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February 17, 2012

Michael P. Shaw, Esq.
Certified Financial Planner Board of Standards, Inc.
1425 K Street, N.W., Suite 500
Washington, D.C. 20005

Re: Proposed Changes to Bankruptcy Procedure

Dear Mr. Shaw:

The Financial Planning Association[®] (FPA[®])¹ welcomes the opportunity to comment on the Certified Financial Planner Board of Standards' proposed changes to the way it discloses bankruptcy filings by CFP[®] professionals and candidates for CFP certification. We appreciate your efforts to address this difficult subject with concern for both the public and your certificants. Based on the information provided in the request for comments, there appears to be both potential benefits and drawbacks to the proposal. There are also questions which could be answered through a more detailed explanation of current procedures, the rationale for the proposed changes, how the proposed disclosures will be made, and how the changes are expected to benefit consumers. Input from FPA's CFP certificant members reflect a sharp division of support and opposition. What seems evident is that more detailed information on the proposal would allow certificants and others to provide more productive input and build a stronger consensus on how best to improve the disclosure process.

The CFP Board's mission is to "Benefit the public by granting the CFP certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning."

The foremost consideration is how the CFP Board's oversight and discipline of certificants benefits consumers. With the organization's mission as its cornerstone, the Disciplinary and Ethics Commission (DEC) and its predecessors have been reviewing bankruptcy filings by CFP certificants for many years. Pursuant to Article 3 of the Disciplinary Rules and Procedures,

¹The Financial Planning Association is the largest membership organization for personal financial planning experts in the U.S. and includes professionals from all backgrounds and business models. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission or state securities administrators, and approximately 58 percent hold insurance licenses. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colorado.

many of those reviews resulted in disciplinary actions being taken against certificants. Most of those actions were for violating section 6.5 of the Rules of Conduct.² In those cases, which often resulted in a public letter of admonition or a suspension, the DEC found that the bankruptcy filing “reflected an inability to manage [the certificant’s] personal finances and engaged in conduct that reflects adversely on [the certificant’s] integrity and fitness, upon the CFP marks and upon the profession.”

The current proposal contains very little discussion as to why this longstanding policy is being changed. Was the previous policy unfair or unworkable? Do the proposed changes reflect a change in the CFP Board’s belief regarding the implications of filing for bankruptcy protection? A more detailed discussion of the CFP Board’s reasoning for the change would help FPA and certificants better evaluate the change in policy.

We understand that there has been a large increase in the number of bankruptcy filings by CFP certificants that must be reviewed by the DEC. As a commission composed of volunteers, there are clearly limits on what can be asked of their time. However, there is no discussion of other options that were considered by the CFP Board to help reduce the burdens placed on these volunteers. For instance, the task could possibly have been made more manageable by procedures that would permit staff to vet these matters in ways that could ease the burdens on DEC volunteers. It seems likely that the recent increase in certificant bankruptcies are attributable to the deep and sustained economic difficulties that impact them directly as well as indirectly through the economic stress and losses suffered by their clients.

According to the release, the proposed changes are designed to provide consumers with additional information regarding a certificant. This is a laudable goal; however, it raises initial concerns because there are details of how the information will be presented to the public. Would a certificant who has filed for bankruptcy protection have their name appear with an upfront, “billboard” disclosure after their name on the CFP Board’s public website? The Board has only recently asked certificants the question of whether they have ever filed for bankruptcy but is proposing that all bankruptcies will be disclosed for five years after discovery by the Board, regardless of when the bankruptcy originally occurred. Would there be any time limits on events to be disclosed to the public? For example, if a certificant filed for bankruptcy more than 10 years before becoming a certificant, would that be subject to disclosure to the public under the proposal?

There is no discussion of whether or not the certificant will be provided with an opportunity to explain the reason for the filing or, if so, how it will be done. Without this explanation it appears that all bankruptcy filings are equal in the eyes of the CFP Board, a position that many of our members do not support. Conversely, by making this the only item that is directly disclosed (if this is indeed the way it will be handled), such disclosure elevates bankruptcy in importance over other items subject to disclosure. The issues raised indicate a significant concern as to

² Section 6.5 reads, “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. “

whether the proposed disclosure would ultimately benefit the consumer, or have the opposite effect.

While the proposal appears, at first brush, to be a good attempt at dealing with a difficult problem, more detailed information is critical to providing more informed and helpful comments. We therefore urge the CFP Board to re-propose the change and provide additional information regarding both the reasons for the change and how it will be implemented.

Sincerely,

David A. Cohen
Assistant Director, Government Relations