February 2, 2018

Via e-mail to comments@cfpboard.org

Board of Directors
Certified Financial Planner Board of Standards, Inc.
1425 K Street NW, No. 800
Washington, DC 20005

Re: Second Revised Proposal of Revisions to CFP Board’s Standards of Conduct

This comment letter is provided by several of the U.S. Securities and Exchange Commission ("SEC") and/or the Financial Industry Regulatory Authority ("FINRA") registered financial services firms represented on the Certified Financial Planner Board of Standards, Inc.’s ("CFP Board”) Business Model Council and additional regulated firms (collectively, “Firms” or “regulated firms”). We hope our comments below reiterating our collective, long-held support of a harmonized best interest standard of care for the provision of personalized investment advice inform CFP Board’s second proposed revisions to its Code of Ethics and Standards of Conduct (referred to herein as the “Standards of Conduct” or the “Revised Proposal”).

We collectively employ or are associated with approximately 18,200 CFP® certificants and have invested considerable time and resources to encourage and support our financial professionals in obtaining and maintaining CFP® certifications. We made these investments because, in our experience, the associated training is consistent with our values and helps our CFP® certificants to provide quality financial planning. We recognize the Standards of Conduct as an essential part of the CFP® certification and appreciate CFP Board’s willingness to consider the industry’s feedback.1

Unfortunately, the vast majority of our key concerns regarding the initial proposal remain in the Revised Proposal. There is still much work required to remove impracticality and inconsistency with the regulatory environment from the Revised Proposal in order for our Firms to support it.

Most critically, the timeline for finalizing the Standards of Conduct by the end of the second quarter of this year and making them effective by January 1, 2019 fails to account for the SEC’s stated intention to advance its own best interest standard of care in the coming months. There is no compelling reason why the Revised Proposal should move forward at this particular juncture. Given the almost inevitability of inconsistencies between the Revised Proposal and the SEC’s forthcoming rulemaking, we are requesting that, in order to best achieve its investor protection goals, CFP Board wait to see what the SEC proposes, rather than adding to the growing patchwork of standards of care.

I. CFP Board Should Defer Finalization of the Standards of Conduct and Should Align Them with the SEC’s Proposal.

We believe a best interest standard applied consistently across the industry is the best result for investors, the firms that serve them and CFP® certificants. Moreover, we believe the SEC is in the best position to accomplish the goal of a harmonized standard that ensures investors’ interests are put first while preserving investor access to financial information, advice, products and services. Based on CFP

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1 In addition to the concerns raised in this letter, our Firms support the recommendations made by Securities Industry and Financial Markets Association ("SIFMA") in its comment letter.
Board’s recent comments to the SEC that “[a]bsent a uniform fiduciary standard, confusion persists among retail investors seeking investment advice,” we believe CFP Board shares this view.\(^2\)

Unfortunately, the Revised Proposal is in direct conflict with a harmonized best interest standard of care. The proliferation of different standards of care across accounts, state lines, products and, potentially, professional designations does not provide clarity or reliability for investors. In fact, the different standards in effect today have proven to reduce investor choice since in order to reduce compliance risk, many financial services providers have been forced to limit the availability of product, advice and service platforms.

A. CFP Board’s Revised Proposal Contributes to Growing Problem of Overlapping, Inconsistent Standards of Conduct.

If CFP Board revises its Standards of Conduct now, the changes would come in the midst of multiple regulators, including the Department of Labor (“DOL”), adding new and different standards of care applicable to different account types when providing investment advice. For example, the State of Nevada recently adopted a new fiduciary duty pertaining to “financial planners,” which includes broker-dealers.\(^3\) Other states have indicated that they may soon follow the course set by Nevada.\(^4\) Furthermore, the New York Department of Financial Services and the National Association of Insurance Commissioners have also proposed new standards of care for life insurance and annuity products. The result is, as SEC Chair Jay Clayton recently remarked, “we’re in a position where we could have different standards for the individual investor – that doesn’t seem right.”\(^5\)

In fact, multiple standards of conduct can apply to investment advice provided by a financial professional for a single customer.\(^6\) These differences are based on whether a financial professional provides investment advice concerning (1) assets in an employer plan, (2) assets in an individual retirement account, (3) assets in a taxable account, (4) assets in a particular state and (5) particular product types. Each of these differences is further complicated by whether a particular account is serviced by (1) a broker-dealer or (2) a registered investment adviser. In sum, an individual client could be subjected to half-dozen or more standards of care. This is why the SEC is expected to act to resolve this critical issue by proposing a new standard of care regulation in the coming months. Former CFP Board Chair Blaine Aikin acknowledged that SEC action is imminent: “[I]t’s likely we will see an SEC

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\(^6\) See, e.g., Correspondence from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to ORI and OED, EBSA, Dep’t of Labor, regarding Proposed Conflict of Interest Rule and Related Revised Proposals, RIN 1210-AB32 (July 17, 2015), at 4, available at: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00405.pdf.
Mr. Aikin added that he believes “[t]he most efficient and effective way to rectify the current regulatory imbalance is for the SEC to take the lead.”

B. The Impact of Inconsistent Standards of Care on the Marketplace.

As former Chair Aikin stated, “Financial firms that have dually-registered advisors are caught between a rock and a hard place when it comes to current fiduciary standards of care.” Many financial services providers have responded to the DOL’s rule, and the potentially higher costs and litigation risks it poses, by limiting the availability of professional investment advice, eliminating service model choices and narrowing the range of products available to retail investors. In fact, one of the reasons why the DOL delayed the implementation of its rule, and the SEC has indicated it intends to move forward on a harmonized approach to standards of care, is due to concerns about how the DOL’s rule would impact investor access and choice.

The SEC and CFP Board are both concerned with protecting investors and promoting public trust. It is in the best interest of the public to have government and non-government entities work together, or minimally strive for consistency, in aiming to achieve their common goal of establishing a harmonized best interest standard. The Standards of Conduct, which have not been updated in some time, will arrive at a better outcome if informed by SEC rules. We believe rather than moving forward with its Revised Proposal now, CFP Board’s concerns about retail investors could be best addressed by delaying action until the SEC issues its proposal and then to work with the SEC and other regulators to implement such standards of care consistently.

II. The Revised Proposal is Impractical and Duplicative of Existing Regulations and Will Likely Conflict with the SEC’s Forthcoming Rulemaking.

The stated mission of CFP Board is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning. To accomplish this mission, it is critical that CFP Board eliminate or reduce barriers to investor access to CFP® certificants. The scope and compliance requirements included in the Revised Proposal differ significantly from the standard of care applicable to investment advisers registered under federal and state securities laws; the duty of fair dealings under the Securities Exchange Act of 1934 and

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8 Id.
10 See, e.g., Correspondence from Catherine J. Weatherford, President & CEO, Insured Retirement Institute, to ORI and OED, EBSA, DOL regarding Definition of the Term “Fiduciary”; Conflict of Interest Rule – Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Prohibited Transaction Exemption 84-24 RIN 1210-AB79 (Apr. 17, 2017), at 15, available at: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01413.pdf (New studies have shown that more than 70 percent of investment professionals will disengage from retirement savers with less than $300,000 in investable assets because of the Fiduciary Rule.).
FINRA rules applicable to broker-dealers; and the “Impartial Conduct Standards” related to the DOL’s rule. For example, the Standards of Conduct would require specific disclosures, record retention and other compliance responsibilities that are not required by our primary regulators, most notably for non-advisory clients, and that would only apply to a limited sub-group of a firm’s financial representatives on an ad hoc basis. This would impose numerous operational and systems requirements that Firms would be challenged to comply with given the competing regulatory requirements.

The result of the Revised Proposal is impractical burdens placed on our business models, requirements that are broader than, and therefore conflict with, regulatory standards, and the addition of supervision and liability risks for regulated firms. Among our many concerns is that the Revised Proposal will force a succession of changes to the detriment of client service, choice and fees. This is contrary to the business model neutral and investor focused goals of CFP Board. We discuss below in further detail our principal issues with the Revised Proposal and, in particular, those issues that may be in conflict with the proposal expected from the SEC. This is all the more reason why it is imperative that CFP Board not front-run the SEC’s own rulemaking on standards of care.

A. The Revised Proposal Is Not Business Model Neutral.

We expect the SEC will propose a best interest standard of care that is business model neutral. While CFP Board has stated that it “does not advocate any particular business model or compensation arrangement,” it appears that the Revised Proposal could require application of the Standards of Conduct, and potentially costly financial planning services, to advice given in a brokerage relationship which, as a practical matter, would operate to discourage the use of brokerage as a service option. This is particularly troubling since CFP Board has previously acknowledged that many CFP® certificants engage in business and brokerage activity unrelated to financial planning, and “it would be inappropriate for CFP Board to impose a fiduciary standard in such situations.”

Our recommendation remains: Any revision to the Standards of Conduct should recognize the importance of maintaining investor access to both the broker-dealer and registered investment adviser business models.

B. The Definition of “Financial Planning” Is Too Broad.

The Revised Proposal continues to define the term “Financial Planning” as “a collaborative process that helps maximize a client’s potential for meeting life goals through ‘Financial Advice’ that integrates relevant elements of the client’s personal and financial circumstances.” The effect of the Revised Proposal is, thus, to dilute the distinction between financial planning and financial advice as

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16 Revised Proposal “Glossary.”
In fact, a reasonable interpretation of the proposed definition of “Financial Planning” appears very similar to FINRA’s “Know Your Customer” obligations, which require firms to use “reasonable diligence” to know the “essential facts” concerning every customer, including the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs and risk tolerance. In the absence of a clear distinction, investors cannot choose the level of service that is appropriate for them. This distinction is especially important in the context of broker-dealers, which have clientele, including business or institutional clients, for whom a comprehensive financial plan is not the most appropriate solution. 18

Our recommendation remains: Financial planning is a unique service, it should be more narrowly defined as such, and the Standards of Conduct should apply only when a CFP® certificant provides such services to a client. Consequently, there is no reason to expand the existing definition of “Financial Planning.”

CFP Board best serves the public and supports CFP® certificants by clarifying how and when its Standards of Conduct apply, including refinements to the Revised Proposal to clarify when the definition of Financial Planning applies. For example, the final Standards of Conduct should state that Financial Planning is not intended to apply where a representative of a broker-dealer merely makes a recommendation after obtaining relevant personal and investment related information from the client, as required by FINRA. As an additional example, Section (B)(4) of the Standards of Conduct “Integration Factors” which appears to apply only when determining if “a CFP® professional has agreed to provide or provided Financial Advice that Requires Financial Planning,” should state that the factors should also be weighed in determining whether the definition of Financial Planning applies.


The initial Revised Proposal contained a “rebuttable presumption that CFP® professionals are required to provide Financial Planning when providing Financial Advice.” 19 While the Revised Proposal eliminated the “rebuttable presumption” language, it sets forth “factors that CFP Board will weigh in determining” whether there is “Financial Advice that Requires Financial Planning” 20 and adds Section (B)(5) to the Standards of Conduct “CFP Board Evaluation,” which places the burden of proof on CFP® certificants to demonstrate compliance with the Standards of Conduct was not required. 21 In our view, there is no substantive change from the initial proposal here. The Revised Proposal continues to require CFP® certificants to deliver a level of service that may not be warranted for all investors or in all circumstances. Providing financial advice simply does not require a prescribed, time-intensive and potentially costly financial planning process in every instance. 22

Further, the implementation of a financial plan may be performed by a broker-dealer, insurance agent or bank employee with a CFP® certification. A financial plan may also be implemented by an individual, with or without a CFP® certification, who did not create the plan.

For example, a broker-dealer’s clientele may include: A closely-held small business seeking to obtain key person life insurance; a not-for-profit opening an account to sell shares of stock that it regularly receives from donors; an executor selling stocks, bonds or other investments within an estate, in order to cover expenses of administration, or pay taxes; a municipality needing assistance with issuing and selling bonds; or a publicly traded corporation funding a deferred compensation plan for executives.

Initial Proposal § (B)(4).
Revised Proposal § (B)(4).
Revised Proposal § (B)(5).
Revised Proposal § (B)(5).
The practice standards for the financial planning process only provide the flexibility to exclude the “implementation” and “monitoring” steps. See Revised Proposal §§ (C)(6) & (7).
**Our recommendation remains:** There should not be a burden of proof on CFP® certificants to demonstrate why financial planning was not provided to every client. Instead, CFP Board should promote continued training to build CFP® certificants’ competence in a broad range of financial planning areas to meet clients’ particular needs.

D. **The Standards of Conduct Should Not Be a Basis for Legal Liability.**

In the annotated version of the Revised Proposal, CFP Board states, “[i]t remains the case that the Code and Standards of Conduct are not designed to be a basis for civil liability, and that Clients of CFP® professionals and other third parties are not intended to be considered third-party beneficiaries of a CFP® professional’s agreement to adhere to the Code and Standards of Conduct.” This statement should be made in the text of the Standards of Conduct themselves and not solely in the commentary.

**Our recommendation remains:** The Standards of Conduct should clearly identify that they are to be used exclusively for CFP Board to evaluate the conduct of CFP® certificants. They should also clearly state that they are not intended to create a private right of action, are not designed to be the basis for civil liability and clients of CFP® certificants and other third parties are not intended to be considered third-party beneficiaries of a CFP® certificant’s agreement to adhere to the Standards of Conduct.

**III. The Timing and Broadness of the Revised Proposal is Impractical for Regulated Firms.**

Revising the Standards of Conduct at this point in time disregards the current regulatory environment. Our primary regulators have set forth a robust regulatory framework for our Firms and are currently endeavoring to propose a harmonized standard of care for financial services firms. CFP Board has referred to regulatory standards of care as a “minimum standard”. The historical approach to rule making by our regulators coupled with the prioritization of rules addressing standards of care lead us to believe that the SEC regulations will be comprehensive.

Regulated firms expect to put substantial time and resources into implementing the SEC’s rulemaking and potentially additional provisions from the DOL in the near future. The primary focus for firms must be to comply with regulatory requirements and they must take care that commitments to non-government organizations do not impede their compliance with, applicable laws and regulations.

The Standards of Conduct apply to a professional designation and require unique disclosure and compliance structures for only the portion of a firm’s financial professionals holding the CFP® marks. This is an impractical burden for a non-regulatory organization to ask that regulated firms bear for two reasons. First, the Standards of Conduct, as proposed, would ask firms to create bifurcated compliance approaches – one for CFP® certificants and one for the rest of their financial professionals, including clients of brokerage, insurance and banking products and services. Second, it is terribly inefficient for regulated firms to implement CFP Board’s Standards of Conduct for a portion of its financial professionals, then soon after implement a new standard of care promulgated by the SEC, which could have materially different implementation requirements.

If CFP Board moves forward as planned, regulated firms will be faced with significant challenges. CFP Board should be aware that moving forward at this time with the current proposal will require a regulated firm to consider the practical compliance and implementation challenges of the Standards of Conduct and will likely lead to varying levels of acceptance and approaches to implementation of the Standards of Conduct by regulated firms, which could potentially include
considering alternatives ranging from no longer reimbursing CFP® certificants for training, testing and membership costs to exploring alternate designations and certifications to meet training needs.

**Our recommendation remains:** We do not believe it is in the public interest to have multiple standards of care and urge CFP Board not to move forward without the benefit of SEC action so we can collaborate on developing a harmonized best interest standard that will serve the best interests of investors. Further, we believe that CFP Board should acknowledge that where a regulated firm is meeting the requirements of its primary regulators, including but not limited to any standards of care promulgated by the SEC, these actions are sufficient for purposes of compliance with the Standards of Conduct.

**IV. Conclusion**

In our view, the best path forward for investors is for CFP Board to wait for the SEC to issue rules addressing standards of care for retail investors and to coordinate with regulators and the industry to consistently apply them. We appreciate the opportunity to provide feedback on the Revised Proposal. Each of the undersigned firms has a strong history of collaboration with CFP Board. We respectfully request that CFP Board take our comments under careful consideration and take practical steps to ensure the Revised Proposal does not negatively impact the ability of regulated firms to continue serving investors through CFP® certificants.

Respectfully submitted,

Ameriprise Financial Services, Inc.  Wells Fargo Advisors
Morgan Stanley Wealth Management  Edward Jones
LPL Financial  UBS Financial Services, Inc.
RBC Wealth Management US  AXA Advisors