Consumer Federation of America

August 14, 2017

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

Re: Proposed Revisions to Code of Ethics and Standards of Conduct

Dear Sir or Madam:

I am writing on behalf of the Consumer Federation of America (CFA)[1] to express our enthusiastic support for the CFP Board's Proposed Revisions to its Code of Ethics and Standards of Conduct. These revisions will provide enhanced protections for investors who turn to CFP professionals for financial advice, ensuring that investors receive advice that is in their best interest at all times during the relationship. These proposed revisions provide a model for what advice standards should look like throughout the financial industry, regardless of business model or compensation structure.

First, we appreciate the CFP Board's continued commitment to the highest standards of professional competency and ethics. Since 2008, CFP professionals across all business and compensation models have been required to operate under a fiduciary standard when providing financial planning services. While that standard has benefited investors substantially, it leaves open the possibility for a CFP professional to make sales recommendations or otherwise act in a way this is not in the investor's best interest, outside of the financial planning relationship. The proposed standards close this potential loophole, extending the fiduciary duty to all financial advice, not just when a CFP professional provides financial planning services. This means that a client will be fully protected throughout the relationship, regardless of what services they are receiving.

Moreover, what constitutes financial advice, which then triggers the CFP professional's fiduciary duty, is appropriately defined broadly and is consistent with both securities laws and the Department of Labor (DOL) fiduciary rule. The proposed definition of financial advice is: "A communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the client take or refrain from taking a particular course of action." Moreover, the proposed definition of financial advice explicitly states that, "The determination of whether financial advice has been provided is an objective rather than subjective inquiry. The

[1] The Consumer Federation of America is a non-profit association of nearly 300 consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

more individually tailored the communication is to the client, the more likely the communication will be viewed as financial advice."

This proposed definition of financial advice is consistent with the formulation that FINRA has adopted in defining whether a recommendation has been made for purposes of the suitability rules applicable to brokers. It is also consistent with the definition of investment advice that the DOL adopted in its fiduciary rule. This consistency across regulatory definitions will allow CFP professionals to adopt consistent practices across investors' accounts, and investors will, in turn, receive critical protections across their accounts. As a result, an investor who turns to a CFP professional will receive fiduciary advice in both their retirement and non-retirement accounts and regardless of how the CFP professional is already regulated.

In addition, the proposed revisions clarify what the fiduciary duty entails, including a duty of loyalty, a duty of care, and a duty to follow client instructions. We strongly support the inclusion of each of these duties, as they will ensure that the CFP professional serves the client's best interest at all times.

Importantly, the duty of loyalty requires that the CFP professional 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. This requirement is compensation neutral and allows for the existence of conflicts, but still ensures that those conflicts don't inappropriately influence recommendations. As a result, a CFP professional will be required to always put the client's interests in the driver's seat, rather than giving priority to any competing interests of the CFP professional, his or her firm, or any other party. Similar to the definition of financial advice, this language mirrors the language in section 913 of Dodd-Frank, which provides the SEC the authority to promulgate a uniform fiduciary standard for broker-dealers and registered investment advisers, as well as the language in the DOL fiduciary rule's best interest standard.

The proposed revisions reinforce the duty of loyalty with a requirement to avoid and appropriately manage conflicts of interest. Specifically, the standards require a CFP professional to adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the CFP professional's ability to act in the client's best interests. Critically, the proposal makes clear that disclosure alone is not sufficient to satisfy this standard. This is exactly the right approach, as study after study has shown that disclosure alone is ineffective at arming investors to protect themselves against the harmful impact of such conflicts or to discipline market participants. While we believe the proposed language is clear that a CFP professional must: 1) avoid; or 2) fully disclose material conflicts <u>only after</u> properly managing those conflicts and obtaining a client's informed consent, some commentators have suggested that it is not clear, and that a CFP professional could comply with this duty merely by disclosing conflicts and receiving a client's consent. We therefore urge the CFP Board to clarify to the extent necessary that a CFP professional continues to have a duty to act in the best interest of the client, appropriately manage all material conflicts, and place the client's interest above the CFP professional's, in addition to fully disclosing the conflict.

In addition, the proposed revisions clarify that a CFP professional's duty of care is to act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the client's goals, risk tolerance, objectives, and financial and personal circumstances. This language ensures that investors will receive advice that is professional, prudent, and based on a high level of expertise. It also appropriately parallels the language in the DOL's best interest standard.

While the revisions broadening the fiduciary standard to apply to all advice and the duties clarifying the fiduciary duty are the most noteworthy aspects of this proposal, we also strongly support the proposed pre-engagement disclosures. According to the proposal, a CFP professional must provide to a prospective client a plain English summary of material information about the CFP professional and the CFP professional's firm, including a description of the services and products provided, a description of how the client pays and how the CFP and CFP's firm are compensated, a summary of material conflicts of interest, such as the offering of proprietary products, receipt of third-party payments for recommending products, material limitations on the universe of products, the receipt of bonuses or other non-cash compensation for selling products, and the receipt of additional compensation when the client increases the amount of assets under management, and a link for the relevant webpage that sets forth the CFP professional's public disciplinary history or any bankruptcy, if any. Most investors' first and last investment decision is choosing who to rely on for advice. Prospective clients who receive this information at the outset of the relationship will have the information they need to make a truly informed choice about that decision and will have a better understanding about what the terms of the relationship will be.

In conclusion, we appreciate the CFP Board's continued commitment to the highest standards of professional competency and ethics. The CFP Board's recent experience has shown that a broad and strong fiduciary standard is not only good for investors, it's good for CFP professionals. In addition, the CFP Board's own experience shows it's possible to comply with a broad and strong fiduciary standard, regardless of business model or compensation structure. We have no doubt that these revisions will continue to set a model for what advice standards should look like throughout the financial industry.

Respectfully submitted,

Micah Hauptman

Micah Hauptman
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