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June 14, 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 Sanction Guidelines

Dear Mr. Shaw:

The Financial Planning Association® (FPA®)¹ welcomes the opportunity to comment on the Certified Financial Planner Board of Standards' Proposed Sanction Guidelines (the "Guidelines"). We appreciate your efforts to address this difficult subject with concern for both the public and your certificants. Efforts to increase transparency are laudable and we believe that, taken as a whole, these Guidelines are a very positive step. We support their implementation. That said, we have some questions on some specific issues.

Given the limited time for making comments, we are not going to go through and discuss each individual proposed sanction guideline.² Rather, we will focus on some of the broader issues and questions as well as certain guidelines that appear to us to have significant issues.

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.

² We appreciate the CFP Board extending the time from 30 days to 45 days to comment on this proposal. However, we believe that lengthy documents such as this deserve an extended period of time for interested parties to review them. Other entities, such as FINRA, which have similar 30 day periods have a second 30 day period when the item is published by the SEC. That second submission also contains a detailed description of how the comments from the previous period were handled. Beyond the formal comment period itself, the SEC and FINRA often less formally discuss ideas before rules are proposed, through speeches, concept releases, roundtables and other communications. Often, rules are withdrawn, revised extensively and re-proposed. Effectively, SEC and FINRA rules undergo a give and take review process that extends months, and often years. We encourage the CFP Board to consider the length of public comment periods and the overall process with a view to achieving the best input from certificants and the public.

GENERAL QUESTIONS

The first issue is the use of a specific time for a suggested sanction, rather than a range. Other entities such as FINRA that have undertaken similar initiatives have used ranges in their guidelines. One is not necessarily better than the other, but we believe that it would help certificants if the Board had explained its thought process for this choice.

It is also not clear what happens if a certificant is subject to multiple rule violations e.g. a books and records violation and a failure to supervise. Are they combined and, if so, how? Nor is it clear what happens if a certificant the subject of a covered sanction for a covered action such as a 15 day administrative suspension for forgery. It is not clear if the certificant is subject to a Public Letter of Admonition (for the administrative action), a three month suspension (the suggested penalty for forgery) or a combined penalty. There is also no discussion of how the Disciplinary and Ethics Commission ("DEC") would decide which sanction is appropriate.

We are unclear as to why a CFP certificant's bankruptcy filing has any bearing on the sanction to be imposed by the DEC. Since a certificant's first bankruptcy filing is no longer reviewed by the DEC, we do not believe it should be deemed an aggravating factor. Under the section discussing factors that should not be considered aggravating or mitigating is whether or not the CFP professional was "forced or compelled to pay restitution." It is unclear what this means. It could mean that they lost a case and the arbitration panel or a court found for the investor or that a solo practitioner's firm was forced to settle and pay by their insurance company. If the former then we believe that such a payment may have a bearing on the case and should be considered by the DEC.

SPECIFIC GUIDELINES

We are concerned about the proposed sanction for two or more bankruptcies especially as this includes business bankruptcy. It is possible to envision many cases where a business bankruptcy is a strategic decision or even potentially an obligation to shareholders or partners rather than any evidence of inability to master finances. A certificant may join a company in an effort to turn it around and protect the shareholder investors, yet find that it simply is not possible. We do not believe that this effort should be considered a mark of unprofessional behavior. Furthermore, the threshold for this sanction is quite low: all directors and 5% shareholders are included. Many small companies have a large number of directors in order to tap into their expertise. They may not exercise much control over the day-to-day operations of the company. Similarly, the owner of 5% of a class of voting stock, may, if there are a number of classes, exercise little control over the company. Compare this to the proposed guideline sanction for forgery -a 3 month suspension- and this sanction seems overly harsh.

Under forgery we are concerned about the policy notes. It is unclear how having "implied authority" would affect forgery. If you are signing under implied authority, it is customary to make that clear and, hence, there would be no forgery. The negligent/reckless standard use is also unclear. We believe that a more useful question would focus on the intent of or potential benefit to the certificant. If the forgery was done to "assist" the client (customer left the office without initialing one paragraph, is now unavailable and the document is time sensitive) that is different from a forgery done to steal from the customer.

The guideline penalty for committing fraud, misrepresentation or deceit appears to be unreasonably low with a range from a public letter of admonition to a three month suspension.

We believe that fraud is a greater danger to investors than the unauthorized use of the CFP mark and merits a long suspension. This would appear to be especially true if you compare the harm caused by fraud to the harm caused by a second business bankruptcy filing.

In the final analysis, however, we believe that having a set of guidelines in place is a net benefit to the public and your certificants. We applaud you taking this step.

Sincerely,

David A. Cohen
Assistant Director, Government Relations