

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30868

This is a summary of a Settlement Agreement entered into at the June 2018 hearings of the Disciplinary and Ethics Commission (“the Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: (1) relied on the private fund adviser exemption from registration although he was not entitled to; (2) used Inflated Asset Valuations; (3) made misrepresentations on Forms ADV; (4) failed to have his firms submit to surprise examinations as required by the Securities and Exchange Commission’s (“SEC”) Custody Rule; (5) failed to have his firms comply with the SEC’s Compliance Rule; (6) improperly used fund assets to pay his legal fees; (7) contracted to earn a performance fee for managing a fund, without determining whether the fund’s investors were qualified clients; and (8) failed to disclose a SEC bar related to the foregoing conduct to CFP Board.

II. Findings of Fact

Respondent became a CFP® professional in March 2003 and has maintained his certification since that date. Respondent first became associated with a Financial Industry Regulatory Authority (“FINRA”) member firm in 1996 and has passed the following FINRA examinations: (a) Series 7 - General Securities Representative Examination (1996); (b) Series 63 - Uniform Securities Agent State Law Examination (1996); and (c) Series 65 - Uniform Investment Adviser Law Examination (1998).

Respondent owns and/or controls several entities that are relevant to this matter.

ABC Financial is an investment advisory firm that was registered with the SEC from 2008 through 2017, and is based in State A. It provides investment advice to individuals with taxable and retirement plan savings accounts. More than 75% of ABC’s clients are high-net-worth clients. As of March 2017, the firm reported \$132,370,284 in assets under management (“AUM”), including \$123,608,265 in discretionary AUM. Respondent is the managing member, sole owner and Chief Compliance Officer (“CCO”) of ABC Financial.

ABC Capital is an investment advisory firm that has never been registered with the SEC. It is a limited liability company that reported its principal place of business as Respondent’s home in State B but, in fact, conducts business from ABC Financial’s home office in State A. From October 2013 through June 2016, ABC Capital claimed to be an investment advisor solely to private funds whose AUM totaled less than \$150,000 and, thus, was exempt from registration pursuant to the Investment Advisers Act of 1940 (“Advisers Act”). ABC Capital serves as an investment advisor to two private funds: (a) ABC Capital Insight Fund, LLC (“Insight Fund”); and (b) ABC Capital Fund II, LLC (“Capital Fund”). Respondent is the managing member, sole owner and CCO of ABC Capital.

The Insight Fund is a private fund formed in State B in 2006. In its March 2016 Form ADV, ABC Capital reported that the Insight Fund had 66 beneficial owners and a gross asset value of \$9,684,930. Most of the beneficial owners of the Insight Fund were also clients of ABC Financial.

ACH 30868

- 1 -

Copyright © 2018 Certified Financial Planner Board of Standards, Inc. All rights reserved.

The Capital Fund is also a private fund that was formed in State A in 2014. In its March 2016 Form ADV, ABC Capital reported the Capital Fund's gross asset value as \$1.3 million.

Advisers Act Rule 206(4)-2(a) (the "Custody Rule") provides a safekeeping requirement concerning the custody of funds or securities of clients by investment advisors. According to the Custody Rule, if a firm is an investment advisor registered or required to be registered under section 203 of the Advisers Act, it is unlawful for the firm to provide investment advice to clients unless it: (a) adopts and implements written policies and procedures reasonably designed to prevent violation (by the firm or its supervised persons) of the Act and the rules that the SEC has adopted under the Act; (b) conducts, at a minimum, annual reviews of the adequacy of its policies and procedures established pursuant to the rule and the effectiveness of their implementation; and (c) designates an individual who is a supervised person responsible for administering the policies and procedures that it adopts under paragraph "a" of the rule.

Advisers Act Rule 203(m)-1 provides a private fund advisor exemption, which states that an investment advisor with its principal office and place of business in the United States is exempt from the registration under section 203 of the Act if the investment advisor: (1) acts solely as an investment advisor to one or more qualifying private funds; and (2) manages private fund assets of less than \$150 million.

Advisers Act Rule 206(4)-7 (the "Compliance Rule") provides that it shall be unlawful for an investment advisor to provide investment advice to clients unless it: (a) adopts and implements written policies and procedures reasonably designed to prevent violation by it and its supervised persons of the Advisers Act and the rules promulgated thereunder; (b) reviews, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and (c) designates an individual (CCO) who is a supervised person responsible for administering the policies and procedures that it adopts under paragraph (a) of this section.

Failure to Qualify for Exemption from Registration

ABC Financial served as the investment adviser to the Insight Fund from 2006 until 2013. After consulting with a compliance specialist in 2013, Respondent formed ABC Capital because he understood that ABC Financial would not have to comply with the Custody Rule if the Insight Fund was advised by an exempt reporting advisor (ABC Capital) instead of an advisor registered with the SEC (ABC Financial). Respondent sought to save on expenses by not having to obtain an annual audit for the Insight Fund or a surprise examination to comply with the Custody Rule.

Beginning in October 2013, ABC Capital claimed to be exempt from the Advisers Act's registration requirements because it served as an advisor to private funds with AUM of less than \$150 million. The SEC determined that although ABC Capital advised two private funds with combined gross assets of approximately \$11 million, it did not qualify for this exemption because ABC Financial and ABC Capital were under common control and operationally integrated. Examples of the common ownership and operational integration of ABC Financial and ABC Capital are that they: (a) were both owned by Respondent; (b) shared the same employees; (c) operated in the same office; (d) shared the same technology systems; and (e) both failed to maintain policies and procedures addressing registration or exemption from registration as an investment advisor. Based on the above, the SEC concluded that ABC Capital was not exempt from registration under Section 203(m) of the Advisers Act because it was not acting solely as an adviser to private funds.

Under the Custody Rule and the Compliance Rule (Section 203(a) of the Advisers Act and Rule 203A-2 promulgated thereunder), ABC Capital was required to be registered with the SEC in order to provide investment advisory services to the Insight Fund and the Capital Fund because it did not meet the requirements for exemption since it was under common control and shared its principal office and place of business with ABC Financial.

Inflated Asset Valuations

The Insight Fund's Amended and Restated Operating Agreement ("Operating Agreement") provided that Respondent and ABC Capital would be entitled to a performance fee if the fund was profitable at the time it was wound down and investors received a return of their investment plus profits. Respondent and ABC Capital did not charge the Insight Fund a management fee for providing investment advice.

The Operating Agreement required Respondent to meet redemptions based on the fair market value of investor's investment in the Insight Fund. Most of the Insight Fund's assets were invested in the equity and/or debt of private companies, but some of its assets were invested in shares of a private equity fund. Because all of the Insight Fund's investments were illiquid, it required some judgment to arrive at a fair market valuation of the investment.

The advisor to the above-mentioned private equity fund provided fair market valuation information to Respondent and ABC Capital, unlike the Insight Fund's other investments which did not provide any valuation information. In August 2015, the private equity fund's advisor sent ABC Capital a partner summary as of June 2015 showing that the private equity fund had paid total distributions of \$867,992 to the Insight Fund and that the Insight Fund's capital balance was \$724,103. The private equity fund advisor also provided other financial statements (as of June 2015) that showed the Insight Fund's capital balance was based on ABC Capital's portion of the fair value of the private equity fund's investments. Despite those financial statements, ABC Capital sent statements to the Insight Fund's investors stating that the June 2015 fair market value of the Insight Fund's investment in the private equity fund was \$2,194,475.72.

Respondent and ABC Capital provided periodic valuation statements to investors in the Insight Fund that stated what they claimed were fair market value estimates of the Insight Fund's investments. Although Respondent and ABC Capital occasionally employed the services of third-party valuation providers in calculating valuations, Respondent often assigned his own estimated valuations to the Insight Fund's investments, despite not having any valuation experience or training.

The following are examples of the inflated valuation information provided to the Insight Fund's investors in the June 2015 statements: (a) ABC Capital reported a fair market valuation for the private equity fund that was approximately three times higher than the fair valuation of the investment provided to ABC Capital by the private equity fund. Respondent arrived at the fair market value without conducting any valuation analysis; (b) ABC Capital's fair market value estimate for a \$50,000 investment in a portfolio company showed that the investment was still valued at its original cost although Insight Fund's 2014 annual tax reporting statement reflected that the investment was written off as a bad debt; and (c) many fair market value estimates for Insight Fund's other investments were based on stale information. For example, Insight Fund's largest holding by fair market value estimate was approximately a one percent holding in an insurance company which a third party valued at \$2.5-\$3 million based on the insurance company's financial information. Although Respondent was aware of this valuation, Respondent increased the valuation of the insurance company to \$3,519,000 without documenting any additional valuation analysis. Respondent, ABC Capital and ABC Financial did not receive any fees based on the inflated valuations discussed above.

False Statements in Form ADV Filings Signed by Respondent

In ABC Capital's March 2015 and March 2016 Form ADV filings, it reported the gross asset value of the Insight fund as \$9,684,930. In ABC Financial's June 2016 and March 2017 Form ADV filings, it reported that it was an advisor to a private fund and that the gross asset value of the Insight Fund was \$9,684,930. Respondent employed a compliance consultant with regard to these matters. Respondent signed each of the Forms ADV.

The reported gross asset values for the Insight Fund was based on the inflated valuations of the fund's investments, resulting in material overstatements of the value in each of the above-mentioned Forms ADV. Additionally, ABC Financial's Forms ADV filed in June 2016 and March 2017 reported the same \$9,684,930 gross asset value for the Insight Fund as ABC Capital's Form ADV filed in March 2016 and March 2017. It was misleading for both ABC Financial and ABC Capital to report the same assets under management for the Insight Fund.

In its Forms ADV filed in October 2013, February 2014, March 2015, March 2016, and March 2017, ABC Capital listed its place of business as Respondent's home in State B and stated that it did not share the same physical location with ABC Financial. Respondent signed each of these Forms ADV. In reality, ABC Financial and ABC Capital operated out of the same location in State A and were operationally integrated in certain critical aspects, such as their employees, physical location and technology systems.

Custody Failures

First, from 2013 to 2015, ABC Capital had custody of Insight Fund and Capital Fund's assets but did not subject the funds to the required annual audits or surprise examinations in order to verify the assets held by ABC Capital. Instead, to avoid this Custody Rule requirement, Respondent created ABC Capital and changed the investment advisor of the Insight Fund from ABC Financial to ABC Capital.

Second, ABC Financial had custody of certain other clients' assets that were also not maintained by a qualified custodian. Examples of these include: (a) accepting client stock certificates and blank signed authorization forms from certain clients; (b) possessing access to certain clients' log-in and password information related to client accounts, including accounts with cash transfer options, which provided ABC Financial with the ability to make withdrawals or transfer assets in those accounts. Despite having custody of these other client assets, ABC Financial did not obtain surprise examinations during the time period from 2011 to 2015.

Compliance Failures

As registered investment advisors, ABC Financial and ABC Capital were required to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. ABC Capital did not adopt or implement any such policies and procedures. For example, although the Insight Fund's Operating agreement required ABC Capital to fair value fund assets, ABC Capital did not adopt or implement any compliance policies and procedures addressing the valuation of fund assets. Although ABC Financial worked with a compliance consultant, ABC Financial adopted an off-the-shelf compliance manual that was not tailored to the type of business it conducted, and its compliance policies and procedures did not address registration or exemption from registration as an investment advisor. In addition, ABC Financial failed to conduct annual reviews of the adequacy and effectiveness of all its compliance policies and procedures.

Failure to determine whether Insight Fund's Investors were Qualified Clients

While drafting the Insight Fund's Operating Agreement, which contained the performance fee provision, Respondent reviewed prospective investor information to determine whether each prospective investor was an accredited investor. Nonetheless, not all investors in the Insight Fund were qualified clients as defined by Rule 205-3(d) promulgated under Section 205(e) of the Advisers Act. Respondent did not conduct any review to determine if each investor in the Insight Fund also satisfied the definition of a qualified client. Respondent, ABC Financial, and ABC Capital did not charge the Insight Fund any performance fee for investors who may have received a return or partial return of their principal investment and profits.

Improper Use of Fund Assets to Pay Legal Fees

In 2016, Respondent, ABC Financial, and ABC Capital incurred legal fees related to the SEC's investigation. Respondent negligently relied on the Insight Fund's Operating Agreement as the basis for using the Insight Fund's assets to pay those legal fees. The Operating Agreement, however, provided only for the payment of "costs directly relating to the ongoing activities" of the fund. Approximately \$65,000 in legal fees paid out of the Insight Fund's assets did not directly relate to the fund's ongoing activities because the fees were for legal services provided to the investment advisors, not the fund. Respondent, ABC Financial, and ABC Capital have repaid the fund for all the legal fees paid in connection with the SEC's investigation.

Securities Law Violations

Section 203(a) of the Advisers Act prohibits an investment adviser from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the SEC or exempt from registration. Section 206(2) prohibits an investment adviser from directly or indirectly engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

According to the SEC Order, ABC Capital provided investment advice to the Insight Fund and the Capital Fund without registering under the Advisers Act or relying on the registration of ABC Financial, and, as a result, ABC Capital willfully violated Sections 203(a) of the Advisers Act, and ABC Financial and Respondent willfully aided and abetted and caused those violations. Respondent did not act with scienter, however, and was not aware that he was committing any of these violations when they were being committed.

In July 2017, Pursuant to a settlement, the SEC issued a Cease and Desist Order against Respondent, ABC Financial, and ABC Capital. Without admitting or denying the SEC's findings, Respondent consented to the entry of the Order.

The SEC determined that Respondent violated the following sections of the Adviser's Act and the rules promulgated thereunder:

- A. Willfully aided and abetted and caused ABC Capital's violation of Sections 203(a) of the Advisers Act which prohibits an investment adviser from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the SEC or exempt from registration;
- B. Willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from directly or indirectly engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
- C. Willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the SEC ... or willfully to omit to state in any such application or report any material fact which is required to be stated therein;
- D. Willfully aided and abetted, and caused ABC Capital's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle or engage in any act, practice, or course

of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

- E. Willfully aided and abetted and caused ABC Capital's violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which, among other things, prohibit an investment adviser registered or required to be registered under Section 203 of the Advisers Act from having custody of client assets unless the client assets are verified by actual examination at least once during each calendar year by an independent public accountant without prior notice or announcement to the adviser, or, if the client is a pooled investment vehicle, such client is subject to an annual audit.
- F. ABC Financial willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, and Respondent willfully aided and abetted and caused those violations.
- G. ABC Financial willfully violated, and Respondent willfully aided and abetted and caused ABC Financial's violation of, Section 205(a)(1) of the Advisers Act, which prohibits investment advisers registered with the Commission or required to be registered from entering into, extending, or renewing any investment advisory contract if such contract provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the fund or any portion of the funds of the client.
- H. ABC Financial and ABC Capital willfully violated, and Respondent willfully aided and abetted and caused ABC Financial's and ABC Capital's violations of, Section 206(4) of the Advisers Act and Rule 206(4)- 7 promulgated thereunder, which require investment advisers registered or required to be registered to, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review at least annually the adequacy of the policies and procedures and the effectiveness of their implementation.

Pursuant to the settlement, the SEC ordered that Respondent:

- A. Cease and desist from committing or causing any violations and any future violations of Sections 203(a), 205(a)(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7, 206(4)-8 thereunder;
- B. Is prohibited from acting in a CCO capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. After three years, Respondent may apply to act in such a CCO capacity to the appropriate self-regulatory organization, or if there is none, to the SEC, subject to the applicable laws governing the re-entry process; and
- C. Is jointly and severally liable (along with ABC Financial and ABC Capital) to pay a \$150,000 civil money penalty to the SEC for transfer to the general fund of the United States Treasury.

Respondent, ABC Financial and ABC Capital have undertaken to:

- A. Not charge or accept compensation related to the Insight Fund on the basis of a share of capital gains upon or capital appreciation of the funds of the clients, including but not limited to any performance fees;
- B. Have Respondent complete 30 hours of compliance training related to the Advisers Act within one year of the issuance of the SEC Order;

ACH 30868

- 6 -

Copyright © 2018 Certified Financial Planner Board of Standards, Inc. All rights reserved.

- C. Send ABC Financial's clients and each of the current and former investors in the Insight Fund or the Capital Fund a copy of the Order; and
- D. Retain an independent compliance consultant acceptable to the SEC's Staff within 120 days of the issuance of the Order. The compliance consultant shall conduct a review of both ABC Financial and ABC Capital and submit a written final report to the SEC's staff within one year of the issuance of the Order. ABC Financial and ABC Capital shall take all necessary and appropriate steps to adopt and implement all recommendations contained in the final report of the compliance consultant.

Article 13.1 of the *Disciplinary Rules and Procedures* ("Disciplinary Rules") provides that a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline "shall include the suspension, bar or revocation as disciplinary measure by any governmental agency, industry self-regulatory organization or professional association."

The SEC is a governmental agency. The Order is an order of professional discipline by the SEC and Respondent is one of the subjects of that order. Therefore, the Order conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent. See ACH 29656.

As set forth in Article 13.3 of the *Disciplinary Rules*, since Respondent's professional discipline has been proven, Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal of any evidence presented by CFP Board Counsel other than proof of professional discipline.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

Respondent, a certificant, failed to place the interest of the client ahead of his own when he: (a) provided false financial statements to investors that reflected inflated values for investments held in two private funds that ABC Capital advised (the "Inflated Asset Valuations"); and (b) included the Inflated Asset Valuations in ABC Capital's and ABC Financial's Forms ADV filed with the SEC and signed by Respondent (the "Forms ADV Misrepresentations"). Thus, Respondent violated Rule 1.4 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.1 of the *Rules of Conduct*, which provides that a certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services. A certificant shall not mislead any parties about the potential

benefits of the certificant's service. A certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

Respondent, a certificant: (a) used Inflated Asset Valuations; and (b) engaged in Forms ADV Misrepresentations. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

Respondent, a certificant: (a) relied on the private fund adviser exemption from registration although he was not entitled to and did not otherwise qualify for an exemption from SEC registration; (b) used Inflated Asset Valuations; (c) engaged in Forms ADV Misrepresentations; (d) failed to have ABC Capital and ABC Financial submit to surprise examinations as required by the SEC's Custody Rule; (e) failed to have ABC Capital and ABC Financial comply with the SEC's Compliance Rule; (f) improperly used fund assets to pay his legal fees; (g) contracted to earn a performance fee for managing a fund, without determining whether the fund's investors were qualified clients; and (h) aided and abetted, and caused ABC Capital's and ABC Financial's violations of the Advisers Act and the rules promulgated thereunder. The SEC Order is conclusive proof that Respondent violated Sections 203(a), 205(a)(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7, 206(4)-8 thereunder, which are applicable regulatory requirements governing professional services provided to the client. In this case, Respondent violated several securities laws, but did not financially benefit to the detriment of his clients. In addition, Respondent did not in fact charge any performance fees. Nonetheless, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he: (a) relied on the private fund adviser exemption from registration although he was not entitled to and did not otherwise qualify for an exemption from SEC registration; (b) used Inflated Asset Valuations; (c) engaged in Forms ADV Misrepresentations; (d) failed to have ABC Capital and ABC Financial submit to surprise examinations as required by the SEC's Custody Rule; (e) failed to have ABC Capital and ABC Financial comply with the SEC's Compliance Rule; (f) improperly used fund assets to pay his legal fees; (g) contracted to earn a performance fee for managing a fund, without determining whether the fund's investors were qualified clients; and (h) aided and abetted, and caused ABC Capital's and ABC Financial's violations of the Advisers Act and the rules promulgated thereunder. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Fifth Ground for Discipline

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the SEC Order are the proper basis for professional discipline, and the Order constitutes professional discipline. Therefore, the Order is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

ACH 30868

- 8 -

Sixth Ground for Discipline

Pursuant to Article 3(e) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any acts or omission that violate these rules or that violates an order of discipline. Under Article 13.2 of the *Disciplinary Rules*, every CFP® professional who receives a suspension or bar of a professional license must notify CFP Board within 30 days after receiving notification of the suspension or bar. In July 2017, the SEC notified Respondent of his prohibition from acting in a Chief Compliance Officer capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Respondent failed to report this suspension or bar of his professional license to CFP Board within the required 30 calendar-day period. Therefore, Respondent's omission violated Article 13.2.

IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a suspension of his right to use the CFP® certification for three months pursuant to Article 4.3 of the *Disciplinary Rules*. CFP Board will publish the suspension in a press release and on its website. The publication will include, but not be limited to, the discipline and a description of the facts underlying the discipline.

The Commission considered the following sanction guidelines:

- Conduct 28: Revocation of a Financial Professional License (Revocation).
- Conduct 5: Breach of Fiduciary Duty (Suspension for at Least One Year and One Day).
- Conduct 20(d): Misrepresentation to Clients and Prospective Clients (Public Letter of Admonition).
- Conduct 30: Securities Law Violation (Public Letter of Admonition).

In coming to its decision to enter into the Settlement Agreement, the Commission considered no mitigating factors. However, the commission did consider a number of aggravating factors, including:

- Multiple issues of negligence that occurred over a substantial time period;
- Respondent took liberties in valuating assets that made his performance look better than actual value;
- The substantial fine imposed of \$150,000 by the SEC indicates a substantial issue;
- Respondent took \$65,000 from fund balance for legal fees.

The Commission also considered two *Anonymous Case Histories* (“ACH”). First, the Commission consulted ACH 21365, where FINRA found that the respondent and his company violated securities laws related to the sale of securities on military bases. In that case, the Commission issued to respondent a public letter of admonition. Second, the Commission consulted ACH 24269, where the respondent conducted business as an investment advisor in a state without being properly registered, failed to properly renew his investment advisor license, and failed to timely file annual amendments to forms ADV. In that case, the Commission issued to respondent a public letter of admonition.