

## New Fiduciary Issue Developments

March 15, 2007

Dear FPA Colleague:

The financial planning community has been abuzz with the word "fiduciary" for many months. The debate was renewed only last week by CFP Board's new release of proposed changes to its *Code of Ethics and Professional Responsibility*. The release is timely in that it will help FPA address a key question for you, for me, and for the 28,500 other members of FPA: what does the term "fiduciary" actually mean for financial planners, and how will CFP Board's proposal ultimately affect your practice?

Even before CFP Board released its original exposure draft last July, your Board of Directors was carefully researching the issue. The bewildering array of rules and regulations affecting financial planners is of great concern to FPA. Indeed, when FPA sued the Securities and Exchange Commission (SEC) the previous year over the broker-dealer exemption, its concern had a lot to do with an unlevel playing field for brokers and advisers and the standard of conduct that should apply to financial planning advice, no matter what their regulatory affiliation or method of compensation.

When FPA responded last fall to CFP Board's first proposal, we expressed strong concern with an optional fiduciary duty that would have allowed certificant to opt out from a fiduciary standard unless otherwise required by law. Regardless of whether you work for a large or small firm, a financial professional needs to have confidence that the standards are fair and applicable to all styles of practice. While much additional analysis is needed on the [current exposure draft](#), the new CFP Board proposal appears to establish a uniform application of a code of conduct. As a result, I am pleased to report to you that CFP Board appears to have listened carefully to FPA and its other stakeholders and taken our comments to heart. We applaud CFP Board for doing so.

The new standards, as we read them, are no longer aspirational or optional. In fact, they appear to be much stronger than the current requirements. The new proposal not only clarifies that a fiduciary duty of care applies to a financial planning engagement, but also to those times when a certificant provides "material elements of the financial planning process." Additionally, even when the certificant provides other, non-financial planning services, the proposal makes clear that the certificant "shall at all times place the interest of the client ahead of his or her own." I think we all agree that this should be a fundamental basis for any client relationship. Moreover, it is stronger than the existing Rule 202, which simply requires certificant to "act in the client's interest."

While there has been a lot of activity at CFP Board, there is also much in the way of news to report here at FPA. I wanted to give you an update on recent action by the FPA Board of Directors in regard to the fiduciary question. Even as CFP Board was involved in the re-drafting process, a special FPA Fiduciary Task Force was at work for six months reviewing the overall fiduciary question. The task force found that the current regulatory structure does not provide adequate and consistent regulation of financial planning activities. After carefully reviewing the findings and recommendations of the task force, the FPA Board of Directors approved a motion on March 1 to accept the work of this task force and support the continued development and definition of a universal standard of care for the financial planning profession that is unambiguous and without exception, based on a client's best interests.

At this point, we believe CFP Board's proposal is generally in alignment with the FPA Board's motion. While much work still needs to be done in understanding the application of the CFP Board proposal to "material elements" of the financial planning process, additional work on this important topic will be undertaken by FPA as well. We need to identify how a clear and unambiguous standard of care should apply in practice. So, I am greatly encouraged by the work that has been undertaken by both organizations in attempting to define professional standards for the benefit of consumers and the profession.

So what happens next? The FPA Professional Issues Committee, a group of volunteers, is now studying the CFP Board proposal and will submit a recommendation to our Board of Directors in the near future. The Board will then determine a position and respond to CFP Board on behalf of membership prior to the April 25 deadline. We will, of course, share those written comments with you.

Additionally, I am appointing the new Financial Planning Standards of Conduct Task Force to continue the ground-breaking work of the Fiduciary Task Force regarding the applicability of a best-interest standard to financial planners. I would strongly encourage you to review the comprehensive research and analysis put together by the Fiduciary Task Force, their findings, recommendations and extensive legal research, which can be found on [FPA's Web site](#). Please feel free to post your thoughts and opinions on [FPA's special discussion forum](#). Both FPA volunteer groups will be reviewing the comments received from membership as they proceed with their assigned tasks.

Further, I would strongly encourage all FPA members to respond to CFP Board's [online survey regarding your opinion on the latest exposure draft](#). Please be aware — even if you are not a CFP® certificant — FPA's *Code of Ethics* incorporates the principles of the CFP Board *Code of Ethics*, and thus affects all members. We want to make sure that your voice is heard, too.

As the debate over an appropriate standard of conduct continues, I want to reiterate that FPA views this whole effort as a positive and healthy step in the growth of the financial planning profession. A uniform and clear standard that places the client's interest first is clearly in the best interest of financial planners. I look forward to reporting to you with our progress on this issue in the near future.

Sincerely,

A handwritten signature in black ink that reads "Nick Nicolette". The signature is written in a cursive, flowing style.

Nicholas A. Nicolette, CFP®  
President