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# CFP Board: Fiduciary Hypocrites

By Don Trone June 28, 2018

The Certified Financial Planner Board of Standards made a recent announcement that it has created a Standards Resource Commission to help CFP certificants meet the Board’s new Code of Ethics and Standards of Conduct.

Before the newly formed commission begins its work, it should insist that the CFP Board adopt generally accepted fiduciary best practices for association boards. Otherwise, the work of the commission will just become additional ways and means for the CFP Board to abuse its power.

The CFP Board is a parasite. Consider the following from Wikipedia:

Parasites increase their own fitness by exploiting hosts for resources necessary for their survival, in particular by feeding on them and by using intermediate (secondary) hosts to assist in their transmission from one definitive (primary) host to another.

No organization has sucked more life out of financial planners than the CFP Board. To be clear, I’m referring to the conduct of the senior staff and directors as opposed to the dedicated faculty and volunteers that provide invaluable support for CFP candidates and certificants.

Consider the CFP Board’s recent conduct, and why members of the commission and CFP stakeholders (including the Financial Planning Association and the National Association of Personal Financial Advisors) should be alarmed:

**Publicly the CFP Board has advocated for fiduciary standards while at the same time it has intentionally interfered with the efforts of outside organizations attempting to develop fiduciary standards for financial planners.**

Associated with the above interference, there’s overwhelming evidence that senior staff and at least one director engaged in self-dealing, collusion and undisclosed conflicts of interests.

There also is a preponderance of evidence to demonstrate that the staff has buried formal ethics complaints of “friends” while orchestrating kangaroo courts for “enemies.” Ten years ago, the Board’s CEO convinced the directors that his staff, not the independent Disciplinary and Ethics Commission, should be overseeing the disciplinary process. In response to the change, five members of the DEC resigned in protest. “The CEO of the CFP Board has given staff unfettered control of the DEC process,” one of the departing members said at the time. “In doing so, he has done profound violence to the integrity of the whole disciplinary and ethics review process.”

What needs to be done?

**Since the CFP Board is imposing a fiduciary standard on certificants, the Board should demonstrate that it also is going to abide by fiduciary best practices. A fundamental principle of leadership is that you don’t ask those you serve to do something you’re not willing to do yourself.**

**To restore confidence and trust, the members of the commission and CFP stakeholders should insist that the Board immediately adopt the following fiduciary and governance best practices:**

1 **Open elections:** The board of directors needs to be reconstituted. CFP stakeholders should be electing directors, not the staff and sitting directors that are in collusion with the staff. This backroom mentality helps to explain why there is rampant self-dealing and flagrant abuse of the disciplinary process.

2 **Publish minutes**: There’s only one reason for a not-for-profit board to go dark (not to publish its minutes) — when it’s involved in unethical or illegal activity.

3. **Independent, outside legal counsel**: The board’s in-house attorneys are representing the interests of the staff, not the directors and certainly not the interests of CFP stakeholders.

**Today if a CFP stakeholder has evidence that either the staff or the directors are involved in unethical or illegal acts, there is no recourse.** A properly functioning and ethical board of directors has an ombudsman process, and immediately investigates even a hint of wrongdoing by directors or staff.

4**.** **Independent peer reviews:** The oversight and enforcement of standards should be restored to the DEC and taken completely out of the hands of the staff.

**5. Free speech**: The staff requires directors to sign confidentiality agreements. In addition, directors are not permitted to speak to the media unless accompanied by a senior staff member. This is censorship and is unacceptable in a fiduciary community.

6. **Transparency:** There is a familiar saying — sunlight is the best disinfectant.

**Central to good board governance is that directors lead, and staff follow. The opposite has occurred at the CFP Board, which is why it has de-evolved into a parasite.**

**If nothing is done to cleanse the Board, the work of the new commission will unfortunately create new opportunities for the CFP Board to abuse financial planners. In the continued absence of moral and ethical leadership, the work of the commission — indeed, the value of the CFP mark — will waste away.**

— By Don Trone, L5, is the CEO and co-founder of 3ethos, which has developed the new body of research in behavioral governance. He was the principal founder and CEO of fi360, and the founder and president of the Foundation for Fiduciary Studies.

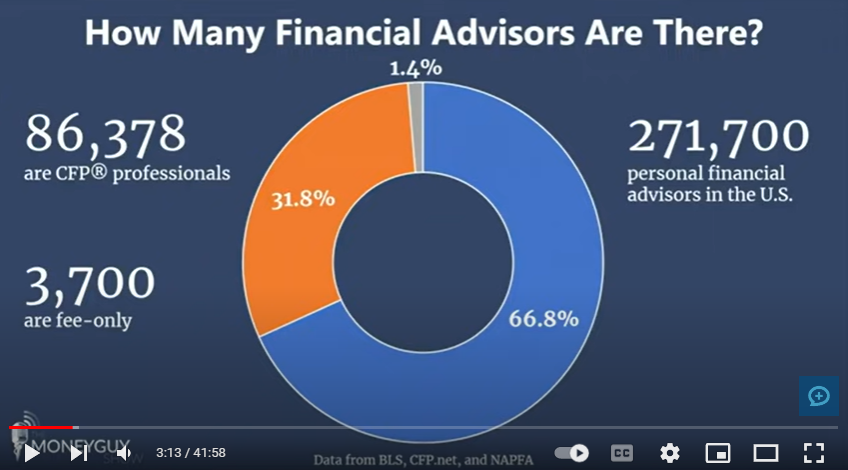
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# How and When to Hire a Financial Advisor

Brian Preston, CPA, CFP®®, PFS and Bo Hanson, CFA, CFP®. (2020 Jan 17). From Money Guys Podcast, Episode. How and When to Hire a Financial Advisor. YouTube. (See the chart below made by two CFP® certificants that indicates that CFP®s are about 96% sales agents and only 4% fee-only planners.)

The Money Guys Podcast is very popular and so it their YouTube Channel. These two call themselves “unicorns” because they are fee only planners which are rare, 1.4% of all that call themselves financial planners or financial advisors, or only 4% of CFPs. See this episode at <https://youtu.be/8Rytagy6PcA>

This chart shows that only about 4% of CFPs are fee only planners, while about 96% of CFPs have a conflict of interest in selling products to earn a commission from their clients and are agents of and represent insurance companies and security broker dealers.



FORBES WEALTH MANAGEMENT

# Why CFP Board Failed The Public And Will Again

Robert Schmansky Sep 17, 2019,

Late last July Jason Zweig and Andrea Fuller reported on the front page of The Wall Street Journal how CFP Board has failed at monitoring certificant listings at their LetsMakeAPlan.Org consumer referral website. Zweig and Fuller found certificants whose disclosure histories appeared clean on CFP Board’s site to have, among other causes for criminal felony charges and other regulatory issues.

Marilyn Mohrman-Gillis, then managing director at Certified Financial Planner Board of Standards... [+] Inc., participated in events with Democrat congressmen and the Obama Administration's Department of Labor to advance the DOL's "Fiduciary Rule," which sought to restrict IRA rollovers. Since the Trump administration and before there has been little advocacy from CFP Board to advance access to financial planning.

Marilyn Mohrman-Gillis, then managing director at Certified Financial Planner Board of Standards... [+] © 2016 BLOOMBERG FINANCE LP

This isn’t the first time CFP Board has failed 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.” In the past CFP Board’s website allowed certificants who clearly held sales licenses to market themselves as “fee-only” (and, even today CFP Board allows advisors to work for firms which falsely call themselves “fee-only” while ignoring that certificants who work for these firms know they are misleading the public).

The response is what I’ve come to expect from CFP Board as political in nature – do not take responsibility, yet still take action. Their reply stated, “In some cases [T]he Wall Street Journal raises important issues, which we are addressing.” A more comprehensive review of what happened should have look not only at the ‘important issues’ that they failed the public and certificants on, but rather their total failure to “uphold [CFP® certification] as the recognized standard of excellence” itself should have been addressed.

Over the last decade under CEO Kevin Keller, CAE, CFP Board has had several other failures, as its leadership moved it starkly away from its core mission toward becoming a much more partisan organization that markets itself as a credentialing firm.

Below are a few examples of this move towards to politicization of personal financial planning at CFP Board:

Keller has been accused of collusion to interfere with those who may offer a higher standard of care to the public, which would reduce CFP Board’s control over the delivery of financial services. This idea of management of a profession is central to the issues at CFP Board, as they recently approved a new Code of Ethics and Standards of Conduct which includes far more rules over specific behaviors, though those rules are so general in nature that they will be open to political interpretations. Many – like their “Fiduciary Duty” on rollover recommendations – are not only too vague know if a certificant is meeting the standard, but they are impossible to meet. CFP Board and every certificant who has worked with clients knows the data they request is impossible to gather, but also irrelevant as I note below they assume the financial planning has no value beyond what the certificant proves.

Nearly all of CFP Board employees and volunteers seem to be of one political mindset – that regulators or CFP Board itself must control the delivery of advice and financial products, rather than allowing for the free market to innovate and bring the best ideas forward. I ran a search of political donations by CFP Board employees and volunteers and of all of the dozens of donations made nearly all went to Democrats, with only one donation by one member made to a Republican (who also donated to Democrats). A social media search of non-donors overwhelmingly reveals Democrat-leaning individuals at CFP Board.

Political volunteers like Barbara Roper of the Consumer Federation of America have overwhelmingly promoted negative views of financial advisors, adding to the public’s distrust of financial planners.

CFP Board itself seems to promote this negative view of advisors, which I’ve experienced personally as a past volunteer. This article promoting the need for a positive message of advisors was provided to me as one of a few reasons that ended my volunteer tenure that also seemed political in nature.

CFP Board pushed for the prior Democrat administration’s Department of Labor “Fiduciary Rule” with no pushback or contributions to the rule to increase financial planning or ensure a level playing field for planners. Many recognized the increased cost that would come to advisors would harm the independent advisor's affordability, yet CFP Board was for a rule without modification that would have reduced demand for their certificants, and especially among low-balance savers and moderate-income earners. The threat of this rule and other regulations have pushed consolidation of firms and products, as regulators – like CFP Board – use vague and personal interpretations of what it means to be a “fiduciary.”

Investors are more and more given simplistic and “safe” advice, rather than a more complete menu of planning and investment solutions. This increasingly is forcing investors to go it alone rather than secure products that have been vetted through multiple layers of compliance from their advisor.

During the Trump administration, CFP Board has made no contributions to the national dialogue around proposed changes to the retirement system and again has had no position to advance financial planning advice or lead on the confusion multiple state fiduciary rules are just now beginning to create. I originally supported CFP Board’s New Code of Ethics and Standards after speaking with an employee of CFP Board who assured me they intended to ensure financial planning would lead and educate others in the fiduciary conversation. Instead, the idea of “fiduciary” has officially died, in large part due to the confusion CFP Board has added to the discourse.

While appointing itself as the arbiter of “fiduciary” behavior among its certificants, CFP Board has created a political standard that starts with the belief that the engagement has no value that the certificant cannot prove; obviously not the attitude that one would expect from a professional certification that claims to have value to the public. The political position CFP Board has taken is to issue vague rules that target advisors in certain circumstances, such as advisors who perform 401(k) and retirement account rollovers while providing no guidance for how an advisor can meet those rules.

Imagine a world where people needed accounting help, but the AICPA (which, runs a far more effective marketing campaign for financial planning than CFP Board) would not allow a CPA to prepare a tax return unless the tax savings from having the return prepared was at least 100% of the cost of the return.

Now, imagine that the AICPA creates a liability for the CPA to know such a thing prior to completing the return! This is akin to CFP Board’s standards for advisors who recommend rollovers (but, apparently only those CFP® certificants who work directly with people, not those who work for firms that onboard clients electronically or by other means).

CFP Board has been accused of interfering with attempts to advance fiduciary knowledge, denying education to certificants of providers discussing more stringent fiduciary rules, colluding to choose fiduciary research that benefits their interests from volunteer firms, and using its monopoly on continuing education to deny critics the right to create fiduciary CE courses.

CFP Board promotes and funds young advisors who push intersectionality, identity politics and Social Justice under the guise of promoting diversity. These ideas are exclusive to the far-left of the political spectrum and are far left of even the average liberal and where the vast majority of advisors and the public at large.

CFP Board’s funding of the 2050 Trailblazers podcast is just one example of this. The name alone refers to a belief that by 2050 whites will no longer be over 50% of the population of the United States. The podcast has episode titles like “Using Your White Privilege,” which is a theory of intersectionality.

CFP Board seems to be advancing a new educational track in “client psychology,” where one certificant volunteer has cumulatively less than one year of experience as a registered investment advisor or broker at three different firms, and whose posts on social media are nearly exclusively about “white supremacy” and other intersectional ideas on race and racism. CFP Board has other advisors they support and fund also with little experience, but who are vocal on social media and in their own publications about “white fragility" and other intersectional concepts.

Intersectionality is a political movement, and one at odds with the compassion, credibility, knowledge, and fiduciary duties required to be a financial advisor. As CFP Board continues to fund and support political movements they not only lose focus of their mission, some have even suggested they put at risk their status as a 501(c)(3) nonprofit.

As a clearly politically-driven institution, CFP Board’s use of volunteers, their promotion of ‘fiduciary’ rules, and refusal to accept common standards of governance shows it seeks to control, not expand, a profession. We see this in their interest in diversity as a divisive political tool. Rather than advancing diversity in positive ways like removing the worthless requirement that certificants hold a bachelors degree, not imposing vague threats onto advisors who may work with lower balance clients as with their vague rollover “fiduciary” rule, and returning to funding outreach programs rather than intersectionality and political actors.

Financial planning is a creation of the market economy which came about to provide competent advice across several facets of personal finances. Organizations like CFP Board were created around that concept to provide the public with a way to find a credible advisor.

If CFP Board continues this path of politicizing their certification the public will find the goodwill that financial planners have built will turn to consumers was nothing more than another bait-and-switch actor in personal finance. The reason CFP Board failed and will continue to is that it refuses to commit to fiduciary governance behaviors for itself and to have leadership that is diverse in their ideas and politics, but committed to the stewardship of the quality of their marks and a financial planning profession for the certificants and public good.

And, if that does not change, the future financial advisor may not wish to be a CFP® certificant but may look to some other way of showing their commitment to sound governance, stewardship and leadership behaviors.

I reached out to CFP Board via email on May 17, and on other occasions, to discuss the issues above and as of this publication have not received a response. My volunteer experience with CFP Board lasted from December 2014 until April 2018.

Investment News

# CFP Board launches new round of ads to promote credential.

The organization urges viewers to hire a CFP — 'It's gotta be a CFP' — in its most direct appeal since the public awareness campaign launched more than a decade ago.

By Mark Schoeff Jr. March 20, 2023

The Certified Financial Planner Board of Standards Inc. launched a new round of advertising Monday making its most direct pitch to the public to hire a financial advisor who holds the credential.

In a CFP Board television ad, a man who looks as if he’s about to bungee jump off a bridge becomes frightened when his gear frays and the friend helping him seems to have no idea what he’s doing.

That scene fades into an office where the man on the bridge is sitting across from a financial advisor. He pensively asks her if she’s a CFP. She reassures him she is.

The ad is meant to contrast high-risk situations and the feeling of uncertainty with scenarios where the protagonist in the ad is confident and secure working with a qualified professional, the CFP Board said in a statement.

“CFP professionals are committed to acting in your best interests,” the ad voice-over says, referring to the fiduciary standard that CFPs must meet when providing investment advice. “That’s why it’s gotta be a CFP.”

The ad directs viewers to “find your CFP professional at LetsMakeAPlan,” a section of the CFP Board website that contains a directory of CFP financial advisors.

The language in the current ad is a departure from previous CFP Board ads in that it explicitly encourages viewers to hire a CFP. Until now, the ask in ads over the course of the public awareness campaign was for viewers to “learn more” about the CFP mark.

The CFP Board can be more direct in its messaging thanks to reorganizing part of its operation as a 501(c)(6) nonprofit. That tax status allows it to promote CFPs with more gusto than it could in its previous 501(c)(3) configuration.

“This campaign tagline directly benefits the CFP certificant and is a clear example of the type of statement we wouldn’t have been able to make as a 501 (c)(3) entity,” CFP Board CEO Kevin Keller wrote in an email.

The CFP Board public awareness campaign launched in 2011. This current CFP ad will run on national broadcast, cable and streaming television, radio and in digital advertising through May 21. Networks where it will appear include ABC, CBS, CNN, Fox News, MSNBC, the Golf Channel, HGTV and the Food Network. The streaming video version will air on Prime Video, Hulu, HBO Max, Apple TV and Roku. Search engine and social media advertising will continue through the end of the year.

“By raising consumer awareness of CFP certification as the standard for competent and ethical financial planning, we reinforce the message that CFP professionals help more Americans achieve their financial goals,” Keller said in the statement.

The CFP Board will spend more than $12 million on the advertising campaign this year, bringing the total expenditure to approximately $150 million since its inception. The annual CFP certification fee is $455, with $160 of it allocated to the public awareness initiative.

The CFP Board hired the Nashville ad firm Buntin to produce this year’s campaign. The CFP Board sets and enforces the competency and ethical standards associated with the mark, which is held by approximately 95,000 financial professionals in the United States.



**It Just Got Tougher to Know How Your Adviser Gets Paid.**

# Does your adviser earn commissions? Fees? A popular website will no longer say.

By Jason Zweig March 6, 2020 10:40 am ET

With markets in turmoil, investors need financial advice more than ever. Unfortunately, figuring out where to get it and how to pay for it just got a little harder.

Until now, consumers could use LetsMakeAPlan.org, a website run by the Certified Financial Planner Board of Standards Inc., a professional-certification body for planners, to see whether an adviser earns commissions, fees or a combination. In an email this week, the CFP Board told financial planners the public search tool on LetsMakeAPlan.org will no longer disclose how they are paid.

That means the search for financial advice, already bristling with jargon and confusion, will require investors to ask even more questions than before. It’s a shame the CFP Board is punting instead of pointing toward clear and simple disclosure.

The CFP Board, a nonprofit that has awarded the certified financial planner designation to more than 86,000 planners, said in its email that its website’s disclosures had been “broad enough to capture the various compensation methods financial planners use today, but not very specific or helpful to consumers.”

The organization added, “We believe the best way for consumers to select their financial advisor is to have a conversation with their prospective advisor.”

A financial adviser on commission earns a sales charge when you trade a stock, bond or fund, or when you buy insurance, for example. That can generate an incentive to rack up excess trades or to take payments from third parties—although a commission-only adviser can also be more willing to handle small accounts and may be the cheapest choice for clients who seldom trade.

A fee-only adviser charges either a one-time or recurring fee for managing your investments or providing financial-planning services. While that eliminates the adviser’s payoff for making trades and can reduce some conflicts of interest, an annual fee can seriously erode your returns over time—and no way of paying for advice can eliminate all conflicts.

Most CFPs—more than half, according to the CFP Board, or perhaps 80% by some industry estimates—charge at least some commissions.

LetsMakeAPlan.org has long served as a shortcut for investors to find a certified financial planner, although the quality of its information has sometimes been questioned.

In 2013, The Wall Street Journal determined that up to 11% of CFPs working at big brokerage firms, whereby definition commissions are involved, were describing themselves on LetsMakeAPlan.org as “fee only”—presumably to attract clients who didn’t want to pay commissions.

Last year, an investigation by the Journal found that more than 6,300 CFPs listed on LetsMakeAPlan.org had customer complaints or had faced criminal or regulatory problems undisclosed on the website.

In both situations, the CFP Board said it had been relying on self-disclosure by planners without verifying that their statements were accurate.

In response to the Journal’s 2019 investigation, the CFP Board said it would increase its scrutiny of planners and consult other sources to validate information, although it declined to implement all the changes recommended by an independent task force that reviewed its procedures.

This June, the organization will begin enforcing a revised code of ethics and conduct requiring all CFPs to act in their clients’ best interest when providing financial advice.

In a meeting last June, the CFP Board’s directors voted to remove the compensation disclosures from the LetsMakeAPlan website, say CFP Board Chair Susan John and Chief Executive Kevin Keller.

“We’d been talking about it for a long time, because self-disclosure is a dangerous thing to be relying on,” says Ms. John, who is managing director of financial planning for F.L. Putnam Investment Management Co. in Wellesley, Mass. Any given planner’s incorrect disclosure about compensation “sometimes may have been inadvertent and sometimes may have been a marketing ploy,” she says.

The LetsMakeAPlan disclosure of how planners get paid is voluntary. The CFP Board has never required planners to “use a soundbite to describe their compensation,” says Leo Rydzewski, the group’s general counsel. “What we’ve done instead is say, ‘If you’re going to use those terms, you can’t use them in a false or misleading way.’ Over time, some people have done just that. When we’ve identified those cases, we’ve issued disciplinary actions against them.” Such enforcements will continue, he says.

How a planner gets paid is “very difficult to verify,” adds Ms. John. “If we couldn’t verify that it’s correct, then what’s the point of doing it?”

All this is another reminder of how lonely and intimidating the world of the individual investor can be.

To learn how a planner gets paid, you will have to ask. For some guiding questions, see my columns “The 19 Questions to Ask Your Financial Adviser,” “The Special Trick to Find the Right Financial Adviser” and “What the E\*Trade Deal Tells You About the New Investing Game.”

The CFP Board will no longer be in the business of attempting to verify how financial planners get paid, because it isn’t easy to do—even though the organization had a $36 million budget in 2017. As a result, you’ll have to do it yourself.

Write to Jason Zweig at [intelligentinvestor@wsj.com](mailto:intelligentinvestor@wsj.com)

Investment News

# CFP Board chief executive Kevin Keller joins $1 million compensation ranks.

By Mark Schoeff Jr. February 27, 2019

The head of the organization that grants the certified financial planner credential has joined a couple other financial industry trade group executives in earning a seven-figure compensation.

Kevin Keller, chief executive of the Certified Financial Planner Board of Standards Inc., received $1.1 million in total compensation in 2017, according to the latest data available through the board’s IRS Form 990 filing. That was a 22% increase from the $901,525 reported for Mr. Keller in 2016.

Other big paychecks went to Paul Schott Stevens, president and chief executive of the Investment Company Institute, who was paid $2.5 million between Oct. 1, 2016, and Sept. 30, 2017, and Kenneth E. Bentsen Jr., president and chief executive of the Securities Industry and Financial Markets Association, who earned $2.4 million between Nov. 1, 2016, and Oct. 31, 2017, according to the groups’ Form 990s.

The filing of Form 990s usually runs well behind the current tax year.

Mr. Keller’s pay included $224,460 in bonus and incentive compensation as well as $200,000 in compensation that was reported as deferred in previous Form 990 filings.

In recent years, Mr. Keller, who has served as chief executive of the CFP Board since 2007, has led the organization as it strengthened the fiduciary requirements of the CFP mark, mounted a public awareness advertising campaign to promote CFPs to investors and promoted diversity in the financial services sector.

In a statement, the CFP Board said Mr. Keller’s total compensation is set at a level that is “competitive with similar-sized financial services and certifying organizations.” The board said it uses an outside consultant to determine his pay level and ties a “significant portion” of his variable compensation to achieving board goals.

Linda Leitz, co-owner of Peace of Mind Financial Planning Inc. and a member of the CFP Board committee that set the mark’s new advice standards, credits Mr. Keller with raising the status and influence of the designation.

“The new CFP standards, the diversity campaign and the consumer awareness drive all point to the CFP being a major element in protecting consumers and elevating the profession,” Ms. Leitz said. “So while it looks like Kevin is paid in the top tier of related executive positions, it’s reflective both of what he has done and what’s on his plate to do going forward.”

Other trade association leaders who made more than $500,000 included former Insured Retirement Institute chief executive Cathy Weatherford ($831,400), Financial Services Institute chief executive Dale Brown ($758,264) and Kevin Mayeux, chief executive of the National Association of Insurance and Financial Advisors ($504,630), according to the groups’ Form 990s.

Karen Barr, chief executive of the Investment Adviser Association, made $449,352; Lauren Schadle, chief executive of the Financial Planning Association, made $346,953; and Geoffrey Brown, chief executive of the National Association of Personal Financial Advisors, earned $197,616, according to the groups’ Form 990s.

CEO pay

Pay\* (Annual increase)

Firm revenue

Kevin Keller

CFP Board (Revenue: $38.2M)

$1.1M Annual increase: (↑22%)

$38.2M

Cathy Weatherford

IRI (Revenue: $6.8M)

$831,400 Annual increase: (↑0.1%)

$6.8M

Dale Brown

FSI (Revenue: $9.6M)

$758,264 Annual increase: (↑10.7%)

$9.6M

Kevin Mayeux

NAIFA (Revenue: $11.9M)

$504,630 Annual increase: (N/A\*\*)

$11.9M

Karen Barr

IAA (Revenue: $5.5M)

$449,352 Annual increase: (↑2.5%)

$5.5M

Lauren Schadle

FPA (Revenue: $10.1M)

$346,953 Annual increase: (↑7%)

$10.1M

Geoffrey Brown

NAPFA (Revenue: $3.5M)

$197,616 Annual increase: (↑8.2%)

$3.5M

\* Pay data comes from the most recent IRS Form 990 filings, which cover either the calendar year of 2017 or organizations’ tax years that ended at some point in 2017.

\*\* Mr. Mayeux was hired in 2015, which makes 2016 reporting a patchwork not easily comparable.

Michael Kitces Nerds Eye View

# CFP Board’s Reduced Experience Requirement Quietly Takes Effect

**with FPA and NAPFA Silence As Tacit Support?**

EXECUTIVE SUMMARY

Last week, proposed changes to the Experience requirement for CFP certification quietly took effect, including both the elimination of the Capstone course requirement for CFP exam challengers, and more controversially a change to the definition of what constitutes “experience” for the 3-year requirement to include both direct and indirect support.

What’s significant about the new “indirect support” rule is that, by the CFP Board’s own statements, virtually any job in the entire financial services industry will now qualify as “financial planning experience”, including an employee benefits administrator, a compliance attorney, and even a journalist who simply writes about financial planning topics!

The change is even more significant given the CFP Board’s introduction of the 2-year “apprenticeship” option for the experience requirement in 2012… which means that over the past several years, the CFP experience requirement has slipped from “3 years of financial planning experience” to “2 years of financial planning experience, or 3 years of any job remotely related to the financial services industry”!

Sadly, while the CFP Board’s prior changes to the experience requirement in 2012 included a public comment period, this time the CFP Board acted unilaterally without stakeholder input, as it continues to push aggressively for growth in the number of CFP certificants. And notably, the FPA and NAPFA have remained remarkably silent about the change as well, suggesting the organizations either tacitly support cutting the experience requirement for CFP certificants, or that they have lost any ability as membership associations to hold the CFP Board accountable.

Ultimately, though, perhaps the most ironic aspect of the CFP Board’s change is the fact that it comes after 4+ years – and $40M+ in spending – on a public awareness campaign to communicate to the public that the CFP marks are the highest “gold standard” in financial planning… even as the CFP Board’s growth strategy makes it easier and easier to obtain that standard.

Michael Kitces

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In addition, he is a co-founder of the XY Planning Network, AdvicePay, fpPathfinder, and New Planner Recruiting, the former Practitioner Editor of the Journal of Financial Planning, the host of the Financial Advisor Success podcast, and the publisher of the popular financial planning industry blog Nerd’s Eye View through his website Kitces.com, dedicated to advancing knowledge in financial planning. In 2010, Michael was recognized with one of the FPA’s “Heart of Financial Planning” awards for his dedication and work in advancing the profession.

“Expanded” CFP Board Experience Requirement Takes Effect

Late last December, the CFP Board announced two changes to the experience requirement for CFP certification, which would take effect on/around July 1st of 2015.

ELIMINATING CAPSTONE COURSE REQUIREMENT FOR CHALLENGE STATUS

The first change under the new rules is that those who are eligible for “challenge status” – which means they already have a Ph.D. in business or economics, a law degree, a CPA license, or the ChFC, CLU, or CFA designations – no longer have to take the “Capstone” financial plan development course to complete the CFP educational requirement. Instead, the challenger can submit a sample financial plan to the CFP Board, which if accepted by CFP professional reviewers, will satisfy the Capstone requirement. (Of course, the advisor must still have otherwise completed the rest of the CFP educational requirement through a CFP Board Registered Program.)

ALLOWING INDIRECT SUPPORT EXPERIENCE FOR FINANCIAL PLANNING

The second change under the CFP Board’s new experience rules was that while in the past the Experience requirement could only be fully satisfied by teaching financial planning, or by the personal delivery, supervision, or direct support of planning to a client, under the new rules a wide range of “indirect” support would be permitted as well.

What constitutes “indirect” support? Examples from the CFP Board’s announcement included positions such as employee benefits administration, a compliance officer, or writing about financial planning as a journalist. Ultimately, the CFP Board declared that indirect experience qualifications will be judged on a case-by-case basis by submitting details about the applicable job experience to Experience@CFPBoard.org.

A Two-Step Process Of Gutting The CFP Experience Requirement To Two Years

While the Capstone change is arguably quite reasonable (as I’ve noted in the past), as there was little sense in requiring a ChFC (or other credentialed and practicing financial planner) who’s been delivering financial plans to clients for many years to take a “financial plan development course” at this point, the change to the direct experience requirement, and introducing “indirect” support, is far more problematic.

The significance of the CFP Board’s decision to include “indirect” support as experience must be viewed in the context of its 2012 introduction of the 2-year “CFP apprenticeship” option to satisfy the experience requirement. The apprenticeship option came about after the CFP Board proposed it (along with other changes to the experience requirement) back in 2011, and was implemented despite at least some opposition during the comment period (including yours truly, who suggested that the 2-year apprenticeship experience would be too little for effective training of a financial planner).

Thus over the past 3 years, the CFP Experience requirement has gone from 3 years of experience directly related to financial planning, to only 2 years of experience directly supporting financial planning [or 3 years of indirect experience].

The CFP Experience requirement was 3 years of direct planning experience, but now it’s only 2?

And as the CFP Board noted in its own press release, it appears that virtually any job in the broad financial services industry will count as experience now! As mentioned earlier, jobs including employee benefits administrator or compliance attorney will now count towards the experience requirement, despite having no direct relationship to financial planning aside from being part of the broader industry. Even a journalist who simply writes about the financial planning topics now qualifies! (Nothing against journalists; it’s just that we wouldn’t accept a doctor whose only experience was writing about the medical industry in a newspaper or magazine, and it’s not an appropriate way to satisfy experience as a professional financial planner, either!)

In other words, rather than continuing to bolster the quality of the CFP marks as financial planning grows, the CFP Board’s two-step progression of cutting the direct experience requirement by 1/3rd in 2012, and then allowing any experience connected to the industry to qualify, has effectively gutted the experience requirement for the CFP marks.

Is The CFP Board Lacking Accountability – No Stakeholder Input, And FPA And NAPFA Silence?

Perhaps most concerning about the CFP Board’s latest change to the experience requirement is that it appears to have been done with no input from CFP certificant stakeholders.

While the introduction of the two-year apprenticeship option was part of the 2011 proposals to the experience requirement – which included a public comment period for stakeholders – the idea that the three-year experience requirement would subsequently be gutted to include any form of indirect experience across the entire financial services industry was not. And it’s hard to imagine that CFP stakeholders would have accepted the apprenticeship option knowing that it was such a stepping stone to cutting the experience requirement overall. (And in point of fact, we don’t even know how widely the apprenticeship option was supported in the first place, as some including yours truly opposed it at the time, and despite the fact it was a “Public Comment” period the CFP Board never actually released the comments to the public!)

In fact, given the significance of the rule change, it’s hard to understand why the CFP Board would not honor its own historical precedents of putting such significant proposals out to stakeholders for comment… unless the CFP Board already anticipated the change wouldn’t be supported and didn’t want to invite the criticism. It’s also notable that even the CFP Board’s announcement of the proposal was released in a manner that would minimize its visibility and make it harder to mount objections – delivered as a press release on December 30th, during the notoriously slow news cycle between Christmas Day and New Year’s Day, when hardly any reporters were around to cover it, and few CFP stakeholders were around to read it!

Of course, in situations where the CFP Board stampedes forward on a questionable change to the rules, we would hope that the advocacy efforts of our membership organizations – the FPA and NAPFA – would still speak on behalf of CFP stakeholders and the financial planning profession to object to such a change. Yet despite repeated inquiries to the leadership of both organizations from yours truly, both the FPA and NAPFA has remained completely silent on the CFP Board’s changes to the experience requirement – ostensibly an expression of tacit support for the CFP Board’s new experience requirement, even though the FPA and NAPFA did nothing to poll their own membership to confirm their desire to support such a controversial change! Or alternatively, perhaps the sad reality is simply that FPA and NAPFA have lost such power with the CFP Board that they can no longer fill the crucial role of holding the CFP Board accountable in the first place?

On the “plus” side, the change to the experience requirement should help the CFP Board to continue to grow the ranks of CFP certificants, as its Board of Directors has increasingly emphasized the importance of growth in recent years. Yet at the same time, it’s more than a little ironic that the CFP Board has spent the past 4 years – and over $40M of CFP certificant dues – funding a public awareness campaign to hold out the CFP marks as the “gold standard” in financial planning, even as it dramatically diminishes the strength of the experience requirement necessary to earn the marks in the first place.

All of which raises the fundamental question: Is the CFP Board’s ambitious growth efforts coming at too much of a potential cost to the integrity of the marks?

So what do you think? Was the CFP Board’s expansion of the experience requirement to allow any indirect financial services industry experience to qualify a good thing for the sake of growing the marks? Was it an appropriate change to enact without a public comment period? Should the FPA and/or NAPFA have taken a position on the issue on behalf of their members? Is the CFP Board lacking in accountability? Share your thoughts in the comments below!

July 7, 2015

**Investment News**

# CFP Board creates separate arm to promote planning careers, hiring of planners.

By Mark Schoeff Jr. January 25, 2023

The group is setting up a 501(c)(6) organization that will give it more latitude to talk to students about the benefits of becoming a CFP and to the public about the benefits of working with one.

The organization that sponsors the certified financial planner credential is creating a new entity that will allow it to more aggressively promote planning careers and encourage investors to hire a planner.

The CFP Board of Standards Inc. announced in a letter to mark holders Wednesday that it’s splitting into two organizations in two different tax categories. The CFP Board Center for Financial Planning will continue to carry the 501(c)(3) nonprofit tax status of the current CFP Board, while the CFP Board of Standards will be a 501(c)(6) nonprofit.

Thanks to its tax designation, which enables it to focus on practitioners, the newly created CFP Board of Standards can highlight the benefits of working as a planner as it talks to students and those mulling a career switch. A 501(c)(3) must make the public its priority.

If the CFP Board concentrated on advancing the profession as a 501(c)(3), it could have risked IRS penalties. It has more latitude as a 501(c)(6).

“We can be much more explicit, much more direct and lead with things like flexible work and salary ranges,” CFP Board Chairman Dan Moisand said in an interview with InvestmentNews.

Increasing the planner workforce is a strategic priority for CFP Board. As a 501(c)(6), it will be in a better position to convince students to become CFPs, said CFP Board CEO Kevin Keller.

The CFP Board wants to give planning the same cachet as careers in science, technology, engineering and math.

“There’s a war for talent, and we’re competing in that war with a profession that many people don’t even know exists,” Keller said in an interview. “We want to create the awareness of financial planning as an attractive career aspirationally with what STEM has done.”

The (c)(6) tax status also will allow CFP Board to transform its ongoing public awareness advertising campaign into pitches that more forcefully urge consumers to turn to a CFP for investment advice.

A typical ad ends with the audience being invited to learn more by visiting the CFP Board’s LetsMakeAPlan website. As a (c)(6) organization, the ads can be more pointed and say “find your CFP” at the site.

“With this change, CFP Board can communicate more directly about the value the public receives from hiring a CFP professional,” the board stated in its letter to CFPs.

The CFP Board will spend $15 million annually on the ad campaign beginning this year. It will invest $3.5 million annually in workforce development for the next several years. The organization’s goal is to boost the number of CFPs in the United States to 150,000 by 2030, up from about 95,000 today.

One of the main differences between a 501(c)(3) and a 501(c)(6) is that donations to the former are tax-deductible charitable contributions, while donations to the latter are deductible as a business expense.

The 501(c)(6) arm also will have more ability to lobby. But Moisand and Keller said the CFP Board does not plan to form a political action committee to make donations to lawmakers’ campaigns.

The two CFP organizations will have the same board of directors and both will draw from the current CFP Board staff of about 100. Keller will be the chief executive of both.

“The board of directors has been clear that the public benefit of CFP Board’s work remains paramount, even as we undertake programs focused on advancing the profession,” the board said in its letter.

On Monday, the CFP Board filed articles of incorporation for its two affiliated organizations. The bifurcation will probably take until the end of the year to complete.

As a 501(c)(6), the CFP Board of Standards could form a membership organization similar to the Financial Planning Association or the National Association of Personal Financial Advisors, but the board doesn’t intend to go in that direction.

“We don’t want to be FPA or NAPFA,” Moisand told a group of reporters in a separate interview.

Moisand denied the CFP Board’s move was related to FPA’s initiative to achieve legal recognition for the title “financial planner.” The CFP Board is leery of that effort because of the potential ramifications for the CFP credential and because the board opposes state regulation of planning.

The CFP Board began thinking about establishing a 501(c)(6) in December 2021, Keller said. The FPA launched its title protection campaign last July.

“We’ve been talking about this for a long time, long before FPA came out with title protection initiatives,” said Moisand, principal at the advisory firm Moisand Fitzgerald Tamayo. “It has absolutely nothing to do with that. It has everything to do with our ability to do our part in advancing the profession in areas where we’re uniquely suited to making advancements, and we’re limiting ourselves because of the tax status.”

Fashioning two nonprofit organizations out of one is a legal lift but not necessarily expensive.

“The costs are minimal,” Keller said. “It’s an administrative function.”

**ALM Think Advisor** Financial Planning > Charitable Giving

# The Curious Case of the CFP Board and a Double-Dipping CFP

By Bob Clark September 24, 2012

In case you missed it, financial planner Allan S. Roth told an interesting—and troubling—story about a CFP Board enforcement case in his Wall Street Journal blog “Total Return” on September 12. The piece was unfortunately titled “Is the Fiduciary Standard a Joke?” which apparently gave some readers (as evidenced by their comments) the impression that Mr. Roth thinks the standard is a joke, when in fact, he clearly was wondering whether the Board takes its own standard seriously, given the example he cites.

It seems that a new client (who had formerly been a client of another financial planner) came to Mr. Roth for a second opinion on his financial affairs. As a CFP, the client’s former advisor had held himself out as a “fiduciary.” Yet, in the client’s portfolio, Mr. Roth found an annuity upon which the other advisor had been “double dipping”: that is, charging a commission and an AUM fee, resulting in some 5.29% (yes, that’s right: 529 bps) in annual fees.

Once made aware of the situation, according to Roth, both the insurance company and BD involved made a generous settlement to the client. And both the client and Mr. Roth filed complaints with the CFP Board against the former advisor for having breached his fiduciary duty. “What was surprising was that not a word came from the CFP Board,” wrote Roth. “In following up with the Board, I was told they had lost the complaint that I had filed, and hadn’t yet gotten to the client’s complaint. Eventually, the client received a letter that no public action would be taken against this CFP.”

When contacted about Roth’s allegations, the CFP Board issued a written statement to me from CEO Kevin Keller that reads, in part:

Certified Financial Planner Board of Standards certainly doesn’t consider the fiduciary standard a joke. We take it very seriously; we believe that 67,000 CFP professionals do as well.

Unfortunately, Allan Roth, CFP, has used incorrect presumptions related to a case that he filed on behalf of a client to call into question CFP Board, our fiduciary standard and our enforcement process.

Mr. Roth is presuming that because there was no public sanction against a CFP professional – against whom he brought a breach of fiduciary duty claim – CFP Board’s enforcement process is flawed and we don’t uphold the fiduciary standard. What Mr. Roth fails to disclose (or perhaps understand) is that CFP Board did not require our CFP professionals to adhere to a fiduciary standard until July 1, 2008, which is about three years after the time of the alleged misconduct Mr. Roth wrote about. We also didn’t receive a complaint from either Mr. Roth or his client until November 2008.

Ah, the complaint, which Mr. Roth claimed the CFP Board lost. Let me remind you, this is the same CFP Board that purports to speak for the financial planning profession on the fiduciary debate—and during the writing of Dodd-Frank was angling to become the regulator for financial planners. Perhaps I’m uninformed, but I don’t ever remember hearing of even FINRA having the temerity to claim that they “lost” a client complaint.

According to Roth, he went on to talk to the Board’s managing director, Professional Standards & Legal, Michael Shaw, who said he couldn’t comment on specific cases, “but did note that while the CFP Board did not revoke or suspend the CFP’s license or even issue a public letter of admonition, it was possible that CFP received a private censure.” I’ll bet that really put his tail between his legs.

Then, according to Roth, Board CEO Kevin Keller invited him to serve as a volunteer panelist on the Board’s Disciplinary and Ethics Commission so he could “write about the process from the inside,” as sort of a “peace offering” (“bribe” would certainly be too strong, here). “But then I received an agreement to sign,” he wrote, “giving the CFP Board the right to review and approve the article I would write on the process before publication… … [which was] not open to negotiation. This agreement was acceptable to both the Wall Street Journal and me…”

Here’s how Mr. Keller responded to this assertion in his letter to me:

What’s also disappointing is that CFP Board, in a completely transparent effort to illustrate the strength of our enforcement process, extended an invitation to Mr. Roth to serve as a “panel volunteer” on our Disciplinary and Ethics Commission (DEC) and write about it—something which had never been done before.

Consistent with our standard procedures for all our DEC volunteers, we asked him to sign a confidentiality provision and—to ensure that no confidential information was unintentionally included—asked to review a draft of the article in advance. Yet, Mr. Roth declined to sign it and thus our offer was turned down. Contrary to his assertion, we never required “approval” of the author’s content.

Keller further responds to Roth’s claims and addresses the CFP Board’s role on a fiduciary standard for all advice-givers and its own fiduciary standard:

If Mr. Roth’s client brought a similar claim today—under our revised standard—the outcome would likely be very different. In fact, under our publicly available sanction guidelines, a breach of CFP Board’s fiduciary duty would generally result in a suspension to use the marks for one year and one day.

Contrary to Mr. Roth’s suggestions, CFP Board has been a leader in supporting the fiduciary standard. We required it more than two years before Dodd-Frank became the law of the land. Beyond the actions we took requiring it for certification and re-certification, we have been on the leading edge of an effort to create a uniform fiduciary standard of care with more than 10 submissions to the SEC and Capitol Hill advocating this important consumer protection reform.

In retrospect, Roth summed up his version of the case this way: “In my mind, this wasn’t a close call. How could it possibly have been determined that the CFP acted in the best interests of the client? The only difference between this case and a broker without fiduciary duty is that at least the broker never claimed to be working in the client’s best interests.” Which led him to ask the question about the CFP Board’s “fiduciary standard”: “Is it merely an advertising campaign, or is it real?”

Contrary to some of the comments found on Roth’s blog, this is not a story about an “isolated case” or vilifying CFPs: it’s about the CFP Board and its seriousness, not just about a fiduciary standard, but about actually regulating financial planners. Sure, this is just one case. But it’s a really bad one. Lost complaints, confidential rulings, private censures?

The only really salient point that Mr. Keller raises here is that the infraction in question took place before the Board adopted a fiduciary standard. Fair enough, as far as it goes. But that raises at least as many questions as it answers: Why didn’t the Board simply tell that to Roth, who had conversations with both Michael Shaw and Kevin Keller (secrecy is one of the problems here)? I suspect he might have dropped the matter. Also, double dipping is unethical even for brokers, who aren’t fiduciaries: so why would it be okay for a financial planner, who still had the duty to “put the client’s interest first” even before the fiduciary standard?

The sad truth, as revealed in the Dodd-Frank debates and in cases such as this one, is that the powers that be aren’t going to take financial planners seriously until they start taking themselves seriously: which has to start and end with the “self” in their SRO.

**Michael Kitcies Nerd's Eye View.**

# Is The CFP Board’s New Mandatory Arbitration Requirement Really Fair?

MARCH 28, 2016

The right to use the CFP marks entails signing an agreement with the CFP Board, which commits the CFP certificant to abide by the CFP Board Terms and Conditions of Certification. These Terms Of Use cover essential details, from the CFP Board’s rights over the CFP marks, to the certificant’s use of them, and the ability of the CFP Board to discipline the certificant or revoke the marks entirely in cases of misconduct.

Last week, the CFP Board announced major updates to the Terms and Conditions of Certification, for the first time in nearly eight years. And, while several of the changes are simple clarifications to the legal language, the CFP Board did introduce a new provision that would require all disputes between CFP certificants and the organization to be taken to mandatory arbitration, rather than a court of law.

Arguably, arbitration will be a less expensive and more expedient path in many (or even most) cases, but the CFP Board’s arbitration requirement that keeps the outcome confidential (even if ruled against the CFP Board), coupled with a separate (and already existing) rule that limits any CFP Board liability to no more than $1,000 (plus legal fees), effectively means the CFP Board has remarkably little accountability or transparency whatsoever in any dispute (or worse, a series of disputes) with CFP certificants.

And perhaps most concerning is simply the fact that the CFP Board is changing its Terms and Conditions unilaterally. Technically, this is the organization’s right, as it controls the CFP marks and CFP certificants always have the right to not sign and choose to walk away. Yet the growth of the CFP marks in public prominence, and the CFP Board’s success in outdistancing virtually all other designations for financial advisors, means that even if CFP certificants would prefer that arbitration simply be an option rather than mandatory, they have very little choice but to accept the unilateral changes being handed to them... or risk being disparaged when the CFP Board's "Certified = Qualified" public awareness campaign questions their competency for having walked away from the marks?

So with the FPA unable to effectively advocate on behalf of CFP certificants, will the CFP Board consider some means to allow CFP certificants as stakeholders to weigh in on the decision before we are forced to waive our legal rights... or at least, will the CFP Board's Board of Directors modify its mandatory arbitration proposal to limit its scope to its publicly stated purpose, and provide some public information regarding arbitration outcomes to at least step up to being as "transparent" as FINRA?!

Michael Kitces

AUTHOR: MICHAEL KITCES

Michael Kitces is Head of Planning Strategy at Buckingham Strategic Wealth, which provides an evidence-based approach to private wealth management for near- and current retirees, and Buckingham Strategic Partners, a turnkey wealth management services provider supporting thousands of independent financial advisors through the scaling phase of growth.

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Understanding The CFP Board’s Terms And Conditions

CFP Board Of Standards - LogoAs a part of applying for CFP certification – initially or upon renewal – every CFP certificant must agree to abide by the CFP Board’s “Terms and Conditions of Certification”.

The current CFP Board Terms and Conditions agreement forms the basis for the legal contract between the CFP Board and those who apply, and covers everything from the actual authorization of when and how CFP certificants can use the CFP marks, to the CFP Board’s retained intellectual property ownership of the marks themselves, and the rules regarding a CFP certificant’s right to relinquish the use of the marks, have them revoked, or be (publicly) disciplined by the CFP Board for failing to use them properly.

As with any contractual agreement between two parties, from time to time there may be a dispute regarding the terms of the agreement – a potentiality that was brought into sharp relief nearly 3 years ago when Jeff and Kim Camarda sued the CFP Board in a dispute over whether they should be publicly disciplined for an alleged violation of the CFP Board’s Practice Standards regarding compensation disclosure. In essence, when the Camardas were found “guilty” by the CFP Board’s Disciplinary and Ethics Commission (DEC), and the ruling was upheld in the CFP Board’s Appeals Process, the Camardas sought out the court system to be the final arbiter of whether the CFP Board properly followed its process in adjudicating the result.

On the plus side, the fact that CFP certificants have some final path of recourse beyond the CFP Board’s own DEC and Appeals committees is arguably a very good thing, as it helps to ensure the CFP Board is accountable for its disciplinary process. The bad news, though, is that court disputes can be very expensive for all parties involved, with estimates that the CFP Board may have racked up more than $600,000 in legal bills just in the discovery phase of the Camarda case, and a who-knows-how-expensive bill for the Camardas in their efforts to defend themselves from what they claim was an inappropriate CFP Board disciplinary outcome in the first place.

The alternative, for those who want some legal recourse, but wish to avoid the costs (and slow pace) of the traditional court system, is to pursue arbitration instead. And now, with its latest update to the CFP Board Terms and Conditions of Certification, the CFP Board will soon require it.

CFP Board Introduces Mandatory Arbitration Requirement

In a change announced late last week, the CFP Board declared that it was revising and updating the Terms and Conditions of Certification for all certificants, effective at the beginning of May. And although many of the changes in the revised Terms and Conditions of Certification were simply clarifications of some legalese from the existing agreement, a significant new provision is the introduction of a new Section (r) pertaining to disputes between CFP certificants and the CFP Board, which would for the first time mandate arbitration for those seeking a resolution.

New CFP Board Terms & Conditions will impose Mandatory Arbitration for certificant disputes.

The arbitration process itself would be handled through the American Arbitration Association, and would entail the selection of three arbitrators who are all former Federal or state court judges with at least 5 years of experience on the bench (chosen from an initial list of 15 potential judges, where each party can strike three names and then rank order the rest according to preference).

The chosen arbitration panel can then meet with the parties, any witnesses they call, review the documents that were presented in the original CFP Board Disciplinary proceedings (and any additional discovery documents the arbitrators request). The arbitration decision (and any award for damages) is to be made within 9 months (unless extended by mutual agreement of the parties), and if the CFP Board loses it is obligated to pay both the CFP certificant’s legal fees (up to $30,000) plus the costs of the arbitration itself (if the CFP Board wins, the arbitration costs are split, and each party pays its own legal fees).

Notably, the mandatory arbitration provision also requires that the occurrence of the arbitration itself, along with any claims raised, issues addressed, the substance of the proceedings, and any final award, will all be kept strictly confidential.

CFP Board Mandatory Arbitration – Expediency vs Transparency?

Given the costs and hassles of the legal system, arbitration as a means of resolution for legal disputes has been on the rise for many years now, and the CFP Board is hardly the first to implement a mandatory arbitration clause. In fact, most advisors are (or should be) familiar with the idea of mandatory arbitration, because it’s standard in virtually every brokerage account agreement that we sign with our clients (and is estimated to be included in 46% of RIA client agreements as well).

On the other hand, the inclusion of mandatory arbitration agreements in the securities industry has come under increasing criticism in recent years as well. While billed as a means to expedite the dispute resolution process, the FINRA arbitration process in particular has come under increasing criticism that it is biased against consumer complaints, that the process may not always be fair (or at least isn’t perceived that way), and that the always-private proceedings obscure a critical aspect of consumer transparency and broker accountability. The momentum against mandatory arbitration in the securities industry has built up so far, that last year there was even a legislative proposal in Congress that would ban pre-dispute mandatory arbitration clauses altogether.

Now to be fair, as a mandatory arbitration process goes, the CFP Board’s new approach in its revised Terms and Conditions agreement is arguably a particularly fair and reasonable one. It relies on judges (rather than industry participants that might favor the CFP Board), it uses multiple judges (which might even get better results than just relying on a single judge in court), and it allows a healthy period of time (9 months) for resolution. In addition, it’s important to note that in the context of the CFP Board – at least when it comes to a dispute regarding a disciplinary matter – that the arbitration panel will effectively be the fourth stage of review on the same information (after CFP Board staff determines probable cause, the DEC hears the matter, and the CFP Board Appeals Committee reviews it), so the facts of the case should (hopefully!?) be well established at that point anyway. Yet even as a fourth level of review, the process should still be more expedient than a court case, preventing the CFP Board from being ‘distracted’ by lawsuits (which has clearly been an issue with Camarda, and is not fruitful for the organization or CFP certificants in the long run).

Yet the one major challenge of the CFP Board’s new mandatory arbitration process is its confidentiality. The CFP Board points out that confidentiality ensures that if a certificant wants to dispute a disciplinary matter, the dispute itself won’t become public… which is important, as if an advisor thinks they’ve been wrongly accused or disciplined, a public dispute about their disciplinary action is almost as damaging as outright being found guilty. The reputational risk to the advisor of a public court case disputing a disciplinary action – even if ultimately found innocent – is still significant. So confidentiality of the proceedings, for the sake of the CFP certificant, is a good thing. And of course, if the CFP certificant really is guilty of some client infraction, it would ostensibly still come out when the CFP Board issues the public discipline that lead to the arbitration dispute in the first place.

But the mandatory arbitration agreement with the CFP Board goes both ways. It also “protects” the privacy of the CFP Board. So if there are significant problems with the CFP Board, and multiple certificants are disputing disciplinary issues, neither the public nor CFP stakeholders will ever know. If cases are being disputed, and precedents are being set based on the outcomes, no future certificants will ever have the opportunity to rely on those prior precedents. In fact, throughout with the Camarda case, and including with its final resolution, the CFP Board fought persistently to have all details of the case sealed in court, raising questions of whether the CFP Board had something to hide from the public and the broader community. In a world of mandatory arbitration, transparency is lost, and there will be no way to ever find out.

Even When CFP Board Is Wrong, Its Liability Is Limited?

Beyond the issues of whether a mandatory arbitration is transparent or not, it’s also crucial to recognize that whether CFP Board is found ‘guilty’ of an infraction – in arbitration or in court – that in virtually all cases, the maximum penalty under the new Terms and Conditions that CFP Board would possibly have to pay a CFP certificant for its own wrongdoing is a whopping $1,000 (plus attorney’s fees).

If CFP Board makes a discplinary mistake w/ a CFP certificant, there’s little financial recourse.

In point of fact, this significant limitation on liability is not new. A limitation on liability for the CFP Board already exists in the current Terms and Conditions of Certification as well, where the liability is limited to no more than any “application fees” that were paid (i.e., the $325 the CFP certificant pays in application fees to become or renew as a CFP certificant). In fact, arguably the CFP Board never really had much at risk in the Camarda lawsuit and their allegations of business damages, beyond perhaps paying the Camardas legal fees, if the CFP Board was able to bring its Limitation of Liability to clause to bear. And arguably the CFP Board may have never been liable for damages to the Camardas' reputation anyway, given that it was actually the Camardas themselves, and not the CFP Board, who revealed the dispute to the media.

Nonetheless, in the new version of the Terms and Conditions, the updated language is even more crystal clear that the CFP Board’s liability would be limited to no more than $1,000 in a case where the CFP certificant disputed a public disciplinary matter (such as the Camarda scenario).

In other words, when CFP certificants sign their application to become (or renew as) a CFP certificant, they waive a significant number of rights in any future dispute with the CFP Board. They waive any claims against CFP Board staff, directors, or officers, any right to legal compensation for CFP Board wrongdoing above a paltry $1,000, and now they waive any right to have the matter heard in court or even see the light of day (in lieu of a mandatory arbitration process that may be expedient but also lacks transparency).

Similarly, all CFP certificants who sign the CFP Board’s Terms and Conditions also agree to indemnify the CFP Board in any lawsuits where the CFP Board is named alongside the CFP certificant. In other words, if the CFP Board is ever named in a lawsuit alongside a CFP certificant (e.g., questioning the credibility of CFP marks for a CFP professional who caused client harm), the CFP certificant would be on the hook to cover the CFP Board’s legal fees in the matter (and would also be barred from settling the case unless the CFP Board agreed to the resolution and/or was entirely cleared of wrongdoing)!

Are CFP Board’s Terms And Conditions Really Fair?

While from the perspective of the CFP certificant, the CFP Board’s Terms and Conditions may seem somewhat lopsided in favor of the organization, they're arguably still reasonable for an organization of the CFP Board's size and position. And most of their provisions are not unique (i.e., other large organizations often impose similar business Terms and Conditions to protect themselves).

After all, in a world where there’s one (big) CFP Board entity and 73,000+ CFP certificants underneath it, the organization needs a path to ensure that it is not dragged into any/every random lawsuit against a misbehaving CFP certificant. In most cases, the indemnification clause will be a moot point because the CFP certificant’s attorney will simply end out defending both anyway, because it’s the same legal matter (and still primarily about the CFP certificant). And the indemnification clause really only pertains to situations where it was the CFP certificant themselves who engaged in wrongdoing (e.g., by failing to follow applicable laws, misrepresenting themselves, misusing the CFP marks in a way that caused consumer harm, etc.).

Similarly, the CFP Board’s Waiver and Release clause (section (o) of the new Terms), which requires certificants to release CFP Board staff, directors, and volunteers from any liability – except in cases of willful misconduct or gross negligence – is arguably a necessary prudence, as it’s not productive for staff and especially volunteers to have to live in fear of lawsuits from random CFP certificants unhappy with a disciplinary outcome (even or especially one that was deserved for CFP misconduct). At the least, it seems reasonable to shift liability exposure from the staff and volunteers to the organization as a whole instead.

And the CFP Board's limitation on liability pertains specifically to liability that would arise out of the CFP Board's application of discipline to a CFP certificant, and/or a scenario where there was otherwise a dispute about the CFP certificants (inappropriate) use of the marks, the CFP Board's right to announce a disciplinary enforcement action, etc. Given that no CFP certificant "likes" to be publicly discplined - even if he/she is in the wrong - the CFP Board does need to take reasonable action to avoid a legal backlash by engaging in a disciplinary action in situations where it really is merited. In other words, the fact that the CFP Board is willing to step up and actually enforce its Practice Standards is admirable in the first place, and it’s hard to fault the organization for wanting some limitations on its legal exposure in the process of doing so.

Still, if arbitration is so expedient, perhaps it’s more appropriate give CFP certificants the option for arbitration, or even an incentive for it (CFP Board is guaranteed to cover arbitration costs if it loses?), but don’t require it. And while putting some limit to the CFP Board’s liability may be a practical necessity, is it really appropriate to do it in a manner so limiting that CFP certificants have no real recourse even in cases of legitimate harm? In theory, this would be a moot point, because a disciplinary decision against a CFP certificant wouldn't go public until after the arbitration was over, and if the arbitration panel found in favor of the certificant, there would never be "inappropriate public information" that caused financial harm to the CFP certificant in the first place. Still, it's concerning that even if the arbitration panel finds in favor of the CFP certificant, and affirms that the CFP Board really was in the wrong, and there was some financial harm that had occurred (e.g., if a staff member did inappropriately leak private case information to the public or media), the CFP certificant still would have no substantive financial recourse.

And beyond the issue of liability, is it really good for the profession in the long run if the CFP Board has an unlimited right to prevent any transparency regarding disputes between CFP certificants and the organization? After all, there is a reason why the proceedings of our court system are generally public affairs in the first place – because it’s essential for a foundation of trust between the ‘overseers’ and those being overseen and disciplined.

Are CFP Board’s Terms And Conditions Too Unilateral?

Of course, the CFP certificant who doesn’t like the CFP Board’s Terms and Conditions always has the same choice as anyone who doesn’t like the terms of a business contract placed before them: you have the right to walk away from (i.e., to voluntarily relinquish) the CFP marks.

Yet with the CFP Board’s growing market share of CFP certificants, its massive and growing lead over all other financial advisor designations in terms of consumer trust and recognition, and a Consumer Public Awareness Campaign that states “Certified = Qualified”, the organization is becoming so successful with the CFP marks that arguably walking away just isn’t actually an option anymore. In fact, if you decided you didn't like the CFP Board's new Terms and Conditions and chose to walk away from CFP certification altogether, the CFP Board's Public Awareness Campaign would effectively bash you after the fact by suggesting to your clients and prospects that you're not qualified to serve them (because you're no longer certified)... which makes the decision to "agree to the CFP Board's Terms or walk away" suddenly feel like a decision being made under duress!

In other words, the CFP Board’s latest changes to the Terms and Conditions of Certification raises the question of whether the CFP marks have become so prominent that financial advisors no longer have a fair choice about whether to follow the new Terms or walk away. Instead, the CFP Board’s two-way agreement has become a unilateral contract that CFP certificants are stuck with, bound to, and unable to walk away due to the lack of any viable alternative designation and given the years of studying and exam efforts they already poured into getting the designation in the first place.

Which suggests that perhaps it’s time for the CFP Board to consider a process to engage CFP certificants in conversations about the Terms and Conditions, rather than potentially undermining trust with the CFP stakeholder community by unilaterally applying the changes to everyone with barely a month’s notice (as the new rules will be effective May 2nd). After all, when it comes to making decisions about what’s a “fair” line to limit the CFP Board’s own liability and exposure, it’s hard to envision how the staff and Board of Directors can possibly give equal weight to CFP stakeholders. I would expect the CFP Board’s Board of Directors, in their role of protecting the organization, to encourage staff to make the contract as favorable as possible to the CFP Board, in their role as protectors of the organization. But when the contract is unilateral, there’s no one left to represent the CFP stakeholders themselves.

Of course, ideally advocacy for CFP certificants would come from the organizations that represent us, like the Financial Planning Association. Yet the drastic decline in the FPA’s power in the financial planning profession has rendered it completely silent on substantive advocacy issues for CFP certificants, from the CFP Board’s decision to cut the CFP experience requirement (for which the FPA failed to utter a single public word in defense of the standards), to the launch of the CFP Board’s Center for Financial Planning that competes directly with many of the FPA’s own services.

Which leaves us once again in the position that the only organization that can engage CFP stakeholders about the Terms and Conditions of Certification is the CFP Board itself, the very organization whose primary incentive is NOT to engage stakeholders, and instead just impose a unilateral contract upon them that protects only itself, knowing that it will be extremely difficult for them to walk away (because of the CFP Board’s own success).

Changes For CFP Board To Consider To Its New Terms And Conditions

So what should the CFP Board be expected to do from here? Ultimately, I would suggest there are several steps worth considering, for the sake of maintaining a healthy relationship with CFP stakeholders and to better legitimize what otherwise feels like an awkward unilateral imposition of new Terms and Conditions:

1. Consider a public comment period regarding the new Mandatory Arbitration clause. As the Board of Directors there's no requirement to do so, but leaders have long recognized that buy-in from stakeholders is essential to legitimize potentially controversial decisions, especially when it involves changing Terms that are unilaterally imposed on the stakeholders. If mandatory arbitration is so clearly better for the organization and its stakeholders, then make the case, and give us a chance to affirmatively agree that we want to waive our right to sue in court, rather than imposing it upon us in a situation of borderline duress.
2. Provide a public reporting mechanism for arbitration panel outcomes. Even FINRA, often lambasted for its lopsided arbitration panels, provides transparency to the public about the outcomes of arbitration panels, appropriately anonymized to protect client privacy and innocent parties. If the CFP Board's disciplinary rulings are being persistently upheld in arbitration, that only provides further validation to the disciplinary process. And if the CFP Board's disciplinary rulings are routinely being overturned in arbitration, the public and CFP certificants have a right as stakeholders to know. When the CFP Board fights tooth and nail to hide the Camarda proceedings from the public, and then unilaterally requires all future disputes with certificants to be hidden from the public as well, it gives the impression there's something rotten being hidden. Providing at least basic information about arbitration outcomes, including whether party was the victor, and the basic facts of the case so other CFP certificants can be aware of important precedents that may have been set, is a modest and reasonable compromise.
3. Limit the scope of mandatory arbitration. Public statements from the CFP Board have characterized mandatory arbitration as a prudent fourth layer of review in disciplinary disputes with CFP certificants. To this extent, it seems reasonable (with the caveats #1 and #2 above). However, the actual language of the Terms and Conditions eliminates the CFP certificants right to sue the CFP Board for any legal dispute whatsoever, in addition to eliminating the right of CFP certificants to come together in legal action (as certificants are required to arbitrate individually, and are barred from class actions). The mandatory arbitration clause is so broad, it also relegates disputes about the Terms to mandatory arbitration, in fact, it would appear that if the Board of Directors itself is failing to properly exercise its duties for some reason, CFP certificants are barred from taking legal action to rectify the situation! This creates a serious gap in basic organizational accountability, and again makes it feel as though the CFP Board has something to hide and an unwillingness to be transparent and accountable.
4. The bottom line is that while the mandatory arbitration agreement may be reasonable, its imposition without stakeholder input, in a manner that lacks transparency of outcomes, while forcing CFP certificants to surrender key mechanisms of organizational accountability, creates a concerning precedent for an organization that already has "trust issues" with its stakeholders. If the primary goal of the new mandatory arbitration clause is really just to avoid future court battles over the CFP Board enforcing its disciplinary process - which I personally think is reasonable - so be it, but limit the scope of mandatory arbitration to be specifically for that purpose, and adjust the rules to allow for a public reporting process of arbitration outcomes in a manner that protects client privacy and innocent parties but provides appropriate organizational accountability and transparency, so we don't always feel like the CFP Board has something it's trying to hide.
5. So what do you think? Is the CFP Board's shift to mandatory arbitration simply a prudent step for an organization growing its enforcement of the Practice Standards? Should the CFP Board has further engaged CFP certificants themselves in the process? Do you think CFP certificants still have the option to "vote with their feet" and leave if they're unhappy with the Terms? Please share your thoughts in the comments below!

**ALM Think Advisor** Regulation and Compliance > Legislation

# New Bill Allows 529 Plans to Be Tapped for CFP, CPA Exams

By Melanie Waddell

Anew bill, H.R. 1477, would allow 529 plan funds to be used to cover the costs of maintaining professional credentials — for instance, taking the CFP Board and CPA exams.

The bipartisan bill, the Freedom to Invest in Tomorrow’s Workforce Act, expands “eligible uses of 529 savings plans to include fees and expenses required to obtain or maintain recognized postsecondary credentials, including professional credentials and certifications.”

The Certified Financial Planner Board of Standards said Thursday in a statement that it was pleased to support the bill, sponsored by Reps. Abigail Spanberger, D-Va., and Rob Wittman, R-Va.

The CFP certification, including the CFP exam, would qualify under this legislation, said Maureen Thompson, vice president of public policy at CFP Board.

CFP Board looks forward “to continuing to work with members of Congress, as we have over the last several years, to build support for the legislation and seek [its] enactment,” Thompson said.

The bill gives accounting professionals “greater financial flexibility as they enter the workforce and seek to further their education,” according to the American Institute of CPAs.

The group pointed out in a letter to lawmakers that the bill “would allow individuals to use 529 funds for expenses, fees and costs related to the Uniform CPA Examination (CPA Exam), which is one of three critical components required for licensure” as a CPA.

AICPA told the lawmakers to ensure, as the legislation advances, “that 529 plan owners and administrators can easily understand and use the expanded benefit. To help achieve this outcome, we encourage increased clarity around the process used to identify a certification as a ‘recognized postsecondary credential,’ as well as clarity on the qualifying expenses, fees and costs under the proposal.”

Jan Lewis, chair of the AICPA Tax Executive Committee, said in statement that “certifications and continuing education are cornerstones of the accounting profession, as tax and accounting laws continue to evolve. This bill allows greater flexibility to accounting professionals to gain and maintain professional certifications, including the CPA certification, and better serve our clients.”

Section 529 savings plans allow students and families to save in an investment account for K-12 and college tuition, room and board and related costs. Earnings and contributions can be withdrawn tax-free to pay for qualified educational expenses. Withdrawals for other reasons are subject to income taxes and a 10% penalty.

The Setting Every Community Up for Retirement Enhancement (Secure) 2.0 Act allows some unused 529 plan funds to be rolled into a Roth IRA.

By Melanie Waddell @Think\_MelanieW



MARKETS | THE INTELLIGENT INVESTOR

# Investors Need This Cop to Toughen Up Does the Certified Financial Planner Board of Standards have the backbone to improve its scrutiny of financial advice?

By Jason Zweig Aug. 9, 2019 11:00 am ET

Last month, a Page One article in The Wall Street Journal described loose disclosure and disciplinary practices at the Certified Financial Planner Board of Standards Inc., which awards the CFP designation coveted among financial advisers.

How soon and how much the CFP Board can improve its procedures is a critical question for the millions of families who rely on the nation’s nearly 85,000 certified financial planners for competent and ethical advice.

LetsMakeAPlan.org, the CFP Board’s online search directory, neglected to inform the public that thousands of the planners listed there have disclosed customer complaints, criminal histories, financial problems or regulatory proceedings, the Journal’s investigation found.

Among these CFPs were 499 who have faced criminal charges, 324 who left a previous firm amid allegations of misconduct, 323 who had been disciplined or investigated by regulators and 68 who filed bankruptcy within the past 10 years. According to LetsMakeAPlan.org, none had been disciplined by CFP Board. Yet all these red flags were disclosed at BrokerCheck, a website run by the Financial Industry Regulatory Authority, which oversees how brokerage firms sell investments.

After the Journal’s article, the Washington, D.C.-based, nonprofit CFP Board said it was creating a task force to “examine and modernize” its disclosure and disciplinary procedures. The task force is expected to report in November.

**The CFP Board’s history suggests, however, that it may lack the backbone to push such an upgrade far enough. “There’s much more interest in growing the number of CFPs than there is in vetting them to protect the public,” says a former CFP Board executive.**

That contention is “simply incorrect,” says the CFP Board, adding that all its strategic priorities are “tied to [its] mission to benefit the public.”

**The CFP Board’s enforcement history isn’t encouraging, though.**

**According to its tax filings, in 2010 the Board reviewed 1,472 cases of alleged violations of its professional standards. That resulted in 103 formal hearings and 68 disciplinary actions that were made public. In 2017, the latest year available, the CFP Board reviewed “in excess of 336” cases— a decline of approximately 75% since 2010. Only 68 formal hearings resulted; the Board tells me it meted out 53 public disciplinary actions in 2017, although its tax filings no longer disclose those numbers.**

**At year-end 2010, there were 61,951 CFPs; by the end of 2017 there were 80,035. So, even as the number of certified planners rose by nearly one-third, the number of investigations fell by three-quarters.**

The CFP Board tells me that “the comparison you seek to draw is inaccurate and the numbers are not comparable.”

In 2012, says the CFP Board, it began reporting only those cases that result in “ongoing investigations.” It stopped investigating single bankruptcy filings. And, the Board says, more CFPs have been volunteering to be disciplined, reducing the number of investigations.

The fall-off in investigations isn’t the only concern.

In 2013, the Journal reported that hundreds of CFPs were falsely describing themselves as “fee-only” on LetsMakeAPlan.org while working for firms that collect commissions. Although the CFP Board cracked down on that practice, it continued for six more years to rely on self-reporting by planners to monitor their conduct. Only after the Journal’s latest article did the Board sayit will stop “solely relying on self-disclosure.”

Finally, it isn’t clear how responsive the CFP Board is to complaints from the public.

On Dec. 4, 2013, David Klein filed a complaint with the CFP Board against two CFPs, Anthony Gugino and Megan Burke of Tompkins Financial Advisors in Pittsford, N.Y.

Mr. Klein contended that in 2009, as his then-wife was dying of cancer, Mr. Gugino and Ms. Burke had recommended a $6.2 million life-insurance policy (annual premiums: $140,000) for him. That may not have been necessary, given the insurance and other assets Mr. Klein already had.

“I’m a well-to-do guy who should have known better, but it was a difficult time in my life,” says Mr. Klein. Later, he became “concerned that they hadn’t done good planning.”

A spokeswoman for Tompkins, speaking on behalf of Mr. Gugino and Ms. Burke, declined to comment.

On Dec. 22, 2017—four years after he filed the complaint—the CFP Board finally told Mr. Klein that its investigation was complete and “did not result in a public sanction” against either of the planners.

Mr. Klein is baffled by that inconclusive response. He is the retired chief executive of a major health-care insurer in Rochester. He has an M.B.A. from the University of Chicago and serves on the board of directors of Computer Task Group Inc., a publicly traded company that provides technology services and staffing.

“I got the impression that this was more of a marketing campaign,” he says, “than an earnest commitment to making sure that CFPs perform in full compliance with the standards of ethics the CFP Board sets forth.”

The CFP Board says it doesn’t disclose details on its investigations, but “the time it takes to resolve each complaint may vary significantly case by case.”

**Roughly 1,900 years ago, the Latin poet Juvenal asked, in loose translation, “But who will watch the watchdogs?” Consumers can only hope the CFP Board’s task force for modernizing its enforcement has more bite than bark.**

Write to Jason Zweig at [intelligentinvestor@wsj.com](mailto:intelligentinvestor@wsj.com)

**FA Financial Advisor Magazine**

# Global Junkets Lavished on Directors Fuel CFP Board High Life

APRIL 3, 2014 • EVAN SIMONOFF

Editor's Note: To read a response to this blog from the CFP Board chairman, click here. To read additional comments from Evan Simonoff, click here.

Year after year, the CFP Board of Standards manages to expand its reach, grow its revenues and inflame licensees with an amazing degree of reliable predictability. How does it keep doing it?

Some suggest that the board subtly curries favor with CFP Board directors by dangling lavish perks in front of them. Topping the list is a long array of expensive international junkets offered to members of the board’s various international councils and others.

Gaining global adoption of the CFP mark is a legitimate goal for the CFP Board. So is learning about how the personal financial advice business is evolving in other nations. After all, American advisors might be able to learn a lot from their international colleagues.

And if it involves flying around the world in business class and staying at fancy four-star hotels to explore the global condition of the personal financial advice business, the price must be paid. But some former directors are starting to wonder exactly how high that price is and whether the luxurious junkets and other perks color directors’ judgment. It should be noted that not all the international council meetings of the Financial Planning Standards Board involve foreign travel. This week it met in Denver; last year it met in Sydney and Hong Kong.

Some relationships at the CFP Board have bordered on dubious. Several recent CFP Board CEOs reportedly have retained CFP Board chairs as their own financial advisors. Is that a conflict of interest? I don't know. I also don't know who Kevin Keller's advisor is, or if he even has one. I do know that over the years several CFP Board chairs have let it be known that CFP Board CEOs are their clients, though I can't say I've ever seen the engagement agreements.

The doubling of CFP licensees’ fees has dramatically increased the board’s revenues from $12.6 million in 2009 to $26.4 million in 2012. Technically, the board didn't double fees; it added a special fee with licensee support to market the CFP mark. But it seems unlikely they will reduce the fee when the four-year marketing program ends in two years. According to Guidestar, CEO Kevin Keller’s total compensation increased from $448,000 in 2009 to the most recently reported $888,000 in 2012. But Keller isn't the problem, which has existed long before he arrived at the CFP Board. More worrisome is that the board has outlined an enormously expansive agenda while dropping the ball for many of the essential functions it is supposed to perform.

Remember the revisions of ethics class requirements that were supposed to go into effect on April 1? They’ve been delayed. A proposed revision of practice standards has also been aborted for now.

**Last year, the CFP Board aroused the ire of many advisors by clumsily entering and then exiting the age-old debate over compensation. At the same time, the SRO placed its board of ethics and examination under staff control. Many complain the group’s staff is increasingly populated with former Finra cowboys who view all CFP licensee activity through a transactional lens and possess no understanding of the financial planning process.**

Still, a budget reaching almost $27.3 million in 2012, almost double its take three years before, has fueled the board’s growing ambitions. The CFP Board is toying with various new ventures, from entering the continuing education business, to establishing a research institute, and it reportedly is even considering entry into the publishing business.

Some of these ventures might have merit if the board were performing its basic functions effectively and growing the CFP brand by increasing the number of licensees. But it isn’t. Instead, it is running TV commercials filled with actors playing goofball disc jockeys. These TV commercials would fail to meet the basic standards put forth by other professional organizations such as the American Bar Association, according to one licensee who studied it closely.

But money seems to be no object in the Beltway these days -- and certainly not at the CFP Board. The board recently moved upstairs in its building, taking an 11-year lease with more space and a much better view of the White House, sources said.

That would be acceptable if the number of CFP license applicants were growing, but it isn’t growing very fast. Why does it need more space when the number of exam takers aren’t growing? The shortage of future advisors in an aging profession remains the industry’s most immediate challenge, and on a long-term basis it threatens the CFP Board’s economic viability.

The challenges of an aging population are hardly confined to the financial advisory profession so blaming a global demographic problem on the board would be ludicrous. Fully 25% of the physicians in America are over the age of 55. But with its robust $27 million budget some believe the CFP Board is the best positioned organization to tackle the problem in this business and, while some of its initiatives are designed to address the problem, it could do a lot more in the eyes of some certificants.

Finally, just about every new initiative under consideration at the CFP Board places it in conflict with every other organization. Many question whether that’s the best way to grow the profession.

Today, the CFP Board is chaired by the widely respected Ray Ferrara, and it has other board members with unimpeachable integrity such as Joe Votava. The problem is that for decades the SRO has filled its board with the profession’s best, and they have failed to curb its elephant-in-the-living-room tendency. One can only hope that this crew is different. After all, the lavish junkets began long before either Keller or most current board members were involved with the SRO.

Service on the CFP Board's numerous subsidiary boards typically involves hundreds, if not thousands of hours, all of it volunteered. Unlike volunteering and eventually attaining a lofty position at another association, CFP Board service typically doesn't give an advisor enhanced marketing visibility that can ultimately pay off in terms of increased revenue in their business.

Do board executives feel that generous perks are a just reward for volunteer efforts with little obvious reward? Who knows. Past directors say the perks are often subtle and it takes a while before they suddenly wake up and feel conflicted. The entire saga of the magnetic vortex that drives the most honorable, decent individuals to repeatedly wander astray and commit silly acts possesses all the dimensions of a Greek tragedy—or comedy. Jusk ask former volunteers.

The lawsuit filed by Jeff and Kim Camarda against the board will force it to open itself up to the public as never before. Some former board directors fear it will reveal that the emperor has no clothes. “If the CFP Board were held to the same standard as licensees, it would lose its license,” one ex-director says.

Keller’s salary is only a tiny part of the problem. By the standards of non-profits in the Beltway, others running vastly smaller non-profits make considerably more. For instance, Dallas Salisbury, CEO of the Employee Benefit Research Institute, pulled down more than $1.2 million in 2012 running a non-profit with $3.8 million in revenues.

Outside of Facebook and Silicon Valley, the non-profit universe may be where future fortunes are made. Just look at NYSE chairman Dick Grasso’s $142 million retirement plan or NFL Commissioner Roger Goodell’s 33 percent raise to $44 million this year.

The problem for the CFP Board is its misplaced priorities and penchant to reflexively expand its empire.

[REUTERSBREAKINGVIEWS](https://www.reuters.com/news/archive/GCA-Reutersbreakingviews)

NOVEMBER 2, 2012

# CFP Board chairman steps down amid ethics concerns

By [Suzanne Barlyn](https://www.reuters.com/journalists/suzanne-barlyn)

3 MIN READ

(Reuters) - The chairman of an organization that certifies and develops standards for financial planners has stepped down amid allegations that he may have violated the group’s ethics rules.

Alan Goldfarb, chairman of the Certified Financial Planner Board of Standards Inc, resigned along with two members of a disciplinary and ethics committee, the organization said in a statement on Friday.

The three left after an investigation coordinated by a CFP Board special committee found “sufficient merit” that they may have violated the group’s own standards, the CFP Board said. The preliminary findings “do not involve alleged violations of criminal or civil laws,” wrote Kevin Keller, the CFP Board’s chief executive, in a statement emailed to Reuters.

“The resignation was to maintain the integrity of the Board. I did not commit any violation,” Goldfarb wrote in an email to Reuters.

Goldfarb’s resignation marks the second incident in less than six month involving leaders of the financial planning profession. In August, Ron Rhoades, also a certified financial planner, said that he would not serve in his upcoming role as chairman of another group, the National Association of Personal Financial Advisors, because of a compliance mishap with Florida securities regulators.

Goldfarb is also a certified financial planner and director of wealth advisory services for Weaver Wealth Management in Dallas, Texas.

The CFP Board did not disclose which standards Goldfarb and the two ethics committee members, whom it did not identify, may have violated. Goldfarb said in the email that the alleged violations involve a flap over representing his business compensation as a “salary” instead of as “fees and commissions.” He declined to provide further details because the CFP Board’s review process is “confidential,” he said.

Goldfarb is registered as both an investment adviser and securities broker.

In addition to his position at Weaver Wealth Management, he is a broker for Weaver Tidwell Capital, LLC, a brokerage registered with the Financial Industry Regulatory Authority.

Investment advisers typically charge a flat fee for their services based on a client’s assets under management. Brokerages, however, charge commissions for their services.

Goldfarb said he expects to be “cleared of any wrongdoing” after the CFP Board completes the next round of a disciplinary process that he helped to develop. He notified the CFP Board of his resignation in a letter on Tuesday.

On Wednesday, the board elected Nancy Kistner, its 2012 chair-elect, to fill the remainder of Goldfarb’s term. Kistner is a managing director at U.S. Trust, a private bank unit of Bank of America Corp. She will serve as the CFP Board’s chairman through 2013.

Reporting By Suzanne Barlyn; Additional reporting by Jed Horowitz

*Our Standards:*[*The Thomson Reuters Trust Principles.*](http://thomsonreuters.com/en/about-us/trust-principles.html)

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# Restoring Trust in The CFP Mark

**APRIL 6, 2009 • SOMNATH BASU**

The financial crisis and brutal economy have decimated more than people's nest eggs-they also have soiled the reputation of many a financial advisor who are seen to have breached the public's trust.

Case in point: the disturbing results of a Harris Interactive poll asking Americans whether they trust the advice they're given from various professionals. Financial advisors lagged behind doctors, dentists, nurses, lawyers and accountants. Only mechanics, real estate agents, insurance agents and stockbrokers were found to give worse advice. And the poll was released two years before the bottom fell out of the market. Imagine what the numbers would be like today. A November 2008 Gallup poll about honesty and ethics in 21 professions ranked stockbrokers 15th-a thin margin above car salesmen.

What can be done to repair the considerable damage? It's quite simple, actually: require at least two to three years of intensive post-graduate work for certified financial planners that's as rigorous as medical and law school, complete with a board exam and the involvement of educational accrediting bodies that add rigor to the education process.

If there's a desire to specialize in annuities or other areas, then another year of schooling should be added to the mix. But the curriculum must be prepared by academics and not industry practitioners, such as those who set up the CFP board and its topic (or product-based) curriculum.

Most practitioners have little knowledge or background about the field of education or the importance of a holistic approach to program and curriculum development, instructional methods or content structure and delivery. Merely having a representative member from an accrediting body in a group of practitioners attempting to create an academic program is not viable. Furthermore, any program needs to be in the purview of an accrediting body with its compliance issues and which could be handled by the roughly half a dozen regional bodies such as the Western Association of Schools and Colleges. For most purposes, certificate programs are generally excluded by these educational governing bodies.

**Parity For Physical And Financial Health**  
How can CFP practitioners possibly be taken seriously when they're able to earn their credentials after only seven to nine months of completing their undergraduate studies? It's important to remember that the requirement of a bachelor's degree was instated only for those credentialing after 2007, before which many planners could hit the pavement straight from high school or even beforehand.

General medical practitioners need about 12 years of education, medical specialists need as many as 15 and lawyers require about 10 years when factoring in undergraduate and apprentice work. It certainly would help if the federal government acknowledged that financial health is as important as physical health, especially during tough times when the mind-body connection exacerbates financial worries. What's needed is a grassroots movement to force regulation of the industry's ethics and competency, as well as close monitoring of fiduciary responsibilities.

The SEC and NASD should test whether brokers understand what products are suitable for clients and make sure this requirement is stringent enough to reduce or eliminate the number of broken American dreams. Consider, for example, that about 70% of a Series 7 Exam (licensing exam for stockbrokers administered by FINRA (nee NASD) focuses on the legal side of the business and what financial professionals need to know to protect themselves from liability, while the other 30% focuses only on the jargon and definitional aspects of investments.

There's no attempt in the exam to test for any analytic knowledge, basic investment theories and application strategies to determine whether the future financial advisors have even a rudimentary knowledge of investment product suitability. This education is supposedly left to the corporations who have little motivation to teach all the right material since that may adversely affect their own profitability.

Another idea worthy of consideration would be a re-certification exam taken every 10 years because the financial-services industry is so dynamic. It would work much like state departments of motor vehicles requiring that drivers periodically test their knowledge about rules of the road and eye-hand coordination to earn the privilege of being able to remain behind the wheel.

**Ending The Pursuit Of Greed**  
Many students who seek to earn a CFP view their education requirements as a burden, preferring accelerated programs as the path of least resistance to considerable earning power. And it's not simply a generational difference. It's the nature of a myopic culture that places short-term gain ahead of lasting excellence.

Scores of impatient individuals are not only zipping through the curriculum in three to six months or choosing self-study but also are without a bachelor's degree when they join wirehouses and financial institutions, which cannot be trusted to adequately train them. Some have even dropped out of high school to share in the spoils and exerting as little effort as possible leading up to their licensing examinations such as the FINRA or state insurance board exams. Consequently, they're ill-prepared to adequately address client needs.

A painful truth is that many financial practitioners are sales people masquerading as planners or advisors in an industry whose ethical practices have a shameful track record. Stockbrokers and insurance agents who earn commissions from buying and selling stocks, insurance and other financial products realize that a CFP credential will help grow the volume of their business or branch them into other related and lucrative products and services.

But they're unwilling to devote the time necessary to achieve a sound education that will help attain their goals, and would rather sell variable or whole life products than simple term life, even when the suitability argument overwhelmingly suggests so, for a higher payday. More often than not, it is the financial institutions they work for who reward such behavior with higher commissions rather than salaries that encourage such behavior and create the vicious cycles that are now the norm.

The time has come to put quality assurance ahead of greed and check all egos at the door. Far too many CFP practitioners and financial intermediaries (i.e., financial planners, financial advisors, chartered financial consultants or financial counselors) are escaping scrutiny right now because public outrage has been directed at large financial institutions such as Citigroup, Merrill Lynch and AIG rather than individual money managers. But it won't take long before this anger spills from executive suites onto individual practitioners.

The way to resolve this issue is for the industry to step boldly in the direction of more meaningful professional education that raises quality standards and infuses investment advice with credibility and confidence.

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# The Go-To Website Often Omits Red Flags

The Certified Financial Planner Board of Standards, which runs LetsMakeAPlan.org, doesn’t inform users about customer complaints, regulatory skirmishes and other problems.

By Jason Zweig and Andrea Fuller Updated July 30, 2019 8:25 am ET

Many people seeking a financial adviser begin their search at LetsMakeAPlan.org, a directory operated by the Certified Financial Planner Board of Standards Inc.

The Board, which controls the CFP label coveted by financial planners, boasts of its high standards and has touted its directory of professionals as a place where people can find a screened, skilled and trustworthy financial planner.

What they won’t find there is any indication that thousands of the planners bearing the board’s seal of approval have had customer complaints or faced criminal or regulatory problems—often directly related to their work with clients. More than 60 have filed for bankruptcy within the past decade although the website says they haven’t disclosed such an event in the last 10 years.

The LetsMakeAPlan.org site has been presenting more than 6,300 planners without showing such problems even though the planners have disclosed them to the Financial Industry Regulatory Authority, according to a Wall Street Journal analysis of more than 72,000 profiles on the website.

The Journal compared data on the LetsMakeAPlan.org site against records kept by Finra, an industry-funded watchdog with legal authority to regulate brokers.

Among the planners the Journal’s analysis flagged, more than 5,000 have faced formal complaints from their clients over investment recommendations or sales practices, and hundreds have been disciplined by financial regulators or left brokerage firms amid allegations of misconduct. At least 140 faced or currently face felony charges, including one who pleaded no contest to a charge of possessing child pornography.

In video and other public materials, the professional certification body has said it holds planners to higher standards than regulators do and has promoted LetsMakeAPlan.org as a one-stop shop for finding planners.

The Washington, D.C.-based CFP Board awards the certified financial planner designation to stockbrokers, insurance agents, financial planners and investment advisers who help millions of Americans manage their household budgets deal with debt, minimize taxes and save for retirement and college.

The professional certification group, which draws its funding from CFPs, promotes its online directory more aggressively than many other professional organizations.

Many CFPs register with Finra because they’re affiliated with brokerage firms.

Financial planners may be regulated by different authorities depending on where they work, and they don’t need the board’s CFP designation in order to practice financial planning. But the CFP mark is prestigious and boosts their profile through LetsMakeAPlan.org.

Fines, suspensions

One adviser listed there with no blemishes is Angelo Talebi of Beverly Hills Financial Planners LLC in Sherman Oaks, Calif.

Since 2012, firms where Mr. Talebi has worked have paid roughly $1.5 million to settle more than a dozen claims that he misrepresented risks or put clients in unsuitable investments, among other allegations, according to BrokerCheck, a site administered by Finra, the brokerage regulator.

In 2015, Finra fined Mr. Talebi $10,000 and suspended him from the brokerage industry for two months after he used a customer’s login and password to trade at another brokerage without his own firm’s knowledge.

In an interview, Mr. Talebi said he used a client’s login and password because the client asked him to. Asked about other customer complaints, he said he didn’t do anything wrong. “There has never been a case of material wrongdoing found against me, no embezzlement, no forgery,” he said.

Mr. Talebi said the CFP Board contacted him in early July to schedule a disciplinary hearing. That was after the Journal asked the Board about his record. The Board said it couldn’t comment on Mr. Talebi.

The Board said it is “committed to the public’s financial wellbeing and will continue to update processes that support this goal.” After inquiries from the Journal, it said it is reconsidering what it should disclose on the LetsMakeAPlan.org site.

Different disclosure and disciplinary processes may explain most of the discrepancies, the Board said.

Its LetsMakeAPlan.org directory includes only two types of financial-planner red flags: discipline imposed by the CFP Board or a bankruptcy disclosure within the past 10 years. These affected just 573 of the CFPs listed on the site as of June.the Board said.

SHARE YOUR THOUGHTS

If you were screening financial planners, how much would you want to know of their background? Join the conversation below.

The website doesn’t show actions taken by the Securities and Exchange Commission, Finra, the Department of Justice or state authorities.

Finra’s BrokerChecksite includes these as well as customer complaints, including some complaints that later have been, or might eventually be, dismissed as groundless.

It includes criminal histories, including some that relate to youthful indiscretions such as misdemeanor shoplifting or buying alcohol with a fake ID.

BrokerCheck discloses all felony convictions, as well as a wide range of financially-related misdemeanor charges, to help investors determine whether to conduct business with a financial professional, says a Finra spokeswoman.

Advisers with criminal records are more likely to have subsequent disputes with customers, even when the charges were minor or were dismissed, a study published in the Journal of Accounting Research in May found.

“The CFP Board does not publicize allegations,” the organization said. “We intend our process to be both fair to CFP professionals and credible to the public.” There are nearly 85,000 CFPs in the U.S.

In response to the Journal’s findings, the board has added disclaimers to LetsMakeAPlan.org suggesting users “may find additional information” about a financial planner with Finra or the SEC.

“In some cases, The Wall Street Journal raises important issues, which we’re addressing,” it said. “We will continue to evaluate what, if any, additional information should be included on the site.”

Patrick Lach, a CFP in Louisville, Ky., who is also an assistant professor of finance at Indiana University Southeast in New Albany, Ind., said trust is vital and clients have a right to know as much as possible about a financial planner. Clients generally provide pay stubs, tax returns and account information to their planner.

“They’re often sharing things that even their best friends don’t know about,” Mr. Lach said. “There can be shame and insecurity around student-loan debt, lagging behind on retirement savings or trying to convince other people that their financial situation is much rosier than it is.”

John Robinson, a financial planner in Honolulu who has written detailed critiques of the Board’s disclosure policies, said, when told of the Journal’s findings, that they suggest “there is no vetting.” Mr. Robinson, who is not a CFP, said, “The CFP Board is setting people up to be deceived.”

John Robinson, a planner in Honolulu who has been critical of the CFP Board

The Board took strong issue with that, saying it has a thorough vetting procedure and a multistep process for investigating allegations of misbehavior. It said that as a professional organization, not a regulator, it plays a different role than Finra or the SEC. The CFP Board said it has no subpoena power, so its investigations take time and may not always turn up the documents needed for it to impose its own discipline.

Background checks

Before certifying someone as a CFP, the Board said, it conducts background checks to look into criminal, legal and bankruptcy history and reviews sites such as the SEC’s online database. Applicants must pass a six-hour exam, among other requirements.

This spring, the Board certified Rudolf Molnar as a CFP.

In 2012, Finra fined Mr. Molnar $5,000 and suspended him for a month after saying he had impersonated four customers to accelerate the transfer of their money to his new firm. As a result, in 2013 Mr. Molnar surrendered his Virginia insurance sales license for a year.

Mr. Molnar’s profile on LetsMakeAPlan.org makes no mention of this.

Through a spokeswoman, Mr. Molnar said he had provided the CFP Board with “extensive disclosures and documentation as part of earning and being approved for the certification.” In the Finra case, he didn’t admit or deny the regulator’s findings.

Among sources the CFP Board said it checks before certifying a CFP is Finra’s BrokerCheck site. Mr. Molnar’s fine and suspension were listed there when the Board certified him.

Asked why it certified him as a CFP, the Board said although such conduct would often result in punishment, “in this circumstance, where Mr. Molnar otherwise had no other customer-related disclosures, CFP Board determined that the conduct that occurred in 2009 did not prevent Mr. Molnar from being certified in 2019.”

Every two years, all CFPs must update the Board on their financial and regulatory history. Any who are convicted on a criminal charge or have a professional license suspended or revoked must notify the board within 30 days. It “relies heavily on self-disclosure, complaints from either clients or other CFP professionals, and news scans,” the Board said.

In response to the Journal’s findings, the group said, it will from now on look at Finra and SEC records each time a CFP renews certification.

Sixty-eight CFPs who have filed for bankruptcy within the past 10 years had LetsMakeAPlan.org profiles that don’t mention a bankruptcy, according to the Journal’s analysis of such events listed on Finra’s BrokerCheck. The Journal compared the disclosures on the LetsMakeAPlan.org site to the Finra site in May.

Though profiles on LetsMakeAPlan.org show whether a CFP has disclosed a bankruptcy in the last 10 years, the CFP Board said that its disclosure-policy criteria account for discrepancies between LetsMakeAPlan.org listings and Finra’s BrokerCheck.

The CFP board said some planners may have failed to disclose a bankruptcy.

“If the CFP Board is relying on the individual CFPs for accuracy, then it’s clearly being duped,” said Jill Gross, a professor of securities law at Pace University in White Plains, N.Y., who has often served as an arbitrator in financial disputes. “Those are the kinds of CFPs we don’t want advising investors.”

Rising above

In a CFP Board ad that ran on national cable television from 2014 to 2017, and remains widely available on planners’ websites, a voiceover warns, “If they’re not a CFP pro, you just don’t know. Find a certified financial planner professional who’s thoroughly vetted at LetsMakeAPlan.org. CFP. Work with the highest standard.”

In one of a series of educational videos for planners the CFP Board posted online in October, the group’s general counsel, Leo Rydzewski, says oversight of financial advisers is structured “much like a pyramid,” with federal regulation on the lowest level and the CFP Board’s standards at the apex, “rising above” all other authorities.

The organization said Mr. Rydzewski’s reference to superior standards refers to education and ethics among CFPs that “go beyond what is required by the government at the federal or state level.”

The non-profit CFP Board gets most of its funding through certification fees from planners who have earned the CFP; the group also collects examination and educational fees from those who are seeking to earn the CFP.

The Board tells financial planners $145 of their $355 annual certification fee goes to a public-awareness campaign, which in part promotes the LetsMakeAPlan.org site. As a result, in 2017, the Board spent nearly $12 million of its $36 million budget on that campaign, according to its annual tax filing for that year.

Other professional groups, such as the American Institute of CPAs, for certified public accountants, and the CFA Institute, for chartered financial analysts, don’t hold themselves out as matchmakers for consumers seeking to find vetted professionals with clean disciplinary histories.

For example, CPAverify, an online directory of licensing and disciplinary information about accountants, is run not by the AICPA but by a consortium of state accounting boards.

The CFP Board’s revenue more than doubled between 2007 and 2017, the latest year for which tax filings are publicly available. Its chief executive, Kevin Keller, earned $1.1 million in salary, deferred compensation and benefits in 2017, up from $421,000 in 2008, the filings show.

Investment firms including Charles Schwab Corp. and Vanguard Group cite the CFP designation in their marketing to investors. Personal-finance sites including The Motley Fool and NerdWallet suggest that customers begin their financial-planner search at Let’sMakeAPlan.org. The CFP board estimates 765,000 visits to the site in 2018, but the organization can’t track how many of those visits led to a CFP being hired as a result.

There, people will find Aon Miller of AM Investment Strategies in Chattanooga, Tenn., listed with a clean history.

In May 2018, Finra suspended Mr. Miller from the brokerage industry for one year and fined him $25,000.

Finra found that in 2012 Mr. Miller had participated in five securities transactions without prior disclosure to his firm as the regulator requires. The firm, Benjamin F. Edwards & Co., fired him in 2012 for not following its procedures, according to Finra disclosures.

An attorney for Mr. Miller said his client didn’t receive any personal financial gain and that the transactions hadn’t violated any securities laws. “Ultimately, all of [his] customers received their initial investments plus interest, so there certainly was no customer harm. Indeed, they all had gains,” said the attorney, Stephen Councill.

Leo Rydzewski, general counsel at the CFP Board

Mr. Councill said a disciplinary action by the CFP Board may be forthcoming.

The Board said it doesn’t disclose whether a CFP is under investigation. Edwards said it doesn’t comment on current or former employees.

Some other CFPs have troubled histories with state regulators, among them Carl Heick III , a Kentucky broker with 96 past customer disputes and a temporary state regulatory suspension in 2007, according to FINRA data.

Mr. Heick referred a request for comment to a spokeswoman for the firm where he works, who declined to comment on his behalf. He is listed on LetsMakeAPlan.org as having no disciplinary history with the CFP Board.

The CFP Board said it doesn’t discipline planners “based solely upon allegations.”

Felony charges

Financial planners who have faced felony charges not mentioned by LetsMakeAPlan.org include Kevin Daniel Jr. , a Seattle adviser who entered into a felony diversion program last year after threatening to kill someone.

Mr. Daniel referred a request for comment to a spokeswoman for his firm, who said Mr. Daniel didn’t dispute that description of the event but wouldn’t comment further. The CFP Board said it will take “appropriate action” if planners are found guilty of crimes.

Sometimes the CFP Board has failed to act promptly when other professional bodies have penalized financial planners, such as Dale Franklin “Frank” Norton Jr. of Asset & Retirement Management in Newhall, Calif.

The California Board of Accountancy suspended Mr. Norton’s accounting certificate for six months, and the California Department of Insurance revoked his insurance license, after he pleaded no contest in 2017 to a felony count of possessing child pornography.

Under the CFP Board’s rules, revocation of an accounting or insurance license for cause “will always bar an individual from becoming certified.”

Prosecutors in the case, which was in California Superior Court in Los Angeles County, alleged Mr. Norton stored the material on his office computer, according to a state insurance-authority proceeding. He was sentenced to 100 hours of community service and five years of probation, and had to register as a sex offender.

Mr. Norton said in an interview he informed the CFP Board of his accounting suspension when he recently renewed his certificate. “I tried to be as upfront as I could,” he said.

His attorney said Mr. Norton also told the Board about the felony but, in an oversight, not about the insurance-license revocation.

The CFP Board, noting that omission, said Mr. Norton wasn’t fully transparent with it.

On June 14, After the Journal asked the CFP Board about Mr. Norton’s record—and nearly two years after California revoked his insurance license—the organization suspended his certification and began an investigation.

—Elisa Cho contributed to this article.

Write to Jason Zweig at intelligentinvestor@wsj.com and Andrea Fuller at andrea.fuller@wsj.com

Industry Spotlight > Advisors

# Kitces, Other Advisors Stunned by Rude Advisor Sanctioned by CFP Board

By Jeff Berman

News November 07, 2022 at 02:29 PM Share & Print

**What You Need to Know**

An advisor's CFP certification was revoked by the CFP Board for insulting a prospective client by email and being disrespectful towards a CFP Board counsel.

The advisor told a prospective client by email that he understood why her husband left her.

Advisors and other CFPs were stunned by his actions but not all agreed his credential should have been revoked.

Several advisors and certified financial planners have spoken out on Twitter and criticized the behavior of an advisor based in Sequim, Washington, whose CFP certification was recently revoked by the Certified Financial Planner Board of Standards for insulting a prospective client by email and for being unprofessional and disrespectful towards a CFP Board counsel, among other infractions.

“Wow, this was a wild ride,” Michael Kitces, chief financial planning nerd at Kitces.com and head of planning strategy at Buckingham Wealth Management, tweeted on Saturday, referring to an article about the matter published last week by Financial Advisor.

A former prospective client of David R. Nute, 72, submitted a written grievance to CFP Board, complaining that she had asked Nute if she could drop off copies of documents she needed for a potential transaction in person at his office instead of transmitting them electronically, according to CFP Board.

After Nute responded that his time was “too valuable” to make the trip to his office to pick up her documents, the former prospective client emailed him and said she no longer wanted to work with him.

Nute responded to her email, stating, among other things: “It is totally ridiculous to expect me to drive into town and waste a couple hours of $1,000 hourly time,” and “I was only trying to help and your reactions tell me why your husband left you.”

The communications between the prospective client and Nute took place about two years ago.

In 2013, CFP Board’s Disciplinary and Ethics Commission issued a warning to Nute about a similar interaction with a prospective client, according to the organization.

“Professionalism should be a part of human decency but if even that can’t be expected then permission to use respected marks should require it,” Eric Jones, a CFP and financial advisor with Baird’s Bowker Jones Group in Rockford, Illinois, tweeted in response to Kitces’ post on Sunday.

“The guy clearly has issues and needs help,” Travis Sickle, a CFP and financial advisor at Sickle Hunter Financial Advisors in Tampa., Florida, tweeted Saturday.

At the same time, Sickle said he thought CFP Board “overstepped” by revoking his certification. The advisor didn’t give an explanation for this opinion, even after Kitces responded by asking, “Genuinely curious, overstepped in what regard/at what point here?” (Sickle didn’t immediately respond to a request for comment by ThinkAdvisor on Monday.)

Sickle, however, wasn’t alone in questioning whether CFP Board overstepped, and the CFP Board declined ThinkAdvisor’s request to comment on the Twitter discussion.

**CFP Board’s Order**

In July, CFP Board issued an order in which Nute received a revocation of his CFP credential and his right to use the CFP certification marks. The sanction followed an appeal of a January Order of Revocation from the Disciplinary and Ethics Commission.

The CFP Board’s Code and Standards Enforcement Committee affirmed the Commission’s findings that Nute failed to treat fellow professionals and others with dignity, courtesy, and respect in violation of Standard A.7 of the group’s Code of Ethics and Standards of Conduct.

The Enforcement Committee also affirmed the Commission’s finding that, by using the language he did with the former prospective client, he violated Standard A.7 of the Code and Standards.

The Enforcement Committee affirmed the Commission’s finding of many relevant aggravating factors, including that Nute contended he was entitled to behave in this manner since the individual was no longer a prospective client and, therefore, he could personally insult her, and he didn’t show any remorse during the investigation and hearing over the incident, CFP Board said.

Nute also didn’t treat CFP Board Counsel with dignity, respect or professional courtesy, often referred to the counsel in derogatory terms and insulted them in written correspondence and verbally during the hearing, CFP Board said.

At the hearing, he failed to testify with decorum and blatantly ignored instructions to engage with civility and he also received multiple negative reviews on the internet from customers detailing similar unprofessional behavior, which was “evidence of a pattern of misconduct,” according to CFP Board.

Nute’s misconduct was “emotionally abusive, causing harm” to the former prospective client, and he refused to acknowledge his cruelty, the organization said. Pursuant to the decision of the Enforcement Committee, Nute’s revocation became effective July 19.

**Nute’s Views**

“It’s the height of absurdity,” Nute said in a phone interview Monday about his CFP certification being revoked. “I’m not guilty of hurting any client. All I’m guilty of is trying to defend myself against a board who seems to think that they have the right to change their position at any point for somebody who’s arguing with them.”

What started out as a censure became a revocation of his credential after the hearing, he said, adding: “There’s nothing in their 900 cases of history that they publish on their website that shows anything” like the incident in question here “leading to any type of discipline.”

The measures taken against him were based on “[about] five words” Nute maintained, adding that the prospective client had expressed interest in a reverse mortgage. Nute also admitted that he told her he understood why her husband had left her; the ex-CFP said he did so after she became “huffy” with him.

Nute also complained that he “had to spend $2,500 of my money to defend myself” against the censure and then it became a revocation of his license after he allegedly talked disrespectfully to the CFP Board counsel. The revocation was “just totally absurd,” he said, adding: “I don’t regret a thing.”

Less than a year after being named chief executive of the Certified Financial Planner Board of Standards Inc.,

# Kevin R. Keller has found himself embroiled in controversy.

March 17, 2008 By Bloomberg

Less than a year after being named chief executive of the Certified Financial Planner Board of Standards Inc., Kevin R. Keller has found himself embroiled in controversy.

On March 8, five of the nine members of the CFP Board’s disciplinary and ethics commission resigned in protest of a new directive that allows Mr. Keller, 47, to appoint the chairman, members and a staff attorney to the commission, which is responsible for deciding whether to bring disciplinary action against certified financial planners.

The departing members of the commission maintain that his expanded powers threaten the commission’s independence.

Q. Why was this action taken to change the way the disciplinary and ethics commission operates?

A. The board has charged me with protecting the public’s interest through rigorous, ongoing enforcement of CFP Board standards of professional conduct. Traditionally, [the] CFP Board has done a great job of telling the story of CFP certification to the profession. The long-term viability of the organization is enhanced when the general public has the same level of appreciation for the rigor and the difficulty of obtaining CFP certification, and what it means and what the ethical component means. Going forward, we will be working hard at allocating our resources to tell that story externally. Telling the story externally is the great opportunity that of late has not been pursued.

Q. The commission members who resigned say the changes give too much power to CFP Board staff members. What is your response to that?

A. There will be no staff person on the ethics commission. What happened on [March 8] was a reaction among some of the commission members of the disciplinary and ethics commission to changes that the board of directors looked at and thought were important. The changes that they made provide much clearer accountability [and] increased transparency. We look forward to adding public representation to the process. [The commission members who resigned] were resistant to any change there, and we regret that they resigned. We value the contribution that the members made. I have never worked in a profession or industry that was so blessed to have so many people who cared so much to volunteer time and energy away from their business and away from their families for the benefit of the organization.

Q. The controversy stems from the idea that CFPs should be able to judge other CFPs. How will this change affect that?

A. This is clearly just an operational change. When the hearing panels come back to a committee of the whole to ratify their findings, one of the changes that [the former commission members] were concerned about was that it wouldn’t just be certificants sitting in judgment of other certificants. There would be a staff counsel who would sit there providing technical expertise and input to the group, and also making sure that the findings were consistent with previous findings. The commission members are all volunteers. They’re always in a constant state of flowing on and off. The hearing panels will remain autonomous. [The staff counsel is] in an advisory capacity. The appeals committee will have its own outside, disinterested counsel. When certificants are sitting in judgment of other certificants, it’s a good thing [to have staff counsel advising them]. It helps us ensure that the disciplinary and ethics commission is following its established procedures.

Q. What do you hope to accomplish now that you have completed the CFP Board’s relocation from Denver to Washington?

A. There’s a pillar on our strategic plan that addresses that specifically: to influence policy that benefits the public. All the industry groups are here advocating on behalf of their special interest. Our interest is policy that benefits the public and increases the access to competent and ethical financial planning to all. Denver is four hours — and another world away — from K Street.

Since we’ve come to town already, we’re working closely with the [Washington-based] North American Securities Administrators Association on their model legislation for senior designations. We’ve worked with the Senate Special Committee on Aging. Our tax status prohibits us from doing the kind of lobbying that [the Financial Planning Association of Denver] or [the Securities Industry and Financial Markets Association of New York and Washington] would do. We can’t have a [political action committee]. There are limitations. But we do have a story to tell.

Q. What do you think will be your main issues this year?

A. The expectation of what [the Securities and Exchange Commission’s] recommendation will be [as a result of] the Rand report [a report released in January by Santa Monica, Calif.-based Rand Corp., which concluded that most investors fail to distinguish the different regulatory regimes for brokerage and advisory firms].

The big issues are always regulation of financial planning. Financial planners are subject to a patchwork of regulatory requirements and compliance issues.

Q. In the past, the CFP Board has advocated for becoming a self-regulatory organization for financial planners. Now that the brokerage industry has suggested having a SRO for adviser-only firms, what is your position on that?

A. An SRO, by its definition, is a membership organization. CFP Board is not a membership organization. Second, the enabling legislation for the SRO exists in the [Securities Exchange Act of 1934] and grants the [SEC] the ability to delegate the regulation of broker-dealers to an SRO. The [Investment Advisers Act of 1940] has no such enabling legislation. So it’s not on our horizon.

Q. The new ethical standards that take effect July 1 require CFPs to act as fiduciaries. Is the definition different from what investment advisers must abide by?

A. When the certificants provide financial planning or material elements of the financial planning process, the certificants owe the client the duty of care of a fiduciary, as defined by CFP Board. The definitions are slightly different. We have clearly spelled it out for the first time in these standards. We think it is clearly in line with this mission, to benefit the public.

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ARTICLE

**The Role of the Retail-Direct Channel in a Growing Financial Planning Profession**

March 28, 2023

Many industry channels and firm types contribute to the growing financial planning profession: wirehouses, broker-dealer, registered investment adviser (RIA), banking, insurance, retail-direct and more. This Industry Insights article features the role of the retail-direct channel — and is the third in a series of articles exploring various industry channels in the profession.

The Retail-Direct Advisor: Retail-direct advisors work directly with consumers of all income levels. Key characteristics of the retail-direct advisor:

Has the opportunity to directly influence how the American public directs their investments.

Often work in call-centers handling large volumes of calls per day.

Offers advice to vastly different consumers on a daily basis.

Source: CFP Board Guide to Careers in Financial Planning

Retail investors make up the largest sector of investors in the American market, one which has grown significantly over the past few years, fueled, in part, by the evolution of lower cost products and services by companies like Charles Schwab and Fidelity Investments and Vanguard. And these investors increasingly are seeking advice beyond just their investment portfolios.

This retail-direct channel employs advisors who play an essential role in how many Americans receive financial planning advice. Many of these employers strongly prefer, or in some instances require, CFP® certification for client-facing advisor roles — a selling point for firms looking to attract new clients. Roles in the retail-direct channel offer the stability and growth paths of large firms, while providing direct experience with a wide variety of clients — aspects that make the channel attractive to many advisors.

AN INCREASED DESIRE FOR CREDIBLE FINANCIAL ADVICE

The growth of the retail-direct channel is tied to the increased demand for financial advice from the American public, along with the increased interest and accessibility of new financial products and services. In fact, according to data from Fidelity Investments, appointments at Fidelity Investor Centers were up 33% year over year as of Q3 2022.

“We know this deeper planning engagement is timely and needed now more than ever, especially given today’s climate,” said David Coyne, Head of Distribution at Fidelity Investments “[This is a] key reason Fidelity continues to expand and ensure that local branch teams are supported by a dedicated team of specialists.”

An April 2021 survey from Charles Schwab discovered that 15 percent of all current U.S. stock market investors said they first began investing in 2020, a cohort it called “Generation Investor.” It also found that 82 percent of this same group were interested in access to an investment professional to provide ongoing help and guidance. CFP® professionals have an important role in working with new investors to help them understand the complexities around the mechanics of investing and how to effectively manage financial risk.

“Financial planning has evolved from being a product to being an ongoing process over these last 10 years,” said Stephanie King, Managing Director Wealth Solutions at Charles Schwab. “Critical to that evolution has been a shift from planning as simply a discovery tool or sales funnel to a true roadmap that guides clients over the long term.”

ADDRESSING A BROAD VARIETY OF FINANCIAL PLANNING NEEDS

With retail-direct firms increasingly staffing their teams with CFP® professionals, their clients have access to CFP® professionals even from the first engagement— an arrangement that plays an important role in increasing the public’s access to competent and ethical financial advice, as well as ensuring client satisfaction.

Advisors who start in the retail-direct channel often support clients from call centers, connecting with their clients by phone or video. The phrase “call center” may have negative associations for some advisors. In reality, CFP® professionals who work in call centers or serve clients remotely have the opportunity to advise a diverse range of investors with varied portfolios, different levels of financial assets, preferences and strategies.

CFP® professionals in the retail-direct channel advise clients on a broad spectrum of wealth management topics including investment planning, retirement, risk management & insurance planning, estate planning, tax strategies and more. This can provide a valuable opportunity for both early career and tenured CFP® professionals to develop subject matter expertise, while continuously building client-relation skills in a growing, supportive environment.

“Whether they first reach us digitally, through a phone call or a visit to one of our 200 nationwide investor centers, clients come to Fidelity from a wide variety of life stages and with a range of needs,” said Coyne. “Our teams build relationships with these individuals and their families in order to understand their needs and provide them with the education, advice and insights to put them on a path to achieve their goals.”

ADVISOR DEVELOPMENT OPPORTUNITIES IN THE RETAIL-DIRECT CHANNEL

The stability and resources provided by a larger firm, as well as the ample numbers of existing firm clients who are interested in financial planning services, are reasons some financial planners find the retail-direct channel a good place to build their careers.

Many advisors in the retail-direct channel also administer 401(k) plans for employers, giving these CFP® professionals a direct connection to many investors who might not traditionally seek out financial advisors. Often, these investors have accumulated significant wealth without the services of an advisor, and may also possess investable assets held at other firms. Once an advisor gets in the door with these clients through their 401(k) account, they may find opportunities to work with those clients to address their entire portfolio.

“I tried a different model, and it did not work for me,” said Shawn Liu, CFP®, Vice President and Financial Consultant at Charles Schwab on the value of the retail-direct channel for early-career CFP® professionals. “I love the fact that I can now focus on taking care of clients instead of marketing. I think this model is the best way for a young person to enter this profession.”

Typically, retail-direct firms provide resources and continuing education programs to ensure that CFP® professionals are providing the best advice possible.

“Whether it’s Fidelity’s student loan repayment benefit, tuition reimbursement, or generous parental leave policies for advisors growing their families, we know that how you value your team has a meaningful impact on driving a supportive culture,” said Coyne of Fidelity’s benefits. “Additionally, the beauty of a CFP® professional’s career at Fidelity is the boundless opportunity to not only apply your skills as a financial professional but expand outside of the day-to-day work and learn new areas of Fidelity's business.”

“Schwab provides tuition reimbursement for mid-career and advanced career designations that promote specialization within the financial planning profession in areas such as special needs, insurance, behavioral finance, trust and estates,” said King. “The CFP® certification is table stakes for any professional who is a fiduciary and required to act in the best interest of the client.”

CFP® professionals attracted to working with a broad range of client needs from the accessible and low cost to the sophisticated and complex within the stability of a large firm may find exciting opportunities within the retail-direct channel.

“Building an investment strategy remains a foundational element of our work. But today we're able to offer clients so much more — including bringing the peace of mind that comes with having a well-defined plan to help them meet their life's goals.”

THE RETAIL-DIRECT CHANNEL’S IMPACT ON THE FINANCIAL PLANNING PROFESSION

CFP® professionals working in the retail-direct channel benefit from engaging with a variety of client issues that can provide a unique insight into the needs of investors. Particularly for early-career advisors, the holistic approach now embraced by the retail-direct channel is invaluable for building client relations skills while perfecting subject matter expertise.

As Fidelity’s Coyne says, “building an investment strategy remains a foundational element of our work. But today we're able to offer clients so much more — including bringing the peace of mind that comes with having a well-defined plan to help them meet their life's goals.”

The retail-direct channel's connection with millions of retail investors has played an important role in making financial planning advice accessible. These firms have helped many CFP® professionals develop rewarding careers, while enabling investors to increase their wealth and financial security. The continued success and growth of the retail-direct channel has empowered both the growth of the financial planning profession and the diversity of Americans served by financial planning professionals.

FORBES MONEY WEALTH MANAGEMENT

# America’s Broken Financial Advisor Promise - What’s Wrong with the CFP Board & Why You’d Better Check Twice Before Trusting a Certified Financial Planner

Jeff Camarda

Sep 23, 2019, 08:00am EDT

Please see important full disclosure information at the conclusion of this post

The financial advisory world was rocked by the Wall Street Journal report that thousands of CFPs, nearly ten percent of Certified Financial Planners, promoted as clean on the CFP Board’s “find a planner website,” actually were not clean but had public records of misconduct ranging from customer complaints to crimes. Red flags include thousands of client disputes, fines and suspensions - even criminal child pornography – and including over a hundred felony charges or convictions.

For now, at least, it is clear consumers can’t rely on the “highest standard” representations of the CFP Board when it comes to picking an advisor, and may be wise to conduct their own background checks on advisors they use or are considering.

There’s lots more than this that consumers should consider when shopping for an advisor, of course. For additional tips by this author, click here.

**CFP – A Tarnished “Gold Standard” for Financial Advisors?**

While the Board “boasts of its high standards and has touted its directory of professionals as a place where people can find a screened, skilled and trustworthy financial planner,” in reality “what they won’t find there is any indication that thousands of the planners bearing the board’s seal of approval have had customer complaints or faced criminal or regulatory problems—often directly related to their work with clients,” according to the Journal report.

This is in marked contrast to the CFP Board’s national TV advertising claims and other consumer marketing that its CFP directory would help them “find a certified financial planner professional who’s thoroughly vetted…” and that using a CFP lets investors “…work with the highest standard.”

**Almost $100M Spent to Promote The “Highest Standard” CFP Brand**

To communicate this message to consumers, CFP Board has spent a lot on advertising, with a current annual budget pushing $12M. “The CFP Board now has spent more than $10 million a year for almost a decade promoting that the CFP marks are the “gold standard” when it comes to financial planning advice,” according to respected industry blogger Michael Kitces.

That’s about a tenth of a billion dollars. Perhaps because of the substantial advertising effort, the CFP brand increasingly resonates with consumers. The CFP long ago surpassed the CPA as the most-recognized financial credential, and with sustained marketing, could soon top the CPA as the most trusted designation, as well.

Such trust, at least in some cases, may be misplaced.

**CFPs with Red Flags Promoted as Clean**

In the Journal article Looking for a Financial Planner? The Go-To Website Often Omits Red Flags, reporters Jason Zwieg and Andrea Fuller compared what the CFP Board publishes about CFPs promoted as “thoroughly vetted” to the easily obtainable, public misconduct/malpractice records investment regulator FINRA provides for consumers.

The CFP Board “has been presenting more than 6,300 planners (as clean that were not) … more than 5,000 have faced formal complaints from their clients over investment recommendations or sales practices, and hundreds have been disciplined by financial regulators or left brokerage firms amid allegations of misconduct. At least 140 faced or currently face felony charges, including one who pleaded no contest to a charge of possessing child pornography.”

The number of problem CFPs could be much bigger than just these 6300. Since FINRA, like CFP Board, relies primarily on self-reporting, it is possible that rules-skirting CFPs can’t be easily smoked out by a FINRA check if additional CFPs are as untruthful with FINRA as these 6300 were with CFP Board. In a piece called Stockbrokers Fail to Disclose Red Flags a WSJ analysis reported over 1,600 stockbrokers with undisclosed bankruptcies or criminal matters. The Journal’s investigation was not comprehensive, used data from 21 states and did not include insurance/annuity sales complaints or other problems. This may suggest even deeper problems. There could be thousands of brokers – many of whom are CFPs – that look clean on FINRA, but aren’t.

**$1.5M Settlements, Regulatory Suspensions for CFP “Clean” on CFP Board Site**

As an example, the Journal piece cited one CFP whose work resulted in the payment of “roughly $1.5 million to settle more than a dozen claims that he misrepresented risks or put clients in unsuitable investments, among other allegations…” The same CFP was fined “$10,000 and suspended…from the brokerage industry for two months after he used a customer’s login and password to trade…”

**Investors who had relied on the CFP Board’s find a planner directory would have seen this CFP listed as having a clean record, like thousands of others with documented records of misconduct.**

**CFP Board: A Tax Free Charity Selling CFP® Trademark, Not Professional Org**

While these results are disturbing, they should perhaps not be surprising. Unlike professional organizations like the American Medical Association, the American Bar Association, or the American Institute of CPAs, the CFP Board is actually organized not as a professional membership group or professional regulator, but as a tax-free charity run not by CFPs but rather by long-tenured non-CFP staff and a “self-perpetuating” Board whose directors have short service terms, unlike staff. CFPs who pay for the trademark license are not vetted or governed by peer review. The charity’s cash flow comes almost exclusively from selling the right to use the CFP® brand.

The Board’s primary business function and revenue engine is trademark licensing. CFPs must pay an annual “certification fee” pushing $400. With over 80,000 CFP licensees and counting, those dues generate nearly $30,000,000 a year to the 501(c)3 entity. A big chunk of these trademark license fees go to support advertising to promote the CFP brand and generate sales leads for CFPs.

This is in marked contrast to the practice for other designations’ “professional groups, such as the American Institute of CPAs, for certified public accountants, and the CFA® Institute, for Chartered Financial Analysts®…” which “…don’t hold themselves out as matchmakers for consumers seeking to find vetted professionals with clean disciplinary histories,” according to the Zweig/Fuller article. It is also somewhat unusual that CFPs themselves have no say in electing directors or formulating policy. The Board’s sitting directors appoint their successors after relatively short service, where a powerful, long-sitting and charismatic CEO has significant influence.

**CFP Board Not Run By CFPs**

Many if not most of CFP Board staff are not CFPs or apparently even experienced in financial planning. CEO Kevin Keller is not a CFP, and holds degrees described as in “agribusiness.”

According to Ann Marsh writing for Financial Planning, many Directors and “most staff members at the board, including its CEO Kevin Keller, are not CFPs and have not worked as planners.” Marsh quotes “Dave Yeske, a former chairman of the Financial Planning Association and now director of the financial planning program at Golden Gate University in San Francisco: ‘If you are going to get into a situation where you have a string of chairs who have never practiced financial planning, who utterly lack the framework for understanding what the profession is, I think that could be highly problematic,’ Yeske says.”

Of the 21 senior staff listed online by the CFP Board, only 4 report the CFP designation. Of the 15-member CFP Board of Directors, only about half are identified as being CFPs on the Board’s governance page. This page does list the CEO’s major accomplishments during his tenure since 2007, including, “grown the number of CFP® professionals in the U.S. by more than 50 percent to more than 83,000...overhauled the certification’s rules and standards with a new Code of Ethics…launched its first major public awareness campaign to increase awareness of CFP® professionals, funded at about $12 million a year, which has generated consistent and significant signs of positive momentum in consumer awareness of CFP® certification…(and) secured its reputation as a strong advocate for consumer and investor protection…”

**Long History of Lapses in Protecting Investing Public**

The CFP Board, founded nearly a third of a century ago, has a long and somewhat checkered history of lapses in protecting the public. In 2012, a Wall Street Journal piece called Is the Fiduciary Standard a Joke by CFP Allan Roth reported a case where another CFP was found to have been charging over 5% a year in fees and commissions to a client in the dark about total costs. The CFP in question claimed to be a fiduciary acting in the client’s best interests, while receiving egregious and undisclosed “double-dip” compensation. Multiple complaints were filed with CFP Board, but “over the following year” Roth “was told they had lost the complaint I filed and hadn’t yet gotten to the client’s complaint. Eventually, the client received a letter that no public action would be taken against this CFP.” Roth was later invited to witness the CFP disciplinary process, but only on the condition the Board pre-approve any article he might write; Roth and the Journal declined.

Another observer, commenting on a 2012 trade piece called CFP Board Ethics Scandal, reported that “”ads targeting the word CPA appeared on Google searches. The ads read: “Find A CPA Professional – www.letsmakeaplan.org - Prepare and submit tax returns with the help of a CFP® professional” and directed users to a website promoting Certified Financial Planners. Yes, you read correctly: the ad offered to find a CPA, then directed to a CFP. Should an organization supposedly protecting the public and representing ethical standards produce ads rickrolling the public? Are bait-and-switch ads fair to the professional allies they target? More importantly, are they fair to the public?”

**Widespread Compensation Misrepresentation on CFP Board Site**

A year later, the Journal’s Zweig reported that many CFPs who could not possibly meet the Board’s definition of fee-only due to commission conflicts of interest were improperly promoting themselves as fee-only on the CFP Board find-a-planner site. “...many of the CFPs listed on LetsMakeAPlan.org who work at major Wall Street banks and brokerages have been identifying themselves as ‘fee only’…Among the firms: Morgan Stanley, UBS, J.P. Morgan Chase, Bank of America Merrill Lynch, Wells Fargo, LPL Financial Holdings, RBC, Raymond James Financial and Ameriprise Financial. At those firms alone, the Journal identified 661 listed CFPs who call themselves ‘fee only.’”

These firms are all primarily engaged in the non-fiduciary sale of commissionable investments. “Up to 11% of certified financial planners who work at big firms call themselves 'fee only' when, by definition, they can't be.” Commissions create a conflict of interest between reps and clients at such non-fiduciary firms where they may enrich salespeople excessively at client expense. Non-fiduciary firms follow a “suitability” standard that allows higher commissions even when harmful to client wealth. The term fee-only represents to consumers that there are no commissions.

While some would think it obvious and very screenable that wirehouse stockbrokers would have commission conflicts, and that CFP Board could have taken at least some steps to verify the claims made on its website to back up its “thoroughly vetted” advertising claims, the CFP Board’s response was that it “hadn't been aware of the problem earlier…” and “expects that CFPs "accurately disclose their compensation, know our rules and follow our rules."

**CFP Board Pleads Ignorance, CFP Board Commissioners Say Board Knew ”Forever”**

As the fee-only misrepresentation story broke, CFP Board’s CEO Kevin Keller was quoted by Zweig as saying “we wouldn't have sat on this (compensation misrepresentation) data if we'd known it was there.”

Conflicting reports about CFP Board’s awareness surfaced a day before the Journal piece in a Financial Planning article by Ann Marsh, however.

“Asked how long (CFPs) who typically earn commissions have been marketing themselves as fee-only on the board’s website, Bill Hayes,” a Commissioner on CFP Board’s Disciplinary and Ethics Commission, or DEC, reporting to CFP Board CEO, “says, ‘forever.’ The profiles mislead consumers into equating (CFP) brokers who can sell products for commissions with independent advisors who do the work of comprehensive planning, says Hayes, setting up a maddening situation in the marketplace. ‘People think we (all CFPs) are held to the same standard, and this is just not the case,' he says.”

Other DEC Commissioners concurred that the problem was well-known. “The fact that so many (CFP) brokers call themselves fee-only on the board website was regular fodder for hallway conversation among commissioners when they gathered to hear disciplinary cases, according to Robert Fleming, a Tucson-based lawyer…”

As part of Marsh’s report, “… Merrill Lynch broker Jeffrey Slothower of New York, was asked via email if he was aware he was using the term fee-only in violation of the terms of his CFP certificate. ‘(the CFP rules and ethical code) doesn't really apply to me at a wirehouse,’ Slothower emailed back.

‘That’s exactly what I’d expect him to say,’ says Hayes, the disciplinary commissioner. As to why the board has not addressed such transgressions on its own site, CEO Keller says, ‘Our policy is that there is no audit or examination function…’”

**CFP Board Grants Broad “Amnesty” To CFPs Who Misrepresented Their Compensation**

In the Journal report about fee-only misrepresentation on the CFP Board site, CEO Keller said that "we take this issue seriously."

But in the aftermath of the Journal’s and Financial Planning’s fee-only reports, rather than investigating and disciplining such wide misrepresentation, the CFP Board instead “extended a broad amnesty to hundreds of advisors who had been breaking its rules by calling themselves fee-only on the board’s website.”

As of this writing, many CFP’s compensation methods are listed as “None Provided” on the CFP Board site. In 2013 after the fee-only flap, Financial Planning reported that CFP Board “unilaterally (changed) thousands of its certificants’ profiles — removing “fee only,” regardless of the circumstances, and inserting “None Provided.”

Under current policy, CFP Board relies primarily on information provided by CFPs to conduct its vetting procedure, though in response to the Journal red flag report it now says it will review the FINRA and SEC sites “during the certification renewal process” which occurs once every two years.

Some suggest that if the CFP Board is really interested in delivering “the highest standard” it should consider doing its own verification. As mentioned, the Journal reported that other red flags may go entirely unreported even to FINRA, making an independent vetting or “audit” function perhaps even more important to underpin CFP Board’s quality claims.

**“No Audit Function”**

Despite the 2013 Financial Planning reports of the DEC Commissioners claiming the fee-only problem was “well known,” the Journal reported CFP Board claimed it hadn't been aware of that problem earlier.

In its response to the Journal’s 2019 red flag reports, CFP Board notes in recent practice it has “relied on CFP® professionals to fully disclose disciplinary matters and other conduct that may be a violation of our standards,” and that “with limited resources and authority, CFP Board has publicly posted disciplinary matters and taken enforcement actions against more than a thousand CFP® professionals in its 30-plus year history.”

Some 6,300 “clean” CFPs were found with problems just in a 2019 sample examined in Journal’s red flag article, more than six times the number claimed sanctioned by CFP Board over its 34 year watch.

The Journal noted as part of its investigation it discovered “Frank” Norton, a CFP whose CPA license was revoked in 2017 after he plead no contest to felony charges of child pornography, went on probation and was registered as a sex offender. Norton apparently continued to practice as a CFP until the 2019 Journal investigation, when it “asked the CFP Board about Mr. Norton’s record…” after which CFP Board “suspended his certification and began an investigation.” Mr. Norton said in an interview he informed the CFP Board of his accounting suspension when he renewed his CFP; his attorney claimed Norton also told the Board about the felony.

**Has the CFP Board Scaled Back Its Vetting Function?**

Prior to 2008, the CFP Board appeared to actually conduct “thorough vetting.” It routinely crawled the internet to detect CFPs’ FINRA and other “red flag” activity.

Had this been continued, perhaps the problems recently discovered by the Journal may have been averted.

A circa-2008 whitepaper called “Why We Resigned” penned by five then-CFP Board DEC Commissioners noted that “The CFP Board staff regularly searches the internet, using the name of each CFP Certificant, for any po­tential actions that have occurred (FINRA, SEC, State regulatory agencies, civil courts, pro­fessional organizations, etc.) which could indicate probable cause to investigate potential action against a CFP Certificant for violation of the CFP Code of Ethics. After staff investigation, an action could be brought forward to the DEC.”

This practice apparently changed shortly after CEO Keller came to power and took direct “executive branch” control of the DEC’s judicial function in 2008. Current CFP Board changes responsive to the Journal red flag report seem to fall far short of this prior practice, in that the FINRA and other malpractice databases are proposed to be conducted as part of the “certification renewal” process, which occurs only every two years; prior to the 2008 changes, these were done ongoingly. Notably, Mr. Norton, the registered sex offender, suspended CPA and convicted felon, whose attorney claims CFP Board was apprised of his felony and other flags, apparently survived this “certification renewal” process with his CFP intact!

“Limited resources and authority” are now cited by CFP Board as impediments to more extensive checks to validate its “thoroughly vetted” claim, though the Journal points out that fully a third of the Board’s most recently released $36M annual budget is spent on its “public-awareness” advertising campaign, including driving consumer traffic to the CFP directory site which “neglected to inform the public that thousands of the planners listed there have disclosed customer complaints, criminal histories, financial problems or regulatory proceedings…”

CFP Board rightly claims it is not a regulator and lacks “subpoena power or the authority to obtain documents and information from financial services firms,” and in its rebuttal to the WSJ red flags pieces suggests this explains its inability to conduct routine investigations to back up its “thoroughly vetted” claim. Yet it does have the power to suspend or revoke rights to use its CFP® trademark as a matter of policy if CFPs or their employers stonewall investigations, but has not adopted this stance, even in cases where CFPs or their employers have flat out refused to cooperate regarding consumer complaints by “declining to provide information about their advisors…even on the most grievous disciplinary cases”. Per CFP Board’s trademark contract terms: “I understand that my License is conditioned upon continued compliance with these Terms (including but not limited to my obligation to comply with CFP Board’s Standards and Policies).”

**Has Consumer Protection Taken a Back Seat to CFP Board Cash Flow?**

The Journal’s red flag report notes that CFP Board’s “revenue more than doubled between 2007 and 2017, the latest year for which tax filings are publicly available. Its chief executive, Kevin Keller, hired in 2007, earned $1.1 million in salary, deferred compensation and benefits in 2017, up from $421,000 in 2008, the filings show.”

Some wonder if quality control takes a backseat to building CFP Board’s trademark licensing business and cash flow. “'There’s much more interest in growing the number of CFPs than there is in vetting them to protect the public,” said a former CFP Board executive to the Journal. The Board’s revenue comes nearly exclusively from the annual trademark license fees planners pay to use the CFP® mark. From 2010-2017, “the number of certified planners rose by nearly one-third, the number of investigations fell by three-quarters.”

The Journal also noted Rudolf Molna, who was certified as a CFP in 2019. In 2012, Molna was fined and suspended by FINRA for impersonating clients, and his insurance sales license was also suspended. Molna is said to have volunteered this history to CFP Board as part of its vetting process, and it is disclosed on the FINRA site which CFP Board claims it checks prior to certification. Still, he was listed as clean on the CFP directory site. The Board told the Journal “the conduct…did not prevent Mr. Molnar from being certified…”

“John Robinson, a financial planner in Honolulu who has written detailed critiques of the Board’s disclosure policies, said, when told of the Journal’s findings, that they suggest ‘there is no vetting.’ Mr. Robinson, who is not a CFP, said, ‘The CFP Board is setting people up to be deceived.”

**CFP Board Commissioners: “Why We Resigned”**

In the about-11,000-word whitepaper called Why We Resigned, five 2008-era CFP Board Commissioners explained they quit over policy changes they felt compromised the quality and objectivity of the Board’s ethics and enforcement oversight function.

The paper was written by a “majority (and the leadership) of the Dis­ciplinary and Ethics Commission (DEC) of the CFP Board…” including then Chair-Elect Barry Kohler, a Penn grad and Cornell-trained attorney. The DEC is charged with enforcing CFP Board rules. Many concerns noted in the paper foreshadow the problems uncovered in the years since then.

The Commissioners resigned in protest when the quasi-autonomous DEC judicial function was brought under the direct control of the new chief executive, Kevin Keller.

After this change, DEC Commissioners were directly appointed and managed by the CFP Board CEO a practice which continues to this day, per CFP Board’s current Disciplinary Rules and Procedures: the CEO will “appoint the DEC Chair, members and volunteers… (and) oversee the DEC…(including to)…”conduct appropriate background investigations of prospective DEC members…”

When the CEO took over the DEC, the paper’s authors claimed “This procedural action by the Board of Directors…violates the CFP Board’s own Disciplinary Rules” and that it ”…opens the door to the worst kind of political and financial pressures…” and the “potential for a CEO ‘to stack’ the Commission with members whose views are most politically opportune at any particular time is just plain wrong.”

They feared “this change…threatens the integrity and independence of the…disciplinary process…” and “compromised the objective and justice of…enforcement” and might stuff the jury box by “having staff counsel, an employee of the CEO, in the meeting during ratification delib­erations opens the door to the very same kind of political influences as having the CEO select the members and officers of the DEC.”

These Commissioners found it “…simply incomprehensible that the Board of Direc­tors could have imagined—at a non-public meeting, without stakeholder input—that they could adopt dramatic changes…not only was there no public comment, the Board of Directors did not even seek comment from the DEC about the changes they were implementing. “

The authors concluded that as a result of these changes, the CFP Board as of 2008 was “now an entirely self-perpetuating body with no oversight, checks, or balances….” and that they “…give rise to concerns about how such an organization can continue to act in secrecy, with no checks and balances, and without true accountability to anyone…”

**More Concerns About “Self-Perpetuating/Accountable to No One” CFP Board**

Don Trone, a frequent critic of the CFP Board and a leading proponent of the fiduciary advisor movement, has said “The Board doesn’t give a hoot about…the best interests of the public. The Board’s fiduciary initiatives are being fueled by politics, power, ego and greed… “ Trone claims his research has revealed a structure for the CFP Board with practices “that run counter to good governance…”

He notes “there are no open elections for directors” and “directors are required to sign a confidentiality agreement” and “any conversation with a director – public or private – requires the presence of senior staffers.”

He observes “board minutes are not made public” and comments “of particular concern is the absence of minutes identifying the directors who are taking part in determining the exorbitant salaries of senior staffers,” and that “formal ethics complaints against directors are viewed first by the staff and not by an independent ethics committee. This provides the staff the opportunity to bury an ethics complaint against a director who may later have a hand in determining the staff’s compensation.” Again, the Disciplinary and Ethics Commission has reported directly to the CEO since 2008.

In a recent Financial Planning post, Trone suggests “there should be open elections for directors; oversight for the Disciplinary and Ethics Commission needs to be taken out of the hands of the (CEO and) staff and given back to the DEC; and the board needs to start publishing its minutes and be more transparent about its proceedings.”

Former CFP Board Chair Ray Ferrara responded that “It is most unfortunate that Don Trone’s June 20th column suggesting that the CFP Board use 1% of its budget for its own oversight was published…(regarding his allegations of) conflicts of interest, self-dealing and other improper behavior… I find (this) personally offensive, I… can unequivocally confirm that nothing could be further from the truth.”

**Are CFP Board Directors Influenced By The “High Life?”**

In a piece called “Global Junkets Lavished On Directors Fuel CFP Board High Life,” Financial Advisor reported “some suggest that the board subtly curries favor with CFP Board directors by dangling lavish perks…” and reported “…CFP Board CEOs reportedly have retained CFP Board chairs as their own financial advisors,” and that “some former directors are starting to wonder exactly how high that price is and whether the luxurious junkets and other perks color directors’ judgment.”

Recent former CFP Board Chair Ferrara responded these were “unsubstantiated accusations” and contained “erroneous facts” (sic) that were “willfully biased and inaccurate.” Ferrara went on to say “CFP Board has significantly improved its enforcement policies and practices – all with the goal of being fair to participants and credible to the public.”

**Questions of impropriety at the top of CFP Board are not new.**

About the time the Journal broke the story about CFP Board’s website misrepresenting some CFPs’ compensation as fee only, the sitting Chairman of CFP Board resigned under mysterious circumstances related to a disciplinary investigation against him; he was later found to have been misrepresenting his own compensation but viewed as a scapegoat to divert attention from CFP Board’s blind eye to past compensation misrepresentation issues.

Surrounding the forced CFP Board Chairman’s resignation was also suspicion a similar concern of compensation misrepresentation applied to several members of CFP Board’s quasi-judicial Disciplinary and Ethics Commission, involving Commissioners charged with applying and enforcing CFP Board rules: “two DEC members could possibly have had similar disclosure issues (to the Chairman) that led them to resign…the board’s website recently displayed the names of seven members of the DEC, while earlier it listed nine members. Absent from the latest version are Christina Florence, CFP, of Lane Florence LLC in Folsom, Calif., and Mary McFadden Hastings, CFP, of Wells Fargo Advisors, Waltham, Mass. Florence and Hastings did not return calls and e-mails for comment on whether they resigned from the DEC.”

Hastings had history of alleged FINRA misconduct prior to being presumably vetted and appointed to the DEC by the CFP Board CEO Keller. Both have had held non-fiduciary commission sales and fiduciary investment advisor licenses, precluding a fee-only representation, since well before appointment to the DEC, yet still represented their compensation as “fee-only.”

“Florence and another commission member were sanctioned privately… for misrepresenting how they were compensated.” Neither DEC member was publicly disciplined by the CFP Board for compensation misrepresentation. Florence chose to tell her story publicly, and said Keller asked for her resignation as the fee-only scandal developed in 2013. “They sacrificed us,” Florence said of herself and (Chairman) Goldfarb. As the fee-only scandal broke, (CFP Board) “rushed to create the appearance that they were being tough on anyone found to be misrepresenting their fees.”

**“Our Primary Goal Is to Keep (CFPs) Out Of Trouble”**

In the wake of the Journal “red flag” reports, an op-ed piece for Financial Planning called “The CFP Board ‘inexcusably protects certificants at the expense of the public” by Allan Roth, CFP, suggests “CFP Board doesn’t even bother to sufficiently review public records while advertising to the public that certificants have been thoroughly vetted,” and quotes CEO Kevin Keller as saying “our primary goal is to keep certificants out of trouble” when pressed on why “actually enforcing standards” is not a priority.

Industry pundit Michael Kitces notes “the need for better enforcement mechanisms is especially critical with the new CFP Code of Ethics and Standards of Conduct going into effect in October, 2019, which will only increase the stakes further.” But in a move widely viewed as accommodating the wirehouse industry, CFP Board will now delay enforcing the new rules until nine months after they become effective, until mid-2020.

Industry titan and noted commenter Ric Edelman has been a longstanding critic of CFP Board, saying “It is little more than a self-serving entity operating under the guise of serving the public interest. The interests it actually serves are merely those of itself and its members” back when it launched its $100M+ marketing blitz.

**Can CFP Fiduciary Ever Mean “Real” Fiduciary?**

The current CFP ethics code will be replaced by new “fiduciary” standards “effective” October of 2019, but, in a concession the wirehouse/broker dealer industry, which won’t be enforced until at least June of 2020, effectively giving blanket amnesty to CFPs who choose to ignore the new ethics rules. Prior to the extension, some firms had been rumored to be considering requiring their reps to give up the CFP marks, which would cost CFP Board revenue.

The current standards require CFPs to “at all times place the interest of the client ahead of his or her own.” In a Q&A on the Board’s site, the new standards are said to be different because they “expand the application of the fiduciary standard to all financial advice, and requires a CFP® professional to act in the best interests of the client at all times when providing financial advice.”

The current standards underscore this nuance for CFPs rendering planning, as opposed to financial advice to consumers: “when the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board”. The Board defines fiduciary as “one who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client”.

As to when the CFP fiduciary duty is triggered by planning, a CFP Board Q&A explains “the question of whether a client relationship involves financial planning is one that CFP Board determines on a case-by case basis.”

These two different CFP standards seem to be functionally equivalent, with the only nuance the duty of “upmost good faith,” which observers might assume to be implied in all dealings with CFPs given that good faith reflects an absence of malice or intent to defraud, and is a standard non-fiduciary requirement in U.S. business dealings.

Still the general, practical, and widely-held interpretation of the current rules it that unless planning is being done – and arguably consumers may believe this occurs whenever they get advice from a Certified Financial Planner – the fiduciary obligation does not apply.

A CFP® Board-sponsored study found that clients of CFPs may believe they receive fiduciary advice when in reality they receive suitability-governed product sales, which allows higher compensation and firm profits to the detriment of clients’ best interests. Of note, the study attempts to assuage the perceived legal risk that some firms may fear that the employment of CFPs, and association with CFP Board advertising claims, implies: “Clients may believe they are receiving a financial planning service...when they are instead receiving a service that is narrow in scope and incidental to the transaction.... some brokerage firms believe CFP® professionals present more legal risk to a firm compared to other registered representatives at their firm. This section .. shows that CFP® professionals do not present greater legal risks to a firm.”

However, the CFP Board’s $100M “public awareness” marketing campaign was launched after the last financial crisis and deep bear market of 2008. Since then, many consumers may have been induced to trust non-fiduciary CFPs with their money based on its “thoroughly vetted” “committed to working in your best interest” and similar representations over many years. In the next crisis, it is possible the CFP Board’s marketing claims may expose both it - and its $30M a year revenue machine - and CFP employer firms to massive claims of investor damage stemming from deceptive advertising.

**The Question Of Social Welfare – Is the CFP Brand a “False Quality Signal?”**

For better or worse, the CFP Board is at this point in time best, if not well, positioned as a fulcrum to professionalize a very fragmented – and arguably consumer-abusive – industry.

Quality, objective, and well-schooled financial advice is desperately needed by an aging US population at increasing risk of retirement crisis. Incompetence, abuse, and predatory “practice” abound, sadly, even, at the hands of perhaps thousands of “thoroughly vetted” CFPs.

But can CFP Board overcome its perennial misfires and gain traction as a standards enforcing institution? While hope springs eternal, the track record under the current governance and charity structure is not good, and the apparent lack of accountability, the robust and growing cash flow, and secretive governance may not provide meaningful incentive for real change.

As has been the case for other professions like medicine, law and accounting, perhaps the best path lies through government licensure and regulation of defined professional conduct, rather than relying on an operation based primarily on trademark rental, and lacking real representation by practitioners trying to ethically serve the public and professionalize practice.

Somewhat ironically, in 2008, the year the current CFP Board CEO consolidated control, an academic paper called “The Financial Planning Act of 2008”[1] was published by the Journal of Financial Planning. In it, the author argued rather persuasively that “the public simply cannot distinguish legitimate professional planners from faux planners,” and that if a true profession of financial advisory is to emerge, it would likely be built on the CPA model. He offers a model state legislature act on which to build a true, monopolistic, well-defined and regulated profession, analogous to those enabled by states’ bars, and boards of accountancy and medicine.

In the eleven years since, one might wonder how well the CFP Board has helped the public discern between legitimate CFPs and “faux” CFPs using the broadly-promoted badge to bait and switch.

From a social welfare perspective, what really matters now is the utility of CFPs in reliably and honestly solving consumers’ problems, and the proficiency of the CFP Board in facilitating effective and consistent consumer outcomes.

Sadly, as the Journal’s ongoing articles like the red flag pieces have reported, this is too often not the case. Consumers relying solely on the CFP “brand” as a quality signal may too-frequently encounter problem planners they may trust because CFP Board did not deliver on its promises.

There may be a real danger the CFP is sending a false, or at least inconsistent quality signal, and consumers are well-advised to consider it with jaundiced eye.

At this point in time, the CFP Board claims are simply not trustworthy enough to be relied upon without independent consumer investigation.

**Do CFP Standards Really Rise Above All Other Authorities?**

The Wall Street Journal reported that Leo G. Rydzewski, senior member of the Board’s Professional Standards & Legal department, recently stated “federal regulation (was) on the lowest level and the CFP Board’s standards (were) at the apex, ‘rising above’ all other authorities.”

Rydzewski is CFP Board’s General Counsel, and oversees the enforcement of CFP Board’s Standards of Professional Conduct. When queried by the Journal on the statement, in light of FINRAs more accurate reporting of CFP red flags, the Board said “Mr. Rydzewski’s reference to superior standards refers to education and ethics among CFPs that ‘go beyond what is required by the government at the federal or state level.’”

While actual delivery on this “rising above” is clearly spotty, the basic premise is certainly true.

The scope and rigor of the CFP coursework is far more comprehensive and sophisticated than that required to pass the government license exams. The exams are hard and designees who honestly test must demonstrate a degree of education far beyond that required of ordinary financial advisors.

And the CFP standards require much deeper duties to clients than the law applying to most advisors, arguably a true fiduciary standard in that they have been for years required to “at all times” – and “all” surely must include when selling commission products – place the client’s interests ahead of their own. These standards apply even when there is no legal fiduciary requirement, such as for FINRA reps.

But this is where the rub is. Do CFPs take this ethical code seriously? Does CFP Board? Or is it merely bait or an afterthought to juicy commission comp in the former case, and just a slick marketing pitch in the latter?

No Statistical Evidence To Support CFP Board Claims Of “Highest Standard”

When I conducted my PhD research in advisor training, education, professionalism and misconduct, I found FINRA black marks were more frequent for advisors who were male, licensed to sell insurance products like annuities, and dually registered with both fiduciary and non-fiduciary commission sales securities licenses. (This sometimes profound “dual registration” conflict of interest explored in my article called When Fiduciary’s Really A Four-Letter Word).

With co-researchers Dr. Inga Timmerman (Assistant Professor of Finance, California State University, Northridge) and Dr. Pieter de Jong (Associate Professor of Accounting and Finance, University of North Florida), we explored the gender effect in an academic paper called “Who Is Less Likely to Be Involved In Financial Advisor Misconduct?” which was published in the Journal of Wealth Management (Fall 2018, 21(2), 85-96). We found that females with designations had far fewer FINRA flags than men.

Building on our prior research, we then explored the relation between having the CFP designation and records of FINRA misconduct. We used all of the FINRA securities salespeople (stockbroker-type financial advisors, technically “registered representatives” [RRs] of “broker dealers”) in Florida. This was an about-35,000 person sample representing the entire Florida RR advisor population, skinnied down to the around 27,000 modeled to be in retail sales work. In a new paper to be published in the Spring 2020 edition of the academic Journal of Personal Finance which will be presented in October 2019 at the Academy of Financial Services scholarly conference, we focused on CFPs that held stockbroker-type commissions sales licenses (though many also are dually registered with fiduciary licenses). We did this to see if the CFP training and ethical code made a difference in misconduct where there was no legal obligation to act as a fiduciary in the clients’ best interests, as suggested by Mr. Rydzewski, and by common sense.

We expected a better misconduct showing for CFPs. As Rydzewski points out, they are trained to know more and behave better, and had pledged to abide by the applicable CFP Board ethical code that imposes a de facto fiduciary requirement: “The CFP® Board Standards of Professional Conduct requires certificants (sic) to “at all times place the interest of the client ahead of his or her own,” (Rule 1.4)[2] even when not conducting financial planning.”

To try to isolate the expected CFP halo effect, we “factored out” the gender, dual registration, insurance license, and other characteristics that were found to be associated with elevated misconduct in my dissertation paper.

Thus cleansed, surprisingly, we found no statistical difference in misconduct for CFPs vs “regular” commission investment sales reps who lacked CFP education and had not pledged to put clients’ interests above their own compensation. From these findings, one might expect about as much chicanery from a CFP as from a broker with no more training than a week’s worth of study for the Series 7 (like how I passed mine, as a dewy-eyed graduate chemist, back when dinosaurs roamed the earth in the ‘80s).

We observed no CFP misconduct suppression effect. Records of customer complaints, fines, suspensions, revocations, convictions, and other misconduct were statistically identical to garden variety advisors in our data. This was most surprising.

Screening Advisors By CFP Alone Could Lead To Worse Outcomes

Sadly, the situation may be worse from the practical consumer perspective, since in the real-world shoppers may not know or choose to isolate a research independent variable.

Based on CFP Board claims of “thorough vetting” they may be influenced to use the CFP alone as a selection heuristic, assuming this means pre-screening and a higher quality advisor. Ads that have said CFPs are “held to the highest ethical and educational standards” and are “required to make financial planning recommendations in your best interest” can induce consumers to rely on the CFP signal alone.

But since the CFPs in our study were overwhelmingly male, dually registered, and also licensed to sell commission insurance and annuities besides commission securities, picking a planner solely based on having a CFP appears to actually increase the odds of getting a planner with a record of problems like complaints and abusive sales practices.

This is exactly the opposite of the CFP Board’s widely-broadcast message that CFPs are “thoroughly vetted” and operate at the “highest standard.”

The reality uncovered by the WSJ’s reporting is that CFPs have clearly not been well-vetted, at least not by the CFP board, and many CFPs do not operate at the highest standard.

It also runs counter to the rational expectation (and likely legions of individual CFPs’ personal pitches) that high higher education and professional standards should produce more ethical results. Intentional or otherwise, this may set up a potentially dangerous bait and switch trap.

In my dissertation research, I ran uncontrolled regressions to look just at the CFP effect, as a consumer might when relying only on this piece of information to choose an advisor. Looked at this way, I found the b coefficient for findings of FINRA misconduct for CFPs to be over 3.5x higher than for non-CFPs, to extremely high levels of significance (p < .0001). This can be interpreted that the CFP group was associated with misconduct levels that were more than 3.5 higher than those associated with all others in the data sample, in this case 24,133 others contrasted to 2,534 CFPs. Most of these others – 23,470 – held no reported designation, and hence were not known to be obligated to higher ethical codes or have education beyond that needed to obtain basic government licenses; they were free to maximize their compensation at client expense so long as products were “suitable.” Still, the non-CFP others were associated with much lower misconduct than “highest standard” CFPs. Using another regression method called logit, it appeared the odds of finding misconduct were nearly 2x greater for CFPs than others. This was based on the Florida data; my research partners and I are now undertaking to confirm this and other effects with fresh national data.

Abusive Advisors Well-Known in Industry

Unexpected or otherwise, our academic findings are very similar to those in the Wall Street Journal’s report. Many in the field were perhaps not surprised. “For many CFP certificants, it was not surprising to read” of the recent WSJ red flag news, “as many advisors see problematic ‘fellow (CFP) advisors’ when new clients come in having been harmed by one.”

I once presented an unrelated paper at an academic conference, and a FINRA investigator was in my audience. After the talk, we got to discussing designations, and he told me his field experience was very similar to our findings. “The more letters, the more problems,” he said.

This is not to say many if not most CFPs may not be fine, ethical, well-trained and deeply caring practitioners who do what’s right and put their clients first. I am proud to call many such my friends. But, based on the emerging research, it would seem these folks are this way because of who they are, not because they bear the CFP brand, which at least for now, seems as easily worn by scoundrels as by the trustworthy and competent.

No “Profession” of Financial Planning or Financial Advice

Unfortunately, the amalgam of activity we refer to as financial advisory is far from gelling as a profession.

Actors as diverse as bank tellers, insurance and commodities salespeople, fiduciary investment advisors (those that seem to know what they are doing, and those that do not), even funeral home staff, all may purport to offer financial advice. These players operate in a patchwork of industries, from fiduciary trust officers right down to shameless hucksters and outright con(wo)men. Regulation, at best, is uncoordinated, and at worst, absent. Even astute investors have a hard time figuring this out and knowing whom to trust. The recent sagas of Bernie Madoff and Jeffrey Epstein, to name just two, with their trusting trails of high net worth, presumably-sophisticated dupes, is bitter food for thought.

Advisors can be banned from one part, like FINRA securities licensure, but easily jump to another, like the sale of high-commission equity index annuities using an insurance license. These are the kind with the pitch “your investment is guaranteed, but if the market goes up you make big profits.” While technically non-securities/fixed life insurance products, they all look like investments to the public. The small print often reveals the guarantee is a guaranteed loss after commissions and other factors. And the people that sell them can seem very trustworthy and competent, smile brilliantly, and look very professional in a suit, indeed.

Yet another Journal investigative report began with “a loophole that allows brokers who have been barred from the securities industry to sell insurance and other financial products.” It tells the story of advisor Simon to whom client Sigler gave her savings to invest. Statements showed returns of nearly 12%, but “the money disappeared.” Simon pled guilty to securities fraud and (was) currently serving two years in prison. While FINRA eventually banned Simon from selling securities, at the time of the report prisoner Simon still had an active insurance license good for another year! In fact, the Journal report found that at least 13% of brokers permanently banned by FINRA still had active life insurance sales licenses.

One of my early academic papers was called “Why Financial Advisors Have Yet to Leap the Professionalism Bar” (Journal of Personal Finance, Volume 17 Issue 1 2018). It found the financial advisory profession fails each of the six tests, derived from the academic literature, of what is required to make a true profession like medicine or law – both of which, for instance, are clearly defined and government regulated. PhD candidate Steven Lee’s research has found similar conclusions, as have others such as Michael Kitces’s.

To be a physician, you have to go to medical school, pass Boards, survive residency, and cleave to strict regulations to be allowed to practice without committing a crime. An MD or DO gets a monopolistic government license. To have one, you have to cleave to a social welfare contract.

But to be a “financial advisor,” you merely need to call yourself one.

Designations like CFP, in my view, are mere baby steps beyond this. The designation education is meaningful, but the lack of a requirement for a finance-related undergraduate degree, and for any graduate study, is troubling. The CFP code of ethics is promising fruit for development, but black-box governance of the CFP Board charity, the spotty-to-blind-eye record and chaotic enforcement makes it a deceptive shadow of professional standards. I wish it were otherwise, but there is little evidence things have changed much since Mr. Roth’s 2012 piece on apparent CFP Board disciplinary bungling or cover-ups, and lots that they haven’t.

In a follow-up piece to the Journal’s “red flag” article called Investors Need This Cop to Get Off Its Duff, two CFPs were described as selling a $6.2M death benefit life insurance policy – with an annual cost of $140,000 – to an already well-insured man whose wife had terminal cancer and little need to be protected by more life insurance on her husband. This author estimates the commission on such an insurance sale could have approached as much as $200K to the CFPs, on a product for which the client seemed to have no need.

After some time, the client became “concerned that (the CFPs) hadn’t done good planning” and filed a complaint with CFP Board. Four years after he complained, the CFP Board finally told the client that it finished its investigation which “did not result in a public sanction” against the CFPs.

The client has an advanced degree from the University of Chicago’s Booth School, was a CEO of a major company, and sits on the Board of a major publicly traded company. “I’m a well-to-do guy who should have known better, but it was a difficult time in my life” as his wife was dying.

His conclusion? “I got the impression (CFP Board’s public messages and highest standards pledge)… was more of a marketing campaign, than an earnest commitment to making sure that CFPs perform in full compliance with the standards of ethics the CFP Board sets forth.”

For a real, accountable, financial advisory profession to emerge, experiences like this need to disappear, or at least become rare and swiftly adjudicated.

The Deep Social Problem of Unprofessional Financial Advice

More than 650,000 financial advisors help manage over $30 trillion of investable assets in the U.S. with over one-half of all households and nearly 90% of consumers with investable assets over $100,000 seeking such help. Quality financial advice has grave consumer and social welfare implications. Bad advisors drain resources, compromise lives and burden the government as the financial security provider of last resort.

The advisory industry has been long troubled by poor consumer experiences, widespread abuse and fraud, persistent accusations of abuse, regulatory sanctions, and wide misconduct. A seminal academic paper found FINRA advisors – legions of CFPs among them – exhibit a high level of documented misconduct, and an anomalous concentration of repeat offenders, compared to the medical profession: “misconduct is much more concentrated, suggesting that some advisers are more prone to misconduct than others…(with a) high incidence of repeat offenders…. evidence suggests that some firms specialize in misconduct…misconduct is widespread in regions with relatively high incomes, low education, and elderly populations…and that firms that consistently engage in misconduct are likely targeting vulnerable consumers…”

Ethically challenged advisor behavior has been estimated to waste some $17 billion per year of consumer savings. Researchers have found widespread instances where advisors misleadingly couched product pitches as objective advice. These recommendations tended to increase advisors’ compensation to the detriment of the client.

As America ages, quality wealth care becomes indispensable. Unfortunately, it is quite difficult to find and identify, as “advice” continues to be marketed with the same cavalier, caveat emptor gusto as cigarettes, beer, or automobiles – and regulators regularly acquiesce in this, even to the point of letting non-fiduciary sales reps improperly use the term “investment advisor” – which inspires much more consumer trust than more accurate descriptions like life insurance agent or stockbroker.

To download an advisor selection guide by this author, click here.

Solving America’s Wealth Care Problem

Commission sales of investment products are big, big business. Reduced transparency makes for easier sales. When New York recently imposed a rule requiring insurance companies to provide consumers cost-comparison information between commission annuities and their fee analogs, several companies instead chose to suspend sales of the less profitable fee products in order to avoid the requirement. Expensive annuities can have adverse consumer outcomes. To download a detailed annuities guidebook to help better understand these complicated products, click here.

While countries like Australia, the U.K., India, Norway, Finland and Denmark have long banned commissions on the sale of investment products in order to reduce conflicts and protect the public, such a goal may be effectively illusionary given the US political system and the remarkable lobbying might of Big Financial.

What is, perhaps, more attainable, is codification, professionalization, and regulation of financial planners/advisors. They should be distinguished from vendors in a way that pharmaceutical sales reps are from physicians. The Wild West application of these terms is confusing and damaging to consumers.

I think state regulation is a critical issue and realistic goal. There are some things government does really well, and professional regulation is one of them. The CPA, MD/DO, attorney, and other state-regulated professional models work reasonably well, and far better than the financial advisory chaos. While the national Financial Planning Association supports state regulation, perhaps not surprisingly, CFP Board is strongly opposed to such a model, which clearly could wreak havoc with its own revenue machine.

As I said when Barron’s interviewed me on advisor professionalism, “professions are institutionalized, overseen, and enforced by government. The profession exists to serve society. The government grants monopoly power to qualifying professionals, and only they may practice. … to practice as a medical doctor you need to be…licensed (or) you commit a crime. Ultimately, I see a real profession developing along these lines, regulated by a state analog to a Medical Association or Bar, requiring at least a Master’s degree and maybe a practitioners doctorate called Wealth Doctor or something like that.”

As mentioned, the CFP Board is in the best, if not a good, position to facilitate this. If it truly wants to achieve its mission 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,” it must consider converting itself from a secretive charity to a true membership organization whereby CFPs have real voice and power in selecting leadership and shaping the profession. This is how real professions do it. With state license regulation to protect the public, and strong professional membership organizations like the AMA to define and evolve the profession.

As this article has tried to demonstrate, if the CFP Board ever had one, it seems to have lost its way long ago in terms of delivering on its quality promise.

It is time to try something new – there is far, far too much at stake.

To get info on the author’s free monthly online advanced wealth classes, click here.

To read his tips on the dos and don’ts of financial advisor selection, click here.

Full disclosure: my partner/wife and I were issued letters of admonition by the CFP board in 2017. Such letters are CFP Board’s mildest form of public rebuke. They were issued by the DEC “ after determining that: 1) Mr. Camarda owned and managed a registered investment adviser (RIA) and a consulting company (Company); 2) RIA represented to clients on its website and in its Form ADV Part II that it provided "fee-only" investment management and financial planning services; and 3) RIA and Company were functionally one organization providing clients a wide range of investment services, some of which were commission-based…” This third “finding” is demonstrably false. In a statement at the time of the admonition, I noted that I considered it “entirely unwarranted and unfairly inconsistent with its treatment of others,” including the blanket amnesty and other actions. These letters followed a long dispute with the board and a Federal lawsuit my wife and I filed against the board, which was later dismissed. Our position was we overcomplied with both regulations and CFP Board rules, that the Board did not follow its own rules in our and other cases. As we ourselves investigated CFP Board, we lost respect for its integrity and motivations, and voluntarily resigned our CFP licenses in order to avoid continued association with them; CFP Board did not request or order this.

[1] (Moisand, D. (2008). Journal of Financial Planning, 21(10), 78-90).

[2] ("CFP Standards," 2008/2014, p. 9).

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cfp-board-sign.jpg

PRACTICE MANAGEMENT>REGULATION & COMPLIANCE

# Critics Question Impact of CFP Board's Proposed Sanction Revisions

Some observers argue the CFP Board’s proposed changes go too far and that its resources could be better used elsewhere—others say the revisions don’t go far enough.

Patrick Donachie | Jul 30, 2021

The CFP Board’s proposed revisions to its sanction guidelines unveiled this week would penalize certificants for failing to “timely report” potential misconduct, but some criticized the step, with one advisor arguing that the potential changes were largely empty gestures.

The Board’s proposed revisions to its sanction guidelines and procedural rules are the first set of changes recommended by the Board’s Commission on Sanctions and Fitness, which was formed in February 2021 to examine the guidelines for how to accept applicants for the CFP designation, as well as for how CFP professionals should be sanctioned for violating the Board’s code of conduct.

Related: New CFP Board Enforcement Chief Brings a Separation of Functions

At the time, CEO Kevin Keller called the 15-member commission “fundamental” in strengthening enforcement of its Code of Ethics and Standards of Conduct, and saw it as the “third and final phase” in a review of the Board’s enforcement process, starting with a revision to its code of ethics and followed by last year’s overhaul of its procedural rules.

The code of standards requires CFP professionals to report certain potential actions of misconduct to the Board within 30 calendar days. Currently, a professional who fails to do so or submits an “inaccurate ethics declaration” would be subject to a private censure, but the new revisions would increase this to being a public censure, with the sanction potentially being higher or lower depending on circumstances judged by the Board.

Related: CFP Board Tightens Enforcement Ahead of Code of Ethics Implementation Date

According to CFP Board Spokesman John C. Pappas, professionals who are subject to a public censure will receive a public letter of admonishment from the Board, which would be published in a press release and found in the professional's disciplinary history on their Let's Make a Plan profile. And if a consumer searches for someone who's received such a censure, it should then show up in their results on their profile, according to Pappas.

"As for these proposed updates to the Sanction Guidelines and Procedural Rules, due to our improved detection efforts, we expect CFP professionals will be less inclined to risk the chance of failing to report potential misconduct if they will receive public discipline for it," he said.

The Board has made numerous updates after receiving criticism in response to a Wall Street Journal report that found that it had failed to vet thousands of CFP professionals’ regulatory, disciplinary and criminal history, and didn’t include that information on its online search site.

John Robinson, an advisor with Financial Planning Hawaii and a critic of the ways in which the board has addressed its enforcement lapses, found little to celebrate in the proposed revisions. Despite these potential changes, he argued that most of the 6,300 names the WSJ found in its reporting had failed to disclose their disciplinary history and still did not have those issues recorded on the CFP verification site. According to Robinson, no punishment or censure had ever been brought against them, even though failing to disclose was a violation of the Board’s code at the time.

Robinson also questioned how effective a public vs. private censure would be in informing consumers, as private censures can still be public knowledge and are often reported in the media. He said the proposals gave the “appearance of enforcement,” as opposed to actual enforcement.

“I’m critical of the CFP Board always putting its self-interest above those of consumers, and it seems to be its longstanding inherent, cultural DNA to trumpet its own achievement and policies when really dodging around the issue and not addressing the problem,” he said. “In reading this current proposal, it’s more of the same.”

Robinson believed that there were steps the CFP Board could take to improve, starting with publicly censuring or at least acknowledging the failure of those CFP professionals to self-report. He also believed the Board’s public relations campaign suggesting it was getting tough on policing its membership fostered confusion about its power in comparison to regulators. He suggested that the CFP Board directly include links to BrokerCheck, arguing there were scores of CFP professionals with “egregiously bad disclosure histories” with instances stretching into the double digits on SEC and FINRA’s databases.

“If they were serious about enforcement, how about making that a priority?” Robinson said. “None of this solves the central problem, which is a central blindness to its own bad apples.”

The CFP Board's Pappas said the updates would align with the "substantial progress" the organization had made since its first responses to the recommendations of an independent task force set up in 2019 in the aftermath of the WSJ reporting. He said the Board would continue to be open with the public about the changes, and that all its efforts are to maintain "strong competency and ethical standards" with its planners.

"Our goal is to create a credible enforcement program for the benefit of the public. These proposed changes help us do that by bolstering a detection program strategy designed to promptly identify potential misconduct, while also abiding by procedural safeguards that provide a fair forum for those CFP professionals who come under investigation," Pappas said. "We welcome any and all feedback on the proposed changes and any other ways in which CFP Board can strengthen our enforcement mechanisms and uphold our Code and Standards for the benefit of the public."

The CFP Board had considered whether monetary sanctions would be more appropriate than a public censure, and it remains open to suggestion during the public comment period for the proposed rules, which ends September 21. In a Twitter thread, XY Planning Network founder Michael Kitces wrote the potential for monetary sanctions was the most significant development, as that would put the CFP Board in the position of imposing fines for violations, “akin to an actual regulator.”

Kitces understood the appeal of levying fines, as it can cover costs of the Board’s enforcement efforts, but it was nevertheless new ground for the organization. He argued the Board had a “delicate needle to thread.”

“But financial advisors already have too many overlapping regulators. There is little desire for another one,” Kitces wrote. “(CFP Board) risks making it ‘not worth the hassle’ to get the marks for new professionals. Which can slow its growth momentum and limit resources in the future.”

Tim Welsh, CEO and founder of Nexus Strategy, said the revisions seemed like a strange use of resources for the Board, which lacks regulators’ enforcement capabilities. He believes the Board would be better equipped to promote the independent nature of financial advisors, rather than spending money on advertising campaigns and public displays of disciplining CFP professionals.

"It’s curious why they spend so much time and effort on controversial actions, using up resources that could be so better allocated toward educating teens on personal finance, for example, or helping the underserved with pro bono financial planning and all these great things they could be doing," he said. "Do more of that, and don’t worry about disciplining some CFP, because ultimately that’s really the purview of the regulators."

The Board also announced this week that Daniel Moisand, a financial advisor with Florida-based Moisand Fitzgerald Tamayo, was elected 2022 chair-elect for the Board of Directors. He will take over the role of chair after current Chair-Elect Kamila Elliott’s term ends at the close of 2022.

From 1999 to 2001, Moisand served on the organization’s Board of Practice Standards, and in 2008, he headed the Board’s Disciplinary and Ethics Commission. Moisand has been a member of the Board of Directors since 2020, and currently is the chair of the Code and Standards Enforcement Committee.

Additionally, Moisand had previously been the national president and chair for the Financial Planning Association.

“CFP certification is the recognized standard of excellence for competent and ethical personal financial planning,” he said, in a statement. “I look forward to working with fellow Board members to continue raising the bar for the profession while building awareness of CFP certification and access to CFP professionals, for the public’s benefit."

# The CFP Board is Confusing and Misleading Consumers

by [Sara Grillo](https://www.advisorperspectives.com/search?author=Sara%20Grillo), 10/5/22

Advisor Perspectives welcomes guest contributions. The views presented here do not necessarily represent those of Advisor Perspectives.

The CFP Board has strayed from its mission of improving life for the consumer. Instead, it is generating as much confusion as possible for the furthering of its own interests. Make no mistake – transparency is not on its agenda. This is a massive disservice to the public.

Why the debate is important

My guests and I exposed the numerous pitfalls of the CFP Board in a recent podcast debate.

The debate participants were John “JR” Robinson, Scott Salaske, and Robert Wright. JR took a lead role in the debate; he has a 15-year history of exposing the CFP Board’s transgressions and has written numerous articles on this subject.

These podcasts are important to the profession because they open conversations that are central to the role of the financial planner: questions of ethics, governance, advocacy, transparency, and what it means to truly deliver the fiduciary standard.

We’ve debated these topics in depth in two podcasts. Please listen to the CFP Debate Part One and Part Two when you have a moment.

The CFP Board’s non-transparent and misleading regime

There are two major ways that the CFP Board has failed to serve consumers: an intentionally vague search tool and misleading advertisements. They have taken actions that allow predators to use the market to freely prey upon the unwitting.

1. Advisor search tool leads you into lion’s den

Go to the “Find a CFP® Professional” tool on the CFP Board website. Just click here.

Now, enter your zip code and get the names of the first 10 advisors who pop up. Then research them on the IAPD or FINRA BrokerCheck site.

What do you find?

Disclosures!

And what’s scary is that the retail consumer will never do this, leaving them open to being preyed upon by unscrupulous CFP® certificants that this tool points directly to. Sadly, the CFP Board only indicates if the advisor has been disciplined publicly by the CFP Board or has declared bankruptcy.

Bankruptcy?

Who cares?

Do you think that because somebody had five years of medical debt leading them to go bankrupt that they aren’t a suitable advisor? And showing if they’ve been disciplined by the CFP Board isn’t saying much either, given that in 2020 only 84 disciplinary actions were taken. Given there are 92,814 certificants, this is 0.1% (CFP Board, 2022).

The CFP Board should tag anyone with an IAPD or FINRA disclosure history on their search tool so that unsuspecting consumers aren’t led by a trail of breadcrumbs directly to the lion’s den.

The unscrupulous individuals should be removed altogether. Some disclosures are frivolous – for example, you got caught using your brother’s fake ID in college – but that is still an infraction of the law. If you have broken the law, the consumer should be told clearly and be given the option to decide about whether that matters to them.

Instead of bankruptcy, the way the advisor is compensated (fees, commissions, or both) should be freely disclosed on the search tool.

According to JR Robinson, there are some people in the directory “with disclosure histories that would make Bernie Madoff blush.” This table below, used with permission by JR, shows some CFP® certificants with more than 20 disclosures – too much to be bad luck. Yet the CFP Board does nothing to protect consumers.

Source: IAPD, Finra BrokerCheck, Advisor U4’s, JR Robinson

You had 28 disclosure events and still active? Gimme a break – you practically have to be a convicted felon to get your CFP taken away.

2. Misleading advertisements

Advisors

Advisers

Advicers

Agents

Fee-only fiduciary

Fiduciary standard

Suitability standard

Hybrid advisor

Are you confused yet?

And if that isn’t bad enough, the CFP Board is posting obfuscating ads, making matters worse! Take the following (awful) examples of CFP advertisements, past and present.

Implying the CFP is more trustworthy than the non-CFP professional

In frame 0:25 of this CFP advertisement video, it says, “If they’re not a CFP® pro, you just don’t know.” And if that is not a blatant endorsement, I don’t know what is! This is an old advertisement that is not in active circulation, but it does reflect a past transgression.

Misleading terminology

See frame 0:21 of this CFP advertisement video, “confident forever plan.”

You don’t think that’s a little misleading?

It implies that you create one plan and you’re done with financial planning. The phrase sounds so promissory – there’s a reason no compliance officer will ever let you so much as utter the word “forever.”

False assertion of vetting

From a 2014 press release:

Vetted? These people are vetted? As I just explained – they are clearly not!

Unsubstantiated advantages over non-CFPs

From the CFP website:

Wow, just wow.

It’s laughable that they are touting the two-year experience requirement as reason that you should pick someone with this certification. The average amount of experience for a paraplanner is four years, and eight years for an associate advisor, according to a Kitces article.

As we’ll get to in a minute, not everyone who holds the designation acts in the best interests of the client, given that over 75% of certificants are not pure fee-only fiduciaries.

It’s serious to mislead consumers, and it becomes even more worrying when the financial planners who hold the designation start repeating these ideas, or even worse, use the designation’s merits to defraud. Some have used the credential to help them defraud consumers. About 20 years ago, there was a well-known financial planner and radio personality named Bradford Bleidt who ran a $30 million Ponzi scheme. He confessed to have used the CFP designation for credibility to help himself pull it off.

3. The code is a falsely marketed abridgement of the fiduciary standard

The CFP Board Code and Standards is the highest standard, according to the CFP Board.

Really!

The highest standard?

That would be the fiduciary standard.

Here are a few examples of what’s wrong with claiming that the CFP code and standard represents the “highest standard” (above the fiduciary standard, that is):

There is no guarantee that a CFP® professional is following the fiduciary standard 100% of the time. Remember that 70% of CFP® certificants are licensed insurance agents, and 85% of them are paid by both fees and commissions.

In 2009, the CFP Board proclaimed fiduciary status without providing their certificants with any training. It is only over the last few years that they have begun to do some training to provide their certificants with the background to be able to do so.

According to Section A.5 of the CFP code, you’re required to disclose material conflicts of interest; not material facts as you would under the real fiduciary standard, allowing CFP certificants not to disclose what they earn in insurance commissions, for example.

The CFP code doesn’t require disclosures to be made in writing whereas they are by the SEC law.

Consumers are utterly confused about who is a fiduciary and who isn’t, and obfuscations like this are one of the reasons why.

4. Represents interests of insurance companies, not the consumer

The CFP Board increased its fees by $100 this year! It would be palatable if the increase were for a good reason, but it has lost its mission. Its leadership should have just said, “Instead of raising your dues by $100, we’d like you to make a $100 donation to your local state insurance commissioner and we’ll call it even.”

Its mission is supposed to be benefitting the public, no?

Then what in the blazes happened to the emphasis on community outreach? Teachers are getting scammed in their ESP’s, widows and veterans are getting funneled into sham annuities, and the CFP Board is more concerned with playing nice-nice with the insurance companies.

And on top of that, the CEO Kevin Keller makes $1 million a year!

Have you lost your mind, bro? $1 million?

It’s not like he won the Nobel Peace Prize for his amazing contribution to society.

Sara’s upshot

The CFP Board has lost its mission, straying from educating and protecting the consumer and instead focusing on increasing membership and garnering political clout. It acts more like a political party than a professional certification organization.

But there’s a new force materializing in the industry, one with the power to eclipse all that have come before.

It is the dawn of transparency.

The Transparent Advisor Movement’s mission is to promote ideals of clarity, modesty, integrity, dignity, and client advocacy in all aspects of financial advice, with a special focus on advice-only, flat-fee, and hourly service models. There is an emphasis on clear disclosure of services and their related fees.

The goal of the Transparency Movement is to create the country’s best financial advisors – the most ethical, effective, and successful financial advisors that the industry has seen in its history. To do this, we are dismantling many of the norms and reconstructing them with a sheer focus on the experience of the end client, something that has never been done before.

The Transparency Movement is the future of the industry – we welcome anyone who believes in our values and wants to be a part of it. Please join us.

Our next meetup is October 12, and we welcome anyone who wants to make history alongside us as the first truly transparent movement in this industry. Sign up here.

Acknowledgements

I would like to humbly thank the following people for their invaluable contribution to this article.

Knut Rostad – I’m grateful to Knut for proofreading this blog, for his defense of the Fiduciary Standard, and also for including the Transparent Advisor Movement in his work with the Institute for the Fiduciary Standard.

JR Robinson – JR was the driving force behind this debate. I’m amazed at his perspicacity, initiative, and ability to remain committed to protecting the consumer in the face of resistance.

Robert Wright – I give Robert a lot of credit for being the outspoken voice in this debate. Without him defending the CFP Board, it would not have been possible to debate and I’m so grateful for his grace, poise, and strength of character.

Scott Salaske – Scott always brings a down-to-earth perspective to my podcasts. His experience as a successful flat fee advisor is an unbelievable source of strength for the Transparent Advisor Movement

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# Should you cancel your CFP designation? (Heated Debate!)

September 12, 2022

By Sara Grillo, CFA

A $100 increase in the CFP annual certification fee spurred an industry outcry, leading many to question whether the designation is worth it or not. There are more than 92,000 CFP® certificants, as per the CFP Board’s 2022 measure. Are they getting a raw deal? Is it time to say “FU” to your CFP designation?

In this podcast, I rounded up a group of veeerrrry opinionated people and we’ll be debating the subject of what is means to be a CFP® pro. Get ready for a ride as we examine it from all angles: regulatory, ethically, intellectually, etc.

It’s about to get very, very heated so let’s get on to the show!

The debaters include:

• Robert Wright, CFP®, a financial consultant with Advocacy Wealth Management. Robert will be on the “for” team.

• John Robinson (“JR”), Founder of Financial Planning Hawaii, Inc. JR will be on the “against” team.

• Scott Salaske of Firstmetric. Scott will be on the “against” team.

Just for the record, members of the CFP Board and its affiliated were asked to join for us for the podcast – all rejected or ignored the offer.

The CFP designation debate – key points

This was a very special podcast episode for me. Not only were the guests lively and insightful, but the topic is one central to who we are as an industry – and not that I said, “industry”, not “profession.” It brings to light the fundamental question of the role that institutions play in client outcomes, whether those institutions are truly putting the interests of the retail investor over those of their members, and the delicate balance between governance standards and the oppression of individual autonomy.

I really had a good time creating this podcast and I think you’ll enjoy listening.

In our debate we will discuss the following questions:

• The CFP Board harms consumer through its multi-million dollar ad campaigns by suggesting that CFPs are more ethical than non-CFP financial planners and by suggesting that its member standards are higher than those of regulatory agencies.

• The CFP Board promotes a faux fiduciary standard that does not require its members to disclose potential conflicts of interest in writing and that does not require them disclose the percentage or amount of commission its members may receive from the sale of insurance products with opaque commissions.

• The CFP Board’s long, uninterrupted history of putting its own interests ahead of the consumers makes it decidedly unqualified to govern the financial planning profession. [Note: The CFP Board openly states that its primary objective is to make the CFP® mark a regulatory requirement for anyone who provides financial planning guidance. This would make the CFP Board the de facto regulator for the profession.]

• The CFP Board Claims to have weeded out the bad apples in the wake of the Wall Street Journal expose and trumpeted its expulsion of nearly 40 members (most of whom had already left the industry). There are hundreds (perhaps thousands) of CFPs with regulatory disclosure histories that would make Bernie Madoff blush who are still endorsed by the CFP Board as clean.

• The CFP Board’s latest dues increase to fund its marketing efforts and executive salaries highlights the danger of making the Mark the standard for the financial planning profession. Salary is excessive, compensation consultant appointed by the CEO, Keller earned $1,009,329 as disclosed on the Form 990 for 2020.

• In 2020, total disciplinary actions taken was 84, as per the CFP Board Form 990. Given there are 92, 814 certificants this is 0.1%

• The CFP Board has specifically stated that it wants the CFP® mark to be a requirement for anyone who practices financial planning.

Here is how the debate unfolded, point by point.

#1 Are you a superior advisor because you got the CFP designation?

Wright holds the CFP designation, while JR and Salaske do not.

Salaske says that having the CFP designation was never a requirement in anything he did to advise clients. He didn’t see the credential as attractive because by the time he was considering it, he had extensive real-world experience working with clients. He sees it as a testing exercise and doesn’t feel parts of the curriculum are that relevant. However, he did see it as a benefit (when he was looking to hire someone) if a young or inexperienced employee was getting the CFP designation. However, he would not require it.

Wright is an instructor for the College of Financial Planning in addition to being a CFP® certificant. He is very much an advocate for the marks and the education that comes with it. Wright agrees with Salaske’s point that experience trumps everything. According to Wright, it’s more than having to pass a test – there are CFP® certification requirements pertaining to education, quizzes, modules, etc. On the other hand, the FINRA requirements are just taking an exam – Series 7, 66, etc.

Salaske bristles at the fact that attorneys (and CPAs, by the way) can take the exam with certain programs such as Challenge Status, allowing them to bypass certain educational requirements. Wright agrees with Salaske that bypassing education shouldn’t be allowed.

JR, a financial planner, thought leader, and self-proclaimed zealot for this cause, says he does not denigrate the value of the CFP curriculum. He even pays for certain employees to go through the program. For JR, his issue is with the CFP Board and its conduct relative to consumers – not with the curriculum.

#2 The CFP vs SEC – who regulates better?

Wright says, if we are going to asset that the CFP Board and marks are bad, we should ask the question, “bad compared to what?” If we are comparing them to the Utopian idea of what a fraternity of ethics and competence testing should be, then we should find a way to implement it because daydreaming about what it ought to be is less useful. However, if we are comparing the CFP Board to existing agencies for ethical and competence testing, then he rules in favor of the CFP Board. The most important thing the CFP Board does not do is coerce advisors to participate which makes it superior to the SEC and FINRA.

JR argues that it is a big part of the CFP Board’s stated objective is to make the CFP® mark for all whom call themselves financial planners. And that move would make the CFP Board the de facto regulator of the profession. Anyone who uses the term “financial planner” must be registered with the SEC and held to their standard of conduct as a fiduciary under the Advisor’s Act of 1940.

The SEC’s fiduciary standard and code of conduct, when compared side by side with the CFP Board’s code of conduct, you will find that the CFP Board’s code of conduct is carefully worded to be less restrictive than the existing fiduciary standards for the SEC under the Advisor’s Act. He assigns the term “faux fiduciary standard” to the CFP Board’s standards.

Wright retorts back that restrictions don’t necessarily mean higher ethical standards. To that, JR explains that the reason why the securities industry is regulated, as opposed to having a professional organization guide it, like the AICPA or the Bar Association, is that what the SEC regulates is securities. Securities are a product that must be regulated. JR argues that both in terms of enforcement and the requirements of the standard, the SEC’s standard is much higher than the CFP Board’s.

Wright feels that the SEC should be gone, and that the CFP should be a standard. He would like to see several competing agencies to exist as well. He feels that a fraternity of ethics and competence testing is far superior to a government agency that has no interest in justice.

#3 Are the CFP Board’s disclosure requirements too light?

According to JR, the CFP Board’s “faux fiduciary standard” was carefully written to allow advisors to not have to disclose insurance commission they may receive, or opaque commissions in general. Their wording is “material conflicts of interest in general” vs the SEC’s standard that financial planners must disclose “all material facts.”

Source: SEC Source: CFP Board

Wright contests that it may be deliberate but that does not make it unethical. There is nothing wrong with selling insurance.

But, JR asks, why can’t you make it so that financial planners who have the CFP designation have to disclose every penny they earn, up front and in writing, especially from an opaque source? Very simply, the dollar amount and the percentage in writing – why don’t they require that? He feels consumers would benefit from that immensely.

Wright responds that according to Section 8.5 of the CFP Board’s standard of conduct, that planners must “disclose and manage conflicts of interest and even suggest that 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 interest.

JR finds this wording to be vague and ambiguous. He says that in the CFP Board’s standard of conduct it states unambiguously that all CFP designation holders must voluntarily disclose all prior misconduct, any disclosures that may be on their FINRA or SEC IAPD records – and, as revealed in the 2018 Wall Street Journal expose, nobody did it (Zweig, Fuller).

Grillo pipes up that the CFP Board is never going to require compensation methods to be disclosed, because that would go against the insurance agents. JR agrees, stating that 70% of CFP holders have insurance licenses.

#4 Has the CFP Board failed to address the insurance problem – the “third hat”?

JR asserts that anyone who holds themselves out as a financial planner, whether or they wear dual hats, or also are registered reps under FINRA, must follow the fiduciary standard. However, the problem is that the SEC’s reach only extends to securities. Since 70% of CFP® mark holders have insurance licenses, anything they do on the insurance side (outside of variable products) is not regulated by the SEC. Financial planners do not need to act as a fiduciary when selling insurance as long as the product being sold is not a variable product. Hot selling, high opaque-commission products, such as index annuities and index universal life policies are beyond the SEC’s reach.

Insurance is the “third hat” and it’s a big problem. The SEC does not have a solution for this, argues Wright, to which JR responds that they can’t because it’s not their agency. Why not doesn’t the CFP Board address this with their members he asks? In fact, the CFP Board balked at requiring planners to make disclosures in writing.

JR and Wright agree that the CFP Board could impose fiduciary standards on the sale of non-variable insurance products. However, Wright feels that the wording under Section 8.5 is enough and that JR is splitting hairs.

#5 Is the CFP designation just a marketing credential?

Salaske feels that if the CFP Board were that interested in full disclosure, they would have a mechanism on their website whereby all CFP® certificants would have to disclosure all ways they receive compensation. But, they don’t.

According to Salaske, imposing such disclosure requirements would limit the money-making machine that they’ve created. Salaske says you would practically have to be a convicted felon for them to strip you of the mark; they want high numbers so they can collect their revenue and chest pound about membership. Many people use the CFP designation just to market themselves and the CFP Board is complicit in that behavior.

JR adds that Ben Coombs, one of the first CFP® certificants, very candidly stated in an interview that the members of the first CFP class were all insurance salespeople. They wanted to become credible to compete with the brokerage people when selling Master Limited Partnerships and insurance with financial planning credibility, so they got the designation. The designation has its roots in the insurance industry.

In 2003, there was a well-known financial planner and radio personality named Bradford Bleidt, JR continues, who ran at $30MM Ponzi Scheme. He admitted to getting the CFP designation for marketing credibility so he could build trust with people and then defraud them.

Salaske adds that every time the CFP fees go up, on social media there is a big outcry but they still renew because they are using it for marketing purposes.

#6 Does the CFP Board market the CF designation in a way that is misleading to consumers?

JR asserts that it is misleading to consumers to suggest that the CFP Board is a higher regulatory standard than the SEC. Despite the incidences mentioned in #5, the CFP Board has spent millions in advertising telling consumers they should always trust a CFP® professional and if they don’t have the CFP designation you just don’t know about their integrity. JR feels this is harmful to consumers.

#7 What about endorsing CFP® certificant bad apples as being “clean”?

After the 2018 Wall Street Journal article, it was revealed that thousands of CFP designation holders did not disclose to the Board what their disclosure history was, and the Board did not bother to check (Zweig, Fuller). Yet even after this scandal, those six thousand CFP® certificants with disclosure marks are still showing up on the CFP’s website as having no disclosures.

To quote JR, “There are people with disclosure histories that would make Bernie Madoff blush.” The CFP Board has done nothing to protect consumers from those people. The CFP Board claims that CFP® certificants are thoroughly vetted – they’re not. In fact, there are some certificants with as much as 26 disclosure marks on their record – too much to be bad luck. JR claims to have a list of 200 CFP’s who have multiple disclosures (here are some examples below).

Source: John Robinson, FINRA BrokerCheck, SEC IAPD, CFP Board. Verify a CFP® Professional, Financial Advisor U4’s

Wright argues that context is everything and that advertising on its own does that create harm. He uses the example of Doritos advertising during the Super Bowl.

#8 Is the CFP Board the financial institution equivalent of North Korea?

JR agrees with a Don Trone statement from a ThinkAdvisor article, “If the CFP Board were a country, it would be North Korea” and he feels that such statements regarding the Board’s lack of transparency with respect to executive compensation, the amount of money spent on advertising, and the amount of money spent on furthering its interests via lobbying politicians are useful in raising consumer awareness to protect them from being preyed upon.

Wright refutes Trone’s rationale for the North Korea analogy:

• There are no open elections for directors. According to Wright, democracy is not a sign of ethical behavior.

• Directors are required to sign confidentiality agreements. Wright feels this makes sense and makes them more ethical.

• Any conversation with a director requires the presence of a senior staffer. Wright feels this is an assertion rather than evidence of unethical behavior.

• Board minutes are not be made public. Why should they be, asks Wright, this is a private institution.

#9 Is there enough disciplinary enforcement?

It was reported in the CFP Board’s 2020 Form 990 that there were 84 disciplinary actions taken against members. With 92,814 members, this is a very small percentage (CFP Board, 2022).

Wright says if there were more disciplinary actions taken, people would use it as evidence of bad ethics running rampant.

JR says he has an issue with the CFP Board being critical of the SEC’s enforcement capability. He is willing to bet that out of the 82 actions taken, all of them were initiated by the SEC or somebody getting arrested (rather than proactive enforcement by the CFP Board).

Wright argues that the SEC is supposed to be an arm of justice but most of the time they end up litigating, or settling. They let Madoff get away with it after being told.

#10 CFP Board CEO makes over $1MM a year. Is that too much?

According to the 2020 Form 990, CEO Kevin Keller earned $1,009,329 in total compensation. Grillo feels this is excessive and that it’s unfair that at the same time they just raised fees by $100 for all certificants, many of whom are starting out in their careers when money is tight.

Wright says that salary is negotiable, is a matter of opinion, and shouldn’t be judged as unethical.

Surprisingly, JR says that Keller is doing a better job than many more before him in terms of leading the Board politically. Noteworthy to say, though, JR points out that Keller’s success in growing the CFP Board’s membership and public recognition of the CFP® mark are the primary task he was hired to do. Protecting consumers is not in his job description.

Grillo rebuts back that when she hears middle to low-income people on the playground talking about how great it was that a CFP® professional came into their work and did a free community presentation, she’ll feel Keller’s salary is justified.

#11 Has the CFP Board lost their mission?

Salaske says that the CFP Board is not looking out for investor interests; they are looking out for their own interest and doing that via growing their membership, having minimal enforcement actions and raising dues; none of which is in the consumer’s best interest. It’s not doing the public any good by stripping away fee disclosures in order to placate all kinds of compensation methods and conflicts of interest.

Wright says this is a false dichotomy, and asks Salaske if growing his business is not in his clients’ best interest. He says it also benefits clients.

Salaske comes back by saying that it shouldn’t be growth for growth’s sake. It shouldn’t mean sacrificing the mission that they are trying to accomplish.

Wright answers back that growth is not an indication of unethical behavior. You can grow your organization and take care of your clients at the same time and it may even be causative.

Sara’s upshot on the CFP Designation

What’d ya think of my blog and podcast debate on whether or not the CFP designation is worth it? Was this helpful in clarifying the role that the CFP Board plays vs. what it theoretically should?

I’m super grateful to my guests on this show. By the way, this show is Part One of a two part series. In Part Two of this CFP debate, we explore the role that the CFP Board should or should not play in policing financial advisor misconduct.

Thanks for reading. I hope you’ll at least join my newsletter about financial advisor lead generation.

See you in the next one!

-Sara G

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About Robert Wright, CFP®

Robert Wright, CFP® serves as a Financial Consultant with over 10 years of experience in the financial planning and services industry. Robert works directly with settlement planners and the families they work with to develop comprehensive financial plans.

Prior to joining Advocacy Wealth Management in 2022, Robert served in a variety of positions at Fidelity Investments and Morgan Stanley as a Financial Consultant.

Robert completed His Undergraduate Degree at The University of Utah in Economics and his Master of Science in Advanced Personal Financial Planning at Kansas State University. In addition to his formal Education Robert Wright holds his FINRA Series 7 and 66 licenses, is a CERTIFIED FINANCIAL PLANNER™ Professional and holds Georgia Resident Life and Health Insurance. Robert is also an Instructor of CFP® Coursework for the College of Financial Planning Online and on Campus at Kennesaw State University.

Robert is the father of three amazing children: Macie, Liam, and Charlotte; and husband to Priscila Moraes-Wright since 2012. He and his family love to play baseball, swim and play at the Georgia lakes and beaches.

About Scott Salaske

Scott Salaske is the founder and CEO of Firstmetric, a flat fee financial advisor firm in Troy, Michigan. Ever since the beginning of his 20+ year long career, Scott has pursued his mission of delivering high quality financial advice in a low cost and unbiased way.

Early on in his entrepreneurial journey, Scott saw firsthand the inherent flaws and conflicts of interest in the traditional sales and product driven approach, as several family members had lost a significant portion of their hard-earned life savings to high-cost, commission-based investment products and inappropriate advice.

It was at that point Scott thought there had to be a better way for investors to obtain unbiased advice and low-cost access to the financial markets. That lead him to start Quest Asset Management, with the novel idea of putting investor interests first as a fiduciary, which was practically unheard of at the time. The idea centered on the concepts of simplicity, keeping total investment costs and taxes extremely low and developing a custom investment plan for each client using low-cost asset class and index funds.

A few years later Scott merged Quest with another local investment advisory firm, Portfolio Solutions, that shared the same investment principles at that time. Several years after the combined merger, Scott went on to grow the combined firm from advising approximately $60 million in client investment assets under management to more than $1.4 billion. In early 2015, Scott sold his ownership interest in the firm. He started Firstmetric a few years later.

At Firstmetric, Scott continues his mission of delivering low cost, unbiased advice to clients. Along his journey he has been quoted in the following publications: The Wall Street Journal, Investor’s Business Daily, Kiplinger’s Retirement Report, TheStreet.com, Cheddar.TV, Crain’s Detroit Business and MarketWatch.com; among others.

About John “JR” Robinson

John (J.R.) holds a degree in Economics from Williams College and has been a financial advisor since 1989. Research papers he has written on a broad range of financial planning topics have been published in numerous peer-reviewed academic and professional journals. Papers he co-authored on retirement income sustainability won the 2008 and 2010 Certified Financial Planning Board of Standards and International Foundation for Retirement Education Best Paper awards, respectively. His co-authored paper, The Determinants of Nest Egg Sustainability, was a Finalist in the Journal of Financial Planning’s 2016 Academic Research Competition and appeared in the May 2017 issue of that journal.

John is recognized as a thought leader for the financial planning industry, particularly on ethical and regulatory issues facing the profession. His commentary regularly appears in the nationally syndicated news media. In 2019, he helped develop a front-page story in the Wall Street Journal that exposed how the CFP Board of Standards was promoting more than 6,000 CFPs with major regulatory disclosure events (including criminal conduct) while running a multi-million dollar advertising campaign telling consumers that its CFP members are thoroughly vetted and more trustworthy than non-CFP SEC-registered financial planners. John has twice been included on Investopedia’s list of the top 100 most influential financial advisors in the U.S.

He is also a co-founder of Nest Egg Guru, a maker of affordable, client-facing software for financial advisor websites. Nest Egg Guru’s flagship app suite is designed to help engage and educate clients by stress-testing their retirement savings and spending strategies. Nest Egg Guru has also rolled out a unique password management app and a separate secure file-sharing app that financial advisors may offer as a free service to their clients to build loyalty and strengthen relationships. Both of these apps are available for use by Financial Planning Hawaii clients as well.

Most importantly, John holds dear the loyal, lasting relationships he develops with clients. He adamantly believes that the clients’ interests must come first and is constantly seeking new ways to add value to the families he serves.

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# Is The CFP Board’s New Mandatory Arbitration Requirement Really Fair?

MARCH 28, 2016 07:01 AM

EXECUTIVE SUMMARY

The right to use the CFP marks entails signing an agreement with the CFP Board, which commits the CFP certificant to abide by the CFP Board Terms and Conditions of Certification. These Terms Of Use cover essential details, from the CFP Board’s rights over the CFP marks, to the certificant’s use of them, and the ability of the CFP Board to discipline the certificant or revoke the marks entirely in cases of misconduct.

Last week, the CFP Board announced major updates to the Terms and Conditions of Certification, for the first time in nearly eight years. And, while several of the changes are simple clarifications to the legal language, the CFP Board did introduce a new provision that would require all disputes between CFP certificants and the organization to be taken to mandatory arbitration, rather than a court of law.

Arguably, arbitration will be a less expensive and more expedient path in many (or even most) cases, but the CFP Board’s arbitration requirement that keeps the outcome confidential (even if ruled against the CFP Board), coupled with a separate (and already existing) rule that limits any CFP Board liability to no more than $1,000 (plus legal fees), effectively means the CFP Board has remarkably little accountability or transparency whatsoever in any dispute (or worse, a series of disputes) with CFP certificants.

And perhaps most concerning is simply the fact that the CFP Board is changing its Terms and Conditions unilaterally. Technically, this is the organization’s right, as it controls the CFP marks and CFP certificants always have the right to not sign and choose to walk away. Yet the growth of the CFP marks in public prominence, and the CFP Board’s success in outdistancing virtually all other designations for financial advisors, means that even if CFP certificants would prefer that arbitration simply be an option rather than mandatory, they have very little choice but to accept the unilateral changes being handed to them... or risk being disparaged when the CFP Board's "Certified = Qualified" public awareness campaign questions their competency for having walked away from the marks?

So with the FPA unable to effectively advocate on behalf of CFP certificants, will the CFP Board consider some means to allow CFP certificants as stakeholders to weigh in on the decision before we are forced to waive our legal rights... or at least, will the CFP Board's Board of Directors modify its mandatory arbitration proposal to limit its scope to its publicly stated purpose, and provide some public information regarding arbitration outcomes to at least step up to being as "transparent" as FINRA?!

AUTHOR: MICHAEL KITCES

**Understanding The CFP Board’s Terms And Conditions**

CFP Board Of Standards - LogoAs a part of applying for CFP certification – initially or upon renewal – every CFP certificant must agree to abide by the CFP Board’s “Terms and Conditions of Certification”.

The current CFP Board Terms and Conditions agreement forms the basis for the legal contract between the CFP Board and those who apply, and covers everything from the actual authorization of when and how CFP certificants can use the CFP marks, to the CFP Board’s retained intellectual property ownership of the marks themselves, and the rules regarding a CFP certificant’s right to relinquish the use of the marks, have them revoked, or be (publicly) disciplined by the CFP Board for failing to use them properly.

As with any contractual agreement between two parties, from time to time there may be a dispute regarding the terms of the agreement – a potentiality that was brought into sharp relief nearly 3 years ago when Jeff and Kim Camarda sued the CFP Board in a dispute over whether they should be publicly disciplined for an alleged violation of the CFP Board’s Practice Standards regarding compensation disclosure. In essence, when the Camardas were found “guilty” by the CFP Board’s Disciplinary and Ethics Commission (DEC), and the ruling was upheld in the CFP Board’s Appeals Process, the Camardas sought out the court system to be the final arbiter of whether the CFP Board properly followed its process in adjudicating the result.

On the plus side, the fact that CFP certificants have some final path of recourse beyond the CFP Board’s own DEC and Appeals committees is arguably a very good thing, as it helps to ensure the CFP Board is accountable for its disciplinary process. The bad news, though, is that court disputes can be very expensive for all parties involved, with estimates that the CFP Board may have racked up more than $600,000 in legal bills just in the discovery phase of the Camarda case, and a who-knows-how-expensive bill for the Camardas in their efforts to defend themselves from what they claim was an inappropriate CFP Board disciplinary outcome in the first place.

The alternative, for those who want some legal recourse, but wish to avoid the costs (and slow pace) of the traditional court system, is to pursue arbitration instead. And now, with its latest update to the CFP Board Terms and Conditions of Certification, the CFP Board will soon require it.

**CFP Board Introduces Mandatory Arbitration Requirement**

In a change announced late last week, the CFP Board declared that it was revising and updating the Terms and Conditions of Certification for all certificants, effective at the beginning of May. And although many of the changes in the revised Terms and Conditions of Certification were simply clarifications of some legalese from the existing agreement, a significant new provision is the introduction of a new Section (r) pertaining to disputes between CFP certificants and the CFP Board, which would for the first time mandate arbitration for those seeking a resolution.

**New CFP Board Terms & Conditions will impose Mandatory Arbitration for certificant disputes.**

The arbitration process itself would be handled through the American Arbitration Association, and would entail the selection of three arbitrators who are all former Federal or state court judges with at least 5 years of experience on the bench (chosen from an initial list of 15 potential judges, where each party can strike three names and then rank order the rest according to preference).

The chosen arbitration panel can then meet with the parties, any witnesses they call, review the documents that were presented in the original CFP Board Disciplinary proceedings (and any additional discovery documents the arbitrators request). The arbitration decision (and any award for damages) is to be made within 9 months (unless extended by mutual agreement of the parties), and if the CFP Board loses it is obligated to pay both the CFP certificant’s legal fees (up to $30,000) plus the costs of the arbitration itself (if the CFP Board wins, the arbitration costs are split, and each party pays its own legal fees).

Notably, the mandatory arbitration provision also requires that the occurrence of the arbitration itself, along with any claims raised, issues addressed, the substance of the proceedings, and any final award, will all be kept strictly confidential.

**CFP Board Mandatory Arbitration – Expediency vs Transparency?**

Given the costs and hassles of the legal system, arbitration as a means of resolution for legal disputes has been on the rise for many years now, and the CFP Board is hardly the first to implement a mandatory arbitration clause. In fact, most advisors are (or should be) familiar with the idea of mandatory arbitration, because it’s standard in virtually every brokerage account agreement that we sign with our clients (and is estimated to be included in 46% of RIA client agreements as well).

On the other hand, the inclusion of mandatory arbitration agreements in the securities industry has come under increasing criticism in recent years as well. While billed as a means to expedite the dispute resolution process, the FINRA arbitration process in particular has come under increasing criticism that it is biased against consumer complaints, that the process may not always be fair (or at least isn’t perceived that way), and that the always-private proceedings obscure a critical aspect of consumer transparency and broker accountability. The momentum against mandatory arbitration in the securities industry has built up so far, that last year there was even a legislative proposal in Congress that would ban pre-dispute mandatory arbitration clauses altogether.

Now to be fair, as a mandatory arbitration process goes, the CFP Board’s new approach in its revised Terms and Conditions agreement is arguably a particularly fair and reasonable one. It relies on judges (rather than industry participants that might favor the CFP Board), it uses multiple judges (which might even get better results than just relying on a single judge in court), and it allows a healthy period of time (9 months) for resolution. In addition, it’s important to note that in the context of the CFP Board – at least when it comes to a dispute regarding a disciplinary matter – that the arbitration panel will effectively be the fourth stage of review on the same information (after CFP Board staff determines probable cause, the DEC hears the matter, and the CFP Board Appeals Committee reviews it), so the facts of the case should (hopefully!?) be well established at that point anyway. Yet even as a fourth level of review, the process should still be more expedient than a court case, preventing the CFP Board from being ‘distracted’ by lawsuits (which has clearly been an issue with Camarda, and is not fruitful for the organization or CFP certificants in the long run).

Yet the one major challenge of the CFP Board’s new mandatory arbitration process is its confidentiality. The CFP Board points out that confidentiality ensures that if a certificant wants to dispute a disciplinary matter, the dispute itself won’t become public… which is important, as if an advisor thinks they’ve been wrongly accused or disciplined, a public dispute about their disciplinary action is almost as damaging as outright being found guilty. The reputational risk to the advisor of a public court case disputing a disciplinary action – even if ultimately found innocent – is still significant. So confidentiality of the proceedings, for the sake of the CFP certificant, is a good thing. And of course, if the CFP certificant really is guilty of some client infraction, it would ostensibly still come out when the CFP Board issues the public discipline that lead to the arbitration dispute in the first place.

But the mandatory arbitration agreement with the CFP Board goes both ways. It also “protects” the privacy of the CFP Board. So if there are significant problems with the CFP Board, and multiple certificants are disputing disciplinary issues, neither the public nor CFP stakeholders will ever know. If cases are being disputed, and precedents are being set based on the outcomes, no future certificants will ever have the opportunity to rely on those prior precedents. In fact, throughout with the Camarda case, and including with its final resolution, the CFP Board fought persistently to have all details of the case sealed in court, raising questions of whether the CFP Board had something to hide from the public and the broader community. In a world of mandatory arbitration, transparency is lost, and there will be no way to ever find out.

**Even When CFP Board Is Wrong, Its Liability Is Limited?**

Beyond the issues of whether a mandatory arbitration is transparent or not, it’s also crucial to recognize that whether CFP Board is found ‘guilty’ of an infraction – in arbitration or in court – that in virtually all cases, the maximum penalty under the new Terms and Conditions that CFP Board would possibly have to pay a CFP certificant for its own wrongdoing is a whopping $1,000 (plus attorney’s fees).

**If CFP Board makes a discplinary mistake w/ a CFP certificant, there’s little financial recourse**.

In point of fact, this significant limitation on liability is not new. A limitation on liability for the CFP Board already exists in the current Terms and Conditions of Certification as well, where the liability is limited to no more than any “application fees” that were paid (i.e., the $325 the CFP certificant pays in application fees to become or renew as a CFP certificant). In fact, arguably the CFP Board never really had much at risk in the Camarda lawsuit and their allegations of business damages, beyond perhaps paying the Camardas legal fees, if the CFP Board was able to bring its Limitation of Liability to clause to bear. And arguably the CFP Board may have never been liable for damages to the Camardas' reputation anyway, given that it was actually the Camardas themselves, and not the CFP Board, who revealed the dispute to the media.

Nonetheless, in the new version of the Terms and Conditions, the updated language is even more crystal clear that the CFP Board’s liability would be limited to no more than $1,000 in a case where the CFP certificant disputed a public disciplinary matter (such as the Camarda scenario).

In other words, when CFP certificants sign their application to become (or renew as) a CFP certificant, they waive a significant number of rights in any future dispute with the CFP Board. They waive any claims against CFP Board staff, directors, or officers, any right to legal compensation for CFP Board wrongdoing above a paltry $1,000, and now they waive any right to have the matter heard in court or even see the light of day (in lieu of a mandatory arbitration process that may be expedient but also lacks transparency).

Similarly, all CFP certificants who sign the CFP Board’s Terms and Conditions also agree to indemnify the CFP Board in any lawsuits where the CFP Board is named alongside the CFP certificant. In other words, if the CFP Board is ever named in a lawsuit alongside a CFP certificant (e.g., questioning the credibility of CFP marks for a CFP professional who caused client harm), the CFP certificant would be on the hook to cover the CFP Board’s legal fees in the matter (and would also be barred from settling the case unless the CFP Board agreed to the resolution and/or was entirely cleared of wrongdoing)!

**Are CFP Board’s Terms And Conditions Really Fair?**

While from the perspective of the CFP certificant, the CFP Board’s Terms and Conditions may seem somewhat lopsided in favor of the organization, they're arguably still reasonable for an organization of the CFP Board's size and position. And most of their provisions are not unique (i.e., other large organizations often impose similar business Terms and Conditions to protect themselves).

After all, in a world where there’s one (big) CFP Board entity and 73,000+ CFP certificants underneath it, the organization needs a path to ensure that it is not dragged into any/every random lawsuit against a misbehaving CFP certificant. In most cases, the indemnification clause will be a moot point because the CFP certificant’s attorney will simply end out defending both anyway, because it’s the same legal matter (and still primarily about the CFP certificant). And the indemnification clause really only pertains to situations where it was the CFP certificant themselves who engaged in wrongdoing (e.g., by failing to follow applicable laws, misrepresenting themselves, misusing the CFP marks in a way that caused consumer harm, etc.).

Similarly, the CFP Board’s Waiver and Release clause (section (o) of the new Terms), which requires certificants to release CFP Board staff, directors, and volunteers from any liability – except in cases of willful misconduct or gross negligence – is arguably a necessary prudence, as it’s not productive for staff and especially volunteers to have to live in fear of lawsuits from random CFP certificants unhappy with a disciplinary outcome (even or especially one that was deserved for CFP misconduct). At the least, it seems reasonable to shift liability exposure from the staff and volunteers to the organization as a whole instead.

And the CFP Board's limitation on liability pertains specifically to liability that would arise out of the CFP Board's application of discipline to a CFP certificant, and/or a scenario where there was otherwise a dispute about the CFP certificants (inappropriate) use of the marks, the CFP Board's right to announce a disciplinary enforcement action, etc. Given that no CFP certificant "likes" to be publicly discplined - even if he/she is in the wrong - the CFP Board does need to take reasonable action to avoid a legal backlash by engaging in a disciplinary action in situations where it really is merited. In other words, the fact that the CFP Board is willing to step up and actually enforce its Practice Standards is admirable in the first place, and it’s hard to fault the organization for wanting some limitations on its legal exposure in the process of doing so.

Still, if arbitration is so expedient, perhaps it’s more appropriate give CFP certificants the option for arbitration, or even an incentive for it (CFP Board is guaranteed to cover arbitration costs if it loses?), but don’t require it. And while putting some limit to the CFP Board’s liability may be a practical necessity, is it really appropriate to do it in a manner so limiting that CFP certificants have no real recourse even in cases of legitimate harm? In theory, this would be a moot point, because a disciplinary decision against a CFP certificant wouldn't go public until after the arbitration was over, and if the arbitration panel found in favor of the certificant, there would never be "inappropriate public information" that caused financial harm to the CFP certificant in the first place. Still, it's concerning that even if the arbitration panel finds in favor of the CFP certificant, and affirms that the CFP Board really was in the wrong, and there was some financial harm that had occurred (e.g., if a staff member did inappropriately leak private case information to the public or media), the CFP certificant still would have no substantive financial recourse.

And beyond the issue of liability, is it really good for the profession in the long run if the CFP Board has an unlimited right to prevent any transparency regarding disputes between CFP certificants and the organization? After all, there is a reason why the proceedings of our court system are generally public affairs in the first place – because it’s essential for a foundation of trust between the ‘overseers’ and those being overseen and disciplined.

**Are CFP Board’s Terms And Conditions Too Unilateral?**

Of course, the CFP certificant who doesn’t like the CFP Board’s Terms and Conditions always has the same choice as anyone who doesn’t like the terms of a business contract placed before them: you have the right to walk away from (i.e., to voluntarily relinquish) the CFP marks.

Yet with the CFP Board’s growing market share of CFP certificants, its massive and growing lead over all other financial advisor designations in terms of consumer trust and recognition, and a Consumer Public Awareness Campaign that states “Certified = Qualified”, the organization is becoming so successful with the CFP marks that arguably walking away just isn’t actually an option anymore. In fact, if you decided you didn't like the CFP Board's new Terms and Conditions and chose to walk away from CFP certification altogether, the CFP Board's Public Awareness Campaign would effectively bash you after the fact by suggesting to your clients and prospects that you're not qualified to serve them (because you're no longer certified)... which makes the decision to "agree to the CFP Board's Terms or walk away" suddenly feel like a decision being made under duress!

In other words, the CFP Board’s latest changes to the Terms and Conditions of Certification raises the question of whether the CFP marks have become so prominent that financial advisors no longer have a fair choice about whether to follow the new Terms or walk away. Instead, the CFP Board’s two-way agreement has become a unilateral contract that CFP certificants are stuck with, bound to, and unable to walk away due to the lack of any viable alternative designation and given the years of studying and exam efforts they already poured into getting the designation in the first place.

Which suggests that perhaps it’s time for the CFP Board to consider a process to engage CFP certificants in conversations about the Terms and Conditions, rather than potentially undermining trust with the CFP stakeholder community by unilaterally applying the changes to everyone with barely a month’s notice (as the new rules will be effective May 2nd). After all, when it comes to making decisions about what’s a “fair” line to limit the CFP Board’s own liability and exposure, it’s hard to envision how the staff and Board of Directors can possibly give equal weight to CFP stakeholders. I would expect the CFP Board’s Board of Directors, in their role of protecting the organization, to encourage staff to make the contract as favorable as possible to the CFP Board, in their role as protectors of the organization. But when the contract is unilateral, there’s no one left to represent the CFP stakeholders themselves.

Of course, ideally advocacy for CFP certificants would come from the organizations that represent us, like the Financial Planning Association. Yet the drastic decline in the FPA’s power in the financial planning profession has rendered it completely silent on substantive advocacy issues for CFP certificants, from the CFP Board’s decision to cut the CFP experience requirement (for which the FPA failed to utter a single public word in defense of the standards), to the launch of the CFP Board’s Center for Financial Planning that competes directly with many of the FPA’s own services.

Which leaves us once again in the position that the only organization that can engage CFP stakeholders about the Terms and Conditions of Certification is the CFP Board itself, the very organization whose primary incentive is NOT to engage stakeholders, and instead just impose a unilateral contract upon them that protects only itself, knowing that it will be extremely difficult for them to walk away (because of the CFP Board’s own success).

**Changes For CFP Board To Consider To Its New Terms And Conditions**

So what should the CFP Board be expected to do from here? Ultimately, I would suggest there are several steps worth considering, for the sake of maintaining a healthy relationship with CFP stakeholders and to better legitimize what otherwise feels like an awkward unilateral imposition of new Terms and Conditions:

1) Consider a public comment period regarding the new Mandatory Arbitration clause. As the Board of Directors there's no requirement to do so, but leaders have long recognized that buy-in from stakeholders is essential to legitimize potentially controversial decisions, especially when it involves changing Terms that are unilaterally imposed on the stakeholders. If mandatory arbitration is so clearly better for the organization and its stakeholders, then make the case, and give us a chance to affirmatively agree that we want to waive our right to sue in court, rather than imposing it upon us in a situation of borderline duress.

2) Provide a public reporting mechanism for arbitration panel outcomes. Even FINRA, often lambasted for its lopsided arbitration panels, provides transparency to the public about the outcomes of arbitration panels, appropriately anonymized to protect client privacy and innocent parties. If the CFP Board's disciplinary rulings are being persistently upheld in arbitration, that only provides further validation to the disciplinary process. And if the CFP Board's disciplinary rulings are routinely being overturned in arbitration, the public and CFP certificants have a right as stakeholders to know. When the CFP Board fights tooth and nail to hide the Camarda proceedings from the public, and then unilaterally requires all future disputes with certificants to be hidden from the public as well, it gives the impression there's something rotten being hidden. Providing at least basic information about arbitration outcomes, including whether party was the victor, and the basic facts of the case so other CFP certificants can be aware of important precedents that may have been set, is a modest and reasonable compromise.

3) Limit the scope of mandatory arbitration. Public statements from the CFP Board have characterized mandatory arbitration as a prudent fourth layer of review in disciplinary disputes with CFP certificants. To this extent, it seems reasonable (with the caveats #1 and #2 above). However, the actual language of the Terms and Conditions eliminates the CFP certificants right to sue the CFP Board for any legal dispute whatsoever, in addition to eliminating the right of CFP certificants to come together in legal action (as certificants are required to arbitrate individually, and are barred from class actions). The mandatory arbitration clause is so broad, it also relegates disputes about the Terms to mandatory arbitration, in fact, it would appear that if the Board of Directors itself is failing to properly exercise its duties for some reason, CFP certificants are barred from taking legal action to rectify the situation! This creates a serious gap in basic organizational accountability, and again makes it feel as though the CFP Board has something to hide and an unwillingness to be transparent and accountable.

The bottom line is that while the mandatory arbitration agreement may be reasonable, its imposition without stakeholder input, in a manner that lacks transparency of outcomes, while forcing CFP certificants to surrender key mechanisms of organizational accountability, creates a concerning precendent for an organization that already has "trust issues" with its stakeholders. If the primary goal of the new mandatory arbitration clause is really just to avoid future court battles over the CFP Board enforcing its disciplinary process - which I personally think is reasonable - so be it, but limit the scope of mandatory arbitration to be specifically for that purpose, and adjust the rules to allow for a public reporting process of arbitration outcomes in a manner that protects client privacy and innocent parties but provides appropriate organizational accountability and transparency, so we don't always feel like the CFP Board has something it's trying to hide.

So what do you think? Is the CFP Board's shift to mandatory arbitration simply a prudent step for an organization growing its enforcement of the Practice Standards? Should the CFP Board has further engaged CFP certificants themselves in the process? Do you think CFP certificants still have the option to "vote with their feet" and leave if they're unhappy with the Terms? Please share your thoughts in the comments below!

Wall Street Journal MONEYBEAT BLOG

# Some ‘Fee-Only’ Advisers Charge Commissions Too

You might expect that the 'fee-only' description for an adviser would be pretty straightforward. It's not.

By Jason Zweig Updated Oct. 20,

In mid-October, the Certified Financial Planner Board of Standards disciplined six financial advisers for allegedly claiming to be “fee only” when they also received commissions.

That’s a reminder of how loosely investors -- and many advisers -- understand one of the most popular and alluring terms in the financial-advice industry.

**As a 2013 investigation in The Wall Street Journal showed, up to 11% of certified financial planners working at big brokerage firms described themselves on the CFP Board’s own website as “fee only” when they also could get commissions.**

The CFP Board has since “taken steps to prevent” planners who are registered at brokerage firms from claiming they are fee only on its website, says its general counsel, Leo Rydzewski. “It becomes a concern for us when someone is representing their method of compensation in a way that’s inaccurate.”

A commission is a payment by the client -- or a third party -- for a specific transaction, typically to trade a stock, bond, fund or insurance. Fees, which may be hourly, annual or a percentage of assets, are paid only by the client for advice and services rather than transactions.

You might expect that a “fee-only” adviser would never charge commissions. It isn’t that simple, as the Journal reported in February. And financial planners use the term in baffling ways.

There is no official regulatory or legal definition of “fee only.” The CFP Board permits certified financial planners to use that term “if, and only if,” all their compensation comes from the clients as fees, not commissions.

According to a new analysis of Securities and Exchange Commission disclosures by my colleague Andrea Fuller, almost 3,900 firms described themselves as offering both investment management and financial planning to individual clients as of March 31. More than 90% declared to the SEC that they don’t charge commissions.

Some, however, state in one disclosure filing that they do charge commissions -- while claiming, on another SEC form, to be “fee only.”

Consider Mediqus Asset Advisors, a Chicago-based firm that managed $790 million as of March.

The firm’s Form ADV on file with the SEC declares that Mediqus takes commissions. On the other hand, the firm’s official brochure, also filed with the SEC, states that its investment-advisory services are fee only.

On still another hand, the official brochure adds that Mediqus ​or its advisers “may receive a commission from the purchase or sale of publicly traded stocks, bonds, mutual funds, unit investment trusts, REITs or other publicly traded securities or insurance products” by clients not using “our fee-only investment advisory services.”

A disclosure on file with the Financial Industry Regulatory Authority says Mediqus’s president, Joel Blau, spends approximately five to 10 hours per month selling life insurance and fixed annuities.

“If it says five to 10 hours, we have to correct that,” says Mr. Blau. “That’s definitely not correct. There’s no way we do anywhere near that much.”

Ronald Paprocki, chief executive of Mediqus, says commissions probably account for less than 1% of its business. Yet because Mediqus is affiliated with a brokerage, he says, it must disclose that it may take commissions even though all its investment advice is fee only.

“That’s ​a dilemma,” says Mr. Paprocki. “The whole reason we’re talking to you about this is because it probably is confusing.”

Certified Advisory Corp., a financial-planning and investment firm in Altamonte Springs, Fla., manages about $1.3 billion in assets. The firm repeatedly describes itself as “fee only” on its website.

Certified’s official SEC brochure says the firm is “‘fee only,’” but its representatives “may or may not be characterized as ‘fee only.’”

​About ​3% of the total revenue generated from Certified’s clients has come from sales of insurance and securities on a commission, says its president, Joseph Bert. Those commissions aren’t earned by Certified, he says, but by representatives the firm retains as independent contractors.

Mr. Bert says the commissions are fully disclosed and derive from occasional, “one-off transactions” outside the usual scope of the firm’s practice, such as buying long-term care insurance or setting up a gift account for a client’s child.

The term “fee only” can be a marketing magnet. “People are commission-averse,” Mr. Bert says, “and we’re trying to separate ourselves from all the other firms out there that are just trying to sell a product and call it financial planning.”

Confusing? You bet. If you want to hire a financial planner who charges only fees, you will have to ask probing questions. Start with these: Are you a fiduciary, who must always act in my best interests? Will you put that in writing? Does anybody else ever pay you to advise me and, if so, do you earn more to recommend certain products or services?

If the answer to the last question is yes, “fee only” is just talk, and you should walk.

Write to Jason Zweig at intelligentinvestor@wsj.com, and follow him on Twitter at @jasonzweigwsj.

CORRECTION:The CFP Board permits certified financial planners to use that term "fee only" only if all their compensation comes from the clients as fees, not commissions. An earlier version of this article stated that standard had been proposed, but not yet finalized.

Investment News

# Blogger Kitces stokes debate over CFP Board compensation definitions.

In taking organization to task, commentator says virtually all advisers fall under 'commission and fee' label.

By Mark Schoeff Jr. May 21, 2014

The way that the CFP Board categorizes financial adviser compensation makes it nearly impossible for an adviser to be deemed fee-only, according to a popular blogger who is almost single-handedly stoking the debate.

In a 4,360-word post on his blog this week, Nerd’s Eye View, Michael Kitces said that the Certified Financial Planner Board of Standards Inc. defines compensation so expansively that almost every financial planner must be labeled as “commission and fee.”

Under CFP Board rules, a planner can be fee-only only if he or she generates revenue through fees and doesn’t charge commissions and isn’t affiliated with a firm that could charge commissions. The group’s compensation categories also include commission-only.

(See where the new CFP Board chairman stands on the fee-only definition.)

“When nearly all advisers must use the same compensation disclosure label of ‘commission and fee’ to define a wide range of actual compensation structures from 0% commissions to 100% commissions, the very purpose of compensation disclosure begins to lose its meaning, value and clarity for the public that the CFP Board purports to serve,” wrote Mr. Kitces, director of research at Pinnacle Advisory Group.

In an interview, Mr. Kitces said that he is emphasizing the issue because the leading financial planning membership organizations – the Financial Planning Association and the National Association of Personal Financial Advisors — are standing back. Both have indicated that the CFP Board, as the certifying body, determines compensation rules.

“This needs to be fixed,” Mr. Kitces said. “I really don’t know why they are silent on this issue. The CFP Board insists there is no problem, and NAPFA and FPA have said they’re going to let the CFP Board act first. I can’t do this all by myself – nor should I.”

In his blog post, he outlined six scenarios in which advisers in disparate business models all would have to label themselves as fee-and-commission. Mr. Kitces’ post generated a strong reaction on social media.

One of those who tweeted in support was Alan Moore, founder of Serenity Financial Consulting.

“Now there’s even more confusion because how [advisers] are paid is not relevant,” he said in an interview. “It’s how they could get paid. It adds layers of complexity.”

The CFP Board has been embroiled in court and disciplinary cases involving compensation definitions for more than a year.

The organization didn’t respond to a request for comment about Mr. Kitces, but officials addressed the issue in a webinar Thursday.

“We have a definition around fee-only, and we believe our definition is very clear,” said Ray Ferrara, chairman of the CFP Board and president of ProVise Management Group. “We all here at the CFP Board understand what the word ‘only’ means, and it’s hard to make it any clearer than that.”

**William Sweet, president of Stevens & Sweet Financial, endorsed Mr. Kitces’ point of view, calling the CFP Board’s approach to compensation definitions “a little silly.”**

The group is “enforcing the letter of the law rather than the spirit,” Mr. Sweet said. “I would prefer if the focus of the CFP Board was on ensuring that all financial advisers adequately disclose their source of compensation and all potential conflicts of interest rather than on categorizing the type of compensation offered.”

**The CFP Board is blurring the lines between fee-only and commission-charging advisers, said Randy Bruns, a private wealth adviser at HighPoint Planning Partners.**

“We’re painted with the same broad brush, and I don’t know if that’s fair to the client,” he said. “It doesn’t create a clear picture for the client of how different the advisers are in this case.”

The biggest problem is that the commission-only category could diminish within the CFP Board’s framework, Mr. Moore said.

“I’m not aware of anybody who could claim commission-only based on how they’re defining compensation,” he said. “I don’t believe there’s going to be a commission-only category at this point.”

An adviser who is fee-only — and remains so under the CFP definition because he charges clients a flat fee of $4,500 annually — supports the CFP Board’s effort to parse compensation.

“It is worthwhile to delineate those who have an opportunity to earn commissions and those who don’t,” said James Osborne, president of Bason Asset Management.

“If you’d like to be fee-only, it’s not difficult to be fee-only,” he said. “It’s fairly easy to be in a position not to earn a commission.”

There are benefits and drawbacks to each of the fee models, advisers said.

The bottom line is that investors know what they are paying for and why.

“The most important thing is that investors understand the exact cost of the engagement, are getting what they believe to be a fair level of services for that cost and that their financial plan accurately accounts for that cost,” Mr. Bruns said.

Related Topics: Financial Planning

**Michael Kitces Nerds Eye View**

# CFP Misconduct Research (And the Challenge of Counting Financial Advisors)

FEBRUARY 27, 2023

EXECUTIVE SUMMARY

*Financial advisors are generally required to abide by ethical standards, such as the duty to act in a client’s best interests when giving financial advice. Advisors who attain the CFP marks are held to even higher standards, though, with all CFP certificants required to adopt CFP Board’s own more-stringent Code of Ethics and Standards of Conduct. It would stand to reason, then, that advisors who are CFP certificants would be less likely to engage in professional misconduct than their non-CFP counterparts, since they voluntarily adopt this higher standard of ethical conduct in order to use the CFP mark.*

*A forthcoming study by Jeff Camarda et al. in Journal of Financial Regulation, however, concludes the opposite. The paper’s authors state that based on their review of publicly available data, CFP certificants had higher levels of advisor-related misconduct than non-CFPs. Which, if true, would be a surprising and concerning revelation, particularly for CFP certificant advisors (as well as for CFP Board itself) who view the CFP marks as the ‘gold standard’ of financial planning – in large part because of the higher standards of conduct required – because of the risk to their reputation should those marks instead be associated with a higher likelihood of misconduct.*

*But a closer look at the data used in the study reveals issues with the authors’ conclusions. The paper examines advisory-related misconduct data for more than 625,000 FINRA-registered individuals (specifically those who have filed Form U4) and compares the rates of misconduct between CFP and non-CFP certificants. The issue, however, is that not everyone who files Form U4 is an advisor – many assistants, executives, researchers, traders, and other types of professionals are also required to register with FINRA. In fact, according to industry research, there were only about 292,000 financial advisors in total as of 2020, meaning it’s possible that less than half of the individuals used in the study were actually financial advisors. Meanwhile, the vast majority of CFP certificants are financial advisors – meaning it's hardly surprising that CFP certificants were found to be more likely to have histories of advisory-related misconduct than other U4 filers, simply because they were much more likely to be financial advisors in the first place!*

*Previous research by Derek Tharp et al. attempted to identify actual financial advisors and control for other non-certification-related factors, and found (among a smaller sample size) that CFP certificants were actually less likely to have engaged in advisory-related misconduct than non-CFP professionals. Which highlights a key issue in misconduct-related research, which is that researchers’ conclusions are only as trustworthy as the data that goes into the study. Because when similar research attempts to explore rates of misconduct using other variables – such as firm size, fee models, client types, etc. – without being careful to search for unrelated factors in the data that could inadvertently skew the outcome, it can result in similarly ‘surprising’ conclusions that are really just a reflection of spurious relationships based on poor data quality rather than reality.*

*The key point is that even – or especially – when looking at research based on big data, it’s still important to rely on logic when interpreting the results. Sound research may certainly produce conclusions that go against intuition, but when such surprising results do occur – such as finding that CFP certificants commit misconduct at higher rates despite voluntarily adopting a higher standard of conduct than non-CFPs – it’s often the case (after a closer look at the data) that the more logical conclusion is the correct one.*

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Read more of Derek’s articles [here](https://www.kitces.com/?s=&s=&by-author=2067&by-category=&from-date=&to-date=&submit=).

Do CFP professionals engage in more misconduct than non-CFP professionals? That’s a striking suggestion and something that goes beyond claims from prior [academic work that has received attention in the media](https://www.forbes.com/sites/jeffcamarda/2019/09/23/americas-broken-financial-advisor-promisewhats-wrong-with-the-cfp-board--why-youd-better-check-twice-before-trusting-a-certified-financial-planner/) that CFP professionals simply don’t seem to differ from non-CFP professionals in terms of misconduct. It rightfully raises some eyebrows to hear that CFP certificants – those who voluntarily submit to a Code of Ethics more stringent than legally required – are out in the marketplace engaging in more misconduct than other advisors.

Fortunately for CFP professionals, however, it’s not true.

On February 18, authors Jeffrey Camarda, Steven Lee, Pieter de Jong, and Jerusha Lee [published an article titled “Badges of Misconduct: Consumer Rules to Avoid Abusive Advisors”](https://academic.oup.com/jfr/advance-article-abstract/doi/10.1093/jfr/fjac012/7044787#.Y_zUaImmSt4.link) in Journal of Financial Regulation.

The abstract of their paper states the following [**emphasis** added]:

*…Using an advisor misconduct scoring framework we report specific misconduct ratings for each of the 625,980 Financial Industry Regulatory Authority (FINRA) advisers,****finding elevated misconduct for Certified Financial Planner (CFP®) professionals****and commission/fiduciary licensees…*

Pretty concerning finding if you take it at face value, but let’s dive deeper and see what is actually happening.

Author’s Disclosure: Before we dive into this research, I do want to state that I know the authors have worked hard on this project. I’ve previously published with several of the authors, and, at one point in time, I was involved with and contributed financially to this particular project. I voluntarily left the project after some disagreements with another contributor to the project, who ultimately seemed to have stepped away from the project, as well.

What’s Wrong With Most Research on CFP Professional Misconduct

Studies like the current Camarda et al. paper forthcoming in Journal of Financial Regulation have largely relied on regulatory data to evaluate advisor misconduct. Because certain information is reported and publicly available on all securities-licensed individuals, various companies and researchers have seized the opportunity to build data sets off of this regulatory data and explore questions such as, “Do CFP professionals engage in misconduct at higher rates than non-CFP professionals?”

It's a very reasonable question to ask, and it’s a question that has important industry and regulatory implications. It’s no surprise that researchers have been drawn to these types of questions, but this is a case where we have to be very careful about understanding the limitations of the data sets we are working from.

Form U4 is one of the most important regulatory documents for building these data sets. [The FINRA website states](https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u4), “Representatives of broker-dealers, investment advisers or issuers of securities must be registered with the appropriate jurisdictions and/or self-regulatory organizations (SROs). The [Form U4](https://www.finra.org/sites/default/files/form-u4.pdf) (Uniform Application for Securities Industry Registration or Transfer) is used to establish that registration.”

Perhaps the most crucial thing to be aware of in understanding the limitations of these data sets is that many non-advisors are also required to file U4s!

This point bears repeating: Many people who file U4s are not financial advisors. They may be assistants, executives, researchers, traders, compliance folks, and all sorts of others who are required to maintain securities licenses as a part of their job.

Thus why, in addition to the Series 6, 7, 63, and 65 exams that financial advisors are familiar with, there’s also [a litany of other Series exams available from FINRA](https://www.finra.org/registration-exams-ce/qualification-exams), including the Series 57 (Securities Traders), Series 79 (Investment Banker), Series 82 (Private Securities Offerings), Series 86/87 (Investment Research Analyst), Series 99 (Operations Professional), in addition to the Series 30–34 licenses (for Futures trading), Series 50–54 licenses (for Municipal Securities), not to mention a wide range of Principal-level Series licenses for everything from Options Principals (Series 4) to Investment Company Products Principal (Series 26) to Direct Participation Program Principals (Series 39) to General Securities Principals (Series 24).

Recall the 625,980 FINRA-registered individuals mentioned in the abstract of the forthcoming article by Camarda et al. Are there 626,000 advisors? No, because a significant number of them are registered in these various other non-advisor-related roles in the securities industry. In fact, Cerulli Associates [estimates that there were roughly 292,000 advisors across all channels in 2020](https://www.riaintel.com/article/2aucrouk1jd74psrc4fls/practice-management/is-declining-advisor-headcount-at-a-tipping-point). This is another point that bears repeating. Cerulli Associates estimates that the total advisor headcount is less than half of the “advisors” included in the Camarda et al. data set, because FINRA requires registration of a wide range of industry roles that have nothing to do with being a financial advisor.

Now, this wouldn’t be an issue if we actually had a way of identifying advisors in the data sets, but unless we enrich these regulatory data sets beyond what can generally be scraped from the limited publicly available data on FINRA-registered individuals (more on that later), we don’t have any way of identifying who in the data set is actually an advisor. Essentially all of these individuals are treated as advisors, even though we know that more than half of them are not. That’s a big issue!

Recall again that the study in question is interested in advisory-related misconduct. Which group of individuals do you think would be more likely to have engaged in advisory-related misconduct: (a) financial advisors, or (b) non-financial advisors who also happen to be registered with FINRA for other non-advisory jobs?

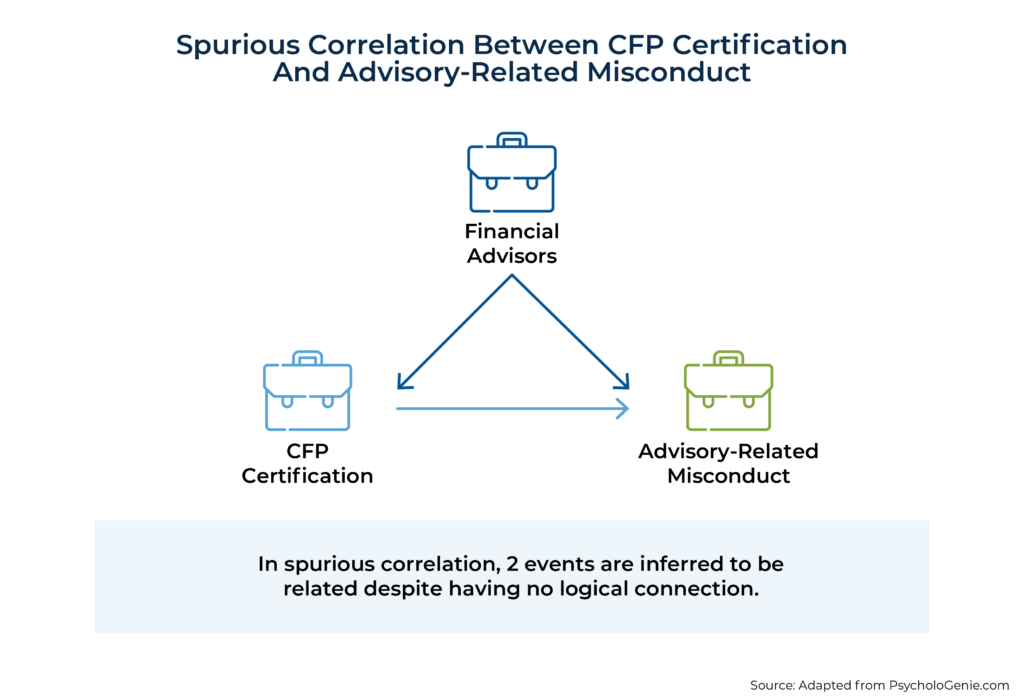
I hope the answer to that question is obvious, but, to be clear, financial advisors are far more likely to have engaged in advisory-related misconduct. This is like asking whether financial advisors or physicians are more likely to have engaged in medical malpractice. Clearly, physicians are more likely to engage in medical malpractice because, well, they’re the ones practicing medicine.

But what about the claimed relationship between misconduct and CFP certification status – how does that play into all of this?

Well, let’s ask a similar question to the one posed before: Which group of individuals do you think would be more likely to hold the CFP mark: (a) Financial Advisors, or (b) Non-Financial Advisors?

Again, I hope the answer is obvious here, but financial advisors are more likely to be CFP certificants than non-financial advisors.

This is a classic spurious correlation. A relationship is observed between CFP certification and advisory-related misconduct, but the 2 are not actually related to one another; rather, it’s simply the fact that being a financial advisor is correlated with both (a) being a CFP professional, and (b) having engaged in advisory-related misconduct, which is especially highlighted when they’re compared to a group where the majority are not financial advisors at all.

[](https://www.kitces.com/wp-content/uploads/2023/01/01-Spurious-Correlation-Between-CFP-Certification-And-Advisory-Related-Misconduct.png)

Now, a reasonable skeptic might say, “Derek, this is all well and good, but do you actually have any data to back this up?” And yes, reasonable skeptic, we do! In fact, it comes from another paper co-authored by me and 3 of the most recent Camarda et al. co-authors.

EVIDENCE OF THE SPURIOUS RELATIONSHIP BETWEEN CFP CERTIFICATION STATUS AND ADVISORY-RELATED MISCONDUCT

As mentioned above, one of the biggest challenges with really diving deep into research on advisory-related misconduct is the fact that there’s no question on the U4 that asks, “Are you truly a client-facing financial advisor?” The U4 is used for all sorts of securities-licensed individuals. Fortunately, however, there are some data vendors that enrich regulatory data, such as [Discovery Data](https://discoverydata.com/), that use various methods to try and identify who is or is not an actual client-facing advisor.

While there is inevitably going to be an error in any sort of attempt to classify advisors and non-advisors within the total universe of securities-licensed individuals, it’s worth noting that data vendors providing these types of services have some significant skin in the game. If wholesalers or others within the industry are purchasing their data to reach financial advisors that they want to market/wholesale to, they’re going to want to have reliable data. Data-vendor clients are not going to be happy if individuals are listed as client-facing advisors, but a wholesaler gets them on the phone and finds out they are not.

So I make no claims here that data vendors are perfect in their classification, but they have some very strong market-based incentives to try and get it right. And their ongoing commercial success suggests that those who purchase the data for business purposes are finding that the data is at least reasonably accurate.

Fortunately, data vendors are also willing to sell their data to researchers for use in academic research. In a 2020 study titled “[Do CFP® professionals engage in less misconduct? Exploring the importance of job classification when comparing misconduct rates among financial service professionals](https://doi.org/10.1080/13504851.2020.1854441)” published in Applied Economics Letters by me, Jeffrey Camarda, Steven James, and Pieter de Jong, we used some enriched regulatory data to examine whether the inclusion/exclusion of enriched data impacted the results of CFP professional misconduct research.

What we found was precisely consistent with the spurious relationship I outlined above.

First, we used all FINRA-registered individuals within the data set, and we looked to see whether CFP certification status alone would be associated with advisory-related misconduct. Here’s an important snippet from the abstract of that study:

*…When using CFP® status as the sole predictor of misconduct among the full sample of licensed individuals, CFP® professionals are found to have 1.86 times higher odds of having engaged in culpable advisory-related misconduct compared to non-CFP® professionals.*

So, in other words, within the data set we were using, we observed the same relationship touted in Camarda et al.’s latest forthcoming paper in Journal of Financial Regulation, that CFP certification was positively associated with advisory-related misconduct.

Notably, the data set we were using was not as large as the one used by Camarda et al. Our data set was limited to only individuals in Florida (due to cost limitations in buying access to a broader data set), but we were still dealing with a large sample of individuals. The full sample was 26,666 individuals.

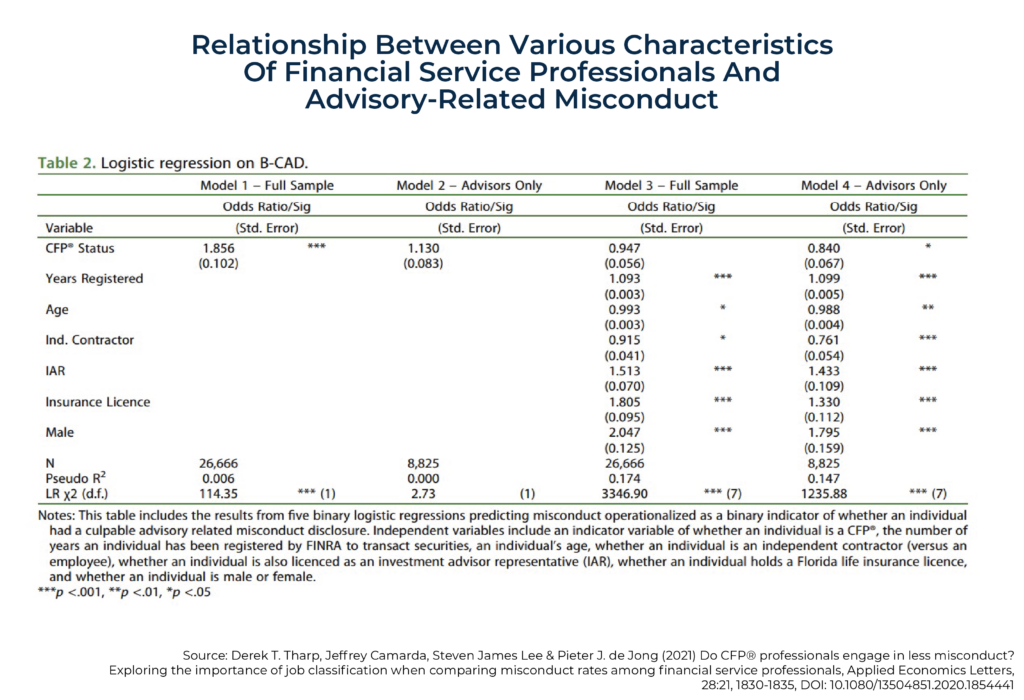
However, there were only 8,825 individuals who had been identified by the data vendor as solely operating financial advisors. And so, our next step was to carry out the same analysis (using CFP certification status as the sole predictor of advisory-related misconduct), but to do so only among the 8,825 individuals actually identified as financial advisors. In this case, contrary to the often-cited positive relationship between CFP certification status and misconduct, we found no statistically significant relationship between CFP certification and misconduct.

We also repeated a similar process to the analysis described above, but instead also included a number of other factors previously found to be associated with advisory-related misconduct, such as age, years registered, IAR status, insurance license status, independent contractor status, and gender (although, admittedly, some of these control variables may be spurious relationships themselves). In this updated analysis among only those identified as financial advisors, there already was no relationship between CFP certification and advisory-related misconduct among the full sample when other factors were controlled for, but once the sample was limited to only the 8,825 individuals identified as financial advisors, the relationship actually flipped to a negative relationship between CFP certification status and misconduct. Here’s another relevant snippet from our abstract:

*However, after controlling for other relevant factors and limiting the sample to only individuals identified as financial advisors, CFP® professionals are found to have 0.84 times lower odds of having engaged in culpable advisory-related misconduct. Because job classifications are generally not available in the standard SEC and FINRA data sets, these findings illustrate how the inability to control for unobserved differences in job roles may bias misconduct analyses.*

In other words, once we controlled for factors previously found to be relevant and limited the study to only individuals identified as working solely as client-facing advisors, the relationship flipped from CFP professionals being more likely to engage in culpable advisory-related misconduct among the full sample with a limited model, to less likely to engage in misconduct when limited to only advisors and controlling for other relevant factors.

Here's a look at our full results for those who may be interested:

[](https://www.kitces.com/wp-content/uploads/2023/01/02-Relationship-Between-Various-Characteristics-Of-Financial-Service-Professionals-And-Advisory-Related-Misconduct.png)

But the key point here is that we found exactly what one would expect to find if there was a spurious relationship between CFP certification and misconduct.

What To Do Going Forward

While we’ve focused solely on misconduct-related studies here, the reality is that this issue plagues a lot of research that has been conducted using similar regulatory data.

Back in 2016, [Michael Kitces noted that this very issue was present](https://www.kitces.com/blog/finra-brokercheck-market-for-financial-adviser-misconduct-study-on-brokers/) in the famous study, “[The Market For Financial Adviser Misconduct](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739170)”, published in Journal of Political Economy and conducted by Mark Egan, Gregor Matvos, and Amit Seru. In this study, the authors also included all sorts of non-advisors in their “over 650,000 registered financial advisers” included within their sample… which, in reality, were simply 650,000 FINRA-registered individuals, a portion of whom also happened to be financial advisors.

Kitces was absolutely right to point this issue out. Unfortunately, however, I’ve paid close attention to the research using these data sets, and, to date, other than myself, Kitces is the only person I’ve encountered who has ever raised this issue. I’ve tried to bring attention to the issue in conferences and other various academic forums, but my concerns generally get waived away as some pedantic nuisance that doesn’t really matter. “Look at our big data! Isn’t it sexy?” But the truth is, it does matter!

Kitces noted back in 2016 that the inclusion of non-advisors could water down the results and understate problems associated with misconduct – since including people unlikely to engage in misconduct is going to understate the prevalence of misconduct. And while that is true on an absolute basis, it’s also worth noting that, on a relative basis, this can have the opposite effect of creating the illusion of greater disparities in misconduct level than there truly are.

As we saw within the [Tharp et al. study examining CFP professional misconduct](https://doi.org/10.1080/13504851.2020.1854441) above, including people who are extremely unlikely to engage in any sort of misconduct in a misconduct study can create spurious correlations that create the illusion of ‘problems’ where they don’t actually exist.

Consider just one particularly illustrative example within the [Egan et al. “Market for Misconduct” paper](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739170). The authors conclude that some firms ‘specialize’ in misconduct. Those would be some of the firms with the highest levels of misconduct.

One such firm identified was Wells Fargo Advisors Financial Network, LLC, which had a misconduct rate of 15.3%. By contrast, Wells Fargo Securities, LLC was one of the firms with the lowest misconduct rates at only 1.7%. Similarly, the paper reports nearly identical contrasting results, such as UBS Securities being a low misconduct firm and UBS Financial Services being a high misconduct firm.

But let’s take a step back and think about this. Should we be even the least bit surprised that Wells Fargo Advisors has a much higher rate of misconduct than Wells Fargo Securities?

Of course not. We should expect Wells Fargo Advisors to have a much higher misconduct rate than Wells Fargo Securities because securities-licensed individuals at Wells Fargo Advisors are far more likely to actually be client-facing advisors. People at Wells Fargo Securities, who are primarily focused on institutional (not retail) investing, are more likely to be traders, investment research analysts, or someone else who has to have a FINRA license for their internal role but who would be extremely unlikely to generate a typical complaint that would result in a client-facing advisor-misconduct report (because they literally don’t sit across from and meet with individual clients).

If we’re looking at the Wells Fargo entities above, our conclusion shouldn’t be that the culture at Wells Fargo Advisors is toxic or that the culture at Wells Fargo Securities is pristine. Maybe the culture at one or both firms is either toxic or pristine, but we don’t know when we’re making an apples-to-oranges comparison of advisor misconduct between a firm that employs client-facing advisors and a second firm that does not (where the former would naturally be expected to have higher levels of advisor misconduct a priori because that’s where the advisors are).

Now, I should note that there is some mention of the use of data vendors precisely for some robustness testing to enrich some of the Egan et al. data – so I do want to give credit to the authors for that –but the primary analyses reported in the paper do not make use of sufficiently enriched data to truly get at what’s driving misconduct. Here’s a sampling of some of their takeaways:

IARs are 50% more likely to commit financial advisor misconduct. Surprising? Of course not. IARs are far more likely to work in client-facing advisor positions where they could commit such misconduct in the first place.

Firms that advise retail clients are more likely to engage in new misconduct. Surprising? Of course not, because advisor misconduct is almost by definition retail-client-facing.

Firms that advise retail clients are more likely to employ an advisor who was previously disciplined for misconduct. Surprising? Of course not, as where else would an advisor (including one with prior misconduct) work?

Firms which charge hourly or based on AUM are more likely to engage in advisor misconduct. Surprising? Of course not, because individuals who charge such fees are more likely to actually be financial advisors (and not some other FINRA-registered non-advisory role) in the first place.

Firms which charge performance fees are less likely to engage in advisor misconduct. Surprising? Of course not, because the SEC actually bans most client-facing financial advisors from charging performance fees to begin with.

I can go on and on, but so much of the study is built on analyses that are fundamentally comparing apples (financial advisors) and oranges (all FINRA-registered individuals, nearly half of whom aren’t financial advisors in the first place).

And my point here is not to pick on Egan et al. – they are all far more talented researchers than I am and could also run circles around me. The lengths they went through to build their data set are tremendously impressive. The quantitative work is phenomenal. And they got a study published in Journal of Political Economy, one of the most difficult journals to publish in the world. There’s a lot to be impressed with in their study. But, fundamentally, we still have a garbage-in-garbage-out problem that plagues almost all of the research in this field; the quality of analysis on financial advisors simply isn’t relevant if it starts from a flawed data set where the majority of those included aren’t actually financial advisors.

To criticize myself (in the Tharp et al. study mentioned), there are so many relevant factors that we didn’t get the opportunity to look at in our work. One particular concern with these lines of misconduct research is that we could start to demonize firms or advisors that simply deal with markets, niches, or business models, where we should expect to have higher rates of reported and/or actual misconduct.

Consider the image below that looks at malpractice rates by medical specialty:

Malpractice Claims By Physician Specialty

Should we conclude from the chart above that neurosurgery is particularly problematic while psychiatry is not? If we were only looking at firms and we knew nothing about firm specialties, should we conclude that firms engaging in neurosurgery are ‘specializing’ in misconduct? After all, such firms (neurosurgery) are more likely to face new malpractice claims and also likely to employ individuals (neurosurgeons) with previous malpractice claims.

Of course, this is all silly, and we know that there are different risk profiles associated with working in neurosurgery versus working in psychiatry. There’s a greater risk that things can go wrong in neurosurgery, and the harms when things do go wrong are greater, both of which increase the likelihood that a patient files a malpractice claim. It’s just a different risk profile entirely.

Granted, that’s not to say that you couldn’t have some firms that are really bad apples with a culture of taking excessive risks or otherwise putting clients in harm’s way. But to really drill down and figure out precisely what’s going on in a particular medical specialty, we could never just rely on a data set of all medically licensed professionals that mixes in client-facing professionals, administrative staff, legal folks, and all sorts of other people.

To bring this back to the financial advisory context, there are many ways we could accidentally demonize people who just happen to work within a particular niche or serve a particular market. Who among the following do you think would be more likely to have reported misconduct?

An advisor who services 250 clients, or an advisor who services 25 clients

An advisor who has been in business for 20 years, or an advisor who has been in business for 2 years

An hourly advisor who has worked with 1,500 clients over the past 10 years, or an AUM advisor who has worked with 150 clients over the past 10 years

An advisor who spends 90% of their time in an executive role, or an advisor who spends 100% of their time in client-facing work

An advisor who works with 100 attorneys, or an advisor who works with 100 music teachers

The point here is that there’s so much nuance that goes far deeper than even just knowing whether someone is a client-facing advisor or not – which we often don’t even know in the first place because that’s not even a field in the publicly available Form U4 data!

Perhaps what we need more than anything is a very logical foundation for what we’re doing as researchers (or as consumers of research).

Let’s go back to the CFP professional misconduct example. Part of the reason that these findings might (but hopefully won’t) get some traction in the media is that they’re surprising. We think, “CFP professionals engage in more misconduct? I would have expected the opposite.”

But at least until the studies in this area get much better, we probably should be relying a bit more on our gut instincts when we hear about these studies. Does it really make sense that CFP professionals –individuals who voluntarily subject themselves to further education, testing, and ethics requirements – would engage in more misconduct, all else being equal?

No, it doesn’t. That’s not to say that it couldn’t be true. Of course, we should remain open to having our views changed by evidence, but we should start with a pretty strong prior that, on average, the types of professionals who self-select into pursuing CFP certification are probably not more likely to engage in misconduct than other advisors.

However, that’s certainly not to say that there might not be some subsets of advisors who do seek out the CFP marks with intentions to engage in misconduct. Certainly, one could try and use CFP certification as a means to get someone’s guard down and could pursue the designation with ill intentions. This individual is going to be relatively rare, but a proper nuanced understanding of the relationship between CFP certification and advisor misconduct shouldn’t overlook the possibility that some could seek out the CFP marks with bad intentions.

Minimum Expectations For Trustworthy Research On Advisor Misconduct

Unfortunately, I am not optimistic that the state of this research will really improve anytime soon. FINRA has not shown any inclination to add a field to Form U4 for registered individuals to indicate whether they’re really client-facing advisors or not. And big data is just too in vogue where, for an academic researcher, it sounds really attractive to be able to publish a study based on “all securities-licensed professionals”. But there are at least some things we can look for that should begin to move this research forward.

First, at an absolute minimum, studies analyzing financial advisors should be able to demonstrate that they have some method of discerning who even is a financial advisor and who is not. These methods will never be perfect – even the data vendors will be relying on imperfect methods – but any study that reports it is based on 600,000+ “advisors” (FINRA-registered individuals) can almost immediately be disregarded. If that claim is made, a study is not actually looking at advisors because there simply aren’t nearly that many in total in the first place.

The simplest way to address limitations like this is for researchers to work with companies like Discovery Data to at least get some enrichment that indicates who has been identified as a client-facing advisor versus who has not.

Second, studies should be grounded strongly in theory and logic. The Tharp et al. misconduct study demonstrates exactly how the relationship between CFP certification and misconduct could flip by limiting the sample to just advisors and introduces additional control variables such as age, gender, IAR status, insurance status, etc. Particularly when studies include all sorts of non-advisors in the analysis, we’re going to see those traits that simply are just traits of advisors will themselves be associated with misconduct. However, we can get a much better understanding here by just thinking critically and logically about whether a ‘surprising’ result is really a new discovery, or just a tacit recognition of a flawed methodology in identifying who is really a financial advisor in the first place.

Third, we should be slow to demonize anyone (or trust studies that demonize anyone) when other factors may remain unaccounted for that could explain a relationship. This could become particularly germane in thinking about different types of business models.

For instance, if an advisor is going to work with truly middle- or lower-class Americans (and not just the top 10% of Americans that previous Kitces Research has indicated most financial advisors target), then the simple reality of that business model is that the advisor will need to work with more clients than an advisor working with deca-millionaires. The truly middle-class advisor might have to try and work with 200–250 clients. That will inevitably mean fewer touchpoints per client and weaker client relationships. Not only does that raise the risk that there might be some sort of oversight, but the weaker client relationship could leave a client more likely to file a complaint than call the advisor to talk through their concerns. By contrast, if an advisor works with only 30 clients, who they know incredibly well and touch base with at least monthly, the risk that something falls through the cracks is lower, and the likelihood that a client jumps straight to filing a complaint (rather than asking for a resolution directly from the advisor first) is likely lower.

Which means you could likely take the exact same advisor and put them in these 2 different contexts, and over the course of their career, an advisor would be far more likely to generate a misconduct record working with 200-250 clients, even if they were every bit as ethical and trying just as hard to not make any mistakes.

Another consideration, and something that, in my opinion, Camarda has done a commendable job with, is trying to look more specifically at what “misconduct” actually means. In his dissertation, Camarda developed various measures of misconduct ranging from misconduct that is least concerning from a consumer perspective (e.g., merely an allegation of non-advisory related misconduct) to the most concerning (e.g., advisory-related misconduct with clear evidence of culpability). If we’re thinking in terms of truly protecting consumers, Camarda’s more strictly defined measures of culpable advisory-related misconduct are good examples of standards other researchers should be striving for.

But ultimately, the main point is to be very careful when interpreting claims such as the claim that CFP professionals are more likely to engage in misconduct. While these types of findings naturally will garner some headlines, we should be aware that these types of findings can be expected when we’re trying to study “financial advisors” using data sets of FINRA-registered individuals that include 300,000+ non-financial advisors.

# Could The FPA’s Waning Power Given Its Declining Market Share of CFP Certificants Lead To Its Untimely Demise?

OCTOBER 27, 2014 07:01 AM 48 Comments CATEGORY: Planning Profession

EXECUTIVE SUMMARY

Since the merger of the IAFP and the ICFP over 14 years ago, the FPA has faced trying times. Amidst a backdrop of aging advisor demographics, a growing tide of retirees, and a declining total headcount of financial advisors, the FPA has never managed to grow materially beyond its peak membership on the day it was born, and since the 2008 recession was suffered from a 17% decline in membership and a 36% decline in revenue.

Yet the reality is that notwithstanding the difficult environment, the number of CFP certificants has nearly doubled since 2000, and the FPA’s failure to grow actually marks a drastic decline from having over 50% of all CFP certificants as members to under 25% of them, leading in turn to a significant loss in its power and standing as an organization. The FPA’s "mysterious" inability to grow despite the tremendous growth of its target market seems to stem from a battle between the legacy of the IAFP and ICFP that still rages on, with the FPA moving close enough to the ICFP’s "CFP-centric" worldview to alienate non-CFPs, yet not close enough to be a beacon of advocacy and success for CFP professionals either. The end result: while 10 years ago the FPA still had enough strength and momentum to sue the SEC and win in pursuit of its advocacy goals for financial planning, now the FPA’s power has waned to the point that it defers to the CFP Board on key issues to certificants and when the CFP Board launches a career center to compete with the FPA’s own Job Board the FPA congratulations the CFP Board for the competitive victory!

Ultimately, the FPA’s inability to honor its own bylaws and its founding Memorandum of Intent, and the organization's struggle to focus effectively to champion and advocate on behalf of CFP certificants – or even control their own advocacy efforts and messaging amongst the leadership and the chapters – raises the fundamental question of why it’s even necessary to have a standalone membership association separate from the CFP Board that grants the marks. Would CFP certificants be better served by going from paying two organizations to only one, and simply having the CFP Board function as both the credentialing body for CFP professionals and their membership organization as well, as is done in many other countries around the world?

Of course, longstanding CFP certificants have witnessed the CFP Board engage in many of its own blunders over the years, and an outside membership association for CFP certificants can be an effective (and even crucial) form of checks-and-balances against the CFP Board. Yet the FPA has increasingly failed to execute this key role, and the FPA’s ongoing loss in power has been the CFP Board’s gain. As the FPA becomes weaker, is the CFP Board becoming increasingly aggressive in trying to chip away at the FPA’s sources of members and revenue and professional impact, potentially accelerating the FPA’s demise? Will the FPA be able to step up and grow its “market share” of CFP certificants to regain its former power before it’s too late, or has the FPA already lost too much focus and momentum, and made itself too irrelevant for too many CFP certificants?

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What Is The Membership Association For CFP Certificants?

If you ask the average CFP certificant “as a CFP professional, what is the membership association that represents you and advocates on your behalf” you’d be surprisingly hard pressed to find a clear and consistent answer.

Many might respond the CFP Board, though in point of fact the CFP Board is not actually a 501(c)(6) membership association, but a 501(c)(3) charitable organization whose mission and purpose is to benefit the public by granting the CFP marks and maintaining their standards; the CFP Board grants the CFP certification and is the owner of the associated trademark, but functions closer to a “regulator” of CFP certificants (as an overseer of the use of the CFP trademark) than a membership association representing them. In fact, given some of the CFP Board’s recent enforcement actions, arguably the whole point of having a membership association for CFP certificants would be to specifically represent the interests of CFP professionals against the CFP Board when its policies go awry!

If it’s not the CFP Board, the next logical answer for the membership association for CFP certificants might be the Financial Planning Association (FPA), which came forth from the merger in 2000 of the former International Association of Financial Planning (IAFP), and the Institute for Certified Financial Planners (ICFP), where the latter really was effectively the membership association for CFP certificants, and the former was a broader organization open to anyone who wished to do or support financial planning (regardless of designation). The merger was intended to bring some of the size and capabilities (and dollars) of the IAFP, to the profession-building focus of the ICFP, consolidating their power, dollars, and numbers to advocate on behalf of the profession, and also simplifying the number of membership organizations to which financial planners belonged. At the time of the merger, the FPA was nearly 30,000 members strong.

Yet over the past 14 years, despite a clear Memorandum of Intent created to facilitate the merger and endow the subsequent direction and vision of the organization, the FPA has failed stunningly to live into its role as the membership association for CFP certificants and those who support them.

The FPA’s Declining Market Share Of CFP Professionals (And Total Membership, Too)

Since the merger, the FPA’s total membership headcount declined, from a peak at the merger of almost 30,000, to only about 23,000 currently. On the one hand, this might be “forgiveable” given that the overall number of financial advisors has declined a little over 10% (as estimated by Cerulli) over that time period as well.

Yet this decline in the FPA’s membership count has also come during a time period where the number of CFP certificants has nearly doubled (from about 36,000 to over 70,000), and the percentage of financial advisors who have CFP certification has more-than-doubled (from about 11% to 23%, as the count of CFP certificants is up even as the total number of financial advisors has declined).

As a result of these shifts, the FPA’s estimated market share of the CFP certificants it purportedly represents, which should be its core membership, has plummeted from 50% to under 25%. As of now, it’s estimated that only about 17,500 of its 23,000 members have their CFP certification today (the rest being students, international members, affiliated professionals, and a small number of non-CFP financial advisors), out of a total of more than 70,000 CFP professionals.

Rising # Of Advisors With CFPs Vs Decline Of CFPs In FPA

By contrast, if the FPA had merely maintained its market-share-percentage of CFP certificants since the merger, and did no more than hitch its wagon to the CFP Board’s growth engine for the past 14 years, the association would/should be more than double its current size, with upwards of 50,000 members in total! To be merely flat in membership since 2000 would actually indicate a significant loss of market share, and the actual decline in membership since 2000 represents a dramatic step backwards in the power of the organization since the merger!

Where Did The FPA Go Wrong Since The IAFP & ICFP Merger?

So given what appeared to be a relatively clear focus for the FPA at the time of the merger, what happened?

In the early years, the FPA (and especially its board) maintained a strong ICFP focus, notably spinning off the old IAFP broker-dealer division into the newly spawned Financial Services Institute in 2003 so the FPA could focus ever more on financial planning issues. The FPA’s early momentum culminated in 2004 when it sued the SEC over the broker-dealer exemption for fee-based accounts (colloquially known as the “Merrill Lynch” rule), and industry articles at the time were declaring that the ICFP’s profession-building CFP-centric focus were winning the contest for the FPA’s soul.

The FPA’s lawsuit turned out to be a resounding victory, as the organization not only sued the SEC... it won the lawsuit 3 years later! In turn, this forced broker-dealers that wanted their advisors to get paid investment management fees while providing ongoing advice to actually become registered as investment advisers, preventing broker-dealers from charging fiduciary-like fees without any fiduciary duty, and spawning the explosive rise in hybrid B-D/RIAs over the past decade or so.

Yet in the midst of its incredible forward momentum in being the membership association for CFP certificants as a burgeoning profession, the FPA started to come under criticism. Some suggested that the board of directors was becoming too RIA- (and former ICFP-member) centric, and needed to be less ICFP-homogeneous. Others raised the question of whether the FPA’s CFP-centric focus was preventing its growth (as total membership had remained stagnant for several years, though arguably that was inevitable early on as the merged organization found its footing), and whether the FPA needed to do a better job drawing in non-CFPs and other various allied/affiliated professionals.

As a result, the composition of the FPA board of directors began to shift, the organization began to adopt a more IAFP-style “big tent” philosophy (anyone who values financial planning is welcome under the big tent, with less focus specifically on CFP certificants), with the unfortunate outcome that even as the FPA won the lawsuit with the SEC, the victory may have marked the zenith of FPA’s power (and its membership count), both of which have been waning ever since as its focus has wandered.

The problem with this “swinging of the pendulum” back towards the IAFP in the mid-2000s is that it left the FPA in a deadly “no-man’s land” for membership; the organization was too CFP-centric to attract non-CFP financial advisors who didn't feel welcome (which today are estimated at only about 5% of total membership), but backed too far away from its CFP-centric messaging to be a beacon for CFP certificants either who were often turned off by the low bar necessary to become a member (driving down CFP market share from over 50% to under 25%). The end result: by trying to adjust its membership requirements to the lowest common denominator, the FPA has simultaneously become less appealing for CFP certificants and non-CFPs as well, and thus membership has been in decline, despite the fact that it was intended to be the membership association for a base of CFP certificants that has doubled over the same time period (and while some have suggested that FPA’s fiduciary positioning may have also “cost” it some members, it’s difficult to see how given that the CFP Board adopted its own fiduciary standard in 2008 and has continued to grow throughout!)!

FPA Bylaws And A Return To CFP Centricity... In Name Only?

In a seeming acknowledgement of its problem – and how far the pendulum had swung in the wrong direction – the FPA “recommitted” in 2012 to its ICFP roots, and ICFP-founder P. Kemp Fain’s vision of “one profession, one designation”, as incoming CEO Lauren Schadle took the reins.

One the one hand, the fact that the FPA had to “recommit” to this vision at all is somewhat stunning, as part of the legacy of the merger Memorandum of Intent was the ICFP’s codification of the FPA’s CFP-centricity into the bylaws of the organization itself. Accordingly, Article II of the FPA’s bylaws state (and have since the merger):

Article II – Purposes

Section 2.1. The purposes of the Association shall be to serve the needs of its members and to establish the value of financial planning and the success of the financial planning profession. This Association is organized exclusively for one or more of the purposes as specified in Section 501(c)(6) of the Internal Revenue Code of 1986.

Section 2.1.1. The thrust of FPA’s message to the public will be that everyone needs objective advice to make smart financial decisions and that when seeking the advice of a financial planner, the planner should be a CFP licensee.

Section 2.1.2. The thrust of FPA’s message to the financial services industry will be that all those who support the financial planning process are valued equally as members in FPA and that anyone holding themselves out as a financial planner should seek the attainment of the CFP mark. FPA will commit to assisting financial planners who are interested in pursuing the CFP designation.

Section 2.1.3. FPA will proactively advocate the legislative, regulatory and other interests of financial planning and of CFP licensees. FPA will encourage input from all of its members in developing its advocacy agenda. It is the intent of FPA not to take a legislative or regulatory advocacy position that is in conflict with the interests of CFP licensees who hold themselves out to the public as financial planners.

Notably, this FPA focus – “that anyone holding themselves out as a financial planner should seek the attainment of the CFP mark” while also allowing as members anyone else who supports the financial planning process – was not only written into the bylaws, but would be almost impossible to change, as Section 17.1 of the bylaws states: “…any amendment or repeal of the Organization’s purposes, as outlined in Article II, shall require ratification through an affirmative vote of at least a majority of the individual members of the FPA…” In other words, to the extent that the FPA in the mid-2000s wanted to become less CFP-centric in its focus, it was operating in violation of its own bylaws by shifting its focus without securing a majority vote of the membership!

Yet despite the FPA’s recommitment to what its bylaws already said it was, and a partial rebranding of the FPA towards a “One FPA” theme (One Profession, One Designation), since Schadle’s announcement of the FPA’s renewed focus upon becoming CEO in 2012 (and a rather negative “blasting” response from American College CEO Larry Barton), the FPA has taken virtually no public positions and statements declaring itself to be the primary membership association for CFP certificants, and taken no significant public positions advocating on their behalf to the CFP Board. Their “CFP centric” return appears to be reflected on only its own website, and is far more difficult to observe in its deeds and public advocacy beyond what may be discussed internally at its home office and board meetings.

In fact, in its recent “Advocacy Day In Washington DC”, the FPA focused all of its efforts lobbying legislators on Capitol Hill, and embarrassingly forgot to include the DC-based CFP Board itself on the list of organizations to visit regarding advocacy in Washington, despite the ongoing challenges for CFP certificants regarding compensation disclosures! In other words, the FPA has declared that it is an advocacy organization on behalf of CFP certificants, but apparently saw no need to advocate the very organization that oversees their CFP marks (despite plenty of recent CFP Board challenges and issues to advocate about!)!

The FPA And The CFP Board – Checks And Balances

The fact that the FPA has not viewed the CFP Board as an organization to which it should lobby and advocate raises a crucial fundamental question about its very reason for being – after all, what’s the point of having two organizations, the FPA and the CFP Board, if it’s not so they can serve as a system of checks and balances against each other? Couldn’t the profession have more efficiency, and generate more political clout on behalf of the profession to legislators and (other) regulators – not to mention, being less expensive for CFP certificants who don’t have to pay two fees to two organizations – if the roles were simply merged into one?

For instance, in Australia, the “FPA” actually fulfills both roles (there is no separation of membership and credentialing), allowing the organization to advocate directly to regulators as both the credentialing organization and the membership association – a key lobbying role it has been playing over the past several years as Australian regulators have rolled out their “Future of Financial Advice” (FoFA) reforms.

For members of the financial planning community here in the US, the answer to the question “why not just merge the FPA and CFP Board into one organization” quickly comes back to the fact that the CFP Board has a long and unfortunate history of engaging in “blunders” from time to time, for which the FPA (and its predecessor organizations) can sometimes play a key advocacy role in getting the CFP Board back on the right track. Yet when the FPA refuses to take a public position on key issues to represent CFP certificants to the CFP Board, it raises the question of whether the FPA is simply making itself irrelevant and is becoming redundant as a membership association.

The FPA’s Waning Power As An Advocate For CFP Professionals

To some extent, it’s not entirely surprising that the FPA has been less willing to push the CFP Board on advocacy issues pertaining to CFP certificants – because it doesn’t actually have a lot of power to advocate with as the FPA’s own clout has been waning dramatically while its share of CFP certificants declines. If the FPA had kept pace with the growth in CFP certificants itself, and had 40,000-50,000 of them as members (and likely well over 50,000 total members at that point), it would be hard for the CFP Board to ignore. As the FPA has failed to take up the mantle for CFP certificants and its market share has fallen to fewer than 25% of CFP certificants as members, its role as a check-and-balance to the CFP Board is coming undone, and the balance of power is shifting to the CFP Board.

The rapid decline in FPA’s power has been astonishing, especially given the recent compensation issues of the CFP Board. While the FPA could have taken the situation as a renewed opportunity to reassert itself as being relevant in representing CFP certificants to the CFP Board and embolden its CFP advocacy brand – especially on behalf of its members working at broker-dealers who may have been slighted by the compensation disclosure debacle but are not comfortable confronting the CFP Board directly – yet instead the FPA deferred entirely to the CFP Board about when to have "the talk” about its recent compensation disclosure issues (and given that the CFP Board has insisted there is no problem to talk about, is tantamount to the FPA just looking the other away and ignoring the issue altogether). In other words, in the span of under 10 years the FPA has gone from successfully suing the SEC to defend the interests of fiduciary financial advisors and commanding significant political clout, to not even being willing to publicly call out the CFP Board on the blatant flaws in its compensation disclosure rules at all.

In the meantime, the FPA’s waning power seems to be not only external; it is also struggling to keep itself focused and on message internally as well. For instance, despite trying to work collaboratively with the Financial Planning Coalition, an FPA board member recently raised the question of whether financial planning should be state regulated (while a reasonable consideration, the Coalition has not publicly agreed to pursue such a course), and there are rumors that the FPA of Florida statewide organization is exploring whether it could actually implement some kind of state licensing for financial planners without necessarily advocating for the CFP marks that are central to the FPA’s mission. Though FPA chapters are technically separate and standalone legal entities from the national organization, the conflict highlights the fact that the FPA still hasn’t fully obtained the buy-in of even its own chapters to the organization’s CFP-centric focus and bylaws, even 14 years after the merger.

And the FPA’s inability to stay on-message and coordinated with the Financial Planning Coalition raises the question of why the CFP Board would want to engage the FPA in the Coalition at all, as there’s little purpose to having the FPA in the Coalition if it will not (or cannot) support the whole purpose of a “coalition” which is to maintain a unified advocacy front! The FPA’s uncoordinated role in the Coalition is especially problematic since the primary asset the FPA brings to the Coalition – its state chapter system and potential to help drive a grassroots effort for state regulation (should the Coalition actually decide to pursue state regulation in a concentrated and coordinated manner) – isn’t much of an asset if the FPA can’t steer and coordinate its own chapters in the first place! Yet the possibility that the FPA may be making itself more of a liability than an asset to the Coalition is a dangerous position, given that the FPA needs the Coalition for advocacy clout far more than the Coalition needs the FPA (as the CFP Board already has more dollars, greater numbers, and stronger connections given its Washington DC base); if the FPA undermines its own role in the Coalition, its advocacy power and relevance to the profession just wanes even further.

The Rising Power Of The CFP Board Is Further Undermining The FPA

Of course, what is a decline in the power of the FPA also represents a rise in the power of the CFP Board, a transition in the balance of power that the CFP Board seems intent to accelerate and capitalize upon to advance its own goals. As noted earlier, the shift in the profession’s balance of power has allowed the CFP Board to control the issues, including not only quieting FPA amidst the CFP Board's refusal to acknowledge a problem with its compensation disclosure rules, but forcing NAPFA to abdicate its own leadership of the “fee-only” definition and capitulate to the CFP Board’s position despite the fact that NAPFA originated the fee-only definition and movement!

However, over the past two years the CFP Board has gone beyond just trying to drive and control the issues, and appears to be proactively trying to undermine the FPA - a potential “silent war” assaulting the FPA’s role in the profession and even its financial viability. First there was the CFP Board’s attempt to begin to offer CFP CE credit, effectively going into competition with the FPA (and other CE providers), which could have damaged attendance at FPA (and NAPFA) conferences that are still a key revenue generator to fund the organization’s annual operating budget; the FPA fought hard and repelled the CFP Board’s attempt (along with NAPFA which was similarly threatened), but only after engaging with a fervor that seemed to signal that the FPA recognized that its own life was on the line.

Then earlier this spring, the FPA announced its partnership with the Academy of Financial Services (AFS), including the decision to co-host an academic track at the FPA BE conference and for FPA to co-publish their Financial Services Review journal; not to be outdone, the CFP Board co-opted the FPA’s announcement with AFS by declaring its own new initiatives just weeks before the FPA/AFS partnership became public, including announcing the CFP Board’s new academic financial planning journal to compete against the FPA’s Journal of Financial Planning (and the AFS’ Financial Services Review), and a new Center for Financial Planning to support academic research. The CFP Board’s announcement of the initiatives – which seemed premature given that they still haven’t been implemented more than 6 months later – was rumored to have come specifically to pre-empt the FPA announcement once the CFP Board had failed in its own attempt to partner with AFS.

More recently, the CFP Board struck against the FPA again, announcing the launch of a new career center in 2015 that would be a “one stop shop” for guides on how to “bridge the gap” from student to financial planner, job and internship listings, and other career management content, a rather direct dig at the FPA’s own Job Board and its now-defunct “Bridge The Gap” program which have not lived up to the task and could now be trumped entirely by the CFP Board’s new initiative (as the CFP Board appears to have far more capabilities to reach students with messaging about its career center as they enroll themselves for the CFP exam in the first place). This presents not only financial implications to the FPA – as their Job Board is a(n admittedly not huge) source of non-dues revenue for the organization – but also potentially cuts off the FPA’s lifeline to students as future members. After all, the biggest issue a graduating financial planning student faces is trying to find a first job and enter the profession, and if the CFP Board is perceived as the go-to source for that solution, the FPA is potentially written out of the student’s awareness altogether.

And the FPA’s battle-weary response to the CFP Board’s latest initiative? The FPA not only declined to fight the issue (now so weak that it has to choose which battles to fight and which it will just concede), but it embarrassingly applauded the CFP Board’s victorious effort at implicitly highlighting the FPA’s failures and making the FPA less relevant to new students in the future.

Will The FPA Survive The Next Recession?

Ultimately, the risk to the FPA is that if the CFP Board manages to chip away at enough of the FPA’s supports – from its pipeline to students, to its non-dues revenue channels with the Journal (which generates advertising revenue) and the Job Board (for which firms pay to have job listings), to its conference attendance and offering of CE credits – the FPA itself could financially topple.

As is, the FPA’s revenue is down 36% from 2008, and it has been forced to trim staff and services accordingly, despite the fact that the markets, economy, and financial advisors are all seeing record highs for income and growth. If the FPA is off 36% in revenues despite the economic recovery of the past 5 years (and down 17% in members despite the fact that the number of CFP certificants is up 20%), then what happens when the next recession comes along and things get really tight, and more advisors choose not to renew while prospective sponsors also cut back their advertising budgets? Can the organization survive another recession after failing to recover from the last one, when it’s now down to only $2M in net assets (on a $10.6M operating budget)?

Acknowledged or not, it seems that the FPA is in a fight for its very survival right now, and it’s a fight the FPA may not win. A loss of the FPA would leave a gaping void in the profession, as it’s simply not feasible to have a group of 70,000+ CFP professionals who do not have their own dedicated professional membership association.

Which, in point of fact, may be exactly what the CFP Board is waiting for – to either facilitate a takeover/assimilation of the FPA, or simply replace it with a new membership organization. While the CFP Board can’t literally be the membership association for CFP certificants – it is legally structured as a 501(c)(3) charity, not a 501(c)(6) membership association, which limits its ability to directly deploy its assets and income as a membership organization – it’s not difficult to imagine ways the CFP Board could still facilitate the process. For instance, while it’s not clear whether the organization could legally use its some of its own $23M war chest of net assets on its balance sheet (according to its 2012 Form 990) to fund a new membership organization spin-off, it might use its relationships to leverage sponsors that could “seed” a new replacement membership organization, and then establish a tight integration between the CFP Board and the new association to rapidly accelerate its growth (for instance, by doing marketing directly to its list of CFP certificants to encourage them to join the new organization). In fact, I would go so far as to say the CFP Board and its Board of Directors would be remiss if they haven’t at least been exploring potential paths to supporting/sponsoring/spawning their own membership association if the FPA takes itself out of the picture.

Of course, the reality is that the FPA has become weak enough that the CFP Board could potentially launch a competing membership organization now, and just further accelerate the decline of the FPA. But realistically, the CFP Board likely would prefer to see the FPA fold (or become desperate in a manner where the CFP Board controls the terms of a merger or wind-down), so that the CFP Board can try to take over the one unique asset the FPA has that the CFP Board wants – its state chapter system and capabilities to do grassroots lobbying at the state level for state regulation, should it be decided that’s the ultimate regulatory path to pursue to advance the financial planning profession (with the CFP Board obviously advocating for the CFP marks as the minimum professional standard).

Where Should The FPA Go From Here?

So given all these challenges, where should the FPA go from here? At the most basic level, the FPA has to focus on one simple reality if it is going to survive: the only way to defend itself against the CFP Board is to have as many CFP certificants as possible, who support the FPA for its advocacy efforts on their behalf (including against the CFP Board) and keep the FPA relevant as a separate membership organization from the CFP Board. The FPA leadership should make “market share of CFP certificants” its one crucial Key Performance Indicator for the coming years when evaluating the success of its staff, programs, and efforts. Just growing membership isn’t enough (not that the FPA has even been succeeding in that regard); if the FPA isn’t gaining in total share of CFP professionals, too, it’s still losing ground in its power struggle with the CFP Board.

After all, the reality is that with 70,000 CFP certificants and the numbers still growing, there are too many CFP professionals to not have a clear membership association loudly and publicly advocating on their behalf and helping to make them more successful. If the FPA cannot take on that role – whether due to its fuzzy and meandering focus, lack of clear messaging, or simply poor execution – then some other organization will eventually fill the void (CFP-Board-driven or otherwise), and at the point a true competing membership association crops up to challenge the FPA, its demise may only be further hastened (as it cannot afford to lose what core CFP certificant membership base it has left). Which means, once again, the FPA either truly lives into its CFP-centric mission, or it must figure out an astonishing pivot that could keep itself relevant as a membership and advocacy organization competing against another CFP-centric membership group (and given the existence of FSI, NAIFA, and others, it’s not really clear what other role the FPA could realistically fulfill).

In other words, the FPA really has no choice at this point but to embrace its CFP-centricity – or better yet, clarify its position to be “one profession, one minimum designation” so it can support the CFP marks as a pathway to the financial planning profession without undermining its relationship with post-CFP educational providers – because any other path just makes the FPA “yet another financial advisor membership association” (a tactic that has clearly done it no favors for the past decade), and the less it attracts CFP certificants, the less beholden the CFP Board must be to the FPA, and the more opportunity the CFP Board has to try to undermine and replace the FPA. In other words, if the FPA doesn’t live into the vision of the ICFP, the CFP Board or some new competitor will take over the role themselves and make the FPA irrelevant to the future of the financial planning profession. There are too many CFP certificants to be so under-represented.

Notably, though, the FPA (finally) fully embracing its CFP centricity and (loudly and publicly) taking up its mantle as the membership association for CFP certificants and advocating on behalf of the CFP Marks does not mean acquiescing or subjugating itself to the CFP Board in the process. The FPA already takes lobbying issues to the SEC and FINRA, even though its members are RIAs and registered representatives; the fact that the FPA lobbies against certain policies of the regulators doesn’t change the fact that members are still expected to be registered with those regulators, and the same would be true of encouraging financial planners to be CFP certificants while advocating on their behalf against the CFP Board when apporpriate. In fact, the whole point of embracing CFP centricity is that by having more CFP certificants the FPA shifts the balance of power back into its favor, to be able to hold its own against the CFP Board and advocate even more effectively, because in advocacy the reality is that numbers = power. The Financial Services Institute recognized this, rapidly gained power in lobbying to FINRA because it has gathered nearly 37,000 registered representatives as members, and so too can the FPA (re-)gain power by trying to rapidly add more CFP certificants to its ranks in order to represent them.

Of course, it’s worth noting again that from the perspective of a CFP certificant, if the FPA cannot step up to the task and ultimately topples, the loss of the FPA isn’t necessarily a bad thing. A potential consolidation of the credentialing body and the membership association allows for a better pooling of resources, more coordinated advocacy and lobbying efforts, likely lower costs for CFP certificants who are FPA members and can just pay one fee instead of two, and the unification of the two could actually become a superior CFP-centric membership association than what the ICFP was and what the FPA was intended to be.

Again, though, the greatest caveat to the elimination of the FPA and a consolidation of the profession’s power within/behind the CFP Board is the fact that with the FPA out of the way, it becomes increasingly difficult for CFP certificants to push back against the CFP Board in an organized and coherent manner when the CFP board does something objectionable, as it has been wont to do from time to time over the years. Which means that ultimately, the FPA’s best path to survival at this point may be to explicitly capitalize on the collective nervousness of the CFP certificant community about what happens when the CFP Board goes “unchecked” for too long, and solicit members on the basis of being that organization which can advocate for their interests against the CFP Board when necessary (while also striving to help their members be successful in other ways as well, and advancing the CFP marks as the center of the financial planning profession in accordance with the FPA bylaws).

But the bottom line, though, is simply this: with the ongoing growth in CFP certificants, it is simply impossible for 70,000+ professionals to not have a membership and advocacy association dedicated solely and entirely to their needs. The FPA is at a crossroads about whether to step up and fully embrace the vision of the IAFP and ICFP merger – to loudly, proudly, and publicly be the membership association of CFP certificants and those who support the financial planning profession with the CFP certification at its center – and justify why CFP certificants should pay for both the CFP marks and a separate membership association to represent them, or risk being made irrelevant as its financial resources continue to dwindle and its power continues to wane, until eventually the CFP Board or some other competitor steps up to fill the CFP certificant membership void on its own terms.

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COMMENTS

BillyBob says

October 27, 2014 at 7:19 am

Great post Michael. I have a difficult time paying all dues lately, I don’t see any value in having our leaders battle to demand regulation and legislation. I would suggest they have had success that could easily be their niche again… they are the one place that once upon a time had great consumer outreach; seminars, blogs, events… but no longer. I’ve been a part of several projects over the last decade that aren’t seen through to completion, or just left to die. There’s no leadership. Over the last year I spent maybe twenty hours providing them work for a project… I should have guessed what would come of it – nothing. Why start a consumer project if you don’t know what it will take to complete? I valued their opposition to CFP Board on CE, so I do see they have some potential value, which is why I’ve stuck around when I know so many who haven’t. However, they need to drop pretending to be something they’re not ready to be in the maker of legislation, and focus on their core value. CFP Board and NAPFA have a little more room to think they can upset members by not focusing on their value proposition to members, but even they IMHO aren’t doing all they can. FPA could easily stake claim to the place for consumers, press, and members to go for financial planning knowledge; they just seem like they aren’t willing. If I had advice, it would be get out of this coalition and spend all energy on consumer outreach through your members. Won’t happen as long as they have all of these attorneys killing our associations with their lobbying on the payrolls.

Reply

Michael Kitces says

BillyBob,

In point of fact, FPA trimmed its budget on lobbying after the revenue decline in 2008; it shut down its Washington office altogether, replacing it with an outsourced lobbying firm (ostensibly also narrowing the scope of how much they would lobby on) at a significantly lower cost.

Being part of the discussion of the future of regulation for financial planning is a crucial part, but that’s the whole point of being part of the Financial Planning Coalition and its purpose – as you note, FPA certainly can’t be the maker of legislation on its own.

Having FPA more involved in communicating financial planning to the public is something that could also be better coordinated with the CFP Board – especially given CFP Board’s ongoing spending in public awareness already – although I have to admit I wish the FPA would spend far more time helping advisors figure out how to get paid for their services, and less time helping advisors figure out how to give more of their services away for free (i.e., pro bono). I’m certainly not against pro bono work at all, but I hear far more advisors struggling to grow their businesses than advisors struggling to figure out how to spend less time getting paid and more time doing pro bono instead…

Sorry to hear of your time and efforts spent on a project ‘that went nowhere’ though. It hurts for any volunteer to see that kind of outcome (or lack thereof). 🙁

– Michael

# Why the CFP Board Should Not Govern the Financial Planning Profession

by John H Robinson, 8/23/18

Advisor Perspectives welcomes guest contributions. The views presented here do not necessarily represent those of Advisor Perspectives

The CFP Board wants its credentials to be a mandatory requirement for all advisers who hold themselves out as financial planners. If its lobbying efforts to this end are successful, the Board would then become the de facto regulator of the financial planning profession, which is the organization’s goal. But the Board’s disingenuous position on the fiduciary standard and its long history of putting its own interests ahead of those of consumers and its members make the Board decidedly unfit for this role.

August 7th marked the close of the public comment period for three proposals put forth by the Securities Exchange Commission (SEC) aimed at bolstering the standard of care provided to clients of brokerage firms and providing consumers with greater clarity regarding the distinction between SEC-regulated Registered Investment Advisers and FINRA-governed broker-dealers. While all three releases received scores of comments, SEC Release 34-83062 , which introduced the SEC’s proposal for a new “Best Interest” standard of conduct for broker-dealers, garnered by far the most media attention and sparked the greatest debate. However, Release 34-83063 , which, among other things, sought comment as to whether the SEC should restrict the use of certain professional titles or designations, should be of interest to all those who fall under the broad “financial services professionals” umbrella.

Regardless of where one falls on the title/designation restriction debate, there is general agreement that investor confusion over the meaning and standing of various titles and registrations is widespread. As a case in point, the FINRA consumer information site lists a staggering 203 known designations used by financial professionals. Release 34-83063 goes into extraordinary detail in laying out the findings of several major studies documenting how consumers as a whole do not understand the distinctions between the myriad titles nor their different regulatory and disclosure implications. To remedy this problem, the SEC proposal, as outlined in the Release, is to restrict broker-dealer representatives from using any variation of the terms “Adviser” or “Advisor” in their communications with the retail public, as those terms are closely associated with “investment adviser” as it is defined under the Advisers Act. The restriction would not apply to “hybrid” reps, and broker-dealer reps who are not dual-registered would still be permitted to use common monikers, such as “Financial Consultant” and “Wealth Manager.” In the release, the SEC also acknowledges that the proposed title restriction alone is unlikely to resolve investor confusion. To further address the problem, the Commission proposed requiring the delivery of separate “Relationship Summary” reports for broker-dealers, registered investment advisers, and hybrid B-D/RIA personnel. These proposed reports are intended to clarify the nature of the client relationship, disclose potential conflicts of interest, and describe the standard of care the client can expect.

Interestingly, Release 34-83063 is largely silent on the use of the title “financial planner,” except to note that a Federal Reserve Consumer Finance Survey found that a higher percentage of consumers (49%) preferred to get advice from financial planners than from other professional designations. As a group, bankers, accountants, and lawyers were the second highest moniker preference (36%). This is noteworthy because the CFP Board of Standards, in coordination with the Financial Planning Association (FPA) and the National Association of Personal Financial Advisors ( NAPFA), has been aggressively lobbying state and federal legislators and the SEC to restrict the use of the term “financial planner” exclusively to CFP certificants. Together, these three organizations comprise the “Financial Planning Coalition” – a lobbying organization aimed at carving out financial planning as a separate profession and making the CFP® certification a required standard for all financial planners. This article separates fact from fiction in the Coalition’s rhetoric.

Is the financial planning profession unregulated?

The following statement appears on the CFP Board of Standards website:

Despite providing advice to millions of Americans about critical financial decisions and retirement planning, financial planners are not regulated as a separate and distinct profession. Any person may hold himself or herself out as a “financial planner” without being required to meet basic competency or ethical standards.

The suggestion that non-CFP financial planners are unregulated and unqualified is a common theme in the CFP Board’s multi-million dollar public awareness advertising campaigns. This position, however, is patently false. In fact, the reason why Release 34-83063 made scant reference to the use of the term “financial planner” is because this title (along with “investment adviser”) is already restricted exclusively to advisers who are licensed with and regulated by the SEC under the Investment Advisers Act of 1940.

While the Advisers Act is intentionally broad in its language and scope, any ambiguity over whether the Act governs the actions of financial planners was erased in 1987 with the adoption of SEC Release 1092, which was aptly titled, Applicability of the Investment Advisers Act to Financial Planners and other Persons Who Provide Financial Services. An excerpt from the release reads, “The SEC has classified persons who regularly provide nearly any type of financial planning services for compensation as investment advisers.[1]“ This information is also clearly disclosed on the SEC Investor Information section of its website under the section titled “Financial Planners.” The section reads, “Financial planners who give investment advise [SIC] to their clients must register with the SEC or the appropriate state securities regulator”.

The CFP Board’s assertion that non-CFP financial planners are not held to ethical standards is similarly baffling and without merit. As SEC Registered Investment Adviser Representatives, all financial planners are subject to the anti-fraud provisions of the Advisers Act, which prohibit misstatements or misleading omissions of material facts and are subject to personal liability and criminal prosecution if they fail to act in accordance with the SEC’s stringent fiduciary standard. All of these legal and moral obligations are clearly explained on the SEC’s website section titled, General Information on the Regulation of Investment Advisers.

Of course, it is technically true that anyone, such as the fictional disc jockey in the CFP Board’s widely-promoted “Can You Tell the Difference?” television campaign, can hold himself/herself as financial planner (or a doctor, lawyer, CPA, etc.), but doing so without being licensed and registered with the SEC is, in fact, a criminal act. Conversely, the suggestion in this and other of the CFP Board’s “public awareness” campaigns that the CFP marks automatically connote higher ethical standards and trustworthiness is both unsupported and irresponsible, as there are many well-publicized examples of unsavory individuals who have attained the CFP marks to build credibility and trust in order to defraud their clients.

**Is the CFP Board’s fiduciary standard the same as the SEC’s?**

For years, the CFP Board of Standards has been actively engaged in a public relations campaign intended to portray the Board as a noble crusader for a unifying fiduciary standard that may be applied to both brokerage representatives and SEC registered investment advisers. At the same time, the CFP Board has been critical of the SEC’s reticence to address the brokerage “suitability” standard and of the SEC’s proposal to replace suitability with a “Best Interest Standard,” instead of simply applying the same fiduciary standard, as defined under the Advisers Act, to brokerage reps that it applies to investment advisers. In a recent Investment News column, self-described ethicist and former CFP Board member, Dan Candura writes, “All fiduciary standards share a commitment to act in the best interest of the client, provide full disclosures of conflicts of interest and inform the customer about costs and compensation. What is different about the CFP Board’s standards is that they apply more broadly than most, including the SEC and DOL.” He goes on to state, “CFP Board [sic] is a voluntary certification for an individual who seeks to serve the public by providing higher standards than those imposed by traditional regulators.”

As with the Board’s assertions that the financial planning profession is currently unregulated and that non-CFP financial planners are not subject to ethical standards, the suggestion that the CFP Board’s fiduciary standard is higher than or even equivalent to the SEC’s standard is inaccurate and misleading. In fact, a side-by-side comparison of the language each body uses to describe its definition of “fiduciary,” shows that, not only is the SEC’s standard decidedly higher and more rigorous, the CFP Board’s wording is cleverly crafted to promote its own self-interests at the expense of consumers.

The SEC’s definition of its fiduciary standard is presented in SEC Publication: Regulation of Investment Advisers. It reads as follows:

Fundamental to the Act is the notion that an adviser is a fiduciary. As a fiduciary, an adviser must avoid conflicts of interest with clients and is prohibited from overreaching or taking unfair advantage of a client’s trust. A fiduciary owes its clients more than mere honesty and good faith alone. A fiduciary must be sensitive to the conscious and unconscious possibility of providing less than disinterested advice, and it may be faulted even when it does not intend to injure a client and even if the client does not suffer a monetary loss.

**Several obligations flow from an adviser’s fiduciary duties.**

Full Disclosure of Material Facts. Under the Act, an adviser has an affirmative obligation of utmost good faith and full and fair disclosure of all facts material to the client’s engagement of the adviser to its clients, as well as a duty to avoid misleading them. Accordingly, the duty of an investment adviser to refrain from fraudulent conduct includes an obligation to disclose material facts to its clients whenever failure to do so would defraud or operate as a fraud or deceit upon any client.

Conflicts of Interest. This disclosure of material facts is particularly pertinent whenever the adviser is faced with a conflict – or a potential conflict – of interest with a client. As a general matter, the SEC has stated that the adviser must disclose all material facts regarding the conflict so that the client can make an informed decision whether to enter into or continue an advisory relationship with the adviser, or take some action to protect himself or herself against the conflict.[131]

Footnote #131 – “The Investment Advisers Act of 1940 thus reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which was not disinterested.

For its part, the CFP Board of Standards has been under fire for years for allowing (and even actively recruiting) brokerage representatives and insurance agents to attain and use the CFP marks in their businesses, even though their employment licenses do not require them to act as fiduciaries. As business school professor Samnath Basu, Ph.D. opined several years ago in a piece entitled, Restoring Trust in the CFP Mark, “A painful truth is that many financial practitioners are sales people masquerading as planners or advisors in an industry whose ethical practices have a shameful track record. Stockbrokers and insurance agents who earn commissions from buying and selling stocks, insurance and other financial products realize that a CFP credential will help grow the volume of their business or branch them into other related and lucrative products and services.”

To address this criticism, the CFP Board in 2017 announced a series of revisions to its Standards of Conduct that it claimed will extend the full reach of its fiduciary standard to all insurance and brokerage CFP holders. These new rules will go into effect on October 1, 2019. Excerpts that are germane to the SEC standard comparison read as follows:

**Fiduciary Duty**

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. The following duties must be fulfilled:

**Duty of Loyalty. A CFP® professional must:**

Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional’s Firm;

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; and

Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional’s Firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interests above the CFP® professional’s.

Disclose and Manage Conflicts of Interest

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. This obligation requires the CFP® professional to provide the Client with sufficiently specific facts so that the Client is able to understand the CFP® professional’s Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. A sincere belief by a CFP® professional with a Material Conflict of Interest that he or she is acting in the best interest of the Client is insufficient to excuse failure to make full disclosure.

In determining whether to infer that a Client has consented to a Material Conflict of Interest, CFP Board will evaluate whether a reasonable Client receiving the disclosure would have understood the conflict and how it could affect the advice the Client will receive from the CFP® professional. The greater the potential harm the conflict presents to the Client, and the more significantly a business practice that gives rise to the conflict departs from commonly accepted practices among CFP® professionals, the less likely it is that CFP Board will infer informed consent absent clear evidence of informed consent. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client.

Evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. Written consent to a conflict is not required.

According to the CFP Board, these new standards require all CFP certificants to act as fiduciaries at all times when providing financial advice. While the above comparison of the two standards may, at first read, suggest that the CFP Board is moving to adopt a fiduciary standard similar to that of the SEC, closer examination finds that there are two major gaps in the CFP standard that allow CFP’s who operate outside of the SEC’s purview as brokerage reps and/or insurance agents to conduct business as usual.

The first difference is the extremely careful wording of the CFP Board’s disclosure language that requires financial advisor to disclose the forms of compensation he/she receives and the potential conflicts of interest that may arise, but does not specifically require the advisor to disclose the amount or percentage of compensation he or she will receive on each transaction. Given that there are many instances in brokerage and insurance sales where compensation is opaque to the consumer, this is a big deal. To illustrate this by example, a broker or insurance agent who is operating as a CFP, but not as a financial planner under the SEC’s purview, would, per the CFP fiduciary standards, be required to disclose that he/she may receive sales commissions, that these commissions may not always be transparent, and that this presents a very real potential conflict of interest. However, upon make a product sale, such CFPs are not specifically required under the new 2019 CFP Standard of Conduct to disclose the amount of revenue they will receive.

Simply put, there is a big difference between informing a client that one may receive commission-based compensation and disclosing to the client that he/she will receive a $10,000 commission on the sale of life insurance policy or a private equity offering! In contrast, if this same adviser is holding himself out as a (non-CFP) financial planner (thus falling under the SEC’s regulatory wing), the amount of compensation is considered to be a “material fact,” that could be relevant to the consumer’s decision-making process and must be disclosed. This distinction between the SEC’s requirement to disclose all “material facts” vs. the CFP Board’s more ambiguous “material conflicts” is a huge difference that has gone largely overlooked in the public discourse.

A second important distinction between the organizations’ fiduciary standards is that the CFP Board’s new standard of conduct offers the brokerage and insurance agent CFPs broad leeway in the manner in which disclosures are made. It specifically states that written disclosure is not required and that the Board will appropriately consider and accept oral disclosure. In the event of a client complaint, this loophole affords the brokerage (non-SEC registered) CFP to simply claim that disclosure was made and that the client either does not remember or is lying. If the CFP is clever, he or she may make notes in his CRM that the disclosure was made, even if it wasn’t, so that the notes may be used to bolster against future claims. In stark contrast, the SEC requires all advisers who hold themselves out as financial planners (both CFP and non-CFP), to provide all prospective clients with SEC Form ADV at or before the inception of the relationship and must also provide updated copies at least annually. This document, which must also be filed with the SEC each year, must disclose in “plain English” all material conflicts of interest and all potential methods of compensation.

Although public and industry awareness of the enormous gap between the CFP Board’s watered-down fiduciary standard and the far more rigorous SEC fiduciary standard remain lacking, I am far from alone in making the point. In a 2017 article entitled Board to Death: Is the CFP Board’s New Fiduciary Standard Really Better Than No Standard at All?, Think Advisor columnist, Bob Clark, also highlighted the deftness of the Board’s history of wordsmithing, “Consequently, the key question is whether this revised standard is, in fact, a real fiduciary standard, or yet another fake standard that is likely do more harm than good. In that regard, the recommendations should close the loopholes in the existing Standards of Conduct that allow CFPs to be part-time fiduciaries…Toward that end, the Board’s recommendations appear to be surprisingly comprehensive and on point. I say “appear” because, as I’ve learned, with any quasi-regulatory document, the practical application of the proposed changes can vary greatly from the way they appear at first blush and ultimately depends on a specific word here or a slightly unconventional definition there.”

Similarly, Knut Rostad, President of the D.C.-based, Institute for the Fiduciary Standard, was quoted in a

March 29, 2018 Financial Planning magazine article that the CFP Board’s new standards, “fall very short of a real fiduciary standard. It’s not even a close call given what is not required of CFPs…This effectively leaves B-D CFPs following the suitability standard.” In a separate article Rostad submitted to Advisor Perspectives, he goes on to say, “Here’s the rub. CFPs mostly work in brokerage sales organizations where things like transparency and disclosure are hard – if not impossible. An [Fiduciary] Institute survey released on March 8 [2018] revealed that just 15% of CFPs are fee-only. A full 85% reported full or partial commissions.”

Are CFP’s better educated and/or more qualified than non-CFP financial planners?

One of the points that the Financial Planning Coalition routinely makes and that is indisputably accurate is that the SEC has no specific educational or experience requirements for becoming a financial planner or an investment adviser. All one needs to do is pass the three-hour FINRA Series 66 – Uniform Combined State Law Examination and complete the necessary registration paperwork. As financial planning industry thought leader and CFP advocate Michael Kitces expressed in a recent Nerd’s Eye View post, “…it’s not enough to just have a fiduciary duty for financial advisors to act in the best interests of their clients, but it’s also essential for the advisor to have the technical competency and training needed to know what’s in the best interests of the client in the first place!” In the piece, Kitces goes on to suggest making the CFP designation the minimum competency standard for the profession.

I believe most practicing financial planners would fully support the SEC establishing basic experience and educational standards, such as a bachelor’s degree or higher in finance, economics or accounting. Such competency standards would undoubtedly lend credibility to the profession and benefit consumers. What arouses the ire of non-CFP financial planners, however, is the implication by Kitces and other CFP promoters, including the CFP Board, NAPFA, and the FPA, that the marks somehow represent a higher minimum designation than an undergraduate finance degree.

To begin, the CFP training program is essentially a correspondence curriculum. It has no formal academic standing or accreditation. In fact, prior to 2008, no college degree was required to sit for the exam, and, even today, no academic experience in finance, economics, or accounting is required to attain the marks. To again quote Professor Basu, “It is important to remember that the requirement of a bachelor’s degree was instated only for those credentialing after 2007, before which many planners could hit the pavement straight from high school or even beforehand.” Tens of thousands of CFPs attained their marks before this nominal requirement was imposed.

According to Kitces, only around 30% of financial planners currently hold the CFP mark. However, what was conspicuously absent in his above-referenced commentary was any evidence to back up his assertion that CFP certificants are more academically qualified than non-CFP financial planners. To the contrary, there is good reason to suspect the opposite is true because all financial planners are required to provide all prospective clients with a plain English document (Form ADV Part 2B) that begins with the following disclosure:

Educational background and business experience – The brochure supplement must describe the supervised individual’s formal education after high school and his or her business experience for the past five years.

Simply put, a financial planner with no academic and/or related work experience must make this disclosure in plain English on his/her ADV 2B. It seems logical that financial planners who actually have an academic background in finance and related industry experience would not feel any great need to attain the marks. On the other hand, a prospective financial planner with an undergraduate degree in, say, travel-industry management or art history is arguably no more qualified than the deejay in the “Can you tell the difference?” PR commercial, and would be more compelled to attain the CFP mark in order to gain some semblance academic credibility.

Further evidence that the CFP mark does not automatically confer knowledge or ethics is provided in a recent podcast hosted by Kitces entitled, Insights From The History Of Financial Planning Since The First CFP Class. In the piece, Kitces interviewed one of the graduates of the first CFP certification class to inform younger listeners that the original purpose of the designation was to lend credibility to insurance agents to help them compete better in product sales against securities reps. The concept was to leverage the CFP credibility into “mega-selling.” The discussion guides listeners through the unseemly days of the late 1970s and early 1980s when CFPs temporarily set aside their focus on pushing high-commission insurance products to push even higher commission-paying, ill-fated, and often fraudulent oil and gas tax shelters. The discussion also traces the origins of the College for Financial Planning in Denver in the 1980s. In a manner similar to that of many of today’s “diploma mills,” the term “college” was chosen to give the appearance of academic credibility when, in fact it was merely the organization that owned and conferred the CFP mark.

I enrolled in the College for Financial Planning’s more developed curriculum in the mid-late 1990s, and it was far less rigorous than my undergraduate economics degree. Micro- and macroeconomics were separate 300-level, semester-long courses in college, but were covered in just a few pages in the College for Financial Planning curriculum. My senior economics seminar in 1987 was on the stock market. A Random Walk Down Wall Street was required reading, as were published papers by Markowitz, Sharpe, Fama and French, Black and Scholes, etc. For its part, the CFP curriculum barely paid lip service to those academic contributions that form the underpinnings of portfolio management. Econometrics and statistics – another 300-level staple of any college economics program and arguably among the most important quantitative skills of planners who provide retirement sustainability guidance today – was non-existent in the CFP exam prep program. Even William Bengen’s landmark 1994 paper, Determining Withdrawal Rates Using Historical Data, didn’t find its way into the curriculum until into the 2000s. Instead, the CFP guide books presented me with concepts, such as how whole-life insurance could be an excellent tool for college funding. (The heavy insurance-sales bias was a primary factor in turning off my desire to attain the mark.)

Regardless of the extent to which the CFP curriculum has evolved today from its insurance sales-based roots, the notion that a correspondence course for a few thousand dollars with no significant admissions standards provides the same or higher level of quantitative skills development as a finance degree from an accredited college or university is absurd. While I do not object to the CFP program as a legitimate path to the planning profession, especially for those who have no prior academic experience in finance, the suggestion that the designation trumps the quarter-million dollar investment (today’s dollars) I made in obtaining an actual finance degree is offensive. Tens of thousands of practicing CFPs attained the marks decades ago, and never once has the CFP Board suggested re-certifying existing members who were granted the designation when the intellectual barriers to entry were lower or non-existent.

Should the CFP Board be granted regulatory authority over the financial planning profession?

As noted in the introduction, the Financial Planning Coalition is spending a great deal of time, effort and money lobbying state and federal legislators and various regulatory authorities to make the CFP mark a required standard for the financial planning profession. A June 2, 2018 Financial Planning magazine article titled, FPA Lobbies for Stronger Advisor Regulations on Capital [sic] Hill notes, “FPA is lobbying for the restriction of the use of the term ‘financial planner’ exclusively to those who have earned the CFP designation.” This requirement would effectively grant the CFP Board of Standards full rule-making and regulatory authority over the financial planning profession.

Kitces, who has become a paraclete for the CFP mark, predicts that these lobbying efforts will indeed come to fruition. In the previously cited Nerd’s Eye view post, Kitces advises, “…if you’re a financial advisor who wants to ‘future-proof’ your own career, then you really should be reinvesting into advancing your education with programs like CFP certification…there will probably be some transition period, so if you’re within 5-10 years of retirement already, you’ll likely be safe to just ride out the status quo. But if you’re younger than that, and still have a longer time horizon in the business, there’s increasingly a risk that once the first round of the fiduciary rule to act in clients’ best interests is done, the next round is going to be about competency standards… which means it may be a good idea to get started future-proofing your own career sooner rather than later!”

Such prognostications beg consideration as to whether the CFP Board is really a qualified steward of the public’s trust. One of the best places to begin is by examining the Board’s past and current behavior both in terms of its representations to the public and the manner in which it governs its own membership base. I have provided examples of how the CFP Board has misrepresented itself to the investing public for the purpose of advancing its own political agenda. The latest example of the CFP Board’s unfitness to lead the planning profession can be found in the hypocrisy with which the Board has criticized the SEC for failing to address investor confusion when the CFP Board’s tireless efforts to recruit brokerage reps and insurance agents to attain and use the marks is a major contributor to the problem. However, very little digging is required to come up with a far longer list of transgressions that raise serious questions about the Board’s ethical conduct and trustworthiness.

A 2013 Financial Planning article entitled, Is the CFP Fiduciary Promise for Real, quotes former NAPFA board member and head of the financial planning program at Alfred State University, Ron Rhoades as saying, “Simply put, many consumers may be under the impression, as a result of the CFP Board's advertisements, that [its] certificants are trusted advisors when, in fact, many do not always practice in such fashion." The article notes that, “Rhoades has accused the board repeatedly of perpetuating fraud against consumers by creating this impression.”

That the CFP Board’s ethical lapses and self-serving actions have continued well beyond the organization’s murky origins described in Kitces’ podcast is further documented in story lines such as, CFP Board chairman steps down amid ethics concerns (Reuters 11/2/2012), Global Junkets Lavished On Directors Fuel CFP Board High Life (FA Magazine 4/3/2014), Is the CFP Board Losing Credibility in the Eyes of Advisors? (Wealth Management 4/11/2014), Did CFP Board Shorten Exams to Lure Certificants? (Think Advisor 1/17/2014), The Curious Case of the CFP Board and a Double-Dipping CFP (Think Advisor 9/24/2012), and Show me the money: Financial advisory trade groups pay handsomely (Investment News 12/2015).

Among the most vocal and credible critics of the CFP Board is Don Trone. Trone is the founder and CEO of 3ethos, a founding principal of fi360, and the former president of the Leadership Center for Investment Stewards. In a July 2017 Think Advisor op-ed piece, “Just Say No to the CFP Board’s New Standards,” Trone did not mince words in expressing his opinion of the CFP Board: “The Board doesn’t give a hoot about certificants, nor about the best interests of the public. The Board’s fiduciary initiatives are being fueled by politics, power, ego and greed.” He goes on to say,

…integrity is a characteristic that the Board fails to demonstrate. Consider the following practices by the Board that run counter to good governance and to a fiduciary standard of care:

**There are no open elections for directors.**

**Directors are required to sign a confidentiality agreement.**

**Any conversation with a director – public or private – requires the presence of senior staffers.**

**Board minutes are not made public. Of particular concern is the absence of minutes identifying the directors who are taking part in determining the exorbitant salaries of senior staffers.**

**A corollary to the previous point: Formal ethics complaints against directors are viewed first by the staff and not by an independent ethics committee. This provides the staff the opportunity to bury an ethics complaint against a director who may later have a hand in determining the staff’s compensation.**

**And, directors are not represented by independent legal counsel.**

**If the CFP Board were a country, it would be North Korea.**

The Board has done more harm to the fiduciary movement than any other organization. And given the absence of transparency and of good board governance, certificants need to understand that there is no self-correcting mechanism to drain the swamp.

Trone’s opinions condemn the CFP Board’s qualifications to serve as regulator, and he is hardly an island in this debate. In fact, there are plenty of other highly regarded industry figures who staunchly opposed the CFP Board’s power grab. Among them is prominent RIA founder and author, Ric Edleman, who was quoted in an RIA Biz interview as saying, “I do not believe the Board, despite its name, properly sets the right standards for our profession. It is little more than a self-serving entity operating under the guise of serving the public interest. The interests it actually serves are merely those of itself and its members.”

Another prominent industry figure who has stood up to the CFP Board is Colorado fee-only CFP and Wall Street Journal columnist, Alan Roth. In an interview with financial writer and Advisors4Advisors President, Andrew Gluck, Roth, who authored a scathing account of the CFP’s ethics review process titled, Is the Fiduciary Standard a Joke?, recounted an uncomfortable experience he had with CFP Board of Standards CEO, Kevin Keller, “Roth’s allegations get personal. During the process of filing his complaint against the alleged fake fiduciary, Roth says he came to be invited by CFP Board CEO Kevin Keller to join the Disciplinary and Ethics Commission. That’s the committee responsible for reviewing complaints and recommending sanctions against CFP licensees. Keller told Roth he wanted him on the committee ’so that I could write about the process from the inside,’ according to Roth’s WSJ post.”

Roth says he would come to view Keller’s invitation as disingenuous. “I initially accepted his invitation – but then I received an agreement to sign giving the CFP Board the right to review and approve the article I would write on the process before publication,” Roth says. Both Roth and his editors at WSJ found the terms set by the CFP Board “unacceptable.”

**Gluck concludes the article with the statement, “This incident makes the CFP Board look like it does not deserve the public’s trust, and that’s a serious problem.”**

Yes, you can tell the difference!

My goal is to raise awareness of the fundamental differences between the fiduciary standards that are applied to SEC registered financial planners and the standard applied by the CFP Board to its members. In cutting through the CFP Board’s decades-long misinformation campaign, it should be clear that the fiduciary standard applied by the SEC requires much greater disclosure and offers greater investor protection than the CFP Board’s self-serving, watered-down version. The CFP Board has fostered investor confusion by allowing thousands of non-SEC regulated insurance agents and brokerage reps to present themselves as financial planners by using the CFP mark, and the Board’s demonstrated pattern of bad behavior over its history render it unfit to serve as the standard bearer for the financial planning profession.

In terms of a path forward, as the SEC noted in its recent requests for comments, providing clarity and resolving investor confusion are a top priority. In comments I submitted in response to SEC Release No. 34-83063, Form CRS Relationship Summary; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, I proposed two simple solutions to the so-called “two-hats” standard of care problem that is at the heart of the investor confusion issue.

The first is to prohibit brokerage reps and insurance agents who are not registered with the SEC as investment advisors/financial planners from using the CFP mark. This would end the misperception that they are acting as financial planners under the SEC’s fiduciary standard. The second solution is to require all dually-registered reps to adhere to the SEC’s fiduciary standard at all times (i.e., regardless of whether they are wearing the “broker hat” or the “investment advisor” hat). Under this rule, dually registered B-D reps and insurance agents would still be allowed to receive commission-based sales compensation, but all such compensation would be required to be disclosed for each transaction. This would end the problem of opaque commissions and is entirely consistent with current SEC rules that permit commission as a form of compensation as long all “material facts” are disclosed. Disclosures of all conflicts of interest and ADV delivery would, of course, be required as well. My comments also advocated for a minimum education standard for SEC registration consisting of an undergraduate degree in finance, economics or accounting, or attainment of the CFP mark. The latter would still offer a path the financial planning profession for college graduates who do not have prior academic experience in finance.

John H. Robinson is the owner/founder of Financial Planning Hawaii and a co-founder of software maker Nest Egg Guru. He has written numerous papers on ethical issues pertaining to adviser compensation and has been included on Investopedia’s list of the Top 100 Most Influential Advisors for the past two years.

[1] The SEC does carve out a few exceptions including a notable registration exemption for financial planners who do not provide investment guidance. This exemption has created a loophole that has allowed many companies that promote mortgage conversion strategies to pass themselves off as “Financial Planners.”

ADVISOR PRACTICE MANAGEMENT | ADVISOR NEWS

# CFP Board Kicks Off $12 Million Ad Campaign with a Cliffhanger

By Kenneth Corbin

Updated March 21, 2023 5:56 pm ET / Original March 21, 2023 4:25 pm ET

The CFP Board, the credentialing body that oversees the Certified Financial Planner designation, is launching a new phase of its long-running marketing campaign, a multimedia initiative that aims to boost awareness of the CFP designation and promote it as the gold standard for financial advice.

COURTESY OF CFP BOARD

The latest phase of the campaign, titled “It’s Gotta Be a CFP,” features a video spot that will air on CBS, CNN, ESPN, and other major networks, as well as streaming services like Prime Video, Apple TV, and HBO Max.

The campaign launches with a 30-second commercial titled “Bungee,” opening with a man preparing to jump from a high bridge spanning a deep gorge. As another man helps to secure the ropes, a piece of equipment comes off in his hand, and he tosses it away.

“Wait, wait. What was that?” the jumper asks.

“What? No, don’t worry about that. Here we go!” the man says.

A narrator intones: “Asking the right question can greatly impact your future.”

The jumper holds a frayed rope end in his hand and asks the other man, “Are you qualified to do this?”

Narrator: “Especially when it comes to your finances.”

The spot then shifts gears, and the jumper is now sitting in a comfortable-looking room meeting with an advisor, who assures him that she is indeed a CFP professional.

“By raising consumer awareness of CFP certification as the standard for competent and ethical financial planning, we reinforce the message that CFP professionals help more Americans achieve their financial goals,” says CFP Board CEO Kevin Keller.

The CFP Board is supporting the message of the video spot with digital banner ads and ready-to-post materials for planners to use in their own marketing and communications, including social-media content, email signatures, and a videoconferencing background image, all reinforcing the idea that CFPs are uniquely qualified to handle the intricacies of financial planning.

Advisor Daily

A collection of our top stories from the day, delivered every evening. Stay on top of the latest advisor news, community commentary, and opinion from industry leaders.

The board says it has spent about $150 million over the past decade on its awareness campaign, including the $12 million earmarked for spending this year. A spokesman for the board confirms that all of that money is slated to fund the “It’s Gotta Be a CFP” campaign.

The campaign is geared at individuals between the ages of 35 and 64 who are the main decision makers in their personal finances.

When the CFP Board embarked on its campaign in 2011, its research found that unaided awareness of the designation among its target audience sat at 17%. In 2022, the board reported that unaided awareness—the measure of people who could come up with the CFP certification without prompting—had risen to 32%.

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Vetta Fi Advisor Perspectives

# The CFP Board’s Duplicitous Dance

by John H. Robinson, 8/8/17

On Tuesday, June 20th, the CFP Board of Standards released a draft of proposed revisions to its Code of Ethics and Standards of Conduct for a 60-day public comment period. The draft and the pronouncements surrounding the release are merely the latest in the Board’s long history of feigning interest in consumer advocacy in order to advance the organization’s own ambition to seize control of the financial planning industry. Its actions serve as a sterling example of why the CFP Board should never be entrusted to be the standard bearer for the profession.

As explained in a five-minute, awkwardly scripted video “interview” between Senior CFP Board Ambassador Jill Schlesinger and the organization’s general counsel, Leo Rydzewski, the most substantive proposed change involves amending the Board’s current ethical standard that requires CFP certificants to act in a fiduciary capacity only when providing financial planning guidance to a new standard that requires CFPs to act in their clients’ best interests at all times. This revision is seen by some as closing a controversial, self-serving loophole that permits non-fiduciary commission-based brokerage registered representatives and insurance agents to obtain the CFP designation and use the CFP marks on their marketing materials, so long as they do not overtly state or imply that they actually provide financial planning guidance.

For many financial planners and industry observers, the current standard, which was instituted in 2009, never passed the “smell test.” While the existence of this loophole enabled the CFP Board to cast a broad membership net that provides the monetary fuel for its advertising and lobbying efforts, it is directly in conflict with, and hypocritical to, the “client-first” standards the Board so zealously purports to promote. On one hand, the Board is constantly preaching about the need for regulatory authorities to create stronger rules that place the interests of the client above those of the financial advisor, while on the other it has been encouraging non-fiduciary advisors to use the marks to gain credibility. Critics have rightly argued that this policy has added to confusion among consumers and has made it more difficult to differentiate between advisors who are held to the lower brokerage and insurance suitability standards that require only limited disclosure of commissions and conflicts of interest and advisors who must adhere to the strict client-first fiduciary standard that is applied to financial planners operating under the Investment Advisers Act.

Although the June 20th initiative has been lauded by some industry observers, the proposed standard of conduct revisions for CFPs comes on the heels of the Department of Labor’s legally mandated fiduciary standard for all financial advisors (including brokerage and insurance reps) who service retirement accounts. Far from taking a leadership role on the fiduciary issue, the Board’s proposal to expand the reach of its fiduciary standard comes after years of foot-dragging. To paraphrase a famous quip from Winston Churchill, the CFP Board can always be counted on to do the right thing…after it has exhausted all other possibilities.

Further, a close reading of the amendment finds that it is carefully and subjectively worded to allow commission-based reps to continue to use the marks and to allow the Board to continue unabated in its recruitment commission-based sales reps to the CFP ranks. The proposed new standard is being presented as an improvement insofar as it does indeed require commission-based certificants to disclose how they are paid, their obvious conflict of interest in selling commission-based products to prospects and customers, and to (subjectively) agree to place their clients’ interests first. What is conspicuously lacking in the proposal, however, is a specific requirement of upfront disclosure of how much (i.e., the dollar amount and/or % of commission) the advisor will receive on commission-based transactions.

Under the proposed amendment, a CFP advisor is not required to specifically disclose the amount of compensation he/she will receive from a client’s purchase of an annuity contract, life insurance policy, non-traded REIT, or other “alternative investment.” Commissions on these products are generally opaque to investors. Supporters of the SEC’s existing, stricter fiduciary standard would likely argue that this is very much material, relevant information that must be disclosed, but the Board’s amendment carefully tiptoes around this 800 lb. gorilla, presumably so as not to offend its legions of dues-paying, commission-based wirehouse brokers and insurance agents. Instead, the abstruse language of the amendment merely leaves it up to the CFP to determine if he/she is acting in the client’s best interest and is sufficiently disclosing material information. The absurdity of this approach is compounded by the fact that the CFP Board has no real capacity to enforce the new “tougher” fiduciary standard on its members until after a consumer complaint is made.

**A pattern of misleading consumers**

The inconvenient truth is that the CFP Board’s proposed new standard only creates the perception of closing the fiduciary standard loophole. Such duplicity is consistent with the CFP Boards’ modus operandi in advancing its agenda of increasing its influence over the financial planning profession by any means necessary. Another blatant example is found in the Board’s $40+ million “Let’s Make a Difference” television PR campaign to raise consumer awareness of the CFP marks. The unambiguous message of the commercials is that advisors who hold the CFP marks are more qualified and more trustworthy than non-CFP financial planners. For an organization that presents itself as a protector of consumer interests, the suggestion that certificants are necessarily more academically qualified than non-CFP financial planners is tantamount to misrepresentation, since CFP certificants who obtained their marks prior to 2008 were not even required to have a college degree. Even today, certificants are not required to have any prior academic background in finance or economics. Similarly, the implication that CFP holders are inherently more trustworthy is both misleading and ethically irresponsible, since there are many high profile examples of CFPs who used the marks to gain trust in order to defraud their clients (see supporting articles). Further, the CFP Board itself has been criticized over the years for being inexcusably slow to revoke the marks from certificants who have been convicted of fraud and/or misrepresentation.

**Give the CFP Board an inch and it will want to be a ruler**

At present, financial planners are regulated by the Securities Exchange Commission (SEC) under the Investment Advisers Act of 1940. The agency’s rulemaking and enforcement authority covers both traditional non-brokerage investment advisers and all financial planners whose services include investment guidance. Under current SEC rules, all financial planners are held to a strict fiduciary standard that is unambiguous in requiring the advance disclosure of ALL material potential conflicts of interests. All financial planners are also required to provide prospective clients with detailed plain English background disclosure information (SEC Form ADV Parts 2A & 2B) and to update and deliver these disclosure documents to clients at least annually.

The SEC’s fiduciary standard applies to all CFPs who fall under the SEC’s purview as investment advisory reps (IARs), but does not apply to CFPs who are traditional brokerage reps or insurance agents. To address this problem without offending its constituency, the Board’s proposed amendment requires this segment to provide a disclosure document that is “substantially similar” to SEC Form ADV to consumers. These advisors, however, would presumably remain beyond the reach of SEC regulation and enforcement.

In terms of its role in the financial services universe, the CFP Board of Standards owns the Certified Financial Planner designation, administers the CFP exam, and sets and enforces the standards for the use of the CFP marks by certificants. Although the organization currently has no regulatory authority over the financial planning profession outside of its membership base, its stated objective is to make the CFP designation a requirement for the entire financial planning profession. To advance this agenda, each year the Board spends millions of dollars on marketing campaigns to influence public perception of the CFP marks and on lobbying efforts to increase the Board’s influence with lawmakers. Funding for these efforts comes primarily from exam fees and membership dues. If the CFP Board is successful in lobbying lawmakers in Washington to make the CFP designation a required standard for financial planning, it would become the de facto regulator of all financial planners.

In sum, the CFP Board’s June 20th proposal is merely a watered-down duplication of existing Investment Advisory Act standards, and it is just the latest example of the organization disingenuously posturing on behalf of consumers while seeking to protect and advance its own financial and political interests. The financial planning profession (including existing CFPs) and lawmakers would do well to wake up to the Board’s subversive, power-grabbing agenda and to think carefully about the wisdom of granting further influence or authority to an organization that is so consistently duplicitous and hypocritical in its own conduct.

John H. Robinson is Founder/Owner of Financial Planning Hawaii and Co-founder and CEO of software maker Nest Egg Guru. He is a regular contributor to industry discourse on a broad range of financial planning topics and was recently named among the top 100 most influential advisors in the U.S. by Investopedia.

**Supporting articles**

Board to Death: Is the CFP Board’s New Fiduciary Standard Really Better Than No Standard at All? (Think Advisor 6/21/2017)

Consequently, the key question is whether this revised standard is, in fact, a real fiduciary standard, or yet another fake standard that is likely do more harm than good. In that regard, the recommendations should close the loopholes in the existing Standards of Conduct that allow CFPs to be part-time fiduciaries…Toward that end, the Board’s recommendations appear to be surprisingly comprehensive and on point. I say “appear” because, as I’ve learned, with any quasi-regulatory document, the practical application of the proposed changes can vary greatly from the way they appear at first blush and ultimately depends on a specific word here or a slightly unconventional definition there.

‘Just Say No’ to CFP Board’s New Standards (Think Advisor 7/11/2017)

The Board has done more harm to the fiduciary movement than any other organization. And given the absence of transparency and of good board governance, certificants need to understand that there is no self-correcting mechanism to drain the swamp.

**Restoring Trust In The CFP Mark (Financial Advisor 4/6/2009**)

It's important to remember that the requirement of a bachelor's degree was instated only for those credentialing after 2007, before which many planners could hit the pavement straight from high school or even beforehand.

A painful truth is that many financial practitioners are salespeople masquerading as planners or advisors in an industry whose ethical practices have a shameful track record. Stockbrokers and insurance agents who earn commissions from buying and selling stocks, insurance and other financial products realize that a CFP credential will help grow the volume of their business or branch them into other related and lucrative products and services.

The Curious Case of the CFP Board and a Double-Dipping CFP (Think Advisor 9/24/2012)

In case you missed it, financial planner Allan S. Roth told an interesting—and troubling—story about a CFP Board enforcement case in his Wall Street Journal blog (See Is the Fiduciary Standard a Joke?)

Let me remind you, this is the same CFP Board that purports to speak for the financial planning profession on the fiduciary debate—and during the writing of Dodd-Frank was angling to become the regulator for financial planners.

When Your Financial Planner Doesn’t Tell All (Wall Street Journal 10/4/2013) The Wall Street Journal has identified at least 17 recent instances in which the CFP Board stripped a planner of the CFP title more than three years after serious allegations first appeared in the public record.

What’s Behind The CFP Board’s Big Fee Increase (RIA Biz 4/11/2011)

The organization has an annual budget of about $14 million, reserves of $28 million and a very nice office on K Street, the heart of Washington’s lobbying district. The organization’s board Friday approved a fee increase of $12 a month, which would amount to a revenue increase of $9 million a year for the organization.

The CFP Board has some critics, including the prominent advisor Ric Edelman, who publicly quit the Financial Planning Association when that group endorsed the CFP mark as a sign of quality. Edelman doesn’t hold a CFP, though many of the planners who work for him do.

**“I do not believe the board, despite its name, properly sets the right standards for our profession,” he says. “It is little more than a self-serving entity operating under the guise of serving the public interest. The interests it actually serves are merely those of itself and its members.” – Ric Edelman**

How the CFP Board is getting its $40 million's worth from its Advertising Campaign (RIA Biz 7/24/2014)

The campaign is not over and CFP Board will continue spending about $10 million annually and review that budgeting on an annual basis.

CFP is caught in the middle. It has some gravitas but in terms of the training required, it’s not nearly the amount off the CFA [Chartered Financial Analyst] or CPA, it’s just not that demanding. It is right in the middle. They’re desperately trying to separate themselves from that pack of others credentials because they want to be seen as more valuable and more serious.”

Is the CFP Fiduciary Promise for Real? (Financial Planning 10/29/2013)

"Just about anyone can use the term 'financial planner,' " the board's chief executive, Kevin Keller, said in a news release announcing the "Let's Make a Plan" campaign. "But only those individuals who have passed a rigorous set of criteria and meet our strict ethical qualifications can call themselves a CFP professional," he added. Yet the campaign may ultimately have the opposite effect, undermining the CFP description by making promises the board cannot fulfill.

"Simply put," says Ron Rhoades, a former NAPFA board member and head of the financial planning program at Alfred State College in Alfred, N.Y., "many consumers may be under the impression, as a result of the CFP Board's advertisements, that [its] certificants are trusted advisors when, in fact, many do not always practice in such fashion." Rhoades has accused the board repeatedly of perpetuating fraud against consumers by creating this impression.

**Is the CFP Board Losing Credibility in the Eyes of Advisors? (Wealth Management 4/11/2014)**

WealthManagement.com surveyed 321 CFP holders and found that one-third believe the recent scandals detract from the perceived value of the designation. Fifty-four percent said they don’t trust the advisor compensation disclosures on the CFP’s website.

“The CFP Board continues to insist that all is well and everything is OK and the compensation disclosure rules are clear,” said Michael Kitces, an industry blogger and advisor who holds a CFP. “And certainly it sounds like the implication from the survey is no, there are still certificants who are concerned about this.”

**CFP Board chairman steps down amid ethics concerns (Reuters 11/2/2012)**

The chairman of an organization that certifies and develops standards for financial planners has stepped down amid allegations that he may have violated the group's ethics rules…Alan Goldfarb, chairman of the Certified Financial Planner Board of Standards Inc, resigned along with two members of a disciplinary and ethics committee, the organization said in a statement on Friday.

**Global Junkets Lavished On Directors Fuel CFP Board High Life (FA Magazine 4/3/2014)**

Some suggest that the board subtly curries favor with CFP Board directors by dangling lavish perks in front of them. Topping the list is a long array of expensive international junkets offered to members of the board’s various international councils and others.

**Did CFP Board Shorten Exams to Lure Certificants? (Think Advisor 1/17/2014)**

Kitces’ blog sparks debate on whether new CFP Board exam regime is a watering down of the mark.

Secret recording: A CFP at JPMorgan pushed high-priced products (Financial Planning 10/13/2016)

The recording raises questions about the CFP Board claim on its website and in its advertising campaign that all certificants are fiduciaries.

Many regrets for those lured by Bradford Bleidt (Boston Globe 1/20/2009)

Before there was Bernard Madoff, there was Bradford Bleidt. Bleidt worked his Ponzi scheme not at exclusive Florida country clubs but in red-brick Masonic halls north of Boston.

CFP BOARD CENSURES IMPROPER CFP® CERTIFICANT CONDUCT (CFP.net 1/1/2005)

CFP Board issued Bradford C. Bleidt an interim suspension, prohibiting him from using the CFP® certification marks, effective immediately. This disciplinary action was taken by the Board of Professional Review, a board of CFP® certificants that interprets and applies CFP Board's Code of Ethics and Professional Responsibility and Financial Planning Practice Standards as well as investigates, deliberates and takes appropriate action with respect to alleged violations of the Code of Ethics or Practice Standards by CFP certificants.

Fee-Only Pioneer Zabalaoui Sentenced To 8 Years (FA Magazine 8/6/2009)

During an emotional court case yesterday, a federal judge sentenced 71-year-old former planner Judith Zabalaoui to 97 months in prison for using a Ponzi scheme to embezzle millions from clients in the New Orleans area…Zabalaoui, a certified financial planner, was regarded as one of the pioneers of the financial advisory profession and among the first advisors to transition to a fee-only model in the early 1980s.

Investment News, Client Prospecting

# CFP Board omits thousands of regulatory, criminal problems of its certificants on consumer site:

**WSJ**

By Mark Schoeff Jr. July 29, 2019

A website maintained by the Certified Financial Planner Board of Standards Inc. to help investors find a CFP fails to list regulatory and criminal misconduct and customer complaints for thousands of its credential holders, according to a Wall Street Journal article posted Monday.

The newspaper analyzed more than 72,000 profiles on the LetsMakeAPlan.org site, comparing them to records kept in BrokerCheck by the Financial Industry Regulatory Authority Inc. BrokerCheck contains background information on registered representatives, including their disciplinary histories.

The WSJ found that more than 6,300 CFPs had Finra disclosures that were not mentioned on the CFP Board’s consumer-facing website.

“Among the planners the Journal’s analysis flagged, more than 5,000 faced formal complaints from their clients over investment recommendations or sales practices, and hundreds have been disciplined by financial regulators or left brokerage firms amid allegations of misconduct. At least 140 faced or currently face felony charges,” WSJ reporters Jason Zweig and Andrea Fuller wrote.

In the article, the CFP Board said it is reconsidering what it should include on its LetsMakeAPlan.org site following the WSJ’s investigation.

“In some cases, the Wall Street Journal raises important issues, which we’re addressing,” the CFP Board said in a statement in the article. “We will continue to evaluate what, if any, additional information should be included on the site.”

CFP Board spokesman Dan Drummond declined further comment to InvestmentNews. The organization is set to make an announcement Tuesday, but Mr. Drummond did not provide details about it.

Next June, the CFP Board will begin enforcing a revised fiduciary standard for mark holders that it touts as tougher than the investment advice standards recently approved by the Securities and Exchange Commission.

FORBES MONEY WEALTH MANAGEMENT

# CFP Board’s Grand Progressive Experiment With Financial Advice

Robert Schmansky May 24, 2020,05:50pm EDT

CFP Board fiduciary Kevin Keller napfa stewardship leadership

Some think that CFP Board's attempts to control money and financial planning advice will lead to a ... [+]GETTY

When the Department of Labor’s Fiduciary Rule – created under the Obama administration – failed in 2018, the lobbying efforts of several left-lead financial organizations like CFP Board and The Financial Planning Association seemed to end as well.

Under the Trump administration there have been no pushes of significance to advance financial planning access or availability. While I haven’t been overly surprised by that fact, I have been curious what the lobbyists could be working on to justify their pay. The financial planning advocate in me always was disappointed when consumer outreach funds shifted from beneficial programs pre-2012, to expensive, and largely failed, lobbying efforts.

An answer may have arrived last week when CFP Board released a grand plan for the financial planning industry related to a “roundtable” meeting they conducted last December, where they outline their vision for a “profession” for financial advice. I’ve written about concerns with CFP Board’s activities over the last several years politicizing and cartelizing the financial planning industry, but the ideas within this document – seemingly to create a profession under their control that encompasses everyone and every definition – has to be one of the most concerning of my career.

CFP Board revealed last week that last December they held a “roundtable forum” with “nearly a hundred leaders from the financial advice ecosystem.” The secretive nature of the meeting and the lack of any disclosure of the participants already makes one wonder with a group known for including only supportive voices and punishing dissenters. (Increasing my concern is that punishment is also high on CFP Board’s current issues, as the other recent emails from the board are related to their swiftness in proposing and pushing through penalties for certificants. As many of those commenting on the board’s rules point out their penalties allow a wide range of action for “conduct” which will be political in nature – some mentioning the board can punish advisors for “an act of moral turpitude” or simply opposing the current whims of CFP Board as the progressive, self-appointed leader of financial planning advice – and many suggest they are being done at this time for political expediency).

While the document lacks any pro-market and consumer ideas to expand access to planning – this being a time where fiduciary rules and regulation have destroyed access and regulated product availability – it seems several have been busy on finding ways to control the financial advice profession, and in what appear to be very collectivist ideas.

While CFP Board wants to be known as the standard-bearer and potentially a regulator for the budding profession of financial planning, they have yet to come to terms with or fully explain their own new standards to which these penalties and rules apply. The fact they would attempt to push those “standards” on certificants and non-certificants alike should be a warning to everyone involved in planning (and, for those with a sense of humor shows little planning from the planners).

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As a certificant I’ve reached out on numerous occasions to CFP Board for information on how one may meet their rules, and to learn why the rules from CFP Board, a group that claims to support financial planning, presumes that the act of financial planning has no value when done by an independent advisor, but not when done by a large Wall Street firm. I’m a certificant trying to meet their rules, and they have ignored all of my requests.

I may be biased, but one may see a political and deplatforming agenda without even looking hard. It would be hard to believe so many employees at any regulator or certification program are not interested in helping a certificant, ex-volunteer, and ex-instructor meet their obligations without realizing that the lack of concern likely comes from politics. Every regulator I’ve ever worked under has recognized that despite disagreements, it’s the public whose interest we both serve. CFP Board is alone in my experience in not being interested in explaining their rules to a certificant to meet his obligations.

In this era of trying to control the profession, the only clear way to know one is safe that I have found to work as a financial planner is as an employee for a large mutual fund firm not faced with an economically backwards rule that places an individual advisor at risk for taking on a client and forcing that advisor to make some sort of unknowable value decision for that client.

One would think there would be some self-reflection or irony seen in the pushing of rules and penalties to protect the public from financial service product producer self-interest, and yet the largest beneficiary of the rules has been the largest mutual fund and brokerage firms. The biggest losers have been independent fiduciary advisors and the public at large – both in terms of their access to advice and the quality of the advice and products available. Consumer interest has been shoved aside for control over the independent advisor and pushing individuals to the largest firms and new, tech firms, neither meet any basic fiduciary definition.

It should seem astonishing that a group which wants to regulate planning has what amounts to a separate and weaker standard for large firms and new tech firms, and an “incomplete” on their rules threatening the truly independent, fiduciary industry, but their time over the last few years has not been spent on clarifying and finalizing one equal standard, but rather on control and penalizing those advisors who strive for a higher standard.

In an article by Knut Rostad for Advisor Perspectives (PDF), Susan John, 2019’s CFP Board chair, seems to acknowledge that many advisors can no longer meet CFP Board’s own standards when it comes to fee disclosure, which was entirely due to CFP Board’s own actions recently to remove critical consumer disclosures from CFP Board’s consumer website. Any real fiduciary relationship starts with total disclosure of costs for the consumer to be able to judge value; CFP Board’s “fiduciary” standard applied to independent advisors is - “Disclose all you want, we’ll judge your decision for you helping that client in the future based on whatever our feelings are at that time.”

John – at the time the prior year CFP Board chair and a past NAPFA board chair – received significant flack on social media for being put out by CEO Kevin Keller as the spokesperson. The use of John as scapegoat has allowed CFP Board to move forward, once again, without consequences to anyone in current leadership.

**CFP Board has been no stranger to politicizing financial advice. Over the years Keller has included political extremists as volunteers and employees, and removed those who may question him**. Rather than committing to intellectual and political diversity, or even established advisors who can speak to how to grow a practice, many of their volunteers are new to the profession and have not established themselves in their own practices, but have served on his ethics committee during the overhaul of their rules.

And while CFP Board promotes identity politics, they are simultaneously failing at diversity precisely due to this political imbalance. Dr. Gad Saad, professor of marketing, holder of the Concordia University Research Chair in Evolutionary Behavioral Sciences and Darwinian Consumption, and author of the forthcoming The Parasitic Mind: How Infectious Ideas Are Killing Common Sense, frequently discusses how the new identity politics closely resemble a religion; where postmodern professors have largely destroyed the value of many degrees, implementing it in personal finance will surely be the death of the value of the financial planner. CFP Board’s education programs at university are very frequently taught outside of the business school in schools that are more receptive to postmodernism and socialism, which has a major contributor to the politicization of CFP Board and the planning profession. I would not be surprised to learn that there were a number of extreme, social justice supporting professors and graduate students at this event. In the past, I’ve noted many with no real-world experience on Keller’s advisory boards.

It is obvious that the promotion of one political ideology – one that’s extreme in its postmodernism, progressiveness and social justice – is, by its very definition, anti-diversity. When CFP Board began working on their newest Code of Standards and Ethics, I noted a practioner whose main experience was in teaching special education and her main interest seems to be tweeting Marxism, “punch a Nazi” (often code for a white, male or simply a capitalist in the woke vernacular), and being given a platform to push progressive ideas like reparations serving on his ethics committee. While the profession is largely split evenly between those who consider themselves conservative or progressive, CFP Board’s young volunteers supporting collectivism and identity politics fit with neither group. Though often the most vocal on social media, they represent a very small percent of real-world planners and clients.

I’ve seen several volunteers and the ‘faces’ that CFP Board promotes in its marketing and with the press are more and more a part of this small and extreme political movement (see more on this in my previously linked diversity article). Putting such extremists on these committees would seem to be a massive failure of leadership; unless the goal of the leadership is no longer to provide the most credible credential for the public, but rather to use their credential to politicize finances and eliminate those who would have other views.

This movement works alongside the deplatforming movement – from moderate progressives to conservatives – in other professions and online. I have been the target of Keller’s ‘deplatforming,’ being removed as a volunteer for voicing concern with the harm these fiduciary rule would (and have) done to independent advice, for writing articles promoting the positive aspects of planning (CFP Board specifically mentioned this article to me as a problem), and for being against partnering with groups like FPA, whose regular promotion of socialist concepts, and specifically for pointing out their annual promotion of Modern Monetary Theory (MMT) as nearly their only economic theory at national conventions, is not compatible with sound personal financial planning.

Some advisors have been looking forward to CFP Board creating a “woke” profession, where people can be deplatformed from being employed professionally due to political disagreements and bullying, rather than have to make their case in arguments with words.

Could CFP Board be creating the first “woke” profession, where those who disagree with the politics are deplatformed and not allowed to practice?

Perhaps more relevant – Do thinking advisors who can pass their exam believe that they will maintain their salary, business value, integrity and value to their clients if CFP Board succeeds?

Advisors who want a truly higher standard frequently contact me to discuss these issues since I’ve been vocal about the lack of leadership at most financial planning organizations, as they have let CFP Board lead and received the benefits from insulating it from criticism, rather than meeting their own mission statements and living up to their fiduciary and leadership responsibilities in their own right. In giving up their independence and ability to criticize CFP Board’s grand experiment building a profession upon a sandy foundation of progressive politics, postmodernism, victimhood and identity politics – rather than capitalism, merit, knowledge, hard work, compassion and facts – they’ve given up the core of their value to the world in exchange for a short-run ‘like’ from CFP Board.

One of my colleagues opined recently that independent advisors have given up our sacred inheritance of a profession consumers value and trust… for nothing more than a bowl of porridge (I would just add that the socialist bowl of porridge isn’t the top quality porridge).

Consumers who believe a fiduciary advisor should be experienced, put politics aside to focus on improving their personal circumstances, have the knowledge and experience to do so, and always put their interests completely ahead of an advisors own (even in the face of conflicting CFP Board standards) will expect professionals recognize the actions of CFP Board in their quest to control financial planning are not compatible with their values and respond accordingly. Father of the fiduciary movement, Don Trone, L5, CEO of 3ethos recently wrote how CFP Board’s standards are “backsliding from where we were 20 years ago.”

I believe we are at a point that is even worse than Trone. Trone’s placing CFP Board in a category of having principles is not accurate. The politics of socialism is the politics of power, not principles. Individual CFP® ceritificants may introduce principles into their practices, but it will be without knowing whether or not they run afoul of CFP Board’s politics. In many cases CFP Board’s political movement will conflict with doing right by consumers, in which case a planner who holds their credential is supporting doing wrong by the client.

And, consumers will reject it all, while the profession loses far more credibility than it ever did to a bad apple or two.

CFP Board’s goal in their meeting summary document is clear that they not only want to disallow advisors to act independently – and I believe deplatform disagreement – but, they also want control over advisors who reject their politically-driven “fiduciary” rules will be subject to them via government regulation. Advisors who think they have somewhere to hide may want to start paying attention.

The publication of the notes from this gathering – five months later – is full of collectivist ideas. From the control over words like “financial planner,” to a less than hidden objective to “develop business models,” to something about “products and services need to be better designed” and if “we don’t” someone else will. Keller’s writing in the past reflects a desire to tell firms what to do – to control the way firms deliver advice – in a typical collectivist fashion.

Like most collectivists, control is most easy to be had when technology replaces critically thinking humans who may oppose moves to politicize. Keller has many of these technology firms on his committees who have CFP® certificants as advisors or members who meet with the public, but these firms have an unstated ‘waiver’ for CFP Board’s “fiduciary” rules that will decimate the individual advisor market in the coming years. These firms contribute financially to CFP Board and other supporting organizations; I have requested to know how these conflicts are managed – since fiduciaries are required to manage conflicts – but, in any case any objective observer can see that the standards for and threats to advisors at these firms are less than for independent advisors.

**At the present time, CFP Board has transformed itself from a credentialing organization with a decent, fairly comprehensive examination (though one severely and perhaps purposefully lacking on basic economic concepts), to what now resembles a political agenda to control what is allowed in investments, financial advice, as well as who can even be allowed to practice and what sorts of ideas can be discussed.**

In the mini-series Waco, actor Michael Shannon plays FBI negotiator Gary Noesner. In lamenting his silent endorsement of the FBI’s priorities shift over his career from seeking to find common ground to end standoffs to use of any force necessary to shut down dissent, he is caught wondering what he should do in a moment of crisis and consults his wife. Noesner has passively spoken up to his bosses about his concerns over time, but mostly watched as the FBI increasingly promoted increasing their power by taking it from the needs and rights of the public.

What is his wife’s response when “talking” to his bosses is not resulting in consequences?

“Talk LOUDER.”

It’s time other advisors speak up – loudly – about the direction of their profession, the damage CFP Board is doing to our value and credibility, and the impact it has had on individuals. And, despite what many tell me, who are not certificants, that “this does not apply to them”... see the document above. CFP Board plans on their politicized “standards” being the standard.

The “transparent” and controlled world CFP Board desires has proven to be one with fewer options for individuals when working with an advisor, the number of firms, new firms have sprung up that outwardly require acceptance of politics and promote deplatforming those individuals and ideas who do not mesh. I’m meeting with many prospects and individuals who are going it alone today, choosing products and strategies without an advisor, because the porridge looks better doing so.

This CFP Board and its volunteers and supporters look very much like the FBI approaching Waco; they haven’t been trained in the basics of our profession in capitalism, freedom, competency, etc., and have given up on peaceful negotiation for militaristic collectivism with the most force to shut down alternative political or personal ideas.

If advisors do not begin to speak loudly, they may need to start looking for new careers. There is no booming financial planning profession in Venezuela (or, as Trone has written, “If the CFP Board were a country, it would be North Korea”), and the end result of the types of control CFP Board seeks will simply make the best choice for consumers to plan more effectively an app on their 5G phone, rather than pay the increased costs CFP Board has imposed on independent advisors for silently advancing conflicted and political advice from their CFP® professional.

I reached out to CFP Board via email on May 24, 2020 to discuss this topic and will update the article with any response. I have also reached out to CFP Board on May 17, 2019 via email, and on numerous other occasions via social media and email to discuss the issues above and to find out how a CFP® certificant can be confident they meet CFP Board’s standards. As of this publication I have not received a response to any request. My volunteer experience with CFP Board lasted from December 2014 until April 2018.

Robert Schmansky

FORBES MONEY WEALTH MANAGEMENT

# CFP Board Provides Cover For Lying Financial Advisors

Robert Schmansky Mar 9, 2020, 11:07am EDT

A liar businessman and financial advisor

A recent decision by CFP Board to remove compensation disclosures from their website provides cover.

Last week, in a surprise announcement that reversed several years of focus they had placed on providing accurate information to the public, CFP Board chose to remove the publication of the method in which a financial advisor is compensated from their public website.

The move has caused a stir in the Fee-Only community, which has overwhelmingly condemned CFP Board's decision. Colleagues at NAPFA have sent questions regarding the change, but after a week there has been little communication aside from releases in the press.

Compensation is a critical question to begin any relationship based on commerce. It is the uncomfortable item that consumers look for validation of and not just from the advisor themselves.

Knowing whether an advisor is compensated only from the client, from financial firms, or a combination is not evident on most advisor websites, and CFP Board's previous disclosure provided perhaps the only simple place for consumers to crosscheck what they believe or were told by an advisor. CFP Board's website previously answered this question by categorizing the way an advisor's firm receives all types of compensation. The firm element is critical as advisors can claim to be salaried or paid by fees alone, when their firm is paid by financial firms to have advisors sell their products.

Consumers want to compare prospective advisors based on services, credentials, and several other criteria, but at the top of every economic transaction is: How much and how will I pay?

Advisors know this as well. As an advisor I am constantly faced with prospective clients coming from meetings with insurance agents claiming to be fee-only, fiduciary advisors. Some advisors will verbally tell or insinuate anything in person, but never in writing or on the web. Since compensation terms like Fee-Only, Fee-Based, Fee and Commission are not universal or legally defined, advisors frequently use whichever they see as most advantageous. The one tool that customers could rely on to see if a CFP® certificant was using a common definition was CFP Board’s website.

Trump Indictment: McCarthy, DeSantis, Musk Blast DOJ Charges As Some Democrats Applaud

What Crimes Was Trump Charged With In Federal Documents Case? Here’s What We Know—And How Much Prison Time He Could Face

In articles and press releases, CFP Board CEO Kevin Keller and Board Chair Susan John both claimed that investors should not be so concerned about fees, rather, they should simply trust that their CFP® professional is a “fiduciary” by definition of their newly enforced Code of Ethics and Standards of Conduct because they claim so. In his typical politician style Keller quipped that the 180-degree change from years of importance placed on the disclosure and significant focus on fees in their new Standards: “It’s about fiduciary, not fees.”

I’ve written in the past how CFP Board has not created a universal fiduciary standard, but rather made vague rules to punish and control certificants and emphasize this at the place that impacts them the most – client IRA rollovers (In short, CFP Board attempts to overrule universal economic laws by ignoring: the overwhelming benefits to clients and focusing only on cost, that clients are always and in every economic decision the determiner of value, and that advisors do not have perfect information of the client at the time the client chooses them, and more.).

Their actions in telling consumers what they should want, and ignoring the reality that all consumers want more information, shows the same disregard for consumer choice as they have for independent advisors, now threatened by CFP Board’s rollover rules (certificants who work for large firms and robo-firms have no such threat for the actions of their employers in IRA rollovers).

Given CFP Board’s constantly changing positions on issues like compensation and history of being accused of political favoritism in enforcement of ethics complaints, as well as steering the profession towards political fiduciary experts that benefit them by creating complex and vague disclosure standards rather than the universal common understanding of the word, it is hard to see this move as anything but benefiting the board itself.

Even in their official reason that their new “fiduciary” standards remove the need, CFP Board seems to have caused a problem for certificants. Their standards require CFP® professionals who work for firms that may offer a different definition than CFP Board on compensation to disclose this to the firm’s clients and the only way that was practically accomplished by certificants who are not in positions of control in the past was via CFP Board’s website.

From CFP Board’s Standards:

“A CFP® professional who does not Control the CFP® Professional’s Firm must correct a CFP® Professional’s Firm’s misrepresentations of compensation method by accurately representing the CFP® professional’s compensation method to the CFP® professional’s Clients.”

I’ve written here at Forbes about a firm that marketed itself as fee-only despite continuing to accept commissions from past product sales and still having an ownership interest in multiple insurance firms. According to CFP Board, certificants that work at such a firm “must correct” the firm’s representation of their services by “accurately representing” based on CFP Board’s compensation definitions. “Fee-Only” advisors, according to CFP Board’s definition do not allow the advisor, firm, or related parties to receive “Sales-Related Compensation in connection with any Professional Services the CFP® professional or the CFP® Professional’s Firm provides to Clients.”

During my research for the prior article I checked for CFP® certificants on CFP Board’s website, and at the time found several listed correctly as “Fee and Commission.”

By hiding compensation information, CFP Board removed the one way these advisors had to prove they were in compliance with CFP Board’s standards and likely was the only way the firm would allow the certificant to be in compliance. By removing the fee disclosures without warning CFP Board itself made these professionals out of compliance and opened themselves and their firm up to lawsuit.

Father of the fiduciary movement and 3ethos CEO Don Trone, L5, has written that CFP Board’s standards, “will only inspire and engage plaintiff attorneys who now have a detailed roadmap on how to sue CFPs.” How simple for a client to now say they understood their advisor was Fee-Only and did not provide in writing anything that shared their firm does receive sales-based compensation.

Trone has also noted:

“Publicly the CFP Board has advocated for fiduciary standards while at the same time it has intentionally interfered with the efforts of outside organizations attempting to develop fiduciary standards for financial planners.

Associated with the above interference, there’s overwhelming evidence that senior staff and at least one director engaged in self-dealing, collusion and undisclosed conflicts of interests.

There also is a preponderance of evidence to demonstrate that the staff has buried formal ethics complaints of friends while orchestrating kangaroo courts for enemies. Ten years ago, the Board’s CEO convinced the directors that his staff, not the independent Disciplinary and Ethics Commission, should be overseeing the disciplinary process. In response to the change, five members of the DEC resigned in protest. ‘The CEO of the CFP Board has given staff unfettered control of the DEC process,’ one of the departing members said at the time. ‘In doing so, he has done profound violence to the integrity of the whole disciplinary and ethics review process.’”

Given the critical importance of cost in the economic transaction of hiring an advisor and the requirement that CFP® professionals provide accurate information, it appears while there is no valid public interest or advisor disclosure reason to remove the compensation function. Though, there could be a very plausible reason for CFP Board - to avoid future embarrassment.

In July 2019, The Wall Street Journal published a well-researched article by Jason Zweig and Andrea Fuller on the many issues related to incorrect information on CFP Board's advisor search tool. While CFP Board responded in typical political fashion, it seems this may be the ultimate response - simply remove information that may embarrass them for not having code to crosscheck their database.

And while information will never be completely correct, by unnecessarily removing critical consumer information that could be easily and automatically crosschecked to see if an advisor is reporting as Fee-Only while also reporting holding sales licenses, CFP Board has acted in its own self-interest for control again over exhibiting fiduciary behavior.

What CFP Board appears to have done by hiding critical information that consumers must have appears to have been done only to avoid future embarrassment, ignore their fiduciary duties to stakeholders, and put advisors and trust in financial advice at risk. Its arrogance to tell consumers and certificants that basic economic reality just can be ignored and replaced with their ever-changing and politically-driven judgement and control will not inspire acceptance of their “fiduciary” standard as what the public expects from a fiduciary.

Rather, by labeling their certificants as fiduciaries despite the board's unwillingness to accept common fiduciary governance standards itself is leading to a scenario where many will lose faith in “fiduciary” advisors entirely.

I was a volunteer for CFP Board from December 2014 until April 2018. I have reached out to CFP Board on several occasions to discuss issues related to the above and as of March 9, 2020 have not received a response, and I welcome any chance to discuss these concerns and update this article with their responses.

Robert Schmansky

Wall Street Journal

When Your Financial Planner Doesn't Tell All

# The CFP Board takes as long as eight years to discipline planners who have committed fraud.

By Jason Zweig

Oct. 4, 2013

**Who's watching your financial planner?**

The Certified Financial Planner Board of Standards says it is. The organization, which has awarded the coveted CFP certification to nearly 69,000 financial planners, launches an investigation whenever it suspects a planner might have violated the profession's ethical standards.

Of course, most CFPs have never been disciplined by a regulator nor had a client lodge a formal complaint against them. But does the CFP Board move fast enough to punish alleged wrongdoers?

In 2011, the CFP Board opened 1,569 investigations, up substantially from 1,324 in 2003. But the number of CFP holders went up even faster, to 64,232 in 2011 from 42,973—so the rate at which CFPs were investigated fell to 2.4% from 3.1%. New investigations fell to 866 last year as the CFP Board worked off the backlog of cases that had built up, says Michael Shaw, who is in charge of professional standards there.

The Wall Street Journal has identified at least 17 recent instances in which the CFP Board stripped a planner of the CFP title more than three years after serious allegations first appeared in the public record. There isn't any evidence that the public has been harmed by the relatively slow pace of the board's disciplinary actions.

But these findings are a reminder that financial planners aren't policed as closely as brokers and investment advisers are, since no government entity specializes in regulating them—and that investors can't count on someone else to do their due diligence.

"We're always looking for opportunities to become more efficient and effective," Mr. Shaw says. "But the more important consideration is that [any CFP being investigated] has the opportunity to have a full and fair hearing."

Unlike state securities departments, the Financial Industry Regulatory Authority or the Securities and Exchange Commission, the CFP Board isn't a regulator. As a certifying body, it has no subpoena power.

Nevertheless, "we don't rubber-stamp any regulatory action," Mr. Shaw says. "We conduct our own investigations here." He says the board also shares information with state and national regulators.

In 2012, the board invoked the right to suspend CFPs automatically if one of their financial licenses is revoked or they are convicted of a felony or certain misdemeanors.

But the CFP Board has only six investigators, counting Mr. Shaw, or less than one for every 11,000 CFPs. They have a lot of ground to cover.

Consider the case of David Disraeli, who runs a financial-advice firm called The Personal CFO in Austin, Texas.

In November 2002, the Texas securities board issued a cease-and-desist order against Mr. Disraeli, alleging that he owed more than $39,000 in federal income taxes, had told investors he was an investment adviser when he wasn't registered and was offering securities that weren't approved for sale in Texas.

Without admitting or denying the claims, Mr. Disraeli consented to the order in April 2003.

In December 2007, the Securities and Exchange Commission found that Mr. Disraeli had borrowed $84,300 from his clients' investments in his firm—and used much of the money to pay his back taxes and expenditures on "coffee, ice cream, groceries, restaurants and videos." The agency barred Mr. Disraeli from working at a brokerage or investment-advisory firm and ordered him to pay more than $194,000 in penalties and other sanctions.

Texas denied Mr. Disraeli's application as an investment adviser in February 2008, citing multiple instances of what the state called "fraudulent business practice."

On Aug. 13, 2010, citing the SEC bar, the board revoked Mr. Disraeli's CFP certification.

That didn't stop Mr. Disraeli from using his CFP credential, however. Although he no longer manages money for outside clients, he sells insurance and offers advice on business transactions and financial planning. His primary website features a 5-by-7-inch replica of his CFP diploma; the "about me" section on his blog, where he posted most recently last November, says he is a "Certified Financial Planner"; a May 27 post on his business-finance site identifies him as "David Disraeli, CFP."

"I'm not still using it knowingly," Mr. Disraeli says. "If it shows up and I haven't taken it down, that's something I need to do."

The SEC "never proved that I misappropriated anything," he says. "I don't feel I did anything wrong. Maybe my accounting wasn't the best, but none of my clients asked for their money back." As to the Texas allegations, "I denied it then and I deny it now," Mr. Disraeli says. "That whole thing was a circus."

Mr. Disraeli unsuccessfully appealed the SEC decision and the CFP revocation. His final court appeal, to the U.S. Supreme Court, wasn't denied until 2010. Those hearings, says Mr. Shaw, explain why the CFP Board—which doesn't take disciplinary action until appeals are resolved—didn't act sooner.

Mr. Shaw says the board is "not aware of" any CFPs who have been suspended or revoked who are still using the title. He says the board regularly monitors defrocked CFPs to prevent them from using the credential.

"They haven't said a word about that," says Mr. Disraeli, although the board did admonish him in 2009 that he must always add the ® trademark symbol when using the CFP letters next to his name.

In 2011, the CFP board found that Steve Rice, a financial planner in Los Gatos, Calif. and former mayor of that town, had provided faulty insurance advice to several clients. The board suspended his CFP certification until November 2014.

This week, however, Mr. Rice was identifying himself on at least three websites, including SteveRiceCFP.com, as "Steve Rice CFP."

Mr. Rice didn't respond to requests for comment; his appeal of the CFP Board's ruling was denied by a board committee. Mr. Rice's public record on brokercheck.finra.org shows one insurance dispute that he settled personally; the client withdrew the complaint after Mr. Rice paid $5,000.

Or consider Louis Mohlman Jr., of Mohlman Asset Management in Fort Wayne, Ind. This past week, Mr. Mohlman's biography on his website read: "Throughout his career he has continued education and specialty training to hold designations of Certified Financial Planner," among other titles.

In June 2009, Mr. Mohlman consented to a Finra order without admitting or denying the findings. According to Finra, he had offered to pay a bank employee $500 to obtain confidential account information for several of the bank's customers. He paid a $10,000 fine and was suspended for three months. In April 1993, the state of Indiana fined Mr. Mohlman $1,000 for allegedly misrepresenting the risks of a unit investment trust; around the same time, he paid $10,000 to settle a customer complaint over a limited partnership.

In March 2010, citing the Finra case, the CFP Board revoked Mr. Mohlman's certification; according to the board, he didn't reply to its inquiry.

When I asked about the biography on his website, Mr. Mohlman replied by email, "Thank you for alerting us to this typo." He didn't respond to requests for further comment.

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Think Advisor

# Did CFP Board Shorten Exams to Lure Certificants?

Melanie Waddell. (2014 January 17),

FPs are debating whether the CFP Board’s recent news that it would be transitioning to computer-based exams and reducing their length and duration is the Board’s way of growing the number of CFP certificants.

Advisor, blogger, Twitterphile and ThinkAdvisor contributor Michael Kitces raised this question in a recent Nerd’s Eye View blog, asking bluntly why the Certified Financial Planner Board of Standards would chop the length of the exam by 40%, from 285 exam questions to only 170, and reduce the exam from a 10-hour, day-and-a-half exam into a 6-hour, single-day exam “if the goal wasn’t to at least create the perception that the exam will be easier and therefore more appealing to take.”

The CFP Board noted in announcing that it was going to computer-based exams that the shortened exams would be “equally rigorous” to the longer paper ones, and that they would “maintain the same content detailed in CFP Board’s exam blueprint, representing the requisite knowledge and abilities to deliver financial planning services to clients.”

Michele Warholic, managing director for examinations, education and talent at CFP Board, told ThinkAdvisor that the Board is “not lowering our standards” by changing the length and duration of the exam.

“If someone wouldn’t be able to pass a 10-hour exam then they won’t be able to pass a 6-hour exam,” Warholic said. “The exam isn’t any easier or more difficult. It covers the same content and those who take the computer-based exam — and pass — will be just as qualified as someone who took the paper exam.”

Thanks to technology, Warholic continued, “the world of testing has changed dramatically over the last decade,” and “computers help create efficiencies in testing.”

She explained that the CFP Board’s process in determining the number of questions on an exam “is not arbitrary.” Scoring of the CFP certification exam, she said, “is based upon a variety of science-based approaches used across the professional testing industry — not just a focus on the number of questions or length of an exam.”

The Board is “confident that those who pass the CFP certification examination will be well-qualified, competent CFP professionals once they become certified, meeting the same high standards we have always had,” Warholic added.

**But a number of CFPs were quick to post comments on Kitces’ blog with their thoughts about the shift. One CFP opined that “it just seems to me that asking fewer questions, by its very nature, makes for a less rigorous and comprehensive exam and serves to dilute the qualifications of CFP practitioners in the name of increasing the numbers.”** **As a fairly recent CFP certificant, the commenter was “not amused by this change — not because I care that others after me will have a shorter exam but I truly feel it undermines the exclusivity and accomplishment of those who did it the way it’s been since 1991.”**

Kitces told ThinkAdvisor that while the transition to computer-based testing is “definitely a plus overall … and if just having more convenient computer-based testing (CBT) with more testing locations grows the CFP headcount, that’s great.” However, he said that “the issue of why it has to be a 6-hour CBT instead of a 10-hour CBT is less clear.” The CFP Board “maintains it wasn’t making the exam easier; the gut response of the community seems to disagree, and the initial reaction of test-takers who are excited about the shorter exam would certainly confirm at least the PERCEPTION that it’s going to be easier.”

Said Kitces: “The feedback seems to be skewing negative, though there are certainly some who are supportive of the change — notably, especially those who haven’t taken the exam yet but plan to do so and are looking forward to the shorter one-day 6-hour version!”

Yet another CFP posted this comment to Kitces’ blog: “The test is now 35% fewer questions than the Series 7 with the same amount of allotted time to complete it. It’s definitely going to be easier, but the public isn’t going to care one way or the other. Most don’t even know what a CFP is, much less the fact that the bar to become one has been lowered dramatically.”

One CFP believes that the wirehouses are behind the changes. “Obviously Merrill Lynch and Morgan Stanley are behind this. They know this is the direction things are going but their guys can’t pass the 10-hour version of the exam.”

Then there was this comment from a CFP who believes the change is indeed a watering down of the CFP credential. “More and more I ‘sell’ my degree in financial planning and neglect to mention the CFP,” the advisor said. “This move [to modify exams] certainly does not help the way I view the exam and designation, which in my opinion barely scratched the surface of what one needs to know as an entry level planner–watering the exam down waters down the marks. I guess the Board is looking to expand revenue.”

# Dalton Education’s College Curriculum Adoption CFP® Program

This is an easily turn-key “a program in a box” for colleges and universities to use to offer the seven courses required by the CFP Board. Packaged this way and they also provide other programs such as directing their college students to Dalton for completion then issuing their own college certificate of completion for direct enrollment at Dalton. This is a highly profitable option for colleges and Dalton says hundreds of colleges and universities are in these educational partnerships. However, knowing the disreputable actions of the CFP Board, the high 90% career turnover and lack of job description disclosure of sales licenses required, should they be?

**We believe this “partnership” is extremely deceptive to students. As we reviewed many colleges offering this program, and the Dalton Education website, they DO NOT DISCLOSE the fact that about 95% of the jobs for CFP®s require insurance or securities sales licenses or both and are commission income.**

These colleges publish on their websites that the CFP® job market is growing and make the career sound like it offers salaries and is for the more academic analysist type of student.

At a cost of $4,500-$7,995 these colleges should not be deceptive. Maybe they are just believing the rhetoric about this CFP® program from their Dalton Education Partner, and have not researched this high turnover “career opportunity” themselves.

A screenshot of a website

Description automatically generated with low confidence

Dalton Education provides colleges and universities with a turnkey solution to starting a CFP® certificate course program. All that the University will have to do is market the program, enroll the students, and employ the instructors.

College and Dalton Education Contract



Example of Dalton’s advertising to Colleges:

A picture containing text, screenshot, font

Description automatically generated

Materials that come with this program are: Access to Dalton Education Learning Management System

Homework Questions

Midterm and Final Exams (taken and graded through Dalton LMS. Scores provided to professor upon request)

Comprehensive teaching slides

Instructor support

The cost of this Curriculum is $100 per student per course plus the cost of the corresponding Money Education textbook.

Students pay the $100 and place their textbook order in a portal set up by Dalton Education. This simplifies the administrative process between Dalton Education and The University. When a student orders through the portal they are given access to the Dalton LMS and the book is either shipped or emailed (eBook) to them.

Here is a sample college portal at this link: <https://dalton-education.com/elizabethtown-store\>

# CFP Board of Standards, Inc. 2021 990 Tax Return



This tax return illustrates many of the facts that have been discussed in the Consumer Warning and Alert about the CFP Board and their operations.

For example:

1. It shows the top heavy above average income paid to the top two people that appear to be the decision makers and control the company. The CEO (Kevin Keller) and General Council (Leo Rydzewski.)
2. It shows that the Board of Directors are unpaid volunteers.
3. It shows that while the income is over forty million a year (40,000,000), it is almost all from high fees charged to CFP® certificants.

Business Insider

# We Might Be Repeating the Mistakes Of The 1999 Bubble And Crash

BOB BRYAN APR 19, 2016,

Fireworks erupt behind the ball drop to mark the New Year in Times Square.

The stock market may be in danger of repeating some very bad history.

The current market environment is looking a whole lot like the 1998-1999 stock market bubble, and the crash of 2000 may not be far behind, said Michael Hartnett of Bank of America Merrill Lynch.

"It could simply be 1998/99 all over again. After all, a 'speculative blow-off' in asset prices is one logical conclusion to a world dominated by central bank liquidity, technological disruption & wealth inequality," he wrote in a note Sunday.

Hartnett, BAML's chief investment strategist, thinks the emerging market problems and subsequent global response reflect a similar set of circumstances in the late 1990s.

Here's the chain of events via Hartnett (emphasis added):

Back then, as could be the case today, a bull market & a US-led economic recovery was rudely interrupted by a crisis in Emerging Markets. The crisis threatened to hurt Main Street via Wall Street (the Nasdaq fell 33% between Jul-Oct 1998, when [Long-Term Capital Management] went under). Policy makers panicked and monetary policy was eased (with hindsight unnecessarily). Fresh liquidity combined with apocalyptic investor sentiment very quickly morphed into a violent but narrow equity bull market/bubble in 1998/99, one which ultimately took valuations & interest rates sharply higher to levels that eventually caused a "pop".

Let's recreate that with today's news.

China slowdown fears sparked a serious drop in both emerging market equities and economic growth.

The stock market went through two big sell-offs in August 2015 and again in December/January/February 2015.

With the Federal Reserve's interest rates already near the zero-bound, there is little room for actual easing. The Fed, however, did hike once and then delayed a possible second hike in March in part due to global fears. The central bank also lowered rate hike expectations, and Chair Janet Yellen has sounded dovish. This coincided to negative interest rate policies around the world.

The winter stock market sell-off produced some of the worst investor sentiment in years, and then a stunning comeback has brought indices near all-time highs again.

There are certainly parallels here, and Hartnett highlighted a few things that could happen next which would confirm his "1999 all over again" thesis.

"As in 1998/99 post the easing you need to see a. US consumer strengthen in next 6 months, b. US resume tightening in due course, c. lower oil will provoke better macro data; d. M&A, buybacks, IPOs, financial engineering will be positive for stocks; e. worsening market breadth," wrote Hartnett.

Now all of those next steps sound plausible, but there are a few problems here. The emerging market situation is less severe than the late-1990s crisis and, as we mentioned, the Fed has not done actual easing this time around.

This may simply mean that the same situation is playing out, just with slightly less violent consequences. The 1999 tech bubble ended up in a massive drawdown and economic recession. Following the same pattern this time but with better systems in place may simply be a small degree of downside protection, or it could prevent it from happening altogether.

In the end, yes, history may repeat itself, but typically not in exactly the same way. Though it's hard not to see the similarities.

Investopedia

# Why Severe 19% Correction Could Happen Like 1998

By MARK KOLAKOWSKI Updated June 25, 2019

What next for the stock market? After hitting a record high on January 26, the S&P 500 Index (SPX) started sliding, with a big sell-off on Monday, a modest recovery on Tuesday, and a small downtick in Wednesday. Students of market history might look to 1998, Bloomberg suggests, indicating that there are several important parallels between then and now. These are: huge increases of stock prices in the late stages of a bull market; extreme equity valuations by historical standards; tightening of credit by the Federal Reserve; euphoric, even giddy, moods among investors; excessive speculation; low unemployment; rising confidence among businesses and consumers; and negative influences from derivatives trading.

In the summer of 1998, a 45-day correction knocked 19.3% off the value of the index. Bloomberg also sees parallels in the movement of tech stock prices then and now.

The Bull Market Today

The S&P 500 rose by a robust 19.4% in 2017, and has added another 0.3% in 2018 through February 7. After gaining 7.5% through January 26, the index has dropped by 6.7% since then. Compared to the previous bear market low, reached in midday trading on March 6, 2009, the January 26 record close represented a gain of 331%.

The Bull Market Then

Back on July 17, 1998, the S&P closed 430% above its previous bear market low on December 4, 1987, per Yardeni Research Inc. Over the ensuing 45 calendar days, the index shed 19.3% of its value. In that same bull market, there already had been three prior corrections, whose orders of magnitude were 10.2%, 19.9% and 10.8%, respectively. Bloomberg notes that the index had advanced by 31% in 1997, and by another 22% in 1998 until the correction began. Warnings about investor complacency were frequent, Bloomberg adds.

Still, the 1998 correction soon was forgotten. On July 16, 1999, the S&P 500 was 19.6% above its pre-correction high that was attained almost exactly a year earlier. Another correction, taking the index down by 12.1% would follow. That great bull market eventually would end on March 24, 2000, gaining another 7.7% from July 16, 1999 and 582% from its start in late 1987, per Yardeni.

High Valuations

Prior to the recent selloff, the S&P 500 was trading at a forward P/E ratio of 18.5 times projected EPS, versus a 10-year average of 15.5, Bloomberg says. The situation was even more extreme in 1998, with this valuation metric having reached a value of 25, per Bloomberg.

Howard Ward, chief investment officer of growth equities at Gabelli Funds, tells Bloomberg that "In both instances the market was acting giddy, euphoric," adding "Stocks rising exponentially when there were few factors justifying the advance." The latter comment describes the momentum investing craze that has gripped many investors today. (For more, see also: Why Stock Investors Play the Risky 'Momentum' Game.)

Tech Bubbles

1998 was in the midst of the Dotcom Bubble, from 1995 to 2000, during which time the technology-heavy Nasdaq Composite Index soared by over 400%, followed by the dramatic Dotcom Crash of 2000 – 2002, in which the Nasdaq shed 78% of its value and returned to roughly where it started. The speculative frenzy also included S&P 500 stocks that were expected to ride the technology and internet wave.

In 2017, the S&P 500 Technology Index (S5INFT) led the S&P 500 with a gain of 36.91%, per S&P Dow Jones Indices. Its year-to-date gain in 2018 is 1.55%.

Danger From Derivatives

In 1998, the collapse of hedge fund Long Term Capital Management rattled the markets, and required a $3.5 billion bailout engineered by the Fed. This fund engaged in algorthmic trading strategies devised by some of the, purportedly, best quants on Wall Street, yet still failed. In 2018, the unwinding of so-called "short-vol" trading strategies has contributed to the recent market downdraft. (For more, see also: 6 Forces That May Push the Stock Market Even Lower.)

What's Different Now

There are several factors that should inspire more confidence in stock valuations now than in 1998, Bloomberg adds. Among these are stronger corporate earnings and cash holdings, coupled with stronger, more widespread, global economic growth. By contrast, 1998 was marked by several severe economic problems, including plummeting oil prices, a debt default by Russia, rapidly declining emerging market currencies, and an Asian economic crisis. However, 2018 has its own set of global risks looming over the markets. (For more, see also: 5 Global Risks That Could Hammer Stocks in 2018.)

**WHITE PAPERS**

# White Paper- WHY WE RESIGNED- We constituting a majority of leadership of the Disciplinary and Ethics Commission (DEC) of the CFP Board of Standards—resigned from the Commission.

By Harv Ames, MBA, CFP®, AIFA®, ChFC, CLU, former Co-Chair, DEC Diana Simpson, MBA, CFP®, former Co-Chair, DEC

Barry L. Kohler, JD, CFP®, CLU, former Chair-Elect, DEC Grace Worley, MBA, CFP®, former Commissioner, DEC

James F. Williams, CPA, MSBA, CFP®, former Commissioner, DEC April 3, 2008

On Saturday, March 8, 2008, we—constituting a majority (and the leadership) of the Dis- ciplinary and Ethics Commission (DEC) of the CFP Board of Standards—resigned from the Commission.

This “white paper” is our statement of the factors and events that led us reluctantly, but unanimously, to conclude that mass resignation was the only avenue available to us to express in the strongest possible terms our disagreement and grave concerns with recent decisions made by the Board of Directors of the CFP Board of Standards. We would have much preferred thoughtful dialog with the Board of Directors had they sought our input prior to making their decisions or had there been meaningful discussion after their ac- tions came to light.2

With a $15 Million annual budget (virtually all of which comes from certificants)3 and an entire department devoted to “public relations,” the CFP Board has aggressively publi- cized their “explanation” of these events. Nonetheless, prior to the issuance of this white paper, we have largely refrained from public comment or discussion, hoping that the Board of Directors—even belatedly—would recognize the wisdom and importance of working with the DEC and obtaining wide input from stakeholders, rather than persisting in decisions made with little or no consultation from stakeholders, certificants, the sub- sidiary boards of the CFP Board, or the public.

1 A copy of the resignation communication is attached as Appendix 1.

2 The nomenclature is confusing. As a part of its governance changes, the Board of Directors changed the names of components of the organization. The key changes are that the former Board of Governors is now the Board of Directors, the former Board of Professional Review (BOPR) is now the Disciplinary and Eth- ics Commission (DEC or “Commission”), and the former Board of Examinations is now the Council on Examinations. For readability, only the current names are used throughout, even though this usage is not, strictly speaking, accurate.

3 See IRS Form 990 (2006) for CFP Board of Standards, available for at no charge (registration required) at http://www.guidestar.org.

We have two distinct areas of concern:

I. The process by which the Board of Directors reached the decisions stated in the January Resolution.

II. The substantive decisions of the Board of Directors, as reflected in a Resolu- tion passed by the Board of Directors at their January 18 - 19, 2008 Meeting [the “January Resolution”]. The full text of the January Resolution is in Ap- pendix 2.

Each point will be addressed separately4.

A CALL FOR ACTION. Until the CFP Board acts in conformity with true “best prac- tices” and in compliance with its own procedural rules, we call for CFP Board to take the following actions:

1. Immediately suspend implementation of the January Resolution.

2. Meet for a full and meaningful discussion with the DEC as it was constituted on March 6, 2008 to address any concerns which the Board of Directors may have.

3. After considering input from the DEC, publicly propose for comment those changes the Board of Directors is considering for the DEC and for the certificant disciplinary process.

4. Schedule a full and open public debate at a venue likely to be attended by a large number of certificants, such as FPA Retreat or FPA Boston.

5. Based on input from the public hearing and further comment from the DEC, adopt any resolutions affecting the certificant disciplinary process and DEC.

I. PROCESS USED BY CFP BOARD.

The DEC learned for the first time at the Business Meeting of the Commission on March 6, 2008 about the January Resolution which so dramatically attempts to change the past practices of the CFP® certificant disciplinary process. This procedural action by the Board of Directors—adoption of the January Resolution—violates the CFP Board’s own Disciplinary Rules and Procedures (DRP), adopted on May 31, 2007.5

4 Because many readers may lack a complete understanding of the context in which these actions of the CFP Board occurred, Appendix 3 provides a full statement about how the disciplinary system which gov- erns CFP® certificants has worked in the past. Appendix 4 discusses the “cultural changes” at CFP Board which preceded the adoption of the January Resolution.

5 On May 31, 2007, the Board of Directors of CFP Board announced the adoption of an updated Standards of Professional Conduct, which sets forth the ethical standards for CFP® professionals. The Standards in- clude the Code of Ethics and Professional Responsibility, the Rules of Conduct, Financial Planning Prac-

Article 1 of the Disciplinary Rules and Procedures (DRP), adopted by the Board of Di- rectors only eight (8) months earlier, states in the second sentence:

The Code of Ethics, Rules of Conduct and Practice Standards may be amended from time to time, with revisions submitted to the public for comment before final adoption by CFP Board (emphasis added). [The full text of DRP Articles I and II is annexed at Appendix 5.]6

We note that the Board of Directors promulgated the initial Exposure Draft of the new Standards in July 2006 without first obtaining public input. Due to the reactions to the draft and the lack of opportunity for input by many stakeholders, the Board of Directors subsequently took a step back and released for public comment in March 2007 a Second Exposure Draft prior to adoption. After a reasonable period for public comment, the new Standards were adopted by the Board of Directors at its business meeting on May 24, 2007.7

In light of this recent experience, it is simply incomprehensible that the Board of Direc- tors could have imagined—at a non-public meeting, without stakeholder input—that they could adopt dramatic changes to past practice.8 Not only was there no public comment, the Board of Directors did not even seek comment from the DEC about the changes they were implementing.9,10

tice Standards, Disciplinary Rules and Procedures, and Candidate Fitness Standards. The full text of the Standards can be found at http://www.cfp.net/Downloads/2008Standards.pdf.

6 Proceeding with implementation of the January Resolution without following the procedure set forth and required by Article 1 of the DRP could give every Respondent an absolute right to challenge legally any DEC decision made after March 8, 2008. Any new DEC or panel formed by the CEO (per the January Resolution) would be constituted as a result of actions in violation of the DRP, and therefore, the purported action of the DEC or hearing panel would be void ab initio and without any legitimate force or effect what- soever. If the intent of the Board of Directors was to reduce the likelihood of successful litigation against CFP Board arising out of the disciplinary process, they have instead accomplished just the opposite.

7 One would also think that with the memory of the “CFP® Lite” fiasco burned so deeply into the institu- tional memory of CFP Board, obtaining public comment prior to attempting any significant change of di- rection would by now be routine.

8 Our understanding is that at its January 2007 business meeting, the Board of Directors adopted a resolu- tion closing its meeting to all but Directors and the CEO. For years prior to that action, in an effort to pro- mote communication between the Board of Directors and its subsidiary boards, the Chair of the DEC regu- larly attended the meetings of the Board of Directors.

The decision by the Board of Directors to close its meetings and “un-invite” the DEC Chair came as a complete surprise to the DEC. We learned of this change only after the DEC election of new officers at the November 2007 DEC Business Meeting. At that meeting, we specifically elected co-Chairs: one to serve as liaison to the Board of Directors, the other to serve as chair for internal DEC hearings and meetings.

9 The Board of Directors notes that two of their Directors are past Chairs of the DEC, and joined in the unanimous adoption of the January Resolution. If this is intended as a justification for not needing to seek

Moreover, the substantive changes established by the January Resolution, violate other provisions of Article 2 of the DRP, as discussed more fully below.11

II. THE JANUARY RESOLUTION SUBSTANTIVE CHANGES.

The January Resolution delegates to staff oversight of the certificant disciplinary process, including the power to appoint the members of the DEC, the volunteers, and the Chair.

To be clear, we believe the current certificant disciplinary process can be improved. In- deed, at virtually every Business Meeting following hearings, the DEC considers changes to the DRP or other changes which will improve the process. Had the Board of Directors stated the specific objectives and goals it was trying to achieve, we are confident that working together, the DEC and the Board of Directors could have arrived at a mutually acceptable—even optimal—set of changes about which public input should then have been sought, and those changes implemented in a considered and deliberate manner.

The CFP Board’s description of the changes made by the January Resolution seem now to consist of a five point program. This was most recently expressed by CFP Board Chair David G. Strege, CFP®,CFA® in the FPA This Week email communication dated March 24, 2008. The full text of this “message” is attached at Appendix 6. In summary, the five changes are:

1. Appointment of the DEC Chair, members and volunteers.

2. Appointment of “public” representatives to the DEC.

3. Autonomy of the Hearing Panels.

input from anyone outside the closed circle of the Board of Directors—particularly from the DEC—it is simply not credible.

Moreover, every communication which any of us have received from past Chairs of the DEC (other than the two currently serving on the Board of Directors), prior members of the DEC, or certificants, has sup- ported our decision to resign and expressed dismay over the changes made by the January Resolution.

10 Even the manner in which the January Resolution was communicated to the DEC is telling. The sub- stance of the January Resolution was not communicated to the DEC prior to the March hearings. Indeed, at a prehearing breakfast with the Chair and Chair-Elect of the Board of Directors and the CEO with the Co- Chairs and Chair-Elect of the DEC, there was no mention of these changes to be announced minutes later at the full business meeting . These actions were taken by the Board of Directors despite the discussion at breakfast in which the CFP Board Chair and Chair-Elect both stressed the need for improved communica- tion with the DEC.

11 In our view, the decision of any certificant, especially any former Commissioner of the DEC (or former member of the BOPR) to (re)join the DEC or serve on a hearing panel constituted by the CEO under the January Resolution would amount to acquiescence to the procedurally illegitimate action by the CFP Board—that is, the transfer of oversight of the certificant disciplinary process from the Board to staff with- out the public comment required by Article 1 of the DRP. Again, as stated in footnote 6, proceeding in this fashion could subject the CFP Board to legal challenge from any certificant as to the validity of those disci- plinary hearings.

4. Staff participation in the ratification process.

5. The Appeals Process.

1. Appointment of the DEC Chair, members and volunteers. Because this change so fun- damentally undercuts the independence and freedom from political pressures essential for a fair judicial or quasi-judicial process—which has been the hallmark of DEC proceed- ings—it merits a full discussion. To do this, we need to examine the significant state- ments in this portion of the Message by CFP Board Chair:

“The previous process was that the Commission made appointments without input from anyone outside their circle. The process was not well documented nor was it ac- countable.”

It is noteworthy that this, of course, is exactly how the Board of Directors makes its own appointments and elects it own Chair and Chair-Elect. They are now an entirely self- perpetuating body with no oversight, checks, or balances.12 The same concerns voiced by the CFP Board about the DEC’s lack of documentation and accountability should be of even greater concern about the Board of Directors. At least with the DEC, many of our actions and processes are conducted in public. The Board of Directors, by contrast, do not even make the Minutes of their regular meetings available to the public or to certificants.

Oversight of the DEC in the past has been by fellow certificants (the Board of Directors), and this has been accomplished both formally and informally. The formal mechanisms were stated in Article 2 of the DRP, specifically, Article 2.2 subsections (b) and (c), which provide “The Commission shall be authorized and empowered to:

(b) Periodically report to CFP Board’s Board of Directors on the opera- tion of the Commission;

(c) Adopt amendments to these Disciplinary Rules and Procedures, subject to review and approval of CFP Board’s Board of Directors; ”

Informal accountability (prior to 2006 at least) came from the past practice of open com- munications with the DEC, having the DEC Chair attend regular board meetings of the Board of Directors, and occasional joint meetings or social functions.

Prospective Commissioners of the DEC were nominated by the DEC and vetted by staff. These decisions have always been subject to “approval” by the Board of Directors. To date, as far as anyone can remember (or has even heard), approval by the Board of Direc- tors of Commissioners nominated to the DEC was routinely granted and the internal op- erations of the DEC were respected by the Directors.

12 It deserves note that about four years ago, CFP Board discontinued the practice of having its members elected by certificants.

Moreover, the changes embodied in the January Resolution violate DRP Article 2.2(d), which authorizes the Commission to “[a]dopt such other rules or procedures as may be necessary or appropriate to govern the internal operations of the Commission.” Changes such as those stated in the January Resolution simply cannot be made without the public hearing required by DRP Article 1.

“By assigning the responsibility to the CEO to implement a transparent process for se- lecting Commission members and volunteers, we have made the selection decisions more accountable.”

Perhaps the most pernicious change wrought by the January Resolution is the attempt to transfer oversight of the DEC from the Directors to staff. This opens the door to the worst kind of political and financial pressures on what has been honored since its creation as an impartial peer-review process.13 The process to appoint inherently contains the process to remove. The potential for a CEO “to stack” the Commission with members whose views are most politically opportune at any particular time is just plain wrong.

“Going forward, CFP Board will appoint Commissioners with an eye toward the geo- graphical diversity of our certificant population and the variety of business models our certificants represent.”

The DEC has always had as a goal diversity of Commissioners. Even a cursory look at the composition of the current Commission (that is, the Commission prior to our resigna- tions) or past Commissions shows diversity along lines of:

• Geography

• Firm size (small firms, big firms)

• Business model (national securities firm or bank, independent practitioner, etc.)

• Compensation (commission, fee, combination)

• Gender

• Professional education/licenses (JD, CPA, Masters in Taxation, etc.)

• Length of practice as a CFP® practitioner

• Prior service to the profession

• Prior service to CFP Board

Diversity has always played a major role in DEC decisions about the selection of volun- teers and nomination of Commission members. For the Board of Directors to imply that it has been otherwise is untrue, and worse, offensive.

13 The vast majority of funding for CFP Board operations comes from certificants. At this point, 43% of certificants are members of only 50 firms. The financial contributions of these 50 firms means that a deci- sion by them to pull away from the CFP® mark would have significant economic impact on the budget and hence, the operations of the CFP Board. Even the threat of discouraging their employees from obtaining the mark could influence decisions of the Board of Directors and staff. The pressure from these 50 firms to re- vise the new Code to allow their employee/certificants to “opt-out” from application of the fiduciary stan- dard and other provisions that make it acceptable to them is an illustration of this power.

2. Appointment of “public” representatives to the Commission. This is a major departure from past practice. However, because it implicates a wide array of public policy consid- erations, this change also warranted great public debate and exposure before adoption.

Here are some of the issues that occur to us:

• How does having public members of the DEC square with the long- standing tradition that certificant discipline is a peer-review process?

• Who is the “public”? Does this mean non-certificant financial profession- als or does it mean consumers who may have only a lay person’s under- standing of the issues, regulatory environment, the technical aspects of the financial planning process, the products used in implementing financial planning recommendations, and the fitness of a practitioner to use the marks?

• How should CFP Board balance its obligations to certificants with its ob- ligations to the public?14 Is the move from a peer-review model to a regu- latory (SEC/NASD/FINRA) model desirable and appropriate?

The DEC as a body, and each of us individually, are not opposed to increased public un- derstanding (and participation in) the certificant disciplinary process. What we do oppose is a rash decision that has not been discussed openly and with deliberation.

3. Autonomy of the Hearing Panels. Again, it would have been helpful had the Board of Directors explicitly stated what problem they were trying to fix by announcing future hearing panels would now include a public member. There is an array of possible solu- tions for incorporating public members into the disciplinary process and at the same time maintaining the essential peer-review character of this process. We would have wel- comed an opportunity for a full and open discussion of this important issue.

4. Staff participation in the ratification process. “Staff counsel will attend the Ratification Meeting at which the proposed decisions of the hearing panels are ratified by the entire Commission.”

14 This really is the issue about what the role of CFP Board is and should be. Historically, as a 501(c)(3) or- ganization, CFP Board protected the public by assuring the education and ethical conduct of certificants met high standards. However, as the Board of Directors now apparently jockeys to position CFP Board for a bid to become the regulatory body overseeing financial planning, the balance has tipped too far: concern for the interests of “the public” now outweigh the historic commitment of CFP Board to certificants and the marks. We find it troubling that this change has occurred without input from the body of certificants who fund the operation of the organization. It is this body of certificants who not only constitute the only reason for the existence of the organization, but who are also virtually the sole source of funding its operations.

This is another radical departure from past practice and one which threatens the integrity and independence of the certificant disciplinary process. Ratification is not a post- decision administrative process. Rather, it is the last step in the decision-making proc- ess by which the conduct of certificants is judged.

The decision of the three-person hearing panel is only advisory until it is discussed by a majority of the Commission, which must then approve the findings and sanctions rec- ommended by the hearing panel.15 It is not uncommon in the Ratification Meeting for the hearing panel decision to be sent back to the panel that heard the case for further con- sideration and/or revision of its findings and/or sanctions.

Having staff counsel, an employee of the CEO, in the meeting during ratification delib- erations opens the door to the very same kind of political influences as having the CEO select the members and officers of the DEC. Past practice worked perfectly well: staff counsel was available outside the room in which ratification deliberations were being conducted. She (or he) was thus readily available to “provide technical assistance and guidance and to provide interpretation of the Standards of Professional Conduct” should that be needed or requested.

Telling is the second paragraph on this point in message by the CFP Board Chair:

“CFP Board's staff attorneys both joined CFP Board after positions with FINRA, where they gained experience interpreting rules and regulations. Additionally, one of the staff attorneys has a firm understanding of securi- ties laws, having worked for the securities administrators in Maryland and the District of Columbia. Their understanding of the financial services in- dustry and its regulatory aspects is impressive. They work with CFP Board's ethical standards on a daily basis, and they are intimately famil- iar with the content of those standards and the way those standards have been applied to specific cases.”

This language reinforces the view that indeed the Board of Directors has decided (while never publicly stating its goals or intentions) to change the disciplinary process from a peer-review model to a regulatory model. The difference is this: in the regulatory model, people who have never practiced financial planning, and who are not even credentialed in the field, make judgments about the conduct of professionals practicing their profession. While a majority of certificants might welcome CFP Board changing from guardians of the marks to becoming the regulatory body for financial planners, this itself is a decision which merits full and open discussion.

15 Again in an effort to continue to refine and improve the certificant disciplinary process, recent practice has been to require the presence of a super-majority of Commissioners before ratification hearings could be commenced.

The fifth point of Chair Strege’s five point program addresses the Appeals Process. This has never been within the purview of the DEC and we take no position on the substance of this change.

III. CONCLUSIONS.

Had there been any genuine desire on the part of the Board of Directors to engage in an open discussion, our resignations could have been avoided or rescinded.16 Indeed, as soon as the DEC learned of the January Resolution, our immediate reaction was to request the Board of Directors table its implementation until after July, when the Board of Directors and DEC were scheduled to have overlapping meetings. There would have been an op- portunity then—already on the calendars of both organizations—for a full and open ex- change. Had the Board of Directors desired, there could have been a genuine attempt to reach a meeting of the minds and find mutually acceptable resolutions to issues and con- cerns never previously voiced publicly, openly discussed with the DEC, or even explic- itly stated. But the response of the Directors to even this modest request was that sus- pending implementation of the January Resolution was not an option and this decision of the Board of Directors would not be reconsidered.

Thus, there was no will on the part of the Directors to engage in meaningful discussion. Their press release was the first attempt by the Board of Directors to spin these events in a light favorable to them, followed by the CFP Report which thanked each of us for our service. Subsequently, we each received a pro-forma call and letter thanking us for our service, but no indication of any desire to discuss in a meaningful fashion the politiciza- tion of the CFP Board disciplinary process.

At its heart, we see the January Resolution as an abdication by the Board of Directors of their fiduciary responsibilities to the profession, to the public, and to the certificants. By over-reliance on the Carver model17 and excessive delegation to staff, they have—in a stroke—transformed a true peer-review process with the required autonomy and inde- pendence into a political process subject to influences of the worst kind.

One wonders why—“if the process ain’t broke”—the Board of Directors decided to tinker with it. Having expressed no concerns about fairness or outcomes, the only conclu- sion to be drawn is that the motivation is purely political. To our knowledge, there has never been legal action taken against CFP Board by a Respondent as a result of alleged flaws in the process or administration of the certificant disciplinary process by the DEC.

The consequences of the January Resolution on what has been a thoughtful, diligent, pro- fessional and fair peer-review process are not acceptable to us as Commissioners. Our

16 Any inference by CFP Board or any Director to the effect that members of the DEC participated in any meaningful discussions is simply false.

17See Appendix 4 for an explanation of the Carver model and its impact on CFP Board decisions and ac- tions.

decision to resign was made only with the greatest reluctance after seeing clearly that that there was no meaningful opportunity to discuss or to influence these profound changes.

The January Resolution should not be acceptable to the public nor to our fellow certifi- cants, the vast and overwhelming majority of whom do the right thing by their clients be- cause it is the right thing to do. All of us are committed to protecting and preserving the integrity of the CFP® mark. The January Resolution is a big step in the continuing march of the Board of Directors in a direction with which we disagree. We cannot—and will not—be party to it.

To: Board of Directors, CPP Board of Standards

Date: March 8, 2008

At its January 17-18, 2008 meeting, the Directors of the CFP Board of Standards unani- mously decided to delegate to the CEO the authority to “appoint the Chair, members and volunteers” of the DEC, and to “oversee the DEC.” These decisions vest unfettered au- thority in the CEO to control the composition of the Commission, as well as the practices, processes and procedures the Commission employs in fulfilling its duties. These deci- sions run counter to entire history of autonomy and independence granted to the DEC and its predecessor, the Board of Professional Review (BOPR) as a peer review body.

These decisions were announced for the first time to the DEC at the March 6-8, 2008 hearings. We feel strongly that these decisions have such great potential to undermine the independence of the DEC in the exercise of its judicial functions that we are unable to fulfill our responsibilities as Commission members. Delegating to staff the power to se- lect, appoint and dismiss Commissioners eliminates peer control from what has been a true peer review process. This will inevitably distort the deliberative process and deci- sion-making of the DEC. This is a profound structural change that will damage the peer review process of the DEC and thereby damage the CFPB mark and diminish the profes- sion.

Our dedication and commitment to the integrity of the mark is unwavering. We welcome the opportunity to discuss these important issues with the Board of Directors.

However, the undersigned are unwilling to continue to serve as Commissioners under these circumstances. Therefore we hereby resign as Commissioners from the DEC effec- tive the clo of the business meeting on March 8, 2008.

Annes, CFPO, Co-Chair - 2008 Diana Simpson, air-2008

Kohler, CFPO C ect — 2009 ace Worley, CFP

APPENDIX 2

Certified Financial Planner Board of Standards, Inc. Board of Directors Meeting

January 17-18,2008 – MINUTES [excerpt only]

The Committee recommended that the Board delegate its authority over the Commission’s activities to the CEO, and proposed the following resolution:

The Board of Directors specifically delegates to the CEO the authority to: (a) appoint the Chair, members and volunteers of the Disciplinary and Ethics Commission ("DEC"), (b) oversee the DEC to insure it follows the established procedures required to provide a fair process to each certificant, and (c) insure that each DEC panel is composed of individuals who act in an impartial and objective manner and have no conflicts of interest with the complainant or certificant subject to the complaint. The CEO, consistent with his general reporting obligations, shall report to the Board of Directors the intended appointments to the DEC and the activities of the DEC.

The Governance Committee also recommended that Mr. Herold serve as counsel to the Appeals Committee to provide legal advice on appeals of Commission decisions.

Motion: Director Glovsky moved and Director Candura seconded approval of the above resolution, and approval of Arthur Herold as counsel to the Appeals Committee. The proposals were approved unanimously.

Chair Strege stated that in accordance with Section 7.4 (Amendments) of the By-Laws, a telephonic Board meeting will be scheduled in late February 2008 to consider amending Section 3.14(c) (Councils, Committees, Task Forces and Other Bodies) by adding the following sentence:

Commission chairs, members and volunteers shall be appointed by the CEO who shall oversee and supervise the Commission’s activities.

Chair Strege indicated that he, CEO Keller and Director Dimitroff would attend the March 6, 2008 Commission Meeting to present the new governance structure.

APPENDIX 3

HOW THE SYSTEM HAS WORKED

The DEC has functioned in relative obscurity for many years. The vast majority of certi- ficants hope they never have a complaint against them alleging a violation the Code of Ethics and Professional Responsibility (“the Code”) or the Financial Planning Practice Standards. And if such a complaint is made, certificants generally scramble to find a copy of the Disciplinary Rules and Procedures to learn how the process works. [See Endnote 1 for a full explanation of the certificant disciplinary process.]\*

A critical part of the CFP Board disciplinary process is the absolute right of a certificant to choose to have a full, fair, and objective hearing—by telephone or in person—before a panel of peers: fellow certificants. A certificant who is alleged to have violated the Code or Practice Standards—called a “Respondent”—is entitled to be represented by legal counsel. Historically, about a third of Respondents choose to be assisted by legal counsel. The process is a peer-review process. While great efforts are made to assure fundamental fairness, it is not governed by the technical procedures or rules of evidence used in court proceedings.

In this peer-review process, it is a panel (historically comprised of three CFP® practitio- ners) that makes the findings in the first instance as to whether there has been a violation of the Code or the Practice Standards and if so, what level of discipline is appropriate.

Hearings have been held three times a year (March, July, and November), and four dif- ferent volunteers attend each hearing session. This has allowed 12 certificants per year to participate in the disciplinary process, to see first hand how it works, and for each volun- teer to determine if he or she would be interested in considering serving on the DEC. The Commissioners of the DEC serve staggered four year terms, with two or three leaving each year and the same number of new Commissioners joining. [See Endnote 2 for a full explanation of the volunteer selection process.] †

This process also allowed the Commissioners of the DEC to observe the conduct, techni- cal expertise, and demeanor of each volunteer, for it is from the pool of past volunteers that future members of the DEC have been selected. Virtually since the beginning, every member of the DEC first served as a volunteer. Commissioners and volunteers have al- most always been thoughtful, concerned, experienced, ethical financial planning practi- tioners.1

1Actually, there was an early period when there was an Associate Board of the Board of Professional Re- view. This group served a probable cause function, determining if allegations against a certificant war- ranted further proceedings. Volunteers served on the Associate Board, and it was Associate Board members who were promoted to members of the full BOPR as vacancies occurred. Once the CFP Board had a staff attorney, the Associate Board was disbanded and the probably cause function became a responsibility of CFP Board staff counsel.

At the business meeting following the November hearings, the DEC proposes to the CFP Board new members (selected by the outgoing Chair and the Chair-Elect) and elects a new Chair-Elect (who will succeed to the position of Chair in 13 months). These deci- sions have been “recommended for approval” to the Board of Directors. However, as far as anyone can remember (or has even heard), approval by the Board of Directors was routine and the internal operations of the DEC were respected by the Directors.

The three person hearing panels (the “hearing panels”) are comprised of two of the nine DEC Commissioners, plus one CFP® designee “Volunteer” serving with the DEC for that set of hearings. The volunteer serves as a full member of the hearing panel, having the opportunity to ask questions and to vote on the issues of violation and sanction.2

After the hearing panel reaches its decision, the decision is then presented to the Com- mission as a whole for ratification. Volunteers attend ratification deliberations and par- ticipate fully in the discussion of the case and the rationale for the decision of the hearing panel. However, only full Commission members are eligible to vote to ratify a hearing panel decision.

Hearing panel decisions must be approved (i.e., ratified) by a majority of the Commis- sion. Past practice has evolved so that a supermajority of seven Commissioners is re- quired before the ratification process can begin. During ratification deliberations, panel members are questioned about the facts of the case, their decision, and the sanction im- posed (if any). It is not uncommon after complete exploration by the entire DEC for a de- cision not to be ratified, and the hearing panel asked to adjourn to reconsider its findings or recommendations. This revised decision of the hearing panel must again go through the full ratification process.

While on occasion the DEC has, with the consent of the Respondent allowed observers into the hearing panel process, ratification deliberations have always been only the DEC and (certificant) volunteers. Staff, including the attorney for CFP Board, have been avail- able outside the deliberation room during ratifications should consultation be needed as to procedures or interpretation of the Code or Practice Standards.

If a Respondent is dissatisfied with the outcome of the disciplinary process at the DEC level, the Respondent may appeal the decision to the Appeals Committee of the Board of Directors. The appeal is heard by a subcommittee of three members of the Board of Di- rectors. Usually at least one of the three is a past Chair of the DEC currently serving as a Director.

Throughout the evolution and development of this process, the DEC has been under the direction and control of CFP® practitioners. It has truly been a peer-review process.

2 Traditionally, the pool of volunteers “self-selected” by indicating on the CFP Board website a willingness to serve. A few volunteers seek to serve only on the Council on Examinations or the DEC. Others are will- ing to accept a volunteer position of any kind. There was little or no screening of potential volunteers by staff. Rather the Chair and Chair-Elect reviewed the biographies of the potential volunteers and selected from among them. The names of the volunteers selected to serve would then be passed to staff who would contact each to confirm availability and willingness to serve.

Never has the DEC been deemed a support function to non-certificant staff—even staff counsel. Rather, CFP Board staff, primarily attorneys and paralegals, have operated in support of the DEC, aiding them in fulfilling their duties.

\*Endnote 1.

A Complaint may occur in one of the following ways (indicative, not inclusive)

1. A client may have a grievance against a CFP Certificant and has the right to file that grievance with the CFP Board. CFP Board staff reviews the grievance and, if it finds “probable cause,” investigates the case and sends the results of that investigation and all attendant materials forward to the DEC for a hearing.

2. On a CFP Certficant’s biannual CFP mark renewal, the Certificant must indicate if any actions (from SEC, FINRA, state regulatory agencies, civil courts, professional organizations, etc.) have been brought against the Certificant in the past . . . regardless of how long ago that/those actions might have been filed. If, through this “self-disclosure,” CFP Board staff finds probable cause to initiate an investigation and, sub- sequently, makes preliminary findings, the case will brought forward to the DEC.

3. If a fellow CFP Certificant believes s/he has observed behavior that is contrary to the CFP Code of Eth- ics in another CFP Certificant, the initiating CFP Certificant can file a complaint with the CFP Board for investigation. Again, that complaint could result in an action being brought before the DEC.

4. The CFP Board staff regularly searches the internet, using the name of each CFP Certificant, for any po- tential actions that have occurred (again, NASD/FINRA, SEC, state regulatory agencies, civil courts, pro- fessional organizations, etc.) which could indicate probable cause to investigate potential action against a CFP Certificant for violation of the CFP Code of Ethics. After staff investigation, an action could be brought forward to the DEC.

5. A candidate for CFP Certification, yet to have declared his/her potential “ethical issues,” could have been discovered to have had such issue(s) and could be investigated for such breach, as a part of a past per- sonal and/or professional history, and have an action brought forward to the DEC relating to the candidate’s “fitness” to hold the mark.

The CFP Board staff completes a full investigation of each potential violation of the Code of Ethics and Practice Standards and can:

1. Dismiss the potential violation without merit, in which case there is no further record against the CFP Certificant.

2. Find “Probable Cause” for disciplinary proceedings to go forward, in which case the CFP Certificant would be informed of such finding, additional information would be requested from the Certificant, and the Certificant would be offered one of four processes listed below:

a. Waiver –The Certificant “throws him/herself” on the “mercy” of the DEC, having submitted a documen- tary response to the CFP Board staff investigation. No penalty is proposed by the Certificant. The DEC considers the evidence before it and makes a determination as to violation of the Code and appropriate sanction.

b. Settlement Offer - If the Certificant believes that s/he did, indeed, violate the Code of Ethics and/or the Practice Standards (or, otherwise, wishes to “plead out”), that Certificant can review past, similar cases in the CFP Board/DEC database to see what “penalty” s/he believes would be appropriate for his/her offense. CFP Board staff instructs the Certificant to the effect that proposing a penalty lower than reflected in the prior case histories would likely result in a rejection of the proposed “Settlement Offer” and the subsequent requirement to exercise one of the following consideration paths, or accept a penalty the DEC might counter-offer to the Certificant, more likely than not more harsh than the Certificant had offered. If a

counter-offer is made by the DEC, the Respondent can either accept that counter-offer or request a personal or a telephonic appearance.

c. Telephonic Appearance – Should a Certificant wish to represent his/her case before the DEC, with or without legal counsel, and with or without witnesses, s/he may opt not to appear in person (cost and time historically being the primary considerations for such a decision) and instead avail him/herself of a tele- phonic appearance, which has the procedural due process as a personal appearance except that the Certifi- cant is at a remote site, connected to the convened DEC Panel by phone. After considering the case, the DEC renders a judgment after ratifying the panel recommendation and the Certificant is informed. The Cer- tificant can accept the decision or appeal that decision to the CFP Board Appeals Panel. The decision of the Appeals Panel is final.

d. Personal Appearance – Here, the Certificant has decided to “make his/her case” in person, with or with- out legal counsel, and with or without witnesses (who may appear in person or telephonically). This presen- tation proceeds exactly as a telephonic hearing, the DEC issues its decision after ratification, the Certificant is notified of the decision, and the Certificant can either accept the decision or appeal to the Appeals Panel.

3. Upon consideration by the DEC, if no findings are made of a violation of the Code or Practice Stan- dards, the matter may be Dismissed or Dismissed with Caution. By contrast, once a finding(s) of viola- tion(s) of the Code or Practice Standards are made, the possible outcomes are:

a) Private Censure

b) Public Admonition (published on the website but which may or may not be published in media lo- cal to the Certificant)

c) Suspension of use of the Mark for a period less than a year (published)

d) Suspension of use of the Mark for a period longer than a year, but, likely, not more than 5 years (published).

e) Revocation of use of the Mark (published)

† Endnote 2.

Prospective volunteers are found as follows:

A. CFP Certificants are encouraged to pursue volunteer positions under the auspices of the CFP Board. These opportunities are listed on the CFP Board site [www.cfp.net] under “Volunteers and Boards.” [Please see: http://www.cfp.net/aboutus/volunteers.asp]

B. A certificant who wishes to volunteer would go to the “Volunteer Registration” form and indicate for which opportunities s/he wished to be considered. After completing and submitting the online form to CFP Board, Board staff would vet such submissions and forward the appropriate submis- sions to the various areas of “Volunteer Opportunities.” The DEC is one such opportunity.

C. When the vetted resumes of those wishing to be considered for volunteer duty on the DEC are re- ceived by the current DEC Chair and Chair-Elect, those DEC officers evaluate the potential volun- teers on the basis of: experience, length of time as a CFP certificant, geographic location of the po- tential volunteer, gender, professional designations/licenses, kind of practice, size of firm, prior volunteer and civic involvement and other indicators of potential successful service on the DEC. The Chair and Chair-Elect then rank the pool of potential volunteers and sends that ranking to CFP Board staff.

D. Staff then begins the process of securing a commitment from the potential volunteers for the next hearing cycle . . . traditionally, the DEC requires four volunteers per cycle. Once “aboard,” volun- teers receive training, following which they act as full members of the hearing panels on which they serve. Volunteers participate fully in the ratification discussions, but only Commissioners are eligible to vote after ratification deliberations.

APPENDIX 4

“CULTURAL” CHANGES AT CFP BOARD

The cultural changes at the CFP Board first appeared about four years ago, when the Board discontinued the practice of having certificants elect Directors. Since then, the Board of Directors have continuously and inexorably taken steps to isolate and insulate themselves resulting in even major decisions being made without input from others.

These changes concern us and should be of concern to every certificant.

Even before the decision to move the headquarters of the CFP Board from Denver to Washington, D.C.—the rationale for which has never been satisfactorily explained to cer- tificants—there were earlier warnings of the cultural changes: the CFP® Lite fiasco and the first revision of the Code of Professional Responsibility, to name two. The public and certificants thought CFP Board had learned the folly of its rose garden strategy. It seemed that the public retraction of the misguided CFP® Lite designation, and the embarrassing need to produce a Second Exposure draft of the revised Code of Professional Responsi- bility had enlightened the Board of Directors that it was unwise to make decisions in iso- lation. We (certificants and the public) all believed CFP Board had learned this lesson.

Evidently not so.

Perhaps the two biggest changes in the culture have been (a) the use (overuse?) of the Carver Model, and (b) the move away from collegiality and collaboration toward secrecy and lack of accountability.

1. The Carver Model. Also called the “policy governance” model, the Carver model has for-profit and non-profit versions. It has been adopted—with variations—by a variety of organizations. The fundamental precept of the Carver model is that the Directors should:

A. Set goals for the organization;

B. Set any desired limits on the staff’s ability to accomplish those goals (i.e., de- termine what methods of accomplishing the goals are not acceptable), and then

C. Get out of the way.

The theory is that the Board can focus only on “ends,” leaving “means” entirely up to the staff (the CEO). While extremely efficient for a Board of Directors (there is little for them to do), the danger with the Carver model taken to an extreme is that Directors fail to exercise oversight and control of the staff—again, principally the CEO. This excessive delegation results in the Board abdicating its fiduciary responsibilities by failing to assure that the methods and the methodology employed by staff are indeed appropriate.1

1 The Board of Directors cannot evade their fiduciary responsibilities by closing their eyes to how staff is accomplishing the objectives set for them by the Board, and when inappropriate methods are employed by staff, claiming: “We hired a competent professional, so don’t blame us for his/her doing things we might not have approved of . . . if we had been paying attention.”

2. Secrecy in the Board Room. For many years, the prevailing atmosphere at CFP Board was one of openness and that we (staff and certificants) were all working together to en- hance the CFP® mark—making certain that the educational requirements were rigorous but reasonable and the ethical standards to which certificants were held were high but consistent with actual best practices.

There was open communication between the Board of Directors and its subsidiary boards: the Board of Professional Review (the predecessor to the DEC) and the Board of Examinations (as it was then called—now the “Council on Examinations”). For a sub- stantial period of time, the Chair of the DEC and the Chair of Council on Examinations were invited to regularly attend meetings of the Board of Directors. [Indeed, before the Board of Directors voted to reduce the size of their own body to 12, the Chairs of both subsidiary boards were voting members of the CFP Board of Directors.]

Such inclusion helped assure open communication both ways: to and from the “big board” and its subsidiary boards. Additionally, past practice was that about every two years, the outgoing Chair of the DEC was invited to apply for a position on the Board of Directors upon completion of his or her four year term as a DEC Commissioner.

Notwithstanding the earlier lessons, the decision to move from Denver to Washington, was made by the Board of Directors apparently in secret. As far as we know, no one from any subsidiary board was involved in the decision-making process or even consulted, and other than the then-Chair of the DEC getting a call the day or two before the move was announced publicly, certainly no information was shared with the DEC.

At about the time of the announcement of the move, in fairly rapid succession, as noted above, the Board of Directors reduced the size of its own body, closed its meetings to the public, and “dis-invited” the Chairs of the DEC and the Council on Examinations from attending any further meetings of the Board of Directors. The decision by the Board of Directors not to allow the DEC Chair to attend was made in January 2007, but not com- municated to the DEC until after the November 2007 DEC Business Meeting.

The announcement of this Board action was made by a Director from CFP Board attend- ing the DEC Business Meeting following the November 2007 hearings. The overwhelm- ing concern of the DEC about being “shut out” by Board of Directors was communicated in no uncertain terms—unanimously by then entire DEC. Prior to taking their action in January 2007, the Board of Directors knew that in November 2006, the DEC had elected Co-Chairs with the specific intention that one would serve as liaison with the Board of Directors and attend all of their meetings.

These actions alone give rise to concerns about how such an organization can continue to act in secrecy, with no checks and balances, and without true accountability to anyone— public or certificants. It is also interesting to note that while the rest of the financial ser- vices community continues to move (or is pushed) towards increasing transparency, the

CFP Board, under the direction of its Board of Directors, has chosen to move in precisely the opposite direction.

We can only speculate that the Board of Directors has decided to position CFP Board to be the self-regulatory organization (SRO) for the financial planning profession. But— consistent with their recent approach—the Board of Directors has said nothing in this re- gard. Indeed, in response to a direct question, the Chair and Chair-Elect of CFP Board at- tending the March 2008 DEC hearings denied that any strategic decision had been made in this regard. We’ll see.

It is questionable whether 501(c)(3) status ever made sense. It is clear, however, that 501(c)(3) has become the pretext for a major barrier to communications between the Board and the body of certificate holders. Each time the Board makes a change severing itself further from the population of certificants, a major cited reason is 501(c)(3). This is an organization that derives virtually none of its revenue from charitable contributions and virtually all of its revenue from “members.” But this is the subject of a different arti- cle addressing concerns about the CFP Board of Standards.

After the move to Washington was announced, over 90% of existing, experienced staff chose NOT to make the move. This required the CEO—newly hired himself—to hire vir- tually the entire staff for all departments. The only Denver employee from the Profes- sional Review Department who chose to move to Washington was one who had been hired only three months prior to the move. Virtually one-hundred percent of the history, experience, and expertise of the staff that had supported critical DEC functions was lost – in one fell swoop!

In the place of these experienced CFP Board employees, the new hires for the two top staff supporting the DEC were both former NASD/FINRA employees. Given their pro- fessional background, it is not surprising that a new (bureaucratic) mindset has become evident—one that derives more from the culture of the regulation of securities dealers than from oversight of financial planners. Staff, in its few months aboard, in our experi- ence, has shown themselves all-too-ready and willing to disregard the culture of the fi- nancial planning profession upon which our professional review—and the very culture of CFP Board—were founded. The organizational mindset now seems to be that financial professionals need to be regulated, and they are regulated best by those who are neither credentialed nor whom have practiced in the profession they are now regulating.

Another significant change was the disrespect shown to the DEC and its members. Com- missioners spend between 20 – 40 hours preparing for each hearing session, and each hearing session requires four days (including travel) of time away from office or home, including one or two weekend days. Hearing days are full, generally beginning at 8:00

a.m. and lasting until 6:00 p.m. or later. Lunches are working lunches. Even at only 8 hours x 4 days, attendance at hearings alone requires a total of 32 hours. Preparation and attendance at hearings thus total a minimum of 50 hours—and all of this happens three times per year. In other words, each DEC Commissioner devotes 150 hours and 12 days per year away from home and office. Also note this does not include time devoted to tele-

phone hearings or other activities, such as attending CFP Board functions, for example, the financial planning clinics in Santa Monica and Boston.

Every member of the DEC is now, and has always been, at the top of our profession. The economic sacrifice made to serve as a Commissioner is far greater than that required of the Directors of CFP Board. While Commissioners have never been paid, traditionally they have been well-treated. By contrast, under the new regime at CFP Board, however, this changed. Rather than being treated as highly regarded professionals, whose experi- ence and expertise was respected and valued, Commissioners have instead been treated more like unpaid staff—and staff that could be treated in a rather disrespectful fashion.

The former atmosphere of collegiality between Commissioners and staff was signifi- cantly diminished.

The DEC and its individual members were more than willing to help during the transition from Denver to Washington. It was important to us to preserve as much of the culture as could be maintained despite the loss (in the Professional Review Department) as noted above of everyone with more than three months experience. Collectively, the members of the Commission have about 20 years of experience with the DEC and the disciplinary process of the CFP Board. The newly hired CEO and staff has less than 20 months of combined total experience.

Nonetheless, staff showed little interest in learning how or why things had been done in the past. Individual members of the DEC offered to travel to Washington, even if that travel was to be at their own expense, to provide background and explain to new staff the certificant peer-review disciplinary process as it had evolved. The goal was to help the new staff transition more smoothly to its role of supporting the DEC. Such offers were not graciously declined; they were ignored. “Going through the motions” efforts occurred at meetings of the Commission before or after hearings, but Commissioners had the sense that the new NASD/FINRA trained staff had their own ideas of how things should run, and as had happened previously, offers of help from DEC Commissioners were simply dismissed.

This is not to say that the processes, procedures and indeed the Code and Practice Stan- dards themselves were perfect. Prior to the move to D.C., each meeting of the DEC be- fore or after hearings included intense and extensive discussions with staff about im- provements that needed to be made, and/or discussions among the members of the Com- mission about how we could improve our processes and the clarity, transparency, and consistency of our decisions.

Despite all of these adverse changes in the culture, we would not have resigned but con- tinued to serve had the Board of Directors not passed the January Resolution.

APPENDIX 5

FULL TEXT OF DRP ARTICLES I AND II

ARTICLE 1: INTRODUCTION

Certified Financial Planner Board of Standards Inc. (CFP Board) has adopted a Code of Ethics and Professional Responsibility (Code of Ethics), Rules of Conduct and Financial Planning Practice Standards (Practice Standards), which establish the expected level of professional conduct and practice for certificants and registrants. The Code of Ethics, Rules of Conduct and Practice Standards may be amended from time to time, with revisions submitted to the public for comment before final adoption by CFP Board. To promote and maintain the integrity of its , CFP®

and CERTIFIED FINANCIAL PLANNER™ certification marks for the benefit of the clients and potential clients of certificants and registrants, CFP Board has the ability to enforce the provisions of the Rules of Conduct and Practice Standards. Adherence to the Rules of Conduct and compliance with the Practice Standards by certificants and registrants is required, with the potential for CFP Board sanctions against those who violate the regulations proscribed in these documents. CFP Board will follow the disciplinary rules and procedures set forth below when enforcing the Rules of Conduct and Practice Standards.

ARTICLE 2: DISCIPLINARY AND ETHICS COMMISSION

2.1 Function and Jurisdiction of the Disciplinary and Ethics Commission

CFP Board’s Disciplinary and Ethics Commission (referred to herein as the “Commission”), formed pursuant to and governed by the bylaws of CFP Board, is charged with the duty of investigating, reviewing and taking appropriate action with respect to alleged violations of the Rules of Conduct and alleged non-compliance with the Practice Standards as promulgated by CFP Board and shall have original jurisdiction over all such disciplinary matters and procedures.

2.2 Powers and Duties of the Commission

The Commission shall be authorized and empowered to:

(a) Enlist the assistance of CFP® certificants to assist with investigations, or serve temporarily on a Hearing Panel;

(b) Periodically report to CFP Board’s Board of Directors on the operation of the Commission;

(c) Adopt amendments to these Disciplinary Rules and Procedures, subject to review and approval of CFP Board’s Board of Directors; and

(d) Adopt such other rules or procedures as may be necessary or appropriate to govern the internal operations of the Commission.

2.3 Hearing Panel

The Hearing Panel may consist of members of the Commission who have been designated Hearing Panel members, enlisted CFP® certificants and up to one individual who is not a CFP® certificant. A Panel shall consist of at least three persons. At least one member of every Hearing Panel shall be a member of the Commission and at least two members of every Hearing Panel shall be CFP® certificants. One member of each Hearing Panel shall serve as Chair of that hearing. The Chair shall rule on all motions, objections and other matters presented in the course of the hearing and must be a voting member of the Commission.

2.4 Disqualification

Commission members shall refrain from participating in any proceeding in which they, a member of their immediate family or a member of their firm have any interest or where such participation otherwise would involve a conflict of interest or the appearance of impropriety.

2.5 CFP Board Counsel

CFP Board Counsel may be either full- or part-time employees of CFP Board or may be nonemployees who are attorneys. It will be the duty of CFP Board and CFP Board Counsel to maintain

an office in such location as approved by CFP Board’s Board of Directors to serve as a central office for the filing of requests for the investigation of certificant or registrant conduct, for the

coordination of such investigations, for the administration of all disciplinary enforcement proceedings carried out pursuant to these Procedures, for the prosecution of charges of wrongdoing against certificants or registrants pursuant to these Procedures and for the performance of such other duties as are designated by the Commission or the Chief Executive Officer of CFP Board. CFP Board Counsel shall have ultimate responsibility to the Commission.

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Get the 2008 FPA Practice Management Scorecard at No Cost

FPA and McLagan, producers of the 2008 FPA Practice Management Scorecard, are excited to announce an important offer allowing FPA members to participate in this year’s program at no cost. Participating members will receive a Scorecard at no cost thanks to this special offer. Conditions apply so please visit https://FPAScorecard.McLaqan.com for more information.

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For this reason, the Scorecard is essential to planners hoping to not only learn where they are now in comparison to competition, but how they expand and improve their practice.

Registration is now open! Visit https://FPAScorecard.McLaqan.com for more information.

Herr the introductory overview.

CFP Board Strengthens Its Ethics Enforcement Policy

Message from CFP Board Chair David G. Strege, CFP , CFA

CFP Board recently announced important changes to the selection process for CFP Board's Disciplinary and Ethics Commission members and the role of staff in support of the work of the Commission. These changes are the culmination of governance discussions that began in 2005. They were announced after an extensive and thoughtful examination of best practices in governance and professional review processes inside and outside the financial services industry.

Here are the changes that were made and what they mean:

1. Appointment of the Commission Chair, members and volunteers: The previous process was that the Commission made appointments without input from anyone outside their circle. The process was not well documented nor was it accountable. By assigning the responsibility to the CEO to implement a transparent process for selecting Commission members and volunteers, we have made the selection decisions more accountable. Potential Commission members/volunteers will be vetted by the Board and the Commission's input will be sought. The ultimate goal is a hearing process that is fair to the certificant and credible to the public. Going forward, CFP Board will appoint Commissioners with an eye toward the geographical diversity of our certificant population and the variety of business models our certificants represent. It is important to note that neither the CEO nor any staff member will serve on the Commission.

2. Appointment of \*public" representatives to the Commission: It is not uncommon for professional review processes to include public representatives. In fact, it is widely considered a best practice that increases transparency and accountability for a profession. And, it increases trust and credibility with the public. CFP Board's Bylaws provide that the Disciplinary and Ethics Commission "may be composed of CFPO certificants and members of the public." While the Bylaws do not specify the total number of Commissioners or the break-down of certificants and public members, it is CFP Board's intention that the Commission will always

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consist of a majority of certificants. It is anticipated that one or two "public" representatives will be appointed to the nine-member Commission in 2009.

3. Autonomy of the Hearing Panels: The three-member panels will function autonomously, as they always have. In no circumstance will there be more than one "public" member on a panel. The hearing panels have been -- and will continue to be -- autonomous groups responsible for recommending disciplinary actions for the cases they hear.

4. Staff participation in the ratification process: Staff counsel will attend the Ratification Meeting at which the proposed decisions of the hearing panels are ratified by the entire Commission. Staff will be available to provide technical assistance and guidance and to provide interpretation of the Standards of Professional Conduct. The Ratification Meeting occurs following the hearings, which are conducted by the Commission’s hearing panels in private. Additionally, staff counsel who attends the Ratification Meeting will not be the same individual who presents cases on behalf of CFP Board to the three-member hearing panels, further segregating duties and responsibilities.

CFP Board’s staff attorneys both joined CFP Board after positions with FINRA, where they gained experience interpreting rules and regulations. Additionally, one of the staff attorneys has a firm understanding of securities laws, having worked for the securities administrators in Maryland and the District of Columbia. -rheir understanding of the financial services industry and its regulatory aspects is impressive. They work with CFP Board's ethical standards on a daily basis, and they are intimately familiar with the content of those standards and the way those standards have been applied to specific cases.

5. The Appeals Process: In the interest of ensuring continued independence of the appeals process, CFP Board has retained outside counsel to advise the Appeals Committee on the Standards of Professional Conduct and to ensure the integrity of the appeals process. The Appeals Committee will deliberate in private, without staff; outside counsel will be available to provide technical support, guidance and interpretation of the Standards.

These changes are a natural extension of CFP Board’s revised Standards of Professional Conduct, which become effective July 1, 2008. We believe that the changes, which were unanimously approved by the Board of Directors, ensure a fair and consistent professional review process for certificants, increase the credibility of the CFP marks in the eyes of the public, and reduce risk to CFP Board.

We regret that five Commission members chose to resign recently. They conducted the most recent hearings in a very professional manner and we appreciate their volunteer service to CFP Board.

Top»

FPA to Provide Financial Education to National Groups

FPA will present at the America in Aging conference hosted by the American Society on Aging and the National Council on Aging, March 26-30 in Washington, D.C.

In an educational seminar on March 27, FPA will explain how professionals in the aging field can help their clients with estate planning. The seminar will focus on the benefits of estate planning, how to start the conversation, estate planning processes and tools.

The conference is expected to attract more than 4,000 attendees. FPA President, Mark Johannessen, CFP@, wlll represent FPA at this event.

Through FPA's relationship with student loan provider, Sallie Mae, the following schools have invited FPA to present to students on real world financial planning:

• March 27: Charleston School of Law in Charleston, S.C.

# White Paper- Badges of Misconduct: Consumer Rules to Avoid Abusive Financial Advisors

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Keywords: financial advisor misconduct; CFP; CFA; registered representative; dual-registered

JEL: C34, L50, L84

Abstract

The financial advisory industry lacks professional standardization/regulation. There are few guideposts to assess advisor quality, and risks to consumer welfare abound. Some 91% of investment advisors operate on conflicted sales commission licenses, though many market themselves as fiduciaries. Using the advisor misconduct scoring framework of Camarda (2017), we report specific misconduct ratings for each of the 625,980 FINRA advisors, finding elevated misconduct for CFP®s and commission/fiduciary licensees. For CFA®s, we found the opposite. We propose a unique scoring system to aid consumers in flagging problematic advisors. We also offer simple regulatory policy recommendations, which could enable stronger consumer protection at minimal cost or bureaucratic burden.

Keywords: financial advisor misconduct; CFP; CFA; registered representative; dual-registered

Large financial companies like brokerages and insurance operations are often integrated firms whose representatives frequently provide fiduciary advice as investment advisor representatives (IAR) and non-fiduciary commission sales licensees called registered representatives (RR). These representatives often work in both capacities with the same clients, creating a conflict of interest, including the potential for both fiduciary fees and product commissions from the same client. In this study, we call those holding both RR non-fiduciary commission sales licenses, and IAR fiduciary advisor licenses, two-hat advisors to underscore their different and conflicting roles and duties. Such advisors can switch hats even with the same client. Investors typically cannot distinguish between the legal duties owed by such advisors (Scholl, Hung, et al. 2018), much less tell which role such an advisor is, or should, undertake at a given time. Compensation conflicts may incentivize some role shrouding. Registered representatives are Financial Industry Regulatory Authority (FINRA)-licensed securities commission sales agents, previously known as stockbrokers. Such sales agents owe no fiduciary duty, though many are two-hat representatives that also hold fiduciary advisory licenses.

Two-hat representatives’ activity has been found to be a strong predictor of fraud (Dimmock and Gerken 2012). Such representatives have been found to have associated with higher rates of misconduct than those with sales licenses only (Camarda 2017, Camarda, Timmerman, and de Jong 2018; Camarda, Timmerman, and de Jong 2020; Egan, Matvos, Seru, 2019). Even worse, after 2010, when the Series 66 fiduciary license exam deemphasized rules and ethics, the industry saw a 20% misconduct increase (Kowalski, Sutherland, and Vetter 2020).

In addition to acquiring licenses to sell securities (in the case of RRs) or offer investment advice for a fee (IARs), financial advisors may obtain one or more designations like the Certified

Financial Planner (CFP®) or the Chartered Financial Analyst (CFA), which are two of the most prestigious designations available. These certifications entail additional training completed by the advisor, often signaling increased value to the consumer.

The primary research questions for this paper were: (1) Is elevated or suppressed public misconduct associated with fiduciary representations of two-hat advisors or with the CFP® or CFA® designations? (2) Is there a correlation between financial advisor misconduct and consumer-identifiable characteristics of advisors? To address these research questions the following research objectives were employed: (1) determine if choosing a financial advisor can be improved by relying on fiduciary licensure or professional designations to source lower-risk advisors; and (2) evaluate if certifications are associated with more palatable levels of reported misconduct. Therefore, the overarching goal of this paper was to identify indicators accessible to consumers that can be used to flag potentially problematic advisors. By using such indicators, consumers, advisors, and regulators can make better informed decisions to improve family wealth and social welfare. To address each research question, we analyzed advisor misconduct using publicly available data. Public misconduct information included customer complaints, fines, settlements, judgments, license suspensions, and other items on individual securities- licensed advisors.

Literature Review

Consumer decision-making is rooted in signal theory (Raskie et al., 2018). This theory posits that consumers tend to rely on brands and other heuristics as hallmarks of quality to save research time in purchase decisions. Consumers may rely on advertising from financial services firms and organizations, such as the CFP Board, to signal quality in advisor selection.

However, as for large financial firms’ misleading marketing messages as described above, recent literature suggests this signal may be unreliable. For example, in July 2019, the Wall Street Journal first reported findings thousands of seemingly clean CFP®s with public records of misconduct, in many cases severe and directly related to client work (Zweig and Fuller 2019a). The Wall Street Journal compared the FINRA and CFP Board Find-a- Trustworthy-Planner website profiles for over 70,000 CFPs. Among those profiles, over 6,300 had public FINRA misconduct records but were listed as reputable on the CFP® site. Reported items included client disputes, fines, and suspensions as well as over a hundred felony charges or convictions. In the wake of these stories the Wall Street Journal reported a CFP Board-appointed task force found misconduct discrepancies resulted from “systemic, longstanding, governance- level weaknesses” at CFP Board and that “these weaknesses will inevitably result in a recurrence of the kind of events reported by the Journal unless the Board of Directors acts...” (Zweig and Fuller 2019b).

In response, the Board committed to improving background checks by adding advisor- specific links to FINRA’s BrokerCheck site. To acquire misconduct information, the consumer must click through to the FINRA link on BrokerCheck site. The CFP Board takes the position that the CFP® site only reflects its disciplinary actions but is not intended to imply that all its members have been exhaustively reviewed. In a news release shortly after the WSJ story broke, the CFP Board of Standards rejected such a comparison between itself and FINRA, emphatically stating that the CFPB is not a regulator and takes a different approach to investigating and publicly posting misconduct information (CFP Board, 2019c).

A seminal study by Egan, Matvos, and Seru (2019) found that financial advisors exhibit a high level of documented misconduct, implying such misconduct to be habitual for some

advisors rather than a purely random phenomenon. Egan, Matvos, and Seru (2019, p. 253) noted that misconduct is much more concentrated, suggesting that some advisors are more prone to misconduct: “The high incidence of repeat offenders suggests that past misconduct should predict future misconduct.” Such troubled advisors tend to concentrate at some firms which may turn a blind eye to, if not actively encourage, misconduct. Egan, Matvos, and Seru (2019) inferred that some firms are prone to misconduct and may use misconduct as a profitable business model embedded within firm culture.

This trend of misconduct seems to follow advisors when they move to (or merge with) another firm. Dimmock, Gerken, and Graham (2018) found similar cultural effects where a merging firm with misconduct history tended to increase misconduct at the merged partner.

Similarly, findings from the current study also suggest that misconduct may be embedded within firm culture.

While the CFP Board has taken some steps to improve transparency to its members’ misconduct records, it is possible consumers may rely solely on the information provided by the CFP Board advertising and not take additional steps to vet potential advisors. These steps, while prudent, may be superfluous given investors’ reluctance to conduct FINRA background checks (Lin et al. 2019), despite the availability of this tool. Relying solely on the CFP Board site could expose consumers to advisors who are listed as clean and certified but who are involved in questionable practices, such as naming the advisor’s family as beneficiaries on clients’ accounts or being embroiled in numerous fraud-related settlements. Since it is difficult to reconcile such histories with the CFP Board’s ethical code and disciplinary process, it is undetermined whether the CFP Board has adequately reviewed CFP®s’ individual FINRA records to flag misconduct

among CFP®s. Given this information is available, affordable, and easy to collate, perhaps in the future it will be reflected in the Board’s oversight of its licensees.

Many financial advisors identify and understand the ramifications of having misconduct disclosures on their permanent U-4 records. Honigsberg and Jacob (2018, p. 27) found that 12% of advisors with misconduct histories attempt to have such records expunged, with a 70% success rate. Such attempts, whether successful, “are a significant predictor of future misconduct”, while at the same time impairing consumers’ and regulators’ awareness of such histories. Unfortunately, financial advisor misconduct is widespread, persistent, potentially devastating to consumers, and detrimental to social welfare. By extension, it is quite costly to society as consumers’ assets are compromised and safety nets are triggered. Advisors with misconduct histories are five times more likely to engage in new misconduct (Egan, Matvos, and Seru 2019). Of those considered to be most harmful to consumers, approximately 20% are associated with more than half of total harm cases (Qureshi and Sokobin 2015). While misconduct data contains valuable information, consumers are often oblivious to it and hence make less than informed decisions when selecting an advisor.

Summary of Methods, Key Findings, and Implications

We used misconduct status as a proxy for advisor ethics and advisory quality. Our study’s primary – and rather surprising – finding is that elevated misconduct is most sharply associated with advisors holding the CFP® designation, followed by non-designated advisors claiming fiduciary duties. These results are paradoxical, counterintuitive, and particularly important from a consumer perspective since fiduciaries, and CFP®s, are sought by consumers to avoid misconduct. Contrarily, we found markedly suppressed misconduct is closely associated with CFA® advisors.

CFP Board site postings for the 152 CFP®s with the worst misconduct scores in September 2020 were analyzed. Of these, 138 (91%) were actively certified (others lapsed, suspended, or revoked), and 126 (83%) were listed as clean and in good standing (without CFP Board discipline).

Our results have implications on several levels. For the CFP Board, accountability is needed to evaluate the conduct of those who operate using a CFP® certification and, perhaps, culling abusive advisors from its ranks. We noted that the CFP Board is organized as a non-profit charity which licenses the CFP® trademark; it is not a professional membership organization, and CFP®s have limited influence in leadership selection or policy formulation. However, this lack of influence may impact on our results, in that, there is no membership-level self-policing function. Some have questioned if the current 501(c)(3) governance structure is the best way for its mission to be achieved (Camarda 2019). Similarly, broker/dealer firms may find a similar opportunity to better validate their marketing claims of consumer welfare, particularly with respect to their legions of two-hat fiduciary licensees. Next, regulators and policy makers may use these findings to improve advisor market function. This may give pause to those who suggest the CFP Board be granted monopolized control over the advisory industry (Kitces 2018; Tharp et al. 2020). Lastly, CFA® charter holders and the CFA® Institute may use the findings to enhance competitive positions by deriving quality arguments. Ultimately, this study adds to the developing misconduct literature by using national data to establish, for the first time, strong, robust, high significance associations between misconduct and the advisor certifications, and fiduciary licensees, consumers seem most prone to utilize.

Methods

Data Extraction and Sample Population

Our data consisted of a national sample of 625,980 financial advisors registered as broker/dealer sales agents in mid-2019 and was purported to be the entire population of such advisors at the time. These are all FINRA registered commission securities sales agents. This is the largest data sample known to us and the benchmark in prior national misconduct studies.

Over $30 trillion in investor assets are overseen by these advisors (Egan et al. 2019). Even in the wake of FINRA’s Regulation Best Interest rule (BI), such representatives have no general fiduciary duty or substantive financial training requirement. Many also have professional designations like the CFP® or CFA®, with associated education and ethical code pledges. Many are two-hat advisors, commission agents also holding fiduciary investment advisors’ licenses, with enhanced ethical and legal duties to act in clients’ primary interests, in addition to sales licenses. We seek to determine if these designations – the CFA®, CFP®, and fiduciary licensure

– are associated with suppressed misconduct, compared to undesignated, non-fiduciary advisors. Our data set was comprised only of those with retail commission sales licenses. Those sales agents who also held fiduciary investment advisor licenses (Series 65 or 66) were so coded in the data. Note neither type of license is required to conduct portfolio analysis; where CFP®s and CFA®s have such licenses, the implication is they primarily or occasionally act as sales-driven retail advisors. We emphasize that only CFP®s and CFA®s with non-fiduciary commission sales licenses are included in our data as the implied potential conflicts go to the essence of our research question.

Following Egan, Matvos, and Seru (2018, 2019) and Honigsberg and Jacob (2018), we extracted data from the FINRA BrokerCheck using a Python algorithm. BrokerCheck catalogs

required public misconduct disclosures for each securities sales licensee. This dataset included every broker/dealer registered representative at that time licensed to practice in the United States, as well as most fiduciary investment advisor representatives. We collected and overlayed designations via the CFA Institute and CFP Board membership sites through a name-matching process.

Measures of Misconduct

Disclosure Incidence Score (DIS)

We adapted the Disclosure Incidence Score (DIS) misconduct scoring method developed by Camarda (2017) and adopted by others (Camarda et al. 2018; Camarda et al. 2020; Tharp et al. 2020) to the extracted data set. We identified 76 scorable misconduct measures, from “been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any felony?”, to allegations of unsuitable recommendations.

DIS is our broadest misconduct measure. It captures all regulatory required disclosure information. Non-advisory matters give insight into judgment and character. Allegation disclosures are informative since a meaningful percentage are likely true, even if not yet proven. In addition, allegations add important information on wrongdoing in cases where complainants die or are worn down by adversaries or process. It should be noted a meaningful percentage of overall misconduct is likely never reported to the BrokerCheck site due to consumer ignorance, flagging motivation, or bureaucratic bottlenecks.

Both a sum and a product version of the DIS calculation were considered for this study. The product version has been selected as it seems to offer a more appropriate score gradient with better correspondence to disclosed severity. It appears to represent a better balance and “spread” between poor advisory quality potential indicators and a more appropriate scale. As an example,

conditions one and three – mere allegation of a non-advisory item – only produces a subscore of 1 using the product method, one fourth as much as a finding of an advisory item like financial fraud which would yields a subscore of 4. The sum method would produce a subscore of 2 for a disclosure of a mere allegation of non-advisory issue, twice the value produced by the product form. This seems intuitively disproportionate. Subscore production using the product form is described in Table 1.

Table 1 shows the DIS subscore calculus. For each disclosure listed on the advisor’s Form U-4, we score that disclosure from 1 (allegation only, not advisory related) to 4 (finding of misconduct, advisory related). The middle column shows the product subscore for each disclosure found on the advisor’s U-4 in accordance with the following:

1. Does the item generally relate to non-investments-specific amoral or unethical behavior?

DIS factor = 1

2. Does the item directly relate to registrant’s actions with respect to investments or theft?

DIS factor = 2

3. Does the item relate to allegations against registrant without other implication of culpability?

DIS factor = 1

4. Does the item relate to allegations against registrant with reasonable implication of culpability?

DIS factor = 2

Thus, an advisor who was alleged to have violated a restraining order with no subsequent finding or was acquitted of said allegation would be scored a “1” for that particular disclosure. If the same advisor was found to have stolen from their client, that would be scored a “4.”

Advisory Disclosure Incidence Score (ADIS)

The segment of DIS score that relates to advisory matters are included in the Advisory Disclosure Incidence Score (ADIS). ADIS measures all findings and allegations of only advisory related matters. Allegations receive a score of two and findings a score of four. Each disclosure item contributes to a cumulative DIS score. The nature of the data is such that multiple counts may not be captured. For instance, in the #1 example above, multiple convictions would only require one yes answer where this item need be disclosed on the registration Form U-4—the permanent record holding disclosures for all representative—would contribute only a single subscore to the overall DIS. In other words, FINRA’s U4 data collection form only offers yes/no answers. If a representative had multiple incidents requiring a yes – say seven fraud convictions

– only one yes is captured. This is true for both allegations and findings. In our view misconduct profiling data would be greatly improved if FINRA were required to clearly indicate multiple counts of reportable items.

Culpable Advisory Disclosure (CAD)

Only those DIS scores that indicated findings of advisory related misconduct were included in the Culpable Advisory Disclosure (CAD) indicated by a score of four. This is the “red handed” measure, capturing convictions, fines, settlements, and other evidence of culpability on advisory abuses. Of the three scoring measures (DIS, ADIS, and CAD), the CAD scoring metric should be the most concerning to stakeholders because it involves findings (not allegations) of advisory-related misconduct.

DIS vs. ADIS vs. CAD Summary

The DIS score counts misconduct disclosures that are both advisor and non-advisory related and includes both mere allegations and actual findings of misconduct. ADIS counts both

allegations and findings of misconduct, but only for advisory matters. CAD just counts actual findings of advisory-related misconduct.

Calculating Misconduct Severity and Propensity

Unlike other misconduct study measures of which we are aware, ours are scalar (score increasing with number and severity of disclosures), and hence give a somewhat proportional view of a representative’s misconduct severity and propensity. Such a tool could easily be developed into a consumer-accessible misconduct grade to aid in shopping. This might be helpful to channel consumers to consider this important information. While BrokerCheck as the source of misconduct data has “significant power” to flag advisors associated with “investor harm” (Qureshi and Sokobin 2015), less than a quarter of investors do background checks before hiring advisors, perhaps due to ignorance stemming from widespread investor financial illiteracy (Lin, et al. 2019), complacency, or difficulty navigating and understanding the BrokerCheck system. Thus, having access to a single misconduct score might prove more accessible.

For example, (see Table 2) consider the second-highest scoring CFP® – call this person “X”; who shows as of March of 2020 as certified and clean on the CFP Board site1. X has a DIS score of 44, an ADIS score of 44 (indicating all misconduct is advisory-related) and a CAD score of 28, while the mean population scores are DIS 1.57, ADIS 1.20, and CAD 0.80. These scores imply seven findings of advisory-related misconduct (28/4) and an additional 8 [(44-28)/2] allegations of advisory misconduct. Remember this may understate actual misconduct due to the count and reporting problems described above. X’s disclosed events include multiple large settlements, a sales license suspension, and termination after allegations of unauthorized

1 The highest scoring has been barred from the securities industry but remains listed as not certified but clean on the CFP Board site as of March of 2020; this person notes the CFP® marks on one of their LinkedIn pages as of March of 2021 CFP® and promotes themselves as a “principal” of a wealth firm and an expert in wealth management.

discretionary trading. March 2021 employment remains with a major, well-known brokerage firm (since 2005) but one flagged by researchers as “specializing” in misconduct as a profitable business strategy (Egan, et al. 2019), a condition of which few consumers are likely to be aware.

Such a simple numeric rating as X’s 44/44/28, or 28/37/35 times average misconduct, might better help consumers if advisors or firms were required to prominently disclose it, rather than trying to find and slog through BrokerCheck, or relying on incomplete or misleading information such as that more easily found on resources such as the CFP Board site or sales rep marketing puffery. Simple cereal-box nutritional-grade information such as an adapted DIS score could go a long way toward informing and protecting individual consumers and public welfare. Statistical Analysis

We coded each representative for applicable independent variables embedded in the data as enriched by CFP® and CFA® membership overlays. Besides designations, we code for gender, two-hat advisor status (having fiduciary investment advisor license in addition to non- fiduciary commission sales license), and for firms identified (Egan et al. 2019) as having the best and worst overall misconduct records. We also considered the interaction of each independent variable of each designation with two-hat status. Finally, to explore cultural effects, we considered the interactions of each designation and two-hat status with being employed by those 20 firms with the best and worst misconduct records, which we call “Egan Best” and “Egan Worst”, respectively.

As one might expect, most advisors show zero misconduct. Our distributions are censored, with a lower bound of zero and a non-normal distribution were heavily skewed. Given the censured nature, we used Tobit as the primary regression technique. Tobit calibrates for meaningful coefficients since it captures the latent informational content of the zero misconduct

scores and integrates these into the estimating process, yielding more meaningful coefficients and significance testing than Ordinary Least Squares (OLS). Tobit coefficients are interpreted similarly to OLS. Also, for this analysis, we used all dummy variables, so each unit change in the coefficient of a respective predictor produces a corresponding change in the misconduct score associated with the predictor. The regressions were two-tailed tests following the form:

DIS, ADIS, CAD = β1 + β2 male + β3 two-hat + β4 CFP® + β5 CFA® + β6 CFP® x CFA® + β7 two-hat CFP® + β8 two-hat CFA® + β9 CFP® x Egan Best firm + β10 CFA® x Egan Best firm + β11 CFP® x Egan Worst firm + β12 CFA® x Egan Worst firm + β13 two-hat x Egan Best firm + β14 two-hat x Egan Worst firm + ε (1)

We estimated this equation using both Logit and Tobit regression. The Logit models probabilities by producing regression coefficients which are logs of odds ratios, which typically are not intuitively informative. Odds ratios lower than one are proportionately associated with less likelihood of misconduct being present, and those higher than one with proportionately greater likelihoods; those close to one are analogous to zero coefficients in typical regressions. A vertical “line of null effect” separates regions of less likely (left) from likelier than not, with distance from this line indicating odds for an independent variable, and a horizontal bisecting line indicating associated confidence limits.

Results

Consumer Signal Findings

Table 3 shows the coefficients for several independent variables in the relationship with three dependent misconduct variables (DIS, ADIS and CAD). The table shows the Tobit

coefficient , which have a similar interpretation as OLS regression coefficients. A Tobit  coefficient measures the linear relationship of the dependent variable for each unit change of the independent variable. The table also shows the Tobit coefficients and calculated percentages associated with Logit odds ratio. The interpretation for the calculated Logit percentage (p) is rather straightforward where the percentages indicate the probability of dependent variable occurrence in relation to the independent variable. Additionally, the table provides information on the statistical significance of both measures and could be found under the Tobit and Logit columns.

Under DIS, the CFP® Tobit  coefficient is 6.6751 with a Logit probability of 68% (both statistically significant), which implies a high misconduct score. For ADIS the CFP® Tobit  coefficient is 12.5298 and has a probability of 77% (both statistically significant) and for the most severe CAD misconduct, the CFP® Tobit  coefficient is 8.2966 and has a probability of 77% (both statistically significant). These results indicate that the CFP® designation is by far the biggest factor associated with elevated misconduct.

Two-hat advisors show the second biggest association with misconduct. For DIS, the Two-Hat Tobit  coefficient is 4.7086 and has a probability of 62%. For ADIS the Two-Hat Tobit  coefficient is 7.8968 and has a probability of 69%, and for CAD the Two-Hat Tobit  coefficient is 5.2848 and has a probability of 68%. All the coefficients are statistically significant at the 1% conservative level.

Conversely, CFA® charter holders show markedly suppressed misconduct. The CFA® Tobit  coefficient is -9.8583 with a Logit probability of 24% (both statistically significant), which implies a low misconduct score. For ADIS the CFA® Tobit  coefficient is -8.7824 and has a probability of 29% (both statistically significant) and for the most severe CAD misconduct,

the CFA® Tobit  coefficient is -6.0217 and has a probability of 28% (both statistically significant).

Secondary Consumer Signal Findings

Table 3 also indicates additional findings. Notably, CFP®s who are also two-hat representatives are slightly more likely to have a record of misconduct than two-hat representatives that are not CFPs. For DIS, the CFP x Two-Hat Tobit  coefficient is -6.5933 with a Logit probability of 33%, and for ADIS the CFP x Two-Hat Tobit  coefficient is - 10.7572 with a probability of 26%, and for CAD the CFP x Two-Hat Tobit  coefficient is - 7.1092 with a probability of 26%. All these coefficients are statistically significant at the 1% conservative level. For advisory measures, these results trump the misconduct-suppressed coefficients associated with CFA®s; two-hat CFP®s show even more suppression. Note the contrast that t those CFP®s who are not two-hat are associated with alarming levels of misconduct. For example, the findings show that under CAD the CFP x Two-Hat Tobit  coefficient is -7.1092 (statistically significant) compared to 8.2966 (statistically significant) for all CFP®. Combining CFA® and CFP® moderately elevates misconduct for DIS (see the CFP x CFA Tobit  coefficient of 2.8243 with a probability of 58%) but loses significance for advisory measures. To explore these results further, we performed an additional series of Tobit and Logit regressions, which are summarized in the Table 4.

Non-two-hat /pure-commission CFP®s show sharply elevated Tobit misconduct with high Logit probabilities, the biggest uniform misconduct effect in this series (see the CFP non- two-hat Tobit  coefficients under all misconduct scores in Table 4). Next were the general two- hat advisor (without CFP® or CFA®) results as in the other regressions. Conversely, there is no

CFA® analog, with commission only/non-two-hat CFA®s still showed suppressed misconduct, though to a lesser degree than two-hat CFA®s.

Cultural Findings and Perspectives

Moving to cultural effects (also see Table 4), we consider the Egan “best”/”worst” firm effects. We do not consider this to be meaningful to consumers since it is unlikely consumers would be aware of the Egan et. al. (2019) information or apply it as an overlay to designation or fiduciary market signals. Recall that “Egan best” firms are those with endemic suppressed misconduct, and “Egan worst” are those with endemic elevated misconduct. CFP®s at Egan best firms have substantially higher rates of misconduct relative to non-CFPs at Egan best firms. The effect of holding the CFP designation on misconduct is positive at both Egan best and non-Egan best firms. However, the effect is larger at non-Egan best firms. . For two-hat advisors, misconduct elevation is somewhat pronounced at Egan worst firms, but very meaningfully suppressed at Egan best firms.

Conclusion

Our findings suggest that consumers engaging CFA® advisors encounter much less misconduct risk across the board. Another key finding is the culture within a given firm. This study indicated that firms who are less accepting of misconduct exhibit less misconduct. It is interesting that CFP®s at Egan worst firms show only marginally elevated misconduct compared to CFA®s who appear more compromised by culture. Also, a two-hat advisor effect was observed, which clearly introduces situations where consumers may believe a proclaimed fiduciary advisor also receives commission at consumer expense. It is possible, the capacity for human rationalization being what it is, that such advisors are not aware of their switching roles. Perhaps, they convince themselves they are promoting clients’ interests even where client-paid

compensation is extreme. For example, a prospective client of one of the authors had accounts at a national warehouse/brokerage, primarily a commission firm. Client believed that advisor was a fee-only fiduciary. On statement examination, a large annuity was discovered, representing a substantial percentage of the account, on which the estimated commission was $80,000. The client asked the author to call the broker/advisor for an explanation. The broker affirmed he was a fiduciary, and declared he only took fees, never commissions on this client, and was bound to put the client’s interest first. He was quite adamant. When asked about the big commission on the annuity, his verbatim response was “oh, except for that.” It seems very likely that customer complaints and other reported misconduct would track such misunderstandings.

At the most basic level, the study findings suggest that consumers who rely on a single market signal should avoid CFP®s if they wish to reduce misconduct risk. Given that consumers tend to seek simple rules of thumb and given CFP Board’s proclivity for extensive “highest standard” advertising, this is a primary consumer protection finding. To reiterate, the data shows that the CFP® credential is associated with dramatically elevated misconduct to high levels of probability misconduct across all measures. At a deeper level, the CFP® results present a fascinating dichotomy and deep policy insight. Two-hat CFP®s seem particularly sensitive to fiduciary duties as evidenced by sharply suppressed misconduct. If consumers were to seek two- hat CFP®s–but not other CFP®s or non-CFP® two-hat advisors–their misconduct avoidance odds improve markedly. However, this confusing selection hierarchy is unlikely to be followed by many without improved consumer advisor literacy.

In contrast with our two-hat CFP® findings, pure commission CFP®s appear to put consumers at extremely high risk of misconduct. By design or coincidence, there is a small proportion of individuals who effectively use the CFP® as a cover for poor sales practices. It is

probable this situation results from a mismatch from consumer expectations spawned by lofty CFP Board marketing representations and the lower legal obligations of CFP® sales agents. This results in a corollary to the quasi- or pseudo-fiduciary effect, which we call the pseudo-financial planner effect. CFP Board marketing messages and the words “Certified Financial Planner” themselves, communicate a duty and service that commission CFP®s are not bound to uphold. It is possible many CFP®s were unaware of this disconnect, and simply performing their employee duties as salespeople. Others may actively allow consumers to believe they are buying financial planning to more effectively push products. Whether or not such CFP®s intentionally participate in this de facto misrepresentation is immaterial. The statistically significant and sharply elevated misconduct associated with CFP®s implies a wide gulf between what consumers are buying, and what they are being sold.

Limitations and Policy Suggestions

Our results can be used to help consumers – and regulators – identify advisors who are less likely to be associated with elevated levels of misconduct. A misconduct score, exemplified by CFP® X in the case study (see Table 2). Recall X’s DIS/ADIS/CAD scores as 44/44/28, or 28/37/35 times average misconduct. Advisors with records of misconduct should be required to provide detail to prospective clients and obtain client written acknowledgment of such disclosure. DIS, ADIS and CAD scores, with simple explanations, could be delivered to prospective clients with signed receipts required as prerequisite to doing business. Table 2 provides examples of what such a disclosure could look like.

Such a system could be expanded by including not only misconduct status but conflicts- of-interests license information such as fiduciary, securities, commissions, life insurance

commissions, and others. In addition, financial education, such as for CFP®, CFA®, CPA, EA, graduate degrees in finance, and so on, should also be captured in a revised reporting system.

Oversight of life insurance sales activities – an area of often-enormous but opaque commissions that are hard to spot but ultimately come out of consumers’ wealth – should be standardized and regulated nationally. States simply do not have the resources to provide adequate accountability. Insurance sales is a frequent area of consumer abuse, particularly among the elderly. Claims of “you don’t pay a commission – I am paid directly by the company!” abound (Steverman 2017), but the reality of surrender charges – de-facto commissions – reaching into double (>10%) and sometimes triple (>100%) digit percentages of first year

premium “investments” can be corrosive to consumer wealth.

The two-hat advisor status quo is clearly problematic. While it serves the industry, the potential for consumer harm is great. It should be modified or abandoned so that advisors – and, if possible, their firms – choose a single commission or fiduciary role. In addition, the CFP Board may consider modifying its marketing to better convey the role of various designations. The propensity of CFP®s for misconduct does not align with claims of ethical integrity or “thoroughly vetted” compliance oversight. If the CFP Board is unable or unwilling to uphold their promotional representations, it would be best for such claims to not be made in marketing campaigns. Additionally, the CFP Board may want to emphasize the education and credentials of their members but avoid general quality or strict oversight claims. Another consideration may be to revise its oversight and disciplinary process to be more aware of and congruent with FINRA/SEC misconduct, and enforcement to sanction, suspend, or revoke misconduct-prone licensees.

Egan et al. (2019) reported “approximately one-quarter of advisers with misconduct records are repeat offenders…[who are] five times more likely to engage in misconduct …The large presence of repeat offenders suggests that consumers could avoid a substantial amount of misconduct by avoiding [such] advisers…[but] neither market forces nor regulators fully prevent such advisers from providing services…”(235). We suggest that public policy could focus on making such advisors inaccessible—or at least provide a visible and accessible demarcation of misconduct—to consumers; thus, protecting consumers with one more step in finding reliable advisors. For example, predatory advisors exceeding a threshold ADIS or CAD score should face lifetime bars, without the opportunity to resurface in other industries as is currently the case (Steinberg 2014, 2015).

To aid researchers, data should be made more uniform and transparent. Client-facing advisors, regardless of industry and regulatory authority in the banking, trust, insurance, securities, advisory, legal, accounting, and others in the financial advisory channels should be enrolled in a national registry and licensed as Retail Financial Representatives. Organizations like FINRA and CFP Board should be made to be more transparent and forthcoming in providing misconduct and other quality research data. Rather than employing impediments to extracting data, as seems currently to be the case, they should offer data in directly regress-able format.

Pan-industries misconduct information, including for life insurance/annuity sales agents, should be pooled, standardized, and collated, including both state and federal sources. Specifically, FINRA should make misconduct count data easily available. Accurate count information would produce more representative DIS scores for researchers and public protection.

Titles need be made plain, so consumers know what they are being offered. For instance, Lach, Flynn, and Kelly (2019) make the excellent suggestion that commission sales agents be

prohibited from using misleading terms like financial consultant and be required to call themselves “Investment Sales Representatives.” If uniformity of titles is required, consumer confusion should diminish, and public welfare should increase to make the industry more transparent. We suggest that bona fide investment advisor representatives (IARs) be required to use the term, Investment Advisory Fiduciary. Beyond this, for two-hat advisors, for every transaction a disclosure with documented client written consent should be required. Such a statement might read:

Sometimes I act as a commission sales agent. My compensation, and the cost to you, may not be clear in such cases. Also, in such cases I am permitted to act with a lesser-than-fiduciary duty to you and may put my interests ahead of yours with appropriate disclosure. On this transaction,

I am acting as a sales agent earning a commission and allow to put my interests ahead of yours

I am acting a fiduciary advisor and must put your interests first.

Such a system would be simple and cheap to implement.

A critical problem is the patchwork of regulatory schemes overlaid on financial advice.

Life insurance agents, bank representatives, and others who compete in this field are often beyond the reach of FINRA and the SEC. To resolve this, all operators, may be given a uniform name, such as Consumer Financial Representative, and be compiled in a national database and required to comply with the disclosure suggestions above.

Beyond this, there is a real need to improve the education of financial advisors, regardless of their role. Effective financial planning or wealth management is complex. At the highest levels, it is at least as complex as medicine or law. It involves the thoughtful integration of a host of underlying disciplines, each extremely complex it its own right. For many individuals, these

include income and estate tax strategic planning, estate and trust planning, long term care planning, retirement income planning, investment analysis, strategy, and management, risk management and asset protection. In some cases, the scope of needed expertise reaches further, to include college funding, business financial planning, executive compensation planning, and other specialized disciplines. While designations like CFP® and CFA® are valuable, they connotate very specific skill sets, the extent and limitations of which consumers may not fully appreciate. The CFP® program, for instance, represents an excellent foundation on which to build an advisory professional education system. It is a beginning, though, and not an end, given it represents only one undergraduate-level course in each one of six planning areas. Past CFP Board ads claiming “the CFP® is the MD of financial planning” seem to be excessive puffery which overstate the credential and perhaps mislead the public.

To make it easier for consumers to identify who they are working with, we propose a hierarchy of practitioners’ credentials, using a medical professional model. Expertise level indicators would help clarify and standardize the industry, and foster true professionalism (e.g., Wealth Advisor Assistant, Wealth Advisor Consultant (for example, CFP/ChFC), Master of Wealth Management (MWM) and Doctor of Wealth Management (DWM)). We believe such a hierarchy represents an outstanding opportunity to serve the public, and for universities, the CFP Board, and CFA Institute to profit from building quality programs with a very wide potential market. The number of CFP®s alone is said to be approaching 100,000 and the number of people who consider themselves financial advisors, including many bank and insurance company employees who are not FINRA registered, is likely in excess of one million. In the meanwhile, comprehensive advisor ratings systems could be developed, integrating misconduct data, fiduciary status, financial education, and practice area competencies. Properly designed, such

ratings could be as useful and clear to consumers as signals like registered nurse, physician’s assistant, and medical doctor. Finally, we believe critical parameters are 1) fiduciary status, 2) misconduct history, 3) educational level, and 4) scope of practice and expertise. A grade or level for each could be assigned and presented in a simple grid, with detail as appropriate presented as sidebar.

Future Research

Collection of life insurance licensure data and overlay of the FINRA dataset would allow the interesting exploration of misconduct associated with this independent variable. A national CFP® dataset to explore insurance and other misconduct for non-FINRA CFP®s would be interesting. Primary research into how two-hat advisors view their fiduciary duties and primary research into how consumers view CFP® duties would also be of interest. Theoretical development into the apparent mismatch between consumer expertise, duty expectations, and the reality of the marketplace may yield productive research avenues. Lastly, couching the present discussion in terms of our proposed Shrouded Professional Dissonance Theory, an extension of Signal Theory, might yield measurable constructs and different misconduct findings.

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Table 1. DIS Subscores as a Function of Condition Combinations

Advisory related? Clear indication of culpability? DIS subscore

Not investment/theft specific No clear indication of culpability 1

Not investment/theft specific Clear indication of culpability 2

Investment/theft specific No clear indication of culpability 2

Investment/theft specific Clear indication of culpability 4

Table 2. Consumer Label

Misconduct Measure DIS ADIS CAD

Misconduct Score (1)

44

44

28

Average Misconduct Score (2) 1.57 1.2 0.8

Incremental Misconduct (1) / (2) 28x 37x 35x

Note: DIS includes all misconduct including accusations as well as findings of misconduct; ADIS includes only advisory-related misconduct including accusations as well as findings of misconduct; CAD includes only advisory-related misconduct with clear evidence findings of misconduct only.

Table 3. Summary of Findings for the DIS, ADIS, and CAD Misconduct Scores

DIS

% of Sample m b odds p Tobit Logit

Sample 100.0% 1.57

Male 60.3% 1.8934 3.9470 1.52 60% \*\* \*\*

Two-Hat 48.8% 2.0842 4.7096 1.66 62% \*\* \*\*

CFP 5.8% 2.3344 6.6751 2.09 68% \*\* \*\*

CFA 2.1% 0.7182 -9.8583 0.31 24% \*\* \*\*

CFP x CFA 0.1% 1.5510 2.8243 1.41 58% \*\* \*\*

CFP x Two-Hat 4.5% 2.2825 -6.5933 0.49 33% \*\* \*\*

CFA x Two-Hat 0.9% 1.1836 2.7041 1.43 59% \*\* \*\*

CFP x Egan Best 0.2% 0.8248 -2.6670 0.70 41% \*\* \*\*

CFA x Egan Best 0.3% 0.1748 -4.0442 0.57 36% \*\* \*\*

CFP x Egan Worst 1.9% 2.9835 1.4467 1.18 54% \*\* \*\*

CFA x Egan Worst 0.3% 1.8015 3.8222 1.53 61% \*\* \*\*

Two-Hat x Egan Best 1.2% 0.6256 -8.1940 0.41 29% \*\* \*\*

Two-Hat x Egan Worst 13.1% 2.6591 2.8948 1.37 58% \*\* \*\*

ADIS

Sample 100.0% 1.20

Male 60.3% 1.5250 7.1842 2.01 67% \*\* \*\*

Two-Hat 48.8% 1.7221 7.8968 2.18 69% \*\* \*\*

CFP 5.8% 2.1039 12.5298 3.42 77% \*\* \*\*

CFA 2.1% 0.5736 -8.7824 0.40 29% \*\* \*\*

CFP x CFA 0.1% 1.3276 1.7116 1.23 55% - -

CFP x Two-Hat 4.5% 2.0545 -10.7572 0.35 26% \*\* \*\*

CFA x Two-Hat 0.9% 0.9807 0.9090 1.15 53% - -

CFP x Egan Best 0.2% 0.5759 -5.1343 0.55 36% \*\* \*\*

CFA x Egan Best 0.3% 0.1215 -3.7296 0.63 39% \* \*

CFP x Egan Worst 1.9% 2.7891 1.3913 1.13 53% \*\* \*\*

CFA x Egan Worst 0.3% 1.5995 4.3913 1.53 60% \*\* \*\*

Two-Hat x Egan Best 1.2% 0.3879 -11.0034 0.34 25% \*\* \*\*

Two-Hat x Egan Worst 13.1% 2.3590 4.8249 1.59 61% \*\* \*\*

CAD

Sample 100.0% 0.80

Male 60.3% 1.0148 4.8404 2.00 67% \*\* \*\*

Two-Hat 48.8% 1.1304 5.2859 2.16 68% \*\* \*\*

CFP 5.8% 1.3482 8.2966 3.35 77% \*\* \*\*

CFA 2.1% 0.3869 -6.0217 0.40 28% \*\* \*\*

CFP x CFA 0.1% 0.8657 1.2174 1.23 55% - -

CFP x Two-Hat 4.5% 1.3236 -7.1092 0.35 26% \*\* \*\*

CFA x Two-Hat 0.9% 0.6440 0.6480 1.15 53% - -

CFP x Egan Best 0.2% 0.4128 -3.2965 0.57 36% \*\* \*\*

CFA x Egan Best 0.3% 0.1055 -2.3863 0.62 38% \* \*

CFP x Egan Worst 1.9% 1.7298 0.8749 1.12 53% \*\* \*\*

CFA x Egan Worst 0.3% 0.9923 2.9978 1.55 61% \*\* \*\*

Two-Hat x Egan Best 1.2% 0.2832 -7.3694 0.34 26% \*\* \*\*

Two-Hat x Egan Worst 13.1% 1.4927 3.1453 1.57 61% \*\* \*\*

Note. Male implies a dummy variable for the male gender; dual means dual means both commission license and IAR fiduciary license, CFP is for the CFP designation and CFA for the CFA designation. Egan Best implies a low misconduct firm as introduced by Egan et al. (2019); Egan Worst implies a high misconduct firm. All interaction terms (as indicated with a dash (-)) are combination of the several variables.  is the mean for each variable.  is the Tobit coefficient while the odds indicate the Logit odds ratio with its calculated percentage (p). The last two columns show the statistical significance of the Tobit and Logit results. A single asterisk (\*) results significant on a 5% two-tail test; double asterisks (\*\*) results significant on a 1% basis.

Table 4. Commission CFP® Misconduct Effect

DIS b p Tobit Logit

Male 3.9 60% \*\* \*\*

Two-Hat 5.4 64% \*\* \*\*

CFP 0.8 53% \*\* \*\*

CFA -6.1 34% \*\* \*\*

CFP non Two-Hat 6.3 66% \*\* \*\*

CFA non Two-Hat -3.9 37% \*\* \*\*

ADIS

Male 7.2 67% \*\* \*\*

Two-Hat 9.2 71% \*\* \*\*

CFP 2.6 56% \*\* \*\*

CFA -6.8 34% \*\* \*\*

CFP non Two-Hat 10.3 73% \*\* \*\*

CFA non Two-Hat -2.1 43% \*\* \*\*

CAD

Male 4.8 66% \*\* \*\*

Two-Hat 6.1 71% \*\* \*\*

CFP 1.7 56% \*\* \*\*

CFA -4.6 34% \*\* \*\*

CFP non Two-Hat 6.8 73% \*\* \*\*

CFA non Two-Hat -1.4 43% \*\* \*\*

NOTE: This table shows the summary of findings for the three misconduct scores (DIS, ADIS and CAD). Male implies a dummy variable for the male gender; Two-hat means dual means both commission license and IAR fiduciary license whereas non-two hat implies the opposite; CFP is for the CFP designation and CFA for the CFA designation. All interaction terms are combination of the several variables.  is the mean for each variable.  is the Tobit coefficient while the p refers to the calculated percentage of the Logit odds ratio. The last two columns show the statistical significance of the Tobit and Logit results. A single asterisk (\*) results significant on a 5% two-tail test; double asterisks (\*\*) results significant on a 1% basis.