

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 26853

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This is a summary of a decision issued following the November 2011 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705.

I. Issues Presented

Whether a CFP<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) failed to provide his firm, Broker-Dealer, with notice of his involvement in private securities transactions with a managed currency program (“Fund”), in violation of National Association Securities Dealers (“NASD”, now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) Conduct Rules 3040 and 2110; 2) recommended and sold investments that were not approved by Broker-Dealer and that were outside the scope of his employment with Broker-Dealer; 3) used an outside email account to skirt Broker-Dealer’s internal controls; 4) informed his clients that the Fund was a safe investment when it was not safe; 5) signed a customer's name to account related documents without the customer's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110; 6) did not disclose his compensation arrangement to clients; 7) did not disclose the referral fees he received for directing clients’ investments to the Fund; 8) was suspended by FINRA for violating NASD Conduct Rules 3040 and 2110; and 9) had his securities license revoked by the State Securities Division for failing to respond to the State's Order to Show Cause.

II. Findings of Fact Relevant to the Commission’s Decision

In November 2008, Broker-Dealer began an internal review of Respondent regarding his recommendation that a client invest in the Fund. Broker-Dealer did not approve the Fund for sale to its clients. Respondent also used an outside email account to skirt Broker-Dealer’s internal controls. In his testimony before the Commission, Respondent admitted that he used the outside email account to communicate with some of Broker-Dealer’s clients.

From June to December 2008, Respondent invested Clients A, B and C’s funds in the Fund. Respondent: 1) informed the clients that he thoroughly investigated the Fund and that the Fund could generate a solid monthly interest rate without exposing the clients to much risk; 2) represented to the clients that that the Fund was endorsed by Broker-Dealer and did not inform the clients that the Fund was not marketed through Broker-Dealer; and 3) did not inform the clients that the Fund was highly leveraged. The Fund suspended trading in September 2008. Clients A lost approximately \$985,000 and settled a civil suit filed against Respondent for \$600,000 in November 2010. Client B lost 90% of her investment and settled a civil suit filed against Respondent for \$40,000 in September 2010. Respondent was responsible for the full

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amount of the settlements with Clients A and B. Client C settled a civil suit filed against Respondent for \$75,000. Respondent contributed \$35,000 to the settlement.

In June 2010, FINRA's Department of Enforcement filed a disciplinary proceeding against Respondent in connection with Respondent's recommendation to 31 individuals and entities that they participate in a foreign currency exchange trading program managed by the Fund. Nearly all of the 31 individuals were Broker-Dealer's clients. Respondent made the recommendations between May and August 2008 while he was employed with Broker-Dealer.

Respondent's clients invested a total of approximately \$2,682,000, with Respondent receiving approximately \$3,900 in compensation for the referrals. By September 2008, Respondent's clients collectively lost more than \$2.4 million or 90% of the amount they invested in the program. Respondent's recommendation and participation in the program was a private security transaction conducted without written notice to, or approval from his firm. Respondent did not provide Broker-Dealer with any notice of his involvement with the Fund, and thereby violated NASD Conduct Rules 3040 and 2110. In addition, between June and July 2008, Respondent signed a customer's name to account-related documents without the customer's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110. In March 2011, FINRA suspended Respondent for 16 months and fined him \$10,000.

In March 2011, the Office of the Attorney General of the State issued Respondent an Order to Show Cause why his registration with the state should not be revoked pursuant to Section 11-412(a)(6) and Section 11-412(a)(7) of the State Securities Act. The Order to Show Cause was related to Respondent's suspension by FINRA for participating in private securities transactions outside the scope of his employment with his member firm and signing a customer's name to account-related documents without the customer's knowledge or consent. Respondent did not respond to the State Order to Show Cause. In May 2011, the State Securities Commissioner revoked Respondent's broker-dealer registration.

### III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission determined that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when, as an employee of Broker-Dealer, Respondent: 1) failed to provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) represented that the Fund was endorsed by Broker-Dealer and did not inform clients that the Fund was not marketed through Broker-Dealer; 3) did not inform clients that the Fund was highly leveraged and operated on margin; 4) informed his clients that the Fund was a safe investment when it was not safe, in violation of NASD Conduct Rule 2110; 5) did not disclose his compensation arrangement to

clients; 6) did not disclose the referral fees he received for directing clients' investments to the Fund; and 7) signed a client's name to account-related documents without the client's knowledge or consent at least 16 times. Thus, Respondent violated *Code of Ethics* Rule 102.

*B. Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) failed to provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) recommended and sold investments that were not endorsed by Broker-Dealer to his clients and that were outside the scope of his employment with Broker-Dealer; 3) informed his clients that the Fund was a safe investment when it was not safe; and 4) signed a customer's name to account-related documents without the customer's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 201.

*C. Rule 401(a) – In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including, conflicts of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity.*

The Commission determined that Respondent failed to disclose to the client material information relevant to the professional relationship when he did not disclose: 1) his compensation arrangement to clients; and 2) the referral fees he received for directing clients' investments to the Fund. Thus, Respondent violated *Code of Ethics* Rule 401(a).

*D. Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.*

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of the employer and the *Code of Ethics* when he: 1) failed to provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) signed a client's name to account-related documents without the client's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110; and 3) used an outside email account to skirt Broker-Dealer's internal controls. Thus, Respondent violated *Code of Ethics* Rule 406.

*E. Rule 407(a) – A CFP Board designee shall advise his/her employer of outside affiliations which reasonably may compromise service to an employer.*

The Commission determined that Respondent failed to advise his employer of outside affiliations that reasonably may compromise service to his employer when he did not provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110. Thus, Respondent violated *Code of Ethics* Rule 407(a).

*F. Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission determined that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) failed to provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) signed a client's name to account-related documents without the client's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110; and 3) used an outside email account to skirt Broker-Dealer's internal controls. Thus, Respondent violated *Code of Ethics* Rule 606(a).

*G. Rule 606(b) - In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission determined that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) failed to provide Broker-Dealer with notice of his involvement in private securities transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) recommended and sold investments that were not endorsed by Broker-Dealer to his clients and that were outside the scope of his employment with Broker-Dealer; 3) used an outside email account to skirt Broker-Dealer's internal controls; 4) informed his clients that the Fund was a safe investment when it was not safe; 5) signed a client's name to account-related documents without the client's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110; 6) did not disclose his compensation arrangement to clients; and 7) did not disclose the referral fees he received for directing clients' investments to the Fund. As a result of the above-mentioned conduct, Respondent violated Rules 102, 201, 401(a), 406, 407(a), 606(a), 607, 701 and 704 of the *Code of Ethics*. Thus, Respondent violated *Code of Ethics* Rule 606(b).

*H. Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks or upon the profession.*

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP<sup>®</sup> professional, upon the CFP<sup>®</sup> marks and upon the profession when he: 1) failed to provide Broker-Dealer with notice of his involvement in private securities

transactions with the Fund, in violation of NASD Conduct Rules 3040 and 2110; 2) recommended and sold investments that were not endorsed by Broker-Dealer to his clients, and that were outside the scope of his employment with Broker-Dealer ; 3) used an outside email account to skirt Broker-Dealer's internal controls; 4) informed his clients that the Fund was a safe investment when it was not safe; 5) signed a customer's name to account-related documents without the customer's knowledge or consent at least 16 times, in violation of NASD Conduct Rule 2110; 6) did not disclose his compensation arrangement to Client A; 7) did not disclose the referral fees he received for directing Client A's investments to the Fund; 8) was suspended by FINRA for violating NASD Conduct Rules 3040 and 2110; and 9) had his securities license revoked by the State Securities Division for failing to respond to State's Order to Show Cause. Thus, Respondent violated *Code of Ethics* Rule 607.

*I. Rule 701 – A CFP Board designee shall provide services diligently*

The Commission determined that Respondent failed to provide services diligently when he: 1) did not obtain Broker-Dealer's approval for the investment prior to recommending the Fund managed currency program to his clients; 2) did not fully understand or explain the risks to his clients; and 3) did not adequately explain the Fund investment to his clients. Thus, Respondent violated *Code of Ethics* Rule 701.

*J. Rule 704 – Consistent with the nature and scope of the engagement, a CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients. Such an investigation may be made by the CFP Board designee or by others provided the CFP Board designee acts reasonably in relying upon such investigation.*

The Commission determined that Respondent failed to make a reasonable investigation regarding the financial products he recommended to the clients when he did not obtain Broker-Dealer's approval for the Fund managed currency program prior to recommending the investment to his clients. Thus, Respondent violated *Code of Ethics* Rule 704.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 401(a), 406, 407(a), 606(a), 606(b), 607, 701 and 704 of the *Code of Ethics*. Article 3(d) of the *Disciplinary Rules* provides grounds for discipline for any act that is the proper basis for a professional suspension. The Commission found grounds for discipline under Article 3(d) because FINRA suspended Respondent for 16 months. Article 3(e) of the *Disciplinary Rules* provides grounds for discipline for any act or omission that violated the *Disciplinary Rules* or that violated an order of discipline. The Commission found grounds for discipline under Article 3(e) because Respondent failed to disclose his suspension to CFP Board within 10 days of receiving notification of the suspension. Pursuant to Article 4.4 of the

*Disciplinary Rules*, the Commission issued Respondent a permanent revocation of Respondent's right to use the CFP® marks.

The Commission considered the following mitigating factors: 1) Respondent paid a total of \$732,000 in restitution to his clients and suffered personal losses of more than \$500,000; 2) Respondent's total compensation for the Fund investments was approximately \$4,000; 3) Respondent made significant personal contributions to settlements with the clients; 4) Respondent's clients received statements reflecting the activity in the accounts, but did not complain until the losses began accumulating; and 5) Respondent did not intentionally harm his clients.

The Commission considered the following aggravating factors: 1) Respondent's clients suffered approximately \$2.4 million in losses; 2) Respondent's consistent failure to comply with Broker-Dealer's compliance policies by failing to disclose and report referral fees and willfully circumventing Broker-Dealer's internal controls by using an outside email account; and 3) Respondent signed a client's name to account-related documents without the client's knowledge or consent at least 16 times.