, CFP®
Tom Brokl, CFP®	William L. Raddatz, CFP®
Paul Doak, CFP®	Brian Rorick, CFP®
Ralph J. Feith, CFP®	Richard C. Salmen, CFP®
David Fragomeni, CFP®	David Strege, CFP®
Daniel A. Gieseke, CFP®	R. Gorden Threlfall, CFP®
Mike Guess, CFP®	Anna Maria Waechter, CFP®
Debbie Heap, CFP®	Steven Wertime, CFP®
Patrice Horner, CFP®	Jim Williams, CFP®
Guy Kraines, CFP®	Vicki Wooters, CFP®
Karin Peterson Labarge, CFP®	Grace M. Worley, CFP®
Leon LaBrecque, CFP®	

OTHERS

Keith J. Soressi

Comments addressing the proposed revisions to Article 2 of CFP Board's *Disciplinary Rules and Procedures* are available for review in their entirety at [www.CFP.net/aboutus/ Rules_Proposal_Comments.asp](http://www.CFP.net/aboutus/Rules_Proposal_Comments.asp)