CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29246

This is a summary of a Settlement Agreement entered into on December 12, 2018 as a consequence of the October 2018 hearings of the Ad Hoc Disciplinary and Ethics Commission ("Ad Hoc DEC") 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. <u>Issue Presented</u>

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* by making material misstatements and omissions to their clients while recommending that the clients invest in what was found to be a Ponzi-like investment scheme.

II. <u>Findings of Fact</u>

Respondent was initially certified as a CFP® professional in September 2000. Respondent has owned and managed several entities through which he purports to provide financial planning advice and investment advisor services, including selling life insurance and annuity products. Among these companies Respondent owns and manages Company W, which was formed in State C in 2003 and Company X with which Respondent was registered as an investment adviser from April 2009 through June 2018. In April 2018, the Securities and Exchange Commission ("SEC") obtained a final consent judgment against Company W in a U.S. District Court.

As described below, Respondent's misconduct was largely (although not exclusively) grounded in his relationship with Individual A. In 2009 Respondent began having dealings with Individual A. Individual A by that time had amassed a lengthy criminal record, including criminal convictions for crimes involving dishonesty (e.g. check fraud) on at least six occasions. In 2003 Individual A and his Investment Company were the subject of a cease and desist order by State B for attempting to raise money from investors to expand Investment Company's payday lending activities in violation of State B's securities law. In 2004 State N issued a cease and desist order against Individual A, his Investment Company and a related Company after finding that they made material misstatements and omissions concerning the registration status of certain securities, as well as the securities' "guaranteed" rates of return. In February 2008 Individual A filed a bankruptcy petition that was later dismissed after he failed to pay the court filing fees.

<u>Individual A's Ponzi Scheme</u>

In May 2008, Individual A formed Company D, to sell debt securities to unsophisticated investors with limited assets by promising to pay them a fixed rate of return. The funds were then invested in tax liens and the securities were not registered with the SEC. Identifying himself as a Senior Vice President on the Website, while not disclosing he was the owner. The website also described an experienced management team that supposedly predated his arrival at the company. However, the management biographies were copied from the resumes of unaffiliated individuals in the banking industry, and Individual A concealed from investors his personal financial difficulties, prior criminal history and regulatory actions taken against him.

In 2009, Individual A formed Company E along with a number of affiliated entities, which purportedly was a separate entity from Company D. Company E issued debt securities to investors in exchange for a fixed rate of return, and promising to invest the funds in the asset lines designated by the investors, such as tax liens, commercial mortgages, and distressed debt. These securities were also not registered with the SEC.

According to Respondent, he first became aware of the Company E offerings in 2009. Respondent contends that he conducted appropriate due diligence with regard to the offerings by: (a) having telephone conversations with Individual A and his staff; (b) attending in-person meetings and interviews with Individual A to discuss the company and review the offerings; (c) personally observing local county tax lien auctions; (d) reviewing Company D's 2009 financial statements and their Dun and Bradstreet report; and (e) placing Company D on Dun and Bradstreet's credit monitoring watch for notification of changes to the company's credit risk.

Respondent personally began investing in promissory notes offered by Company D, without requesting or obtaining any audited financial statements or attempting to verify that Company D had, in fact, made any of the investments listed on its unaudited financial statements. Ultimately, Respondent and his family invested over $600,000 (collectively) in Company D and Company E securities. Respondent said that, after three years of successful personal investment with the Company E companies, he began recommending the investments to clients beginning in the third and fourth quarters of 2012.

Although Company E and the Company E Funds were separate entities, Individual A commingled the funds received from investors and failed to use them as promised. From 2008 through 2014, Individual A raised approximately $22 million from over 200 investors while appropriating approximately $1. 7 million of the investors' funds for his own benefit. Individual A avoided detection of his fraudulent activities for some time by paying old investors with new investors' money. By April 2014, however, the situation had become unsustainable for various reasons, so Individual A fled the country. In a letter to his goddaughter, Individual A acknowledged his misconduct and admitted that the liabilities of the companies far exceeded their assets.

Respondent contends that he generally became aware of an SEC investigation into Company E when some clients notified him in late March and early April 2014 after they received telephone calls from SEC investigators. According to Respondent, he was formally apprised of the SEC's investigation into Individual A and his companies when the SEC called him for an on-the-record ("OTR") interview in March 2014. However, as discussed below, Respondent was aware of Company E's financial difficulties one year earlier when Company E defaulted on the Company D promissory note purchased by him and his family.

In May 2018, the SEC obtained a default judgment against Individual A in the U.S. District Court that permanently restrained and enjoined him from committing further violations of the securities laws. The court decreed that Individual A was liable for disgorgement of approximately $12 million (representing profits gained as a result of the misconduct alleged in the SEC's complaint against him), plus $1.7 million in prejudgment interest. The court also assessed a $12 million civil penalty against Individual A, for a total of over $25 million.

2016 SEC Complaint

In September 2016, the SEC filed a complaint against Respondent and his companies, alleging that they made material misstatements and omissions to their clients when they recommended that the clients invest in a Ponzi-like investment scheme. According to the SEC:

> In recommending the Company E investment, Respondent fraudulently represented himself as an objective and independent investment adviser his clients could trust for sound advice regarding how best to protect and grow what was in many cases their retirement savings. Respondent also fraudulently told his clients that he did not receive compensation from any other party for recommending a particular investment.

The SEC alleged that Respondent misled his investment advisory clients into investing in Company E by: (a) failing to disclose certain kickbacks he received from Company E to the clients; (b) falsely informing clients that Respondent had performed extensive due diligence into Company E and the Company E securities; (c) failing to disclose to the clients that he had reason to believe Company E was an unsound investment; and (d) continuing to solicit clients to invest in Company E securities after the company defaulted on the Company D promissory note owed to Respondent and his family.

Failure to Disclose Kickbacks

As part of their sales pitch to clients, Respondent and his companies touted their independence and said they did not receive any commissions or other compensation for recommending specific securities. In his marketing materials, Respondent also warned clients of the dangers of financial service providers who offer their own investment products, and he assured prospective clients that he did not receive undisclosed incentives for recommending certain investments.

Respondent also made several misrepresentations in Company X's Form ADV Part 2B when he stated:

a. Other than salary, annual bonuses, and regular bonuses, he did not receive any economic benefit from any person, company or organization in exchange for providing clients advisory services through Company X;
b. Neither Company X nor its management persons has any relationship or arrangement with issuers of securities;
c. Neither Company X nor its supervised persons accept any compensation for the sale of securities or other investment products, including asset-based sales charges or services fees from the sale of mutual funds; and
d. Company X does not recommend that clients buy or sell any security in which a related person to Company X has a material financial interest.

Contrary to Respondent's representations in his marketing materials and Form ADV Part 2B, he received undisclosed kickbacks from Company E for persuading clients to invest in Company E securities. Although he was not associated with a broker-dealer, in April 2011, Respondent entered into an agreement with Individual A whereby he was to receive referral fees of 2.0% to 2.5% of the amount Respondent's clients invested in Company E. In 2013, Respondent entered into an updated agreement with Company E that increased referral fees if his clients invested more than $1 million collectively in the calendar year.

Respondent and companies successfully persuaded more than 20 clients to invest approximately $5 million in Company E securities between September 2012 and April 2014. As a result, Respondent and his companies received approximately $130,000 in undisclosed kickbacks from Company E, which greatly exceeded the management fees he earned providing investment advice to the clients.

Based on these findings, the SEC determined that:

> Defendants never disclosed this conflict of interest to their clients. Defendants did not disclose that Respondent was a selling agent of Company E or that he received commissions for advising and persuading his clients to invest in Company E. Instead, Defendants propagated the myth that Respondent was acting as their investment adviser and providing independent advice in return for the management fee they paid him.

Falsely Informing Clients that He Had Performed Extensive Due Diligence on Company E

According to the SEC, Respondent lied when he told his clients that he had performed extensive due diligence on Company E and the Company E securities prior to recommending the investment(s) to his clients. The SEC alleged that Respondent did not provide the clients with any offering documents, instead, he persuaded clients to invest in Company E based on his assurances that he had performed due diligence, and Company E promissory notes were a low-volatility investment that would provide a steady 11 % to 14% return. However, contrary to Respondent's representations, he did not review any audited financial statements for Company E and did not attempt to confirm (a) whether any of Company E's purported investments existed and (b) how they were performing.

In March 2014, shortly before Individual A fled the country, and Respondent had already persuaded over 20 clients to invest approximately $5 million dollars (collectively) in Company E securities, Respondent finally reviewed an unaudited Company E financial statement for 2011. It was only then that Respondent questioned the financial health of Company E in an email to Individual A.

Failure to Disclose Belief that Company E was an Unsound Investment

In order to persuade his clients to invest in Company E, Respondent touted the fact that he and his family had successfully invested in Individual A-related entities. Respondent showed clients copies of his and his family's account statements from Company D that identified the purported returns they received from Individual A.

In July 2013, a $450,000 Company D promissory note that Respondent's family purchased became due, but Company D defaulted on the note. During the summer of 2013, Respondent repeatedly requested that Company E cure the default. Several months later, Individual A sent Respondent and his family $45,250, and he later sent periodic interest payments until January, 2014. In April 2014, shortly before Individual A fled the country, Company E paid Respondent and his family an additional $ 100,000 (supposedly related to the balance owed to them). Respondent failed to tell clients that Individual A had actually failed to pay back his family as promised because he and his family benefitted from the undisclosed kickbacks.

Solicitation of Clients After Company Defaulted on Note

Respondent failed to disclose to his clients that Individual A and his companies were delinquent on the largest investment that he and his family had made with Individual A. Instead, Respondent continued to recommend the Company E investment to his clients and continued to receive kickbacks for persuading his clients to invest in Company E. After Company E defaulted on the Company D promissory note owed to Respondent and his family in July 2013, Respondent's clients invested over $2.5 million in Company E, for which Respondent received more than $60,000 in kickbacks. The kickbacks from Company E made up the majority of Respondent's income from his investment advisory business in 2013 and 2014.

The SEC found that, as a result of his misconduct, Respondent violated the following securities laws: (a) Section 17(a) of the Securities Act of 1933 ("Securities Act"); (b) Section 10b of the Securities Exchange Act ("Exchange Act") of 1934 and Rule 10b-5 thereunder; (c) Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"); (d) Section 15(a)(1) of the Exchange Act; and (e) Section 20(a) of the Exchange Act.

In April 2018, the Court issued a Final Judgment against Respondent and his companies. Without admitting or denying the allegations contained in the complaint, Respondent consented to the entry of the Final Judgment while waiving any right to appeal. The Court ordered that Respondent be permanently restrained and enjoined from committing any further violations of securities laws. Respondent consented to:

a. Be jointly and severally liable, along with Company W. and Company X, to pay disgorgement of $169.31 l.64 plus a $6,869.93 prejudgment interest;
b. Pay an $80,000 civil penalty; and
c. Be permanently barred from the securities industry (with a right to re-apply after five years).

Individual T Grievance Concerning Unsuitable Investment in Company E

As discussed above, Respondent recommended that numerous clients, including Individual T and her husband, invest in Company E securities.

Client Individual T and her husband met Respondent in February 2014 at a Retirement Seminar he hosted at a local university for individuals who were interested in retirement planning. According to Individual T account opening documents, her liquid net worth and annual income did not exceed $49,000. The account opening documents also reflected that her investment objectives were capital preservation, income, and growth. According to Individual T’s Proposal and Investment Policy Statement, her annual income was $36,000, her net worth was $25,000, and her risk tolerance was conservative. Individual T was not an accredited investor.

Respondent recommended that Individual T invest $20,000 from her home equity line of credit in Company E for a promised rate of return of 12.25% for four years. Respondent informed Individual T and her husband that, prior to choosing the company for his own family's investments, he performed a thorough background check of Company E and its representatives, and Respondent reassured them that the company had no volatility issues. Individual T contends that Respondent did not provide her with an offering memorandum.

On February 27, 2014, Individual T invested $20,000 in Mortgage Notes. According to Individual T, a few weeks after she invested in Company E, the SEC declared it to be a Ponzi scheme. In April 2014, Individual T filed a grievance with CFP Board against Respondent. Individual T said that Respondent recommended the investment to 23 clients whose investments in Company E totaled over $5 million.

In Respondent's response to Individual T complaint, Respondent contends that he made the recommendation to Individual T to purchase the Company E investment based on her financial circumstances. However, in his response to CFP Board, he confirmed that he did not complete a formal net worth statement for Individual T and her husband or perform a cash flow analysis for them, despite the fact that his clients were interested in retirement planning. He also contends that all representations he made to her about the offerings from Company E were based on representations made to him by Individual A.

Respondent said that he and his family also lost over $500,000 in Company E and Company D He informed Individual T that should she or any of his other clients choose to file a lawsuit against him or his companies, they would be forced to file bankruptcy because they did not have the resources to defend any lawsuits or pay any claims or judgments arising from such legal action. Respondent also admitted to the client that he did not have an Errors and Omissions insurance policy or any other type of insurance that may address his conduct relative to her investments.

Individual R Grievance Concerning Unsuitable Investment in Life Insurance Company S

Respondent's unsuitable recommendations were not limited to Company E investors, such as Individual T and her husband. He also recommended unsuitable life insurance products to Individual R. Respondent met Individual R in March 2014 when she was 39 years old. Respondent prepared a comprehensive financial plan for Individual R. According to Respondent, Individual R's income was $100,000 in 2013 and was projected to be between $200,000 and $250,000 in 2014. Respondent charged her a 2.75% asset management fee.

In April 2014, when they began implementing the financial plan, Individual R had assets totaling approximately $905,932 that included accounts held at financial institutions F and G. Individual R's assets included the following Non-Retirement Accounts: (a) a $30,000 checking account; (b) a $459,270 Financial Institution F Capital Appreciation Account; (c) a $178,001 Financial Institution F Growth and Income Account; (d) a $15,000 Financial Institution G Individual Brokerage Account; and (e) a $70,000 Company U Restricted Account. Individual R's Retirement Accounts included: (a) a $103,731 Financial Institution F Traditional Individual Retirement Account ("IRA"); (b) a $7,308 Financial Institution F Roth IRA; (c) a $21,311 Financial Institution G/Company U Traditional 401K Savings Plan; and (d) a $21,311 Financial Institution G/Company U Roth 401 K Savings Plan.

Respondent planned to utilize private wealth managers to manage Individual R's investment assets. According to Respondent, the portfolios of these private wealth managers had historically outperformed their relative benchmarks "while taking less risk than their benchmarks as measured by the Beta of their portfolios."

In order to implement the financial plan, Respondent asked Individual R to: (a) provide statements for her Financial Institution F accounts, including her Traditional IRA and her Roth IRA; (b) liquidate two of her Financial Institution F accounts (Capital Appreciation and Growth and Income), and transfer the proceeds into her checking account; (c) liquidate her Financial Institution G brokerage account and deposit the proceeds into her checking account; (d) use the proceeds from the liquidation of the above-referenced accounts to: (i) invest $408,030 in Company E Capital to fund what he called her "Moderate Risk No Volatility Portfolio" which would pay her a 10% annual fixed rate of return; and (ii) use the balance of approximately $251,780 to write a check to Company H, custodian for her "Low Risk Low Volatility and Moderate Risk Moderate Volatility Portfolios;" and (e) liquidate her Traditional IRA account and move to a cash position in the IRA which would later be transferred to Company H to fund the balance of her "Moderate Risk Moderate Volatility Portfolios." Respondent advised Individual R to make a note to herself to follow up with Company U regarding the rollover of her Company 401k account a month after she began her new work assignment in London, England.

Respondent also recommended that Individual R contribute $30,000 a year for 21 years, until age 60, to a fixed indexed universal life insurance policy as a retirement savings vehicle. After 21 years, Individual R would be entitled to take tax-free distributions of $144,000 a year as a loan from the policy until age 99 and the policy also included a death benefit. Respondent said that this would afford Individual R another bucket of money, besides her 401k, that would grow tax-free and provide supplemental retirement income for her.

Respondent recommended that Individual R purchase a universal life insurance policy from Company S as a retirement savings vehicle. He was not appointed to sell life insurance with Company S, but Respondent’s wife was appointed to the company from December 2013 through July 2014. Respondent contends that he told Individual R that he would make the presentation and his wife would sign the policy. Although Respondent's wife signed the policy, Individual R never met her.

In October 2014, Individual R filed a complaint with Insurance Company S regarding the policy she purchased from Respondent. In November 2014, Individual R provided to CFP Board a copy of her complaint to Company S. In her complaint, Individual R alleged unsuitability and deceptive sales practices by Respondent. She also claimed that when Respondent sold her the Company S policy, he implied that he was appointed with the company but she subsequently discovered that Respondent had never been appointed with Life Insurance Company S.

Respondent contends that the only error he made with regard to Individual R is that he misunderstood the appointment process with Company S. He said that, because Company D was appointed with Life Insurance Company S through his wife, who was appointed as an agent with the company, and because he also held an insurance license and provided comprehensive financial planning services to his clients, he incorrectly assumed that he was authorized to represent Company S relative to the policy design that was part of Individual R’s financial plan. Respondent said that, "[a]fter having conversations with the folks at Life Insurance Company S," he realized that he was in error. He said that he should have asked his wife to handle the sales process relating to Individual R’s purchase of the Company S policy.

Individual R claimed that, at the time Respondent presented the policy to her, she was unaware that the assumptions he used were very aggressive. She said that, since then, other professionals that reviewed the policy and the illustrations, have informed her that the assumptions are not sustainable for a reasonable and prudent investor. Individual R said she has been informed that, even under Respondent's generous assumptions, a $30,000 annual premium paid over a five-year period would not generate enough returns to break even. According to the illustration, the gross cash value does not begin to break even until the ninth year.

Individual R requested rescission of the policy and a full refund of her initial premium. She copied the State C Insurance Commissioner on the complaint and asked Company S to investigate Respondent and his wife and take appropriate action.

2014 State C Office of Insurance and Safety Fire Commissioner Investigation

In November 2014, the State C Office of Insurance and Safety Fire Commissioner ("State C") opened an investigation into Respondent's conduct based on Individual R ' s complaint that he sold her an unsuitable investment product and that he misrepresented himself as an agent with Company S. In March 2015, State C concluded that there was insufficient evidence to warrant administrative action against Respondent's license. However, it issued an Agent Practices Warning Letter. In the letter, State C informed Respondent that:

> At this time, we do not feel that there is sufficient evidence to warrant administrative action against your license. However, you should be aware that if the Department receives further allegations of this nature, you may be considered in violation of State C Code and administrative action can be taken against your license.

State C also informed Respondent that:

> Given the current circumstances, the Department has chosen to informally admonish and direct you to henceforth comply with all applicable provisions of Georgia law related to licensed agents.

As a result of CFP Board's investigation into Respondent's matter, CFP Board determined there was probable cause to refer this matter to the Disciplinary and Ethics Commission ("Commission") and alleged the following causes of action:

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, recommended that 20 clients invest in an unsuitable and unregistered securities investment, Company E, while failing to disclose that he received kickbacks from Company E in connection with their investments. Respondent continued to solicit clients to invest in Company E even after it defaulted on a promissory note owed to Respondent and his family, thereby placing his own interests ahead of his clients' interests. Thus, Respondent violated Rule 1.4 of the *Rules of Conduct*.

Respondent, a certificant, recommended that his financial planning client invest in an unsuitable universal life insurance policy. The recommendation was based on unreasonable and aggressive assumptions that are not sustainable for a reasonable and prudent investor. In making this recommendation, Respondent placed his own interests ahead of his client's interests and failed to satisfy his fiduciary duty of care. 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, communicated, directly and indirectly, to clients or prospective clients false or misleading information and failed to disclose, or omitted facts necessary to avoid misleading clients when he engaged in deceptive sales practices by: (a) failing to disclose the kickbacks he received from Company E to the clients; (b) falsely informing clients that he had performed extensive due diligence into Company E and the Company E securities, when he had not; and (c) failing to disclose to the clients that he had reason to believe Company E was an unsound investment. 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 2.2(A) of the Rules of Conduct, which provides that a certificant shall disclose to a prospective client or client the following information: an accurate and understandable description of the compensation arrangements being offered. This description must include: (1) information related to costs and compensation to the certificant's employer; and (2) terms under which the certificant and/or the certificant's employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based.

Respondent, a certificant who was not associated with a broker-dealer, failed to disclose an accurate and understandable description of his compensation arrangements with Company E by failing to inform prospective clients or clients, that contrary to Respondent's representations in his marketing materials and Form ADV Part 2B, he entered into an agreement with Company E whereby he was to receive referral fees of 2.0% to 2.5% of the amount his clients invested in Company E.

In 2013, Respondent entered into an updated agreement with Company E that increased referral fees if he successfully persuaded his clients to invest more than $1 million collectively in the calendar year. Thus, Respondent violated Rule 2.2(A) of the *Rules of Conduct*.

Fourth Ground for Disciplione

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.2(B) of the *Rules of Conduct*, which provides that a certificant shall disclose to a prospective client or client the following information: a general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship.

Respondent, a certificant who was not associated with a broker-dealer, failed to disclose to prospective clients or clients that he had entered into referral arrangements with Company E in which the company agreed to compensate him for recommending the purchase of Company E investment products to clients. This presented a conflict of interest in his relationship with prospective clients and clients. Thus, Respondent violated Rule 2.2(B) of the *Rules of Conduct*.

Fifth 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 is a certificant, the Court's Final Judgment and Respondent's Consent are conclusive proof that Respondent failed to comply with Section l 7(a) of the Securities Act, Section 10b of the Exchange Act and Rule IOb-5 thereunder, Sections 206(1) and (2) of the Advisers Act, and Sections 15(a)(l) and 20(a) of the Exchange Act when he: (a) failed to disclose the kickbacks he received from Company E to the clients; (b) falsely informed clients that he had performed extensive due diligence into Company E and the Company E securities, when he had not; (c) failed to disclose to the clients that he had reason to believe Company E was an unsound investment; and (d) continued to solicit clients' investment in Company E securities after Commercial Equity defaulted on the promissory note owed to him and his family. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Sixth 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 4.5 of the Rules of Conduct, which provides that, in addition to the requirements of Rule 1.4, a certificant shall make and/or implement only recommendations that are suitable for the client.

Respondent, a certificant, failed to make and/or implement only recommendations that were suitable for his clients when he recommended that his financial planning clients invest in an unregistered securities offering that turned out to be a Ponzi scheme, and he recommended that one client purchase an unsuitable investment product based on unreasonable assumptions. Thus, Respondent violated Rule 4.5 of the *Rules of Conduct*.

Seventh 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. Article 13.1 of the Disciplinary Rules provides that a letter or other writing from a governmental agency 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 a subject 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.

As set forth in Article 13.3 of the *Disciplinary Rules*, since Respondent's professional discipline has been proved, 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.

The acts set forth in the Court's Final Judgment and Consent are the proper basis for professional discipline, and the Final Judgment and Consent that barred Respondent from the securities industry and ordered him to disgorge $169,311.64, plus a $6,869.93 prejudgment interest, constitute professional discipline. Therefore, the Final Judgment and Consent conclusively prove there are grounds to discipline Respondent.

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 for five years as provided in Article 4 of the *Disciplinary Rules*.

The Commission found the following *Sanction Guideline* relevant to its decision: (1) Revocation for Revocation of a Financial Professional License (Conduct 28); (2) a Suspension for at Least One Year and One for Breach of Fiduciary Duty (Conduct 5); (3) a Public Letter of Admonition for Conflict of Interest (Conduct 7); (4) a Public Letter of Admonition for Failure to Disclose (Conduct 14(b)); (5) a Public Letter of Admonition for Misrepresentation to Clients and Prospective Clients (Conduct 20(d)); and (6) a Public Letter of Admonition for Securities Law Violation (Conduct 30).

In coming to its decision to enter into the Settlement Agreement, the Commission considered the following aggravating factors: (1) the large number of clients involved and the great amount of client loss; (2) the extended time period during which the conduct occurred; (3) the fact that Respondent threatened to declare bankruptcy in an effort to dissuade a client from complaining; and (4) the fact that he knew he had been defrauded but chose to defraud others himself and blame others for his actions. The Commission did not consider any mitigating factors.

Although the Commission reviewed *Anonymous Case Histories* (“ACH”), it did not rely on any one particular ACH in entering into the Settlement Agreement.