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February 2, 2018

Certified Financial Planner Board of Standards, Inc.
Commission on Standards
1425 K Street NW #800
Washington, DC 20005

Ladies and Gentlemen,

The Financial Planning Association® (FPA®), the voluntary professional membership association for CERTIFIED FINANCIAL PLANNER™ (CFP®) professionals and those who support financial planners and the financial planning process, is pleased to provide the following comment letter on CFP Board's revised proposed *Code of Ethics and Standards of Conduct* (Standards).

We want to thank the Certified Financial Planner Board of Standards, Inc. (CFP Board) and the Commission on Standards for engaging in the crucial work of improving the Standards and advancing the profession. In our first comment letter¹, we outlined areas where our members expressed either concerns or the need for clarification. CFP Board responded exceptionally well to this request. Not only did CFP Board open an additional comment period as FPA requested, but also provided outstanding resources that CFP® professionals could use to compare the proposed changes and understand the rationale for them. FPA sincerely appreciates the efforts CFP Board made in producing this documentation and encourages CFP Board to continue in this manner by producing guidance materials that CFP® professionals can reference as they live into the new Standards.

Since FPA's founding in 2000, through the merger of the International Association for Financial Planning (IAFP) and the Institute of Certified Financial Planners (ICFP), the association has enjoyed a close working relationship with CFP Board rooted in our common interest of building a recognized, respected and distinct financial planning profession. Through our collaborative work within the Financial Planning Coalition and many other efforts, the financial planning profession is on a positive trajectory forward, but more can be done. We applaud CFP Board for having the courage to extend the fiduciary duty to all engagements in which a CFP® professional is providing financial advice to clients.

¹ Financial Planning Association® (FPA®) comment letter to the Certified Financial Board of Standards, Inc. regarding CFP Board's proposed changes to the *Standards of Professional Conduct* (August 21, 2017), available at https://www.onefpa.org/about/Press-Room/Documents/FPA_CommentLetter_CFPStandards.pdf.

We believe the extension of the fiduciary duty when providing Financial Advice will not only serve the public well, but also elevate the level of business success enjoyed by our members – as evidenced in the *Aité Fiduciary Study Findings* from April 2013² – and drive the profession forward. The extension of the fiduciary duty will further distinguish CFP® professionals from others who are not held to the same standard. Consumers, who are confused by terms like “financial advisor,”³ will know their CFP® professional is required to act in a fiduciary capacity when rendering advice, regardless of their business or compensation model. And, as we pointed out in our original comment letter, it is consistent with the principles-based Fiduciary Standard of Care FPA adopted in 2007 that serves as a foundational policy of the association.

With the U.S. Department of Labor's (DOL) partially implemented fiduciary rule and the Securities and Exchange Commission's (SEC) intent to propose a fiduciary rule this year, the financial services landscape is evolving. We encourage CFP Board, with its 80,000 CFP® professionals, to make this important move and ensure the fiduciary requirement for CFP® professionals is complementary to the work being done by other regulatory bodies as to not create a burdensome compliance situation for CFP® professionals once the DOL and SEC complete their work.

The Rebuttable Presumption

FPA is the professional membership organization for CFP® professionals, and we strongly believe that all CFP® professionals should be held to a fiduciary duty regardless of business or compensation model. Our membership is composed of a diverse group of individuals who are some of the most passionate advocates for the financial planning profession. Their experience leads them to believe that consumers relate the CFP® marks to terms like “financial planner” and “financial planning” and this leads consumers to believe they are receiving financial planning advice when they engage the services of a CFP® professional.

FPA has long advocated for CFP Board to close the loophole in the current Standards that allows CFP® professionals to switch fiduciary and suitability hats throughout the client engagement. We were pleased to see in CFP Board's first proposed Standards the “Rebuttable Presumption” that CFP® professionals provide Financial Planning advice, but are concerned with its removal from the revised proposed Standards. Consumers believe, thanks in part to CFP Board's effective consumer awareness campaign and the work FPA is doing to promote the CFP® marks, they are receiving Financial Planning advice when they engage a CFP® professional. Any effort that seeks to limit the effectiveness of this consumer expectation should be done with caution, as doing so weakens the credibility of the CFP® marks and the financial planning profession as a whole.

FPA requests that CFP Board reinstate the “Rebuttable Presumption” from the original proposed Standards to the final Standards that are adopted by CFP Board. We further ask that if a client is not engaging the CFP® professional in Financial Planning, that it is required to be documented in writing by the CFP® professional. We believe this lives up to the spirit of consumer expectations when they engage

² *Aité Fiduciary Study Findings*, April 2013, and referenced by the Financial Planning Coalition on Jul. 5, 2013, to the SEC in response to the SEC Request for *Data and Other Information, Duties of Brokers, Dealers and Investment Advisers*, available at <http://www.sec.gov/comments/4-606/4606-3126.pdf>.

³ “*Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*,” RAND Study sponsored by the United States Securities and Exchange Commission (SEC).

the services of a CFP® professional and provides clarity to the engagement between the CFP® professional and the client.

To ensure the collective voice of CFP® professional members of the association were heard on the revised proposed Standards, the FPA Member Advocacy Council (MAC), which is the official mechanism within FPA that is gathering feedback from members on the activities and programs of regulatory and certifying agencies, employed several feedback opportunities for our members where they were able to share their perspectives. It was through these efforts that we are able to provide the following feedback on the proposed Standards and, where possible, offer possible revisions.

Standards of Conduct – Section A (Duties Owed to the Client)

Overwhelmingly, FPA members voiced support for these standards, but desire clarity on how to apply them. Many CFP® professionals operate under a business model that traditionally has been governed by a rules-based regime focused on sales practices and, as such, may not fully understand the distinction a principles-based regime focused on a fiduciary standard entails. We ask CFP Board to provide supporting material that provides examples, best practices and educates CFP® professionals on how to apply the revised Standards.

Section A.1 states, *“When providing Financial Advice to a Client, a CFP® professional must at all times act as a fiduciary, and therefore, act in the best interest of the Client.”* And Section A.1.a.ii states, *“Seek to avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client’s informed consent, and properly manage the conflict.”*

- Our members have many questions related to the adherence of these standards. For example, are there specific questions a CFP® professional must ask to ensure the standard is being met? How does CFP Board expect CFP® professionals to properly manage conflicts? Should management of known and potential conflicts be officially documented and, if so, what types of conflicts should CFP® professionals document? How will CFP Board determine informed consent was received? How should informed consent be documented?

Section A.1.c states, *“Duty to Follow Client Instructions. A CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.”*

- FPA members stated that in any engagement with a client all “objectives, policies, restrictions and other terms” should be reasonable. FPA believes that “directions of the client” must include additional explanation so it is understood that *those directions are relevant to the engagement with the client.*
- With this in mind, FPA suggests this section be changed to read: *“Duty to Follow Client Instructions. A CFP® professional must comply with all reasonable objectives, policies, restrictions, and other terms of the Engagement and all lawful directions of the Client as they relate to the delivery of Financial Advice.”*

Section A.5.a states, *“Disclose Conflicts. When providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional’s Client that could affect the professional relationship.”*

- While FPA believes that the mere disclosure of material conflicts of interest does not satisfy the fiduciary requirement as proposed in the Standards, we do regard written disclosure to be of the utmost importance to quantifying the scope of the engagement a CFP® professional has with a client. With this in mind, disclosure should be required in written form whenever possible to both protect the client and CFP® professional throughout the course of the engagement.
- While we appreciate the case made by CFP Board in the annotated version of the proposed Standards, members are concerned about how CFP Board will handle verbal disclosures if a client files a complaint. How should a CFP® professional manage verbal disclosures and how will CFP Board equitably adjudicate verbal disclosure related complaints?

Section A.5.b states, *“Manage Conflicts. A CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional’s ability to act in the Client’s best interests.”*

- Does CFP Board require these business practices to be written and formalized so they can be evaluated and reviewed as needed? If so, CFP® professionals would benefit from sample business practices that can be used to ensure they are complying with the requirement. If these business practices are not required in written form, how will CFP Board equitably adjudicate related complaints?

Section A.6 states, *“A CFP® professional must exercise professional judgment on behalf of the Client that is not subordinated to the interest of the CFP® professional or others. A CFP® professional may not solicit or accept any gift, gratuity, entertainment, non-cash compensation, or other consideration that reasonably could be expected to compromise the CFP® professional’s objectivity.”*

- FPA members believe that gifts of nominal value are not likely to jeopardize the objectivity of the advice provided to clients. CFP Board should consider articulating a gift value minimum, below which a violation would not occur.
- FPA members indicate that they often have relationships with custodians and vendors where services – that would otherwise require a fee – are offered as an enhancement to the service contract or included in a service package. For example, firms that custody assets with certain vendors may gain access to portfolio rebalancing software at no cost. It is recommended that CFP Board clarify its stance related to these agreements, provide guidance to CFP® professionals on where/when this would be allowable, and when it would violate “soft dollar” rules within the new Standards.

Section A.10.a.iv states, *“The location(s), if any, of the webpages of all relevant public websites of any governmental authority, self-regulatory organization, or professional organization that sets forth the CFP® professional’s public disciplinary history or any personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person.”*

- FPA members are seeking clarification on what makes public websites “relevant” in this requirement.
- We recommend CFP Board add an additional line that states: *“Examples of relevant public websites include...”*.

Section A.10.b.i states, *“The information required to be provided when providing Financial Advice.”*

- Members providing input pointed out that often information required by the CFP® professional is not completely identified until after the engagement is in place.
- It is recommended that CFP Board alter this line to read: *“The information reasonably required to be provided when providing Financial Advice.”*
- It is also recommended that CFP Board provide CFP® professionals with guidance on the minimum information required.

Section A.10.b.ii states, *“The terms of the Engagement between the Client and the CFP® professional or the CFP® Professional’s Firm, including the Scope of Engagement and any limitations, the period(s) during which the services will be provided, and the Client’s responsibilities. A CFP® professional is responsible for implementing, monitoring, and updating unless specifically excluded from the Scope of Engagement.”*

- FPA members, who are part of larger financial institutions, pointed out that their firms already require documentation that outlines the scope of the engagement they have with clients. How does the requirement in this section take that potential conflict into account?
- Also, it appears that further explanation is needed immediately following the part that reads, *“...for implementing, monitoring, and updating...”*.
 - Is this in reference to the Scope of Engagement, the plan, the recommendations or all of the above?
 - As with the other standards, FPA recommends CFP Board develop materials that provide examples of engagement letters.

As it pertains to sections A.10.a and A.10.b:

- When providing Financial Advice, standard A.10 articulates five types of information that must be provided to clients prior to – or at the time of – the engagement, and the need to document that the information has been provided to the client. According to A.10.b, when a CFP® professional enters into a Financial Planning engagement with a client, these five types of information must be provided in writing. FPA believes the manner in which this information is shared with clients should be applied equally and with the utmost diligence when the CFP® professional is providing Financial Advice or Financial Planning. Providing material information, such as that defined in Standard A.10.a.i-v, in writing provides the client with information they need to make an informed choice. Requiring this information to be provided in writing under

Financial Advice or Financial Planning will ensure the CFP® professional operates under the highest standard regardless of the type of Financial Advice being provided. It is for these reasons, that we ask CFP Board to consider requiring the information articulated under Standard A.10.a be provided to the client in writing where possible for both Financial Advice and Financial Planning.

Standards of Conduct – Section B (Financial Planning and Application of the Practice Standards for the Financial Planning Process)

Section B.2 states, *“Examples of Relevant Elements of the Client’s Personal and Financial Circumstances. Relevant elements of personal and financial circumstances vary from Client to Client, and may include the Client’s need for or desire to: develop goals, manage assets and liabilities, manage cash flow, identify and manage risks, identify and manage the financial effect of health considerations, provide for educational needs, achieve financial security, preserve or increase wealth, identify tax considerations, prepare for retirement, pursue philanthropic interests, and address estate and legacy matters.”*

- The examples provided are not inclusive of all financial matters that may be taken into account in the engagement. FPA suggests the following be included in the standard: *“...may include, but is not limited to, the Client’s need for, or desire to...”*.

Section B.3.b states, *“The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.”*

- Given the success of CFP Board’s consumer awareness campaign, does CFP Board believe the CFP® marks are sufficient for a client to "believe" they are receiving Financial Planning advice when they engage the services of a CFP® professional? As stated previously, according to our members, consumers relate the CFP® marks to Financial Planning advice and believe they are receiving Financial Planning advice when engaging the services of a CFP® professional.

Standards of Conduct – Section C (Practice Standards for the Financial Planning Process)

Section C.5 states, *“A CFP® professional must present to the Client the selected recommendations and the information that was required to be considered when developing the recommendation(s).”*

- Members expressed concerns for CFP® professionals in smaller firms where they may be the sole CFP® professional on staff and members of their team assist in working with clients. A requirement for a CFP® professional to be the primary person delivering the recommendations is viewed as unnecessarily burdensome to those CFP® professionals in smaller firms.
- Many CFP® professionals are members of teams in which the various team members share client-facing activities. In some instances, the CFP® professional may be responsible for the development of financial planning advice, but may not be the person that communicates said advice to the client.
- FPA recommends the following alteration to this standard to accommodate these situations: *“A CFP® professional or their supervised designee, must present and document to the Client, the selected recommendations and the information that was required to be considered when developing the recommendation(s).”*

Standards of Conduct – Section E (Duties Owed to CFP Board)

Section E.1.b states, “*Relevant Misdemeanor. A criminal offense, that is not a Felony, for conduct involving fraud, theft, misrepresentation, other dishonest conduct, crimes of moral turpitude, violence, or a second (or more) alcohol and/or drug-related offense.*”

- The term “crimes of moral turpitude” is overly general. FPA suggests CFP Board provide examples of these types of crimes in an effort to provide clarity.

Supporting CFP® Professionals in Adhering to the Standards

The advancement of these principles-based Standards will require CFP Board to provide support to CFP® professionals so they can adhere to the Standards once finalized. While FPA will explore developing a robust educational program to help our CFP® professional members, we feel it is incumbent on CFP Board to provide critical support to CFP® professionals and help clarify the Standards for the public. Examples of content that would be beneficial, include:

- Condensed version of the *Code of Ethics and Standards of Conduct* into a simple, digestible explanation that can be used by CFP® professionals in promoting the Standards to their clients.
- Content that helps CFP® professionals understand how they will need to alter their practices to stay in compliance, which should include concrete examples and legally substantiated criteria.
- Charts, diagrams and scenario-based case studies that will help CFP® professionals understand the application of the Standards and will help them map their current business processes with the new Standards.
- Best practices, checklists, relevant models and samples of documentation pertaining to the Standards.

Once again, we would like to thank CFP Board staff and volunteer leaders who have committed their time and energy into updating the Standards. Your work is recognized and appreciated by FPA, our members, and the entire financial planning profession. FPA looks forward to further discussing the Standards and exploring how we can work together to support CFP® professionals as we continue to build a respected and recognized profession.

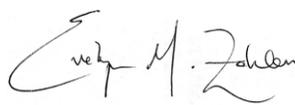
Respectfully Submitted on Behalf of the 2018 FPA Board of Directors,



Frank Paré, CFP®
2018 FPA President



Shannon J. Pike, CFP®
2018 FPA Chair



Evelyn M. Zohlen, CFP®
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