CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28937

This is a summary of a Settlement Agreement entered into at the October 2015 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 for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board's *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he, as a director of a registered investment company, approved advisory contracts for the investment company without having all the information he requested as reasonably necessary to evaluate the contracts, in violation of Section 15(c) of the Investment Company Act.

II. Findings of Fact

Respondent was an independent trustee on the Board of Trustees of WT. WT is registered with the Securities and Exchange Commission ("SEC") as an open-end series investment company that allows unaffiliated advisers to manage portfolios of mutual fund series. Therefore, in his capacity as trustee of WT, Respondent was a director of a registered investment company.

Section 15(c) of the Investment Company Act of 1940 makes it unlawful for a registered investment company to enter into or renew any advisory contract unless the terms of the contract are approved by a majority of the fund's independent directors. As part of the approval process, Section 15(c) imposes a duty on the directors to request and evaluate, and a duty on the advisor to furnish, such information as may reasonable be necessary for the directors to evaluate the terms of the adviser's contract. Such information includes: (i) the adviser's cost in providing services; (ii) the nature and quality of the adviser's services; (iii) the extent to which the adviser realizes economies of scale as the fund grows larger; (iv) the profitability of the fund to the adviser; (v) fee structures for comparable funds; (vi) fall-out benefits accruing to the adviser or its affiliates; and (vii) the independence, expertise, care, and conscientiousness of the board.

Prior to the meeting in October 2008 of the WT Board of Trustees, the trustees requested materials and information from the adviser and sub-adviser as part of the 15(c) process. The trustees requested that the adviser and sub-adviser complete a questionnaire that included requests for information. The questionnaire responses and other materials were compiled into a Board Book. The Board Book also contained a detailed memorandum to the trustees prepared by the trustees' independent counsel. The memorandum discussed the trustees' duties, specifically advising the trustees to consider comparable fees and the services provided by the adviser. At the meeting, the trustees evaluated and approved advisory contracts for the WT funds with the adviser and sub-adviser.

The WT trustees did not have all the information they requested as reasonably necessary to evaluate the advisory contracts. The trustees requested comparative fee information from the adviser but the adviser did not provide comparable fee information.

The trustees requested, but the adviser did not provide, information needed to evaluate the nature and quality of the services the adviser provided. The trustees did not request or receive additional materials and approved the advisory

contracts without having all the information they requested as reasonably necessary to evaluate the advisory contracts.

In June 2015, the SEC issued an Order Instituting Administrative Proceedings and Cease-and-Desist Proceedings Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order").

The SEC found that Respondent, as a director of a registered investment company, approved advisory contracts for WT without having all the information the directors requested as reasonably necessary for their evaluation, in violation of Section 15(c) of the Investment Company Act.

The SEC sanctioned Respondent by ordering that he cease and desist from committing or causing any violations and any future violations of Section 15(c) of the Investment Company Act and pay a civil penalty of $3,250. Respondent consented to the entry of the Order without admitting or denying the findings therein.

Article 13.1 of the *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 a disciplinary measure by any governmental agency, industry self-regulatory organization or professional association."

Article 13.4 does not provide an exhaustive list of disciplinary measures that meet the definition of professional discipline and the SEC sanctions imposed on Respondent qualify as professional discipline. The SEC Order is an order of professional discipline and Respondent is the 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 the 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 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. The Commission found that Respondent, as a director of a registered investment company, approved advisory contracts for WT funds without having all the information he requested as reasonably necessary to evaluate the contracts, in violation of Section 15(c) of the Investment Company Act (hereinafter Respondent's "Violation of Section 15(c) of the Investment Company Act"). Therefore, Respondent violated 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 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent judgment in providing professional services to clients. The Commission found that Respondent failed to exercise

reasonable and prudent judgment in providing professional services to clients, in violation of Rule 4.4, when he took actions that constituted a Violation of Section 15(c) of the Investment Company Act.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(A) of CFP Board's *Disciplinary Rules*. The Commission found that Respondent's conduct violated Rules 4.3 and 4.4 of the *Rules of Conduct*. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

In reaching its decision, the Commission identified the following mitigating factors:

1. Respondent had been a CFP® professional since 1992 and other than this incident had maintained a clean disciplinary record;
2. Respondent served as an unpaid Trustee for a short period of time. While the record did not contain an exact date, Respondent appeared to have resigned from his Trustee position prior to the initiation of the SEC investigation;
3. Respondent disclosed the SEC investigation to CFP Board;
4. The Financial Industry Regulatory Authority, Inc. declined to take any action with regard to Respondent's actions as Trustee; and
5. Respondent had not served previously as a trustee and reasonably relied on legal counsel and the representations made in the meeting materials.

The Commission did not identify any aggravating factors.

The Commission consulted *Sanctions Guidelines* 11 (Diligence) and 30 (Securities Law Violation). While *Sanction Guideline* 30 was technically applicable, the Commission did not give significant weight to this guideline as the record indicated that Respondent did not knowingly or wilfully violate the securities laws. The Commission also consulted Anonymous Case Histories 26723 and 21781.