CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30420

This is a summary of a Settlement Agreement entered into at the October 2017 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. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he had clients sign blank or undated forms and allowed staff to "white-out" dates on those forms in order to reuse them for mutual fund exchanges.

II. Findings of Fact

In May 2016, Respondent's firm, Firm, terminated him for the following:

> Firm's investigation determined that from approximately late 2012 through April 2016, representative was responsible for having clients sign blank or undated forms and was also responsible (by either engaging in the practice or overseeing office employees who engaged in the practice) for the "whiting out" of dates on forms requiring client signatures in order to reuse the forms. The above practices occurred in more than 40 customer accounts. Representative initially denied knowledge and existence of the practices but later that day admitted to knowing about them.

Respondent represented that he was terminated for a violation of Firm's internal paperwork policy. It required the submission of a client-signed Switch Letter ("SL") detailing the applicable mutual fund C-share transactions and/or exchanges after the transaction was executed. Respondent contends that he fell behind in meeting this requirement, so he re-used previously signed SLs. According to Respondent, his clients reviewed and signed initial SLs alerting them to risk and potential issues with product switches. Respondent further asserts that he never signed a customer's name and is not aware of anyone in his office signing on behalf of a client. According to Respondent, his practice was to personally discuss with the client any differences in internal fees of the products being exchanged, the resetting of the contingent deferred sales charges for applicable transactions, and the purpose of the exchange. Respondent represents that the clients agreed to and authorized each transaction.

Respondent estimated that the practice of reusing SLs involved 30-40 client accounts. He claimed that he did not specifically ask clients to sign blank SLs. The SLs included the relevant information (*i.e.*, internal fund fees, reason for the transaction, name of the funds, etc.) on them. On occasion, the customers signed but did not date the SLs. By omitting the dates, previously signed forms could be recycled for future use. According to Respondent, neither he nor any of his staff ever signed a form on behalf of a client.

Respondent stated that he did not personally white-out information on client SLs but he admitted he was aware of the staff's process of whiting-out the dates on SLs so they could re-use them. He contends the only part of the SLs on which white out was used was on the date; the client signatures were original.

In May 2016, following his termination from Firm, Respondent was registered with Broker Dealer. Respondent and Broker Dealer agreed upon a heightened supervision plan for two years. Pursuant to that plan, Broker Dealer is to conduct additional annual in-office audits and Respondent is not permitted to hold a compliance position. Additionally, Respondent is required to complete additional continuing education requirements, including: a) two hours of ethics to be completed in the first six months of association; b) four hours of ethics to be completed in the second year of association; and c) four training opportunities per year which could include calls, webinars, or in-person meetings with Broker Dealer staff to discuss operations and compliance topics. According to Respondent, Broker Dealer conducted an audit of his practices and it has not required any follow-up from him after the audit.

The Financial Industry Regulatory Authority, Inc. ("FINRA") began its investigation regarding Respondent's termination from Firm. FINRA relied upon documents obtained from Firm because Respondent had no documents to produce that were relevant to FINRA's investigation.

In June 2017, FINRA accepted Respondent's Letter of Acceptance, Waiver and Consent ("AWC") in which Respondent accepted and consented to, without admitting or denying, the following findings:

> From January 2013 through May 2016, Respondent maintained approximately 122 customer-signed but otherwise blank forms for 47 clients to submit to Firm in connection with mutual fund exchanges. The pre-signed forms, which were investor acknowledgements and SL, were completed and submitted to the Firm following execution of the transactions. The Firm did not require these forms be signed prior to the transactions. Respondent's actions were in violation of Firm's written supervisory procedures. By virtue of the foregoing, Respondent violated FINRA Rule 2010.

Respondent consented to a suspension from association with any FINRA member in any capacity for a period of three months and a $5,000 fine.

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 . . . [an] industry self-regulatory organization or professional association."

FINRA is an industry self-regulatory authority. The AWC is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively established the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent.

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 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, failed to comply with FINRA Rule 2010 when he maintained customer-signed but blank forms to submit to his firm regarding mutual fund exchanges. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

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 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board *Code of Ethics and Professional Responsibility* ("*Code of Ethics*").

Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he had clients sign blank or undated forms and allowed staff to "white-out" dates on those forms in order to reuse them. As a result, Respondent's firm terminated him for this conduct. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

Third 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 AWC are the proper basis for professional discipline, and Respondent's FINRA suspension constitutes professional discipline. Therefore, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

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 imposed a three-month suspension on Respondent. The issuance of the three-month suspension was published in a press release, or in such other form of publicity as is selected by the Disciplinary and Ethics Commission. The fact of a suspension includes the publication of the facts and grounds for discipline underlying the discipline along with the identification of the CFP® professional.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policies Violation); 30 (Securities Law Violation) and 33 (Professional Discipline involving a suspension for more than 30 days and less than three months). The Commission also consulted *Anonymous Case History* 27686, 28675 and 21589 in reaching its decision. ACH 27686 involved a CFP® professional who retained signed, but incomplete, documents in 34 client files. The CFP® professional also failed to supervise his assistant when he did not direct her to remove the incomplete documents from client files. ACH 28675 involved a CFP® professional who had clients sign blank Automated Customer Account Transfer Forms. The Commission imposed a public letter of admonition in each ACH. ACH 21589 involved a CFP® professional who had a client sign a blank sheet of paper so he could transfer the client's signature onto a photocopy of a client form. The CFP® professional was convicted of criminal forgery. The Commission imposed a suspension for one year in ACH 21589. The Commission determined that Respondent's conduct was not as severe as the conduct that resulted in a criminal conviction for forgery as in ACH 21589, and was closer to, but more severe than, the conduct at issue in ACHs 27986 and 28675. The Commission based its analysis primarily on the fact that the length of time for which the conduct occurred and because the number of clients involved was more significant than ACHs 27986 and 28675.

The Commission then considered whether any aggravating or mitigating factors would affect the appropriate sanction. In aggravation the Commission identified that: 1) Respondent's conduct involved over 40 clients and

numerous forms; 2) Respondent was aware of staff engaging in misconduct and approved of said conduct. The Commission did not cite any mitigating factors. Based on the aggravating and mitigating circumstances, the Commission determined that a three-month suspension was appropriate.