



SIFMA™

Securities Industry and
Financial Markets Association

April 25, 2007

BY EMAIL: mail@CFPBoard.org

CFP Board
Attn: Ethics Task Force
1670 Broadway, Suite 600
Denver, CO 80202-4809

Re: Second Exposure Draft on CFP Board's *Code of Ethics and Professional Responsibility*,
Rules of Conduct, and *Financial Planning Practice Standards*

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association¹ submits this letter in response to the request for comments by the Certified Financial Planner Board of Standards, Inc. ("CFP Board") on the Second Exposure Draft of proposed revisions to CFP Board's *Standards of Professional Conduct* ("Second Exposure Draft"). As we mentioned in our comment letter on the First Exposure Draft, we commend the CFP Board for its efforts to update the *Code of Ethics and Professional Responsibility* ("Code of Ethics"), *Rules of Conduct* ("Rules"), and *Financial Planning Practice Standards*, and we endorse the CFP Board's efforts to bolster ethical and

¹ The Securities Industry and Financial Markets Association ("SIFMA"), established in 2006 through the merger of the Securities Industry Association and The Bond Market Association, brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. More information about SIFMA is available on its home page: www.sifma.org.

professional standards of CFP certificants (“certificants”). We appreciate the changes that the CFP Board made in response to our initial comments and the opportunity to comment on the Second Exposure Draft.

I. Introduction

Employees of SIFMA member firms make up a significant percentage of current certificants. These certificants offer a wide variety of products and services on behalf of their firms, and in addition to the Code of Ethics and Rules of Conduct, they are subject to extensive regulatory oversight and supervision by their employing firms. SIFMA member firms are subject to multiple regulatory regimes, including those administered by the Securities and Exchange Commission (“SEC” or “Commission”), state securities regulators, the NASD, the NYSE, and other self-regulatory organizations (“SROs”).

Our comments are meant to assure that the Code of Ethics and Rules of Conduct achieve their intended purpose, and are consistent with the business models and regulatory structures governing firms that employ certificants. Notwithstanding the laudatory efforts of the CFP Board in proposing and revising the draft Code of Ethics and Rules of Conduct, certain aspects of the Second Exposure Draft conflict with longstanding law applicable to broker-dealers and their registered representatives, and could present substantial problems for firms and certificants that offer multiple types of financial services. We have attached as Exhibit A suggested changes to the proposed Code of Ethics and Rules of Conduct that will avoid these problems. We trust the CFP Board will agree that these suggested revisions are consistent with the Board’s intentions in promulgating the Second Exposure Draft, namely, to reduce investor confusion, maintain high ethical standards, strengthen the standards as appropriate, and ensure that the standards are understandable, enforceable, and applicable to all individuals over whom the CFP Board has jurisdiction.

II. Discussion

A. The CFP Board Should Revise The Definition Of “Financial Planning” To Be Consistent With The Comprehensive Manner In Which These Services Are Provided By Certificants.

We commend the CFP Board for deleting the definitions for “financial planning subject areas” and “personal financial planning subject areas.” We also agree that certificants have a fiduciary duty to a client when they engage in financial planning or provide a financial plan. Yet we continue to believe that the Second Exposure Draft should include a definition of “financial planning” or “personal financial planning” that reflects the comprehensive nature of financial planning services. Specifically, “financial planning” and “personal financial planning” should be defined by the CFP Board as providing a client with comprehensive advice that seeks to address a wide spectrum of the client’s long-term financial needs through the proper management of financial resources. The definitions also should recognize that financial planning services may be provided orally or in writing, as agreed upon by the client and the certificant.

The SEC has considered the overall comprehensiveness of planning services offered by a firm to its client in determining when the firm has engaged in financial planning activities.² Describing “financial planning” as a comprehensive service is consistent with the existing federal and state securities regulatory regimes and provides a fair and appropriate definition that clients can understand. We also believe that this description is consistent with the CFP Board’s view of financial planning. For example, in the Frequently Asked Questions associated with the Second Exposure Draft, the CFP Board recognized that “Not all CFP certificants provide comprehensive financial planning services for all clients.”³

As currently defined in the Rules of Conduct, “financial planning process” and “personal financial planning process” conflict with activities that federal regulators and self-regulatory organizations have long considered to be required brokerage obligations. For example, the definition of “financial planning process” in the draft Rules of Conduct includes **one or more** of

² See, e.g., Townsend and Associates, SEC No-Action Letter (Sept. 21, 1994) (“advisory services offered as part of an overall plan that assesses the financial situation of a customer and formulates a financial plan” not solely incidental to registered representative’s brokerage services). Similarly, the SEC stated in the adopting release for Rule 202(a)(11)-1, “A financial plan generally seeks to address a wide spectrum of a client’s long-term financial needs ... Typically what distinguishes financial planning from other types of advisory services is the breadth and scope of the advisory services provided.” *Certain Broker-Dealers Deemed Not to be Investment Advisers*, 70 Fed. Reg. 20424, 20438 (Apr. 19, 2005). Although the financial planning aspect of Rule 202(a)(11)-1 was not at issue in the recent decision of the Court of Appeals of the District of Columbia Circuit to vacate Rule 202(a)(11)-1, it was overturned solely due to the lack of a severability clause. *Financial Planning Ass’n v. Sec. & Exch. Comm’n*, No. 04-1242, 2007 WL 935733 (D.C. Cir. 2007). However, we believe that the SEC’s definition is more representative of true financial planning and is a more workable framework in light of varying business models and the existing regulatory structure.

³ Frequently Asked Questions, available at http://www.cfp.net/aboutus/Exposure_Draft.asp. The Frequently Asked Questions also note, “Conducting detailed data gathering regarding **multiple aspects** of a client’s financial situation” or “Analyzing a client’s data and making **wide-ranging** recommendations” may be “material elements of the financial planning process.” *Id.* (emphasis added). The phrase “material elements of the financial planning process” is not defined in the Second Exposure Draft but, if as we believe to be the case, the CFP Board is indicating through these statements that comprehensiveness will be the key consideration in determining whether “material elements” of financial planning have been provided, we support that position. However, referring to “financial planning,” “personal financial planning process,” and “material elements of financial planning” in provisions of the Rules of Conduct is redundant and confusing. A definition of financial planning that appropriately focuses on the comprehensiveness of services provided to clients will provide a standard that is simpler, clearer, and easier to apply and enforce. We recommend that the CFP Board delete all of the references to material elements of financial planning.

six elements: (1) establishing and defining the relationship; (2) gathering data from the client; (3) evaluating the client's current position; (4) developing alternatives and recommendations; (5) implementing recommendations; and (6) monitoring the account. Similarly, the proposed definition of "financial planning" "involves the delivery of **all or part** of the financial planning process."⁴

Broker-dealers commonly perform many of these activities, any **one** of which could constitute financial planning under the Second Exposure Draft. In particular, broker-dealers commonly gather client data, evaluate a client's current position, and use this information and analysis to develop brokerage recommendations. It should be emphasized that this is consistent with the obligations and requirements placed upon full service brokerage firms. NASD Rule 2310 specifically requires that broker-dealers perform a suitability analysis for each client and obtain information about the client's financial status, tax status, investment objectives, and "such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer."⁵ Broker-dealers have been subject to great scrutiny with respect to these suitability obligations.⁶ Similarly, under the "Know Your Customer Rule," the NYSE requires members to "Use due diligence to learn the essential facts relative to every customer."⁷ The SEC also has acknowledged that "elements of financial planning have been, are, and should be a part of every broker-dealer's considerations as to the suitability of their recommendations."⁸

The Second Exposure Draft's proposed definitions of "financial planning" and "personal financial planning" has the potential to turn even the most basic brokerage activities of

⁴ Emphasis added.

⁵ NASD Rules of Conduct, 2310(b)(1)-(4).

⁶ For example, prior to becoming Chairman and CEO of NASD, Mary Schapiro noted the increasing complexity and importance of suitability analysis: "Many of the suitability concerns are the same as have been faced with previous generations of elderly. But, as a matter of fact, the suitability analysis may be even more complex that it has been historically. A baby boomer will need to maintain retirement income for a longer period of time, and may even require continued accumulation of wealth during retirement. But he also may have the same concerns about liquidity and market volatility as any other elderly person. We cannot allow the greater wealth and financial sophistication of the aging population to lull us into a sense of complacency. Suitability challenges must be addressed one customer at a time." Mary L. Schapiro, then Vice Chairman and NASD President, Regulatory Policy and Oversight, *NASD Spring Securities Conference*, Chicago, IL, May 25, 2005.

⁷ NYSE Rule 405(1).

⁸ *Certain Broker-Dealers Deemed Not to be Investment Advisers*, 70 Fed. Reg. 20424, 20439 (Apr. 19, 2005).

certificants into financial planning-related activities. Any time that a certificant establishes or defines his or her relationship with a brokerage client, gathers data from the client, **or** evaluates the client's current position, even as part of his or her NASD or NYSE suitability or "know your customer" analyses, the certificant could be deemed to have engaged in financial planning under the Rules of Conduct. Similarly, if a certificant executes trades at client direction based on any recommendation to a client, the certificant could be deemed to be engaged in financial planning under the proposed definition. All of the requirements for financial planning under the Rules of Conduct, including fiduciary duties, could apply to such activities, despite the major distinction between services the representative provided to clients in his or her brokerage or investment advisory capacities. Amending these definitions would enable certificants and clients to understand the difference between brokerage services and financial planning and, therefore, when the Rules apply, consistent with applicable laws and regulations.

Like any standard of conduct, the Rules of Conduct will only have their intended laudatory effect if they can be readily enforced and monitored. However, the Second Exposure Draft has the potential to raise supervision problems. To comply with the Second Exposure Draft as currently drafted (which defines financial planning so broadly as to potentially encompass brokerage services), firms may need to create separate supervisory procedures for certificants in much of what they do.⁹ In reality, it may not be feasible for firms to monitor and supervise two classes of representatives engaged in the same activity under two separate sets of requirements - one for certificants and one for everyone else.¹⁰

Another unintended consequence of the definition of "financial planning process" in the Second Exposure Draft may well be more, rather than less, client confusion. Clients serviced by certificants providing traditional brokerage activities that nonetheless fall within the broad definition of "financial planning process" may receive disclosures indicating that their representative is acting as a fiduciary when, in fact, that is not the case under federal law. Complicating this further, clients receiving *identical* services by representatives who are not certificants may receive a different disclosure -- one that more accurately describes the capacity in which the representative and the firm is acting given federal law and SRO rules. To the extent that a better-informed client is one of the CFP Board's goals, SIFMA firms support this goal and recently have taken concrete steps to achieve enhanced disclosures to clients. As a result of the SEC's interpretation of financial planning, firms carefully reviewed their product and service offerings, categorized them, and created disclosures providing prominent, plain-English

⁹ Yet these supervisory procedures would not apply to non-certificants offering the very same brokerage services.

¹⁰ SIFMA greatly appreciates statements by the CFP Board clarifying that the obligations under the Rules of Conduct only apply to the certificant and that the CFP Board has no jurisdiction over an employer of a certificant. Yet as a practical matter, broker-dealers have an inherent interest in making sure that their registered representatives comply with all requirements related to their activities with the firm's customers.

explanations for clients about the capacities in which the firms and their representatives are operating when providing any particular service, including financial planning and brokerage services. If these disclosures must be changed to explain new requirements that differ for the same services depending upon whether a certificant is offering them, we believe that client confusion will increase.

In short, while gathering data, evaluating a client's current position and making recommendations may, depending on the circumstances, constitute steps in providing financial planning services, we should not presume that every such interaction with a client is in furtherance of financial planning. Nor do we believe it necessary to make this presumption to achieve the goals of the Second Exposure Draft. Instead, the use of the suggested, simple definition of "financial planning," would achieve the CFP Board's purposes, simplify the Rules of Conduct, and harmonize the Rules with existing laws that apply to a significant portion of certificants' activities. Similarly, the first three elements of the definition of "personal financial planning process" and "financial planning process" should be modified to make them consistent with the last three aspects of these definitions. Specifically, and as illustrated in the attached markup, the definitions should be clarified so that the references to "establishing and defining the client-planner relationship," "gathering client data including goals" and "analyzing and evaluating the client's current financial status" all speak to when these activities are done in connection with financial planning.

B. The CFP Board Should Incorporate Clarifying Changes To The Language Of The Exposure Draft.

In addition to making changes to the definitions of "financial planning" and "financial planning process," we also recommend that the CFP Board implement certain other clarifying changes to the Rules of Conduct.

Commission. As an initial matter, we are unsure of the need to define "commission" because it is never used in the current draft of the Code of Ethics, Rules of Conduct, or Practice Standards. Beyond that, the definition of "commission" in the Second Exposure Draft is not consistent with the generally understood meaning of the term, which focuses on amounts paid by a client to its financial services advisor. By contrast, the definition of "commission" in the Second Exposure Draft covers compensation generated from a transaction and received from a party *other than the client*. The broader definition of "compensation" already includes any benefit that a certificant or related party receives or is entitled to receive for providing professional activities. If the definition of commission is retained, we recommend that the CFP Board continue to use the definition in the current Rules of Conduct, which is more in line with industry practice.

Written Agreement and Disclosure. The CFP Board noted that it believes most certificants or their employers currently provide clients with written documents that would meet the requirements of proposed Rules 1.3 and 2.2. We agree with the language in the Rules indicating that written documentation used in compliance with state or federal laws and regulations that includes the listed elements may be considered sufficient to comply with the

written disclosure requirements. The Rules also should clarify that documents created to comply with SRO rules that contain the required information, such as account-opening documents, also would satisfy these requirements.¹¹ This change would allow SIFMA member firms to use, in a consistent and efficient fashion, all of the written disclosures and documents that regulations require, provided they meet the requirements of Rules 1.3 and 2.2.

We also believe that the client disclosures listed in Rule 2.2 are more appropriate in the financial planning context than for brokerage accounts pursuant to which a certificant may provide services. Brokerage clients not only receive a fair amount of disclosures in account opening documents, but also receive other documents, such as prospectuses, providing material information related to their investments.

Oral Discussion. Proposed Rule 1.2 requires the certificant to provide certain oral disclosures to clients before providing financial planning services. While we agree that clients should receive information necessary to make a well-informed decision about whether to engage a firm, we do not believe that oral disclosures are the most effective way to communicate information to clients. We also have concerns about the ability of firms employing a large number of certificants to effectively supervise such oral disclosures.

It is virtually impossible for financial services firms to supervise an individual representative's conversations or oral disclosures.¹² Firms may not be able to disprove a later allegation of noncompliance nor an assertion of compliance, because there may not be any documentary evidence regarding whether the discussion occurred and what topics were covered. The entire structure of broker-dealer supervision (indeed, the entire foundation of the securities laws) is built upon the requirement to disclose information in writing in order to maintain and enforce reasonable written supervisory procedures. Therefore, we suggest that the Rules of Conduct allow certificants to comply with disclosure obligations under Rule 1.2 by providing oral **or** written disclosures. To the extent that the CFP Board wishes to encourage discussion between a certificant and his or her client, we suggest that the Rules of Conduct encourage certificants providing written disclosure to call clients' attention to the disclosure and offer to answer any related questions.

Duty of Care. SIFMA agrees that a certificant is a fiduciary when he or she provides financial planning activities (defined as we have suggested above). However, for many of the

¹¹ For example, we suggest that written disclosures required by state and federal law, and SRO rules, be considered to comply with all of Rule 2.2.

¹² This point also was highlighted during the debate over a proposed SEC Rule that would require mutual fund point of sale disclosure. *Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds*, 70 Fed. Reg. 10521 (Mar. 4, 2005); 69 Fed. Reg. 6438 (Feb. 10, 2004).

same reasons discussed earlier regarding the varying capacities in which a certificant might act, we believe that the formulation of the duty of care in proposed Rule 1.4 is overbroad. SIFMA recommends a formulation of the duty that requires certificants to act in a professional manner and to seek to place the interests of a client ahead of his or her own. Additionally, we suggest that the CFP Board clarify that the duties in Rule 1.4 do not expand or limit the standard of care, permissive activities, and obligations under federal and state laws, and SRO regulations.

Although SIFMA members understand and appreciate the importance of serving the interests of their clients, because the proposed language is similar to the duty of care commonly associated with a fiduciary, we are concerned that this duty will limit a certificant acting as a broker-dealer representative from appropriately servicing the needs of a client. For example, we are concerned that this standard may preclude or significantly impede a certificant from effecting a traditional principal trade in accordance with federal law on behalf of a brokerage client. We do not believe that the CFP Board intends to disregard the reality that its certificants perform a variety of services based on the needs of their clients, often in different regulatory capacities. For example, in the Frequently Asked Questions, the CFP Board recognized that “CFP professionals may be engaged in a wide range of business activities unrelated to financial planning, and it would be inappropriate for CFP Board to impose a fiduciary standard in such situations.”¹³ These comments suggest that the CFP Board appreciates the need for flexibility to serve the varied needs of clients and to respect the different regulatory obligations that apply to many certificants and their employers. Unfortunately, the proposed description of a certificant’s duty of care and the definitions in the Second Exposure Draft inadvertently contradict these positions. Basic brokerage activities and responsibilities have the potential to cause a certificant to be deemed to be providing financial planning under the proposed Rules, and the proposed duty of care could limit his or her brokerage activities inappropriately.

Commingling. Rules 3.8 and 3.9, which relate to commingling the client’s property with the property of the certificant, the certificant’s employer, or other clients, also should allow commingling as permitted by law.

C. The CFP Board Should Clarify The Action Taken By The Certificants’ Employers.

SIFMA agrees with the statement in the Introduction to the Second Exposure Draft and certain provisions of the proposed Rules of Conduct that activities performed by a certificant’s employer will satisfy the Rules. We believe that this approach should govern all aspects of the proposed Rules of Conduct. Thus, we recommend that the Second Exposure Draft include a general provision indicating that, to the extent certificants must comply with requirements regarding disclosures, documents and other obligations under the Rules of Conduct, the certificant will be deemed to be in compliance if the certificant’s employer takes the required action. We suggest that the CFP Board include such an acknowledgement as a catch-all

¹³ Frequently Asked Questions, *available at* http://www.cfp.net/aboutus/Exposure_Draft.asp.

provision in the Rules of Conduct, rather than within select provisions. This change will assure that financial services firms can oversee their employees' compliance with the Rules in a consistent and coordinated fashion.

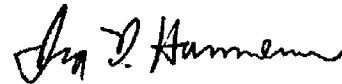
D. The CFP Board Should Clarify The Effect Of The Rules Of Conduct On Legal Obligations Generally.

We believe that the CFP Board should include a general provision clarifying that the Rules of Conduct will not have any bearing on obligations imposed by state or federal law, or the rules and requirements of any applicable self-regulatory organization. This provision will help to ensure that the requirements of the Rules of Conduct are consistent with all of the different legal and regulatory requirements that apply to certificants, and that certificants and certificant's employers offering multiple services are able to comply with and enforce the Rules.

* * *

We appreciate the opportunity to comment on the Second Exposure Draft and respectfully request that the CFP Board implement the recommendations set forth above and in the attached document. We are willing to meet and discuss these matters with the CFP Board and/or its staff and to respond to any questions that you may have. If you have any such questions, please contact the undersigned at 202.434.8440.

Sincerely,



Ira Hammerman
Senior Managing Director &
General Counsel

cc: Kevin R. Keller, CEO effective May 1, 2007, CFP Board
Karen P. Schaeffer, Chair of Board of Directors
Daniel Candura, Ethics Task Force
Marilyn Capelli Dimitroff, Ethics Task Force
Alan Goldfarb, Ethics Task Force

EXHIBIT A

**SIFMA MARKUP OF
SECOND EXPOSURE DRAFT**

Terminology in this Booklet

This terminology applies only for purposes of interpreting and/or enforcing CFP Board's Code of Ethics, Rules of Conduct, Practice Standards and Disciplinary Rules.

- ▶ “CFP Board” denotes Certified Financial Planner Board of Standards, Inc.
- ▶ “Certificant” denotes individuals who are currently certified by CFP Board.
- ▶ “Certificant’s Employer” denotes any person or entity that employs a certificant or registrant to provide services to a third party on behalf of the employer, including certificants and registrants who are retained as independent contractors.
- ▶ “Client” denotes a person, persons, or entity who engages a certificant and for whom professional services are rendered. Where the services of the certificant are provided to an entity (corporation, trust, partnership, estate, etc.), the client is the entity acting through its legally authorized representative.
- ▶▶ **DELETE OR CHANGE TO:** “Commission” denotes the compensation generated from a transaction involving a product or service and received by an agent or broker from a party other than **when** the client, usually **same is** calculated as a percentage on the amount of his or her sales or purchase transactions. This includes 12(b)1 fees, trailing commissions, surrender charges and contingent deferred sales charges.
- ▶ “Compensation” is any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.
- ▶ A “conflict of interest” exists when a certificant’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services.
- ▶ “Fee-only.” A certificant may describe his or her practice as “fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.
- ▶ “Fiduciary.” One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.
- ▶ A “financial planning engagement” exists when a certificant performs any type of mutually agreed upon financial planning services for a client.
- ▶ A “financial planning practitioner” is a person who engages in financial planning using the financial planning process in working with clients.
- ▶ “Personal financial planning” or “financial planning” denotes the process of determining whether and how an individual can meet life goals **providing a client with comprehensive advice that seeks to address a wide spectrum of the client’s long-term financial needs** through the proper management of financial resources. Financial planning involves the delivery of all or part of the financial planning process. It is not necessary to provide a written financial

plan to engage in financial planning. As agreed upon with the client, financial planning can be provided orally or in writing.

► “*Personal financial planning process*” or “*financial planning process*” denotes the process which typically includes, but is not limited to, one or more of these six for providing financial planning. As agreed upon with the client, this process can include the following elements:

- Establishing and defining the client-planner relationship; in connection with financial planning,
- Gathering client data including goals; in connection with financial planning,
- Analyzing and evaluating the client’s current financial status; in connection with financial planning,
- Developing and presenting financial planning recommendations and/or alternatives,
- Implementing the financial planning recommendations, and
- Monitoring the financial planning recommendations.

► “*Registrant*” denotes individuals who are not currently certified but have been certified by CFP Board in the past and have an entitlement, direct or indirect, to potentially use the CFP® marks. This includes individuals who have relinquished their certification and who are eligible for reinstatement without being required to pass the current CFP® Certification Examination. The *Rules of Conduct* apply to registrants when the conduct at issue occurred at a time when the registrant was certified; CFP Board has jurisdiction to investigate such conduct.

Codes of Ethics and Professional Responsibility

Principle 1 - Integrity

Provide professional services with integrity.

Certificants are placed in positions of trust by clients, and the ultimate source of that trust is the certificant’s personal integrity. Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one’s principles.

Principle 2 - Objectivity

Provide professional services objectively.

Objectivity requires intellectual honesty and impartiality. Regardless of the particular service rendered or the capacity in which a certificant functions, certificants should protect the integrity of their work, maintain objectivity and avoid subordination of their judgment.

Principle 3 - Competence

Maintain the knowledge and skill necessary to provide professional services competently.

Competence means attaining and maintaining an adequate level of knowledge and skill, and application of that knowledge and skill in providing services to clients. Competence also

includes the wisdom to recognize the limitations of that knowledge and when consultation with other professionals is appropriate or referral to other professionals necessary. Certificants make a continuing commitment to learning and professional improvement

Principle 4 - Fairness

Be fair and reasonable in handling all professional relationships. Disclose conflicts of interest.

Fairness requires impartiality, intellectual honesty and disclosure of material conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.

Principle 5 - Confidentiality

Do not disclose any confidential client information without the specific consent of the client unless in response to proper legal process, to defend against charges of wrongdoing, or in connection with a civil dispute.

A relationship of trust and confidence with the client can only be built upon the understanding that the client's information will remain confidential.

Principle 6 - Professionalism

Be a credit to the profession.

Certificants behave with dignity and courtesy to clients, fellow professionals, and those in related professions. Certificants cooperate with fellow certificants to enhance and maintain the profession's public image and improve the quality of services.

Principle 7 - Diligence

Provide professional services diligently.

Diligence is the provision of services in a reasonably prompt and thorough manner, including the proper planning for, and supervision of, the rendering of professional services.

RULES OF CONDUCT

1. Defining the Relationship with the Client

- 1.1 The certificant and the client shall mutually agree upon the client's personal financial goal(s) that are relevant to the services to be provided by the certificant.
- 1.2 If the services include certificant is to provide financial planning or material elements of the financial planning process services, prior to entering into an agreement, the certificant and shall provide written information to the client or discuss with the prospective client shall discuss the following:

- a. The obligations and responsibilities of each party under the agreement with respect to:
 - i. Defining the client's goals, needs and objectives,
 - ii. Gathering and providing appropriate client data,
 - iii. Examining the result of the current course of action without changes,
 - iv. The formulation of any recommended actions,
 - v. Implementation responsibilities, and
 - vi. Monitoring responsibilities.
- b. Compensation that any party to the agreement or any legal affiliate to a party to the agreement will or could receive under the terms of the agreement; and factors or terms that determine the cost to the client, how client decisions benefit the certificant and the relative benefit to the certificant.
- c. Terms under which the agreement permits the certificant to offer the client proprietary investment products.
- d. Terms under which the certificant will use other firms to meet any of the agreement's obligations.

~~1.3 — If the services include financial planning or material elements of the financial planning process~~ **If the certificant provides the above information in writing, the certificant shall encourage the client to review the information and offer to answer any questions that the client may have regarding the information provided.**

1.3 **If financial planning will be provided**, the certificant or the certificant's employer shall enter into a written agreement with the client governing the financial planning services ("Agreement"). The Agreement shall specify:

- a. The parties to the Agreement,
- b. The date of the Agreement and its duration,
- c. How and on what terms each party can terminate the Agreement,
- d. The services to be provided as part of the Agreement ~~as a result of the discussion required by Rule 1.2.~~

The Agreement may consist of multiple written documents. Written documentation that includes the elements listed above and is used by a certificant or certificant's employer in compliance with state and/or federal laws and regulations ~~that includes the elements listed above may be considered to comprise an Agreement in compliance with this Rule~~ **or federal law, or the rules and requirements of any applicable self-regulatory**

organization, such as a Form ADV or other disclosure, shall satisfy the requirements of this Rule 1.3.

- 1.4 A certificant shall at all times act in a professional manner and seek to place the interests of the client ahead of his or her own. When the certificant provides financial planning or material elements of the financial planning process, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board. This Rule 1.4 shall not be read to expand or limit the standard of care applicable under or other obligations imposed by state or federal law, or the rules and requirements of any applicable self-regulatory organization.

2. Information Disclosed To Clients and Prospective Clients

- 2.1 A certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or materially misleading information directly or indirectly related to the certificant's professional qualifications or services. A certificant shall not materially mislead any parties about the potential benefits of the certificant's service. A certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid materially misleading clients.
- 2.2 A certificant shall provide a prospective financial planning client disclosure of the following information:
- a. An accurate and understandable description of the compensation arrangements being offered. This description must include:
 - i. Information related to costs to clients and compensation to the certificant and/or the certificant's employer, and
 - ii. Terms under which the certificant and/or the certificant's employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based.
 - b. A general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship.
 - c. Any information about the certificant or the certificant's employer that could reasonably be expected to materially affect the client's decision to engage the certificant that the client might reasonably want to know in establishing the scope and nature of the relationship, including but not limited to information about the certificant's areas of expertise.
 - d. Contact information for the certificant and, if applicable, the certificant's employer.

e. ~~If the services include financial planning or material elements of the financial planning process, these~~ **These** disclosures must be in writing. ~~The written disclosures, and~~ may consist of multiple written documents. Written disclosures used by a certificant or certificant's employer **that include the elements listed above, and that are used** in compliance with state and/or federal laws and regulations **law, or the rules or requirements of any applicable self-regulatory organization**, such as a Form ADV or other disclosure documents, may be considered in compliance with **shall satisfy the requirements of** this Rule: **2.2.**

3. Client and Prospective Client Information and Property

- 3.1 A certificant shall treat information as confidential except as legally required, as necessitated by obligations to a certificant's employer or partners, or as needed to perform the services.
- 3.2 A certificant shall take prudent steps to protect the security of information and property, including the security of stored information, whether physically or electronically, that is within the certificant's control.
- 3.3 A certificant shall obtain the information necessary to fulfill his or her obligations. If a certificant cannot obtain the necessary information, the certificant shall inform the client or prospective client of any and all material deficiencies.
- 3.4 A certificant shall clearly identify the assets, if any, over which the certificant will take custody; or exercise investment discretion; or exercise supervision.
- 3.5 A certificant shall identify and keep complete records of all funds or other property of a client or prospective client in the custody, or under the discretionary authority, of the certificant.
- 3.6 A certificant shall not borrow money from a client unless:
 - a. The client is a member of the certificant's immediate family, or
 - b. The client is an institution in the business of lending money and the borrowing is unrelated to the professional services performed by the certificant, and/or
 - c. Both parties are corporate entities, and a written agreement specifically permits such a borrowing.
- 3.7 A certificant shall not lend money to a client unless:
 - a. The client is a member of the certificant's immediate family, or
 - b. The certificant is an employee of an institution in the business of lending money and the money lent is that of the institution, not the certificant, and/or
 - c. Both parties are corporate entities and a written agreement explicitly permits such

a loan.

- 3.8 A certificant shall not commingle a client's property with the property of the certificant or the certificant's employer, unless the commingling is **permitted by law or is** explicitly authorized and defined in a written agreement between the parties.
- 3.9 A certificant shall not commingle a client's property with other clients' property ~~without~~ **unless the commingling is permitted by law or the certificant has** both explicit written authorization to do so from each client involved and ~~without~~ sufficient record-keeping to track each client's assets accurately.
- 3.10 A certificant shall return a client's property to the client upon request as soon as practicable or consistent with a time frame specified in an agreement.

4. Obligations to Clients and Prospective Clients

- 4.1 A certificant shall treat clients and prospective clients fairly, offer advice only in those areas in which he or she is competent to do so, and provide professional services in a manner that reflects integrity and objectivity.
- 4.2 A certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.
- 4.3 A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.
- 4.4 A certificant shall make and/or implement only recommendations that are suitable for the client.
- 4.5 A certificant shall provide reasonable and prudent professional supervision or direction to any subordinate or third party to whom the certificant delegates responsibility for any client services.
- 4.6 A certificant shall advise his or her current clients of any certification suspension or revocation he or she receives from CFP Board.

5. Obligations To Employers

- 5.1 A certificant who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with CFP Board's *Code of Ethics*.
- 5.2 A certificant who is an employee shall advise his or her current employer of any certification suspension or revocation he or she receives from CFP Board.

6. Obligations To CFP Board

- 6.1 A certificant shall abide by the terms of all agreements with CFP Board, including, but

not limited to, using the CFP® marks properly and cooperating fully with CFP Board's trademark and professional review operations and requirements.

- 6.2 A certificant shall meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP® marks.
- 6.3 A certificant shall notify CFP Board of changes to contact information, including, but not limited to, e-mail address, telephone number(s) and physical address, within forty five (45) days.
- 6.4 A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

7. Activities by Certificant's Employer

- 7.1 A certificant will be deemed to be in compliance with the disclosure, documentation and other obligations described above if the required action is taken by the certificant's employer.**

8. Legal and Regulatory Obligations

- 8.1 These rules shall have no bearing on obligations imposed by state or federal law, or the rules and requirements of any applicable self-regulatory organization.**