

Report of
The Independent Task Force on Enforcement
to the Certified Financial Planner Board of Standards, Inc.

December 17, 2019

CFP Board Independent Task Force on Enforcement

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December 17, 2019

Susan John, CFP®
Chair, CFP Board of Directors

Madam Chair,

The CFP Board's Independent Task Force on Enforcement is pleased to provide its Report and Recommendations to the CFP Board for its consideration. The Report and Recommendations are the culmination of the Task Force's information gathering, analyses, and deliberations and it contains our best thinking on the matters you asked us to address.

The Task Force received complete cooperation from yourself as Chair, the Chair-Elect, the CEO, the General Counsel and Staff members. We are not aware of any attempt made either to interfere with our work or to exert undue influence as to the outcome of our work. In fact, everyone mentioned above was cooperative and helpful.

We would like to formally acknowledge the special assistance we received from Marilyn Mohrman-Gillis, who served as our fact-checker as well as Christy Callaway, who provided us with the administrative and technical support that we could not have done without, especially in view of the tight time constraints under which we worked as volunteers.

We trust that the Report and Recommendations will be helpful to the CFP Board as it continues its efforts to continually improve in carrying out its mission to serve the public.

Sincerely yours,



Denise Voigt Crawford, Chair

Mercer E. Bullard, Reporter

Michael Huggs, Member

Richard Salmen, Member

Nancy M. Smith, Member

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I. INTRODUCTION

The Certified Financial Planner Board of Standards, Inc., is a non-profit organization that fosters professional standards in personal financial planning by setting and enforcing qualification and conduct requirements for holders of the CFP® certification. Prospective CFP® certificants must complete a CFP Board approved course of study at a college or university, pass the multi-part CFP® Certification Exam, and obtain 3 (2) years of unsupervised (supervised) experience related to the delivery of financial planning services. CFP® certificants are subject to the CFP Board's Code of Ethics and Standards of Conduct, which, among other things, requires that a certificant act as a fiduciary when providing financial advice to a client.¹ The CFP Board operates an enforcement program that seeks to ensure compliance by CFP® certificants with the Board's standards of conduct.

In August 2019, the CFP Board created the Independent Task Force on Enforcement ("Task Force") to address reported inadequacies in its enforcement program. The CFP Board gave the Task Force the following charge:

The Independent Task Force on Enforcement will examine CFP Board's current enforcement program. The blue-ribbon group will make actionable recommendations to the Board of Directors about potential changes that will allow the organization to enforce its ethics and conduct standards in a manner that best fulfills its mission to benefit the public.

After gathering and reviewing relevant information and interviewing CFP Board executive-level directors and several staff members, the Task Force presented this Report and its recommendations to the Board of Directors on November 6, 2019. This Report addresses reported weaknesses in the investigative aspect of the CFP Board's enforcement program, rather than in the operation of its hearing and appellate process. The views expressed in this report are those of the individual Task Force members and not necessarily the entities they work for or are affiliated with.

II. BACKGROUND

A. Public Purpose

As a matter of necessity and policy, the CFP Board exists to serve the public. Like other tax-exempt entities, the CFP Board is organized to serve a public purpose. The CFP Board's policies echo its purpose to serve the public interest.

Certified Financial Planner Board of Standards, Inc. (CFP Board) is a non-profit organization acting in the public interest by fostering professional standards in personal financial planning through its setting and enforcement of the

education, examination, experience, ethics and other requirements for CFP® certification.

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The CFP Board's By-Laws recognize the Board's public purpose in identifying "specific purposes and objectives" that it seeks to accomplish, the following of which directly or indirectly implicate its enforcement of the requirements for CFP® certification.

(b) To protect the value and integrity of the corporation's registered marks and to safeguard their status;

(c) To license use of the marks to professionals who have met the corporation's certification standards and criteria; . . .

(f) To establish, conduct and enforce investigatory and disciplinary procedures to regulate the professional conduct of CFP® professionals for the benefit and protection of the general public; . . . [and]

*(g) To lessen the burdens of government by cooperating with and assisting state and federal regulatory agencies to appropriately, effectively and uniformly regulate financial planning professionals . . .*²

*Section 3.1, Articles of Incorporation, Certified
Financial Planner Board of Standards, Inc.*

These objectives reflect a commitment by the CFP Board to create and operate an enforcement program that is, among other things, reasonably designed to ensure that the CFP® mark is used only by persons who comply with the Board's standards of conduct.

B. Governance Structure

The CFP Board is overseen by a Board of Directors, a majority of whom must be CFP® certificants. The Board of Directors may range in size from 11 to 19 directors and have no fewer than 2 public directors. A public Board member is a person who is not a CFP® certificant and has not in the preceding 5 years provided, generally speaking, financial services.³

The Board of Directors assumes "responsibility for ongoing monitoring and evaluation of the organization's activities" and of the CFP Board's CEO. It follows a three-part process to fulfill this responsibility:

First, the Board defines outcomes to be achieved. Next, the Board defines the boundaries of ethical and prudent operational behaviors and conditions in policy, which serve as the Executive Limitations. Then the Board assigns these expectations (outcomes and boundaries as defined in policy) to the CEO and formally and rigorously monitors the CEO's performance against those expectations.

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This process is intended to provide for the Board of Directors to exercise direct, proactive oversight of the CFP Board's strategic policies and programs, establish concrete, strategic goals that these policies and programs are intended to achieve, oversee implementation of policies and programs by the CEO, and regularly evaluate the CFP Board's success in achieving its strategic goals.

Thus, the Board of Directors has responsibility for "ongoing monitoring and evaluation" of the CFP Board's activities, which, as stated in the CFP Board Articles of Incorporation, specifically includes a significant enforcement role. The Board's "specific purposes and objectives" include a duty "[t]o **establish, conduct and enforce investigatory and disciplinary** procedures to regulate the professional conduct of CFP® professionals for the benefit and protection of the general public." The Articles state an aspiration to assume a quasi-governmental role in "cooperating with and assisting state and federal regulatory **agencies to appropriately, effectively and uniformly regulate financial planning professionals.**"

Yet CFP® certificants, who comprise a substantial majority of the Board of Directors, generally have no regulatory experience of any kind, much less any experience with enforcement in the financial services industry. There is no requirement that the Board of Directors include any directors with enforcement experience, and the Board of Directors generally has not included any directors with such experience, with the exception of one public director who currently serves on the Board. Nor is there a requirement that a public member be appointed to the Board of Directors' committee that hears appeals of decisions in enforcement cases brought by the CFP Board. Nor has the Board of Directors sought to appoint a person with experience in financial services enforcement to oversee its enforcement program. ***While the Task Force finds that there were significant failures in the execution of the CFP Board's enforcement program and attendant communications to the public, we find that the primary cause for the failings that prompted the creation of the Task Force are systemic, longstanding, governance-level weaknesses, and that the problems discussed in this Report cannot be adequately addressed without commensurate governance reforms.***

C. Enforcement Program

The CFP Board's enforcement program begins at the certification stage. Prospective CFP® certificants are subject to a background check. If past misconduct is discovered that is inconsistent with the Board's standards of conduct, the prospect may be denied certification on that basis alone. CFP® certificants are generally required to self-report in writing to the CFP Board no later than 30 days after an instance where, among other things, their conduct has been mentioned adversely in a regulatory investigation or action, civil action, arbitration award or they have been the subject of a finding of fraud, theft, misrepresentation or other dishonest misconduct.⁴ They are also subject to a background check every two years that is conducted by the CFP Board's enforcement staff. If the CFP® certificant has engaged in conduct that violates the standards of conduct, they may be subject to private or public sanctions that may range up to permanent revocation of the certification.

The CFP Board's staff obtains information about CFP® certificant misconduct via a number of sources. Historically, it has relied primarily on self-reporting. The bi-annual background check, along with complaints submitted by the public, have comprised the other primary sources of information about misconduct. When the staff learns of a possible violation of the CFP Board's standards of conduct, it evaluates whether an investigation is warranted, conducts an investigation, as appropriate, and initiates an enforcement action, as appropriate. The staff refers matters to the Board's Discipline and Ethics Commission ("DEC") for adjudication. CFP® certificants may file an interim appeal with a Hearing Panel, and a final appeal with the Appeals Committee of the Board of Directors.

This Report is focused on what might be called the investigative aspect of enforcement and public communications related to investigations. The reporting of weaknesses in the CFP Board's programs went not to its adjudicative process, but rather to its investigative function, which essentially comprises the detection and investigation of misconduct. The creation of the Task Force was prompted primarily by the reported difference between how this enforcement function is communicated to the public and how it operates in practice. The Task Force's findings and recommendations do not address the CFP Board's hearing and appellate process except as to the involvement of public board members in the appeals process. Nonetheless, the CFP Board should consider how implementing the recommendations discussed herein may affect the hearing and appellate processes.

D. Public Outreach and Expectations

The CFP Board aspires to a high level of CFP® certificant compliance with its standards of conduct and has created expectations that match that laudable aspiration. As noted, the CFP Board Articles of Incorporation adopt "specific purposes and objectives" that commit the Board to create and operate an enforcement program that is, among other things, reasonably designed to ensure that the CFP® mark is used only by persons who comply with the Board's standards of conduct. An effective enforcement program is a necessary predicate for the CFP Board to state in its Bylaws that: (1) CFP® certificants "have met the corporation's certification standards and criteria" and (2) the Board will "protect the value and integrity of the corporation's registered marks and to safeguard their status."

Echoing the commitment set forth in its Bylaws, the CFP Board has characterized the high standards of conduct to which CFP® certificants are held as an important component of the value the Board provides to the public. The CFP Board has stated that its enforcement program "distinguishes the CFP® certification from the many other designations in the financial services industry."⁵ The CFP Board has expressed the expectation that its enforcement program will provide the public "with the confidence that your CFP® professional is both competent and ethical."⁶

The expectations created by the CFP Board are likely reinforced by the goal-based governance policies it has adopted. This process calls for the Board of Directors to define specific outcomes

that the CFP Board's enforcement program is expected to achieve, translate those outcomes into specific expectations for its CEO, and "formally and rigorously monitor[] the CEO's performance against those expectations." Thus, the CFP Board has created high expectations regarding the efficacy of its enforcement program and the trust and confidence that the public should place in CFP® certificants because of the strength of the enforcement program.

This Report considers, in part, whether that trust and confidence is justified. The CFP Board's creation of this Task Force was prompted by media reports on a gap between expectations created by the CFP Board and the actual operation of its enforcement program. The CFP Board operates a website, letsmakeaplan.org, where users can find a CFP® certificant with an office in their area. The website was created pursuant to a Board campaign to increase awareness of the CFP® mark and funded through a fee increase the proceeds of which were dedicated to promoting public understanding of the special value offered by a CFP® certificant. The CFP Board has placed a high priority on promoting the value of the CFP mark and increasing the number of CFP® certificants. This promotional campaign is partly responsible for the substantial increase in CFP® certificants from 45,755 in 2004 to more than 85,000 today.

The letsmakeaplan.org website creates a significant risk of promising a level of compliance that the Board's enforcement program is not designed to achieve. It provides CFP® certificant profiles that include a "yes" or "no" response to the queries "CFP Board Disciplinary History:" and "Bankruptcy Disclosure in Last 10 Years." The Wall Street Journal ("Journal"), relying on publicly available information, found that a material number of "no" responses to one or both queries were inaccurate. It is our understanding that the CFP Board and staff agree that the level of inaccurate "no" responses was unacceptably high and not consistent with an enforcement program that is designed to ensure a reasonably expected level of accuracy.

The Journal also discovered, again relying on publicly available information, misconduct by CFP® certificants with respect to which no apparent disciplinary action had been taken. This reporting goes to the actual operation of the CFP Board's enforcement program, in addition to reasonable public expectations about the high standards to which the program is purportedly held. These are separate concerns that the Board of Directors must recognize require separate, albeit parallel, consideration.

The Task Force recognizes that some regulators make it extremely difficult for public interest organizations such as the CFP Board to gain time-saving access through efficient data feeds of disciplinary information about financial professionals (even expunging disciplinary records in some cases), but this impediment does not go to the weaknesses in the CFP Board's enforcement program. The problems reported by the Journal did not reflect an expectation that the CFP Board ensures *perfect* compliance by CFP® certificants, or even perfect reporting of CFP® certificants' disciplinary history or bankruptcies. The Journal's reporting was based on the expectation that the CFP Board's express or implied public representations regarding its enforcement program would be reasonably consistent with the facts, making use of publicly available disciplinary information from regulators, and that the Board had implemented an enforcement program that was designed to meet reasonable public expectations.

There are, indeed, factors beyond CFP Board's control that place perfect enforcement beyond reach, and the multidisciplinary nature of financial planning adds to this challenge, but the CFP Board *is* able to control its communications regarding what the public can reasonably expect from its enforcement program and deliver warnings to the public on why and how the public may easily access other publicly available sources of disciplinary information. To publish affirmative representations regarding CFP® certificants' disciplinary history or bankruptcy filings without making reasonable efforts to confirm the accuracy of that information would, of course, be inconsistent with the CFP Board's public responsibilities. The CFP Board also can control the design, implementation and ongoing evaluation of its enforcement program to the extent necessary to meet reasonable expectations and reasonable enforcement goals. Again, this represents a public responsibility of the CFP Board.

III. FINDINGS AND RECOMMENDATIONS

This part of the Report presents the Task Force's findings and recommendations. As discussed immediately below, our significant findings and recommendations go to both the root causes of why issues with the enforcement program arose, focusing on the CFP Board's corporate governance structure and strategic planning and enterprise risk management processes, and to the enforcement program itself. As stated above, our principal finding is as follows:

While the Task Force finds that there were significant failures in the execution of the CFP Board's enforcement program and attendant communications to the public, we find that the primary cause for the failings that prompted the creation of the Task Force are systemic, longstanding, governance-level weaknesses, and that the problems discussed in this Report cannot be adequately addressed without commensurate governance reforms.

The weaknesses identified by the Journal have previously been reported on, and external evaluations of the CFP Board's enforcement program have previously resulted in recommendations regarding the same kinds of issues. Yet the same problems have recurred again and again. The most recent reporting reflects problems that are primarily systemic in nature, resulting from governance, strategic planning, and risk management weaknesses. These weaknesses will inevitably result in a recurrence of the kind of events reported by the Journal unless the Board of Directors acts to implement reforms focused on these systemic causes as well as the necessary reforms to the enforcement program. In addition, directing the CEO to maintain a focus on enforcement in the future will be critical to assuring success.

The Task Force's findings and recommendations address concerns that are particularly related to the CFP Board's promotional efforts. While promoting the CFP® mark will naturally stimulate a high level of interest among the certificants on the Board of Directors and lends itself to more easily measurable indications of success, enforcement matters are likely to prove far less

appealing due to the contentious and complex nature of such matters and the difficulties of determining appropriate measurement metrics in this area. As discussed in this Report, the Board of Directors has not devoted sufficient attention to enforcement matters, and stories appearing in the Journal over the last 7 years reflect that failure. Effective enforcement is a responsibility that the Board of Directors takes very seriously; it is imperative that the Board recruit directors who have experience in overseeing and monitoring enforcement programs.

Finally, our findings and recommendations address certain programmatic issues relating primarily to operational aspects of the enforcement program. In this respect, reforms are already underway, and the CFP Board has made significant progress in addressing the issues raised in the Journal article. Nonetheless, the Task Force believes that more than improvements to existing processes are needed. As the CFP Board has recognized in some respects, its enforcement program has not kept pace with the rapid increase in the number of CFP® certificants or the evolution of modern enforcement methods. However, there is a risk, and the Task Force is concerned, that these findings and recommendations may be perceived to be the root causes of the problems discussed herein and that operational improvements may supplant critical governance reforms. This is precisely the mistake that the Board of Directors and CFP Board executives have made in the past; vigilance will be needed to ensure that it is not repeated.

A. Governance Structure

The Task Force finds that the root causes of weaknesses in the CFP Board's enforcement program lie in its governance structure and strategic planning and enterprise risk management processes. The Journal's reporting goes to specific instances of failures in ensuring (1) the accuracy of the CFP Board's public representations regarding CFP® certificants' disciplinary history and (2) the effective enforcement of the CFP Board's standards of conduct. This narrow focus misses the bigger picture. Here, the major focus should be the corporate governance structure under which the Board of Directors determines the outcomes it wishes to achieve, delegates responsibility for achieving those outcomes, and regularly evaluates the success of its efforts. A strong corporate governance structure is a necessary predicate for success in implementing strategic goals.

As discussed in this Report, the CFP Board has not utilized to the extent necessary its goal-based governance framework with respect to its enforcement program or the expectations created about CFP® certificants' compliance with the Board's standards of conduct. This necessarily means that the focus of the Board of Directors should be to address the weaknesses identified by the Journal primarily as a symptom of weaknesses in the CFP Board's governance structure and processes.

1) Leadership Role of Public Members

The CFP Board's primary obligation is to further the interests of the public, yet, as a matter of governance structure, public members of the Board of Directors play a small role in CFP Board

governance. Under the CFP Board's Bylaws, public directors could represent as little as 11 percent of the Board of Directors. While in practice the proportion of public directors has exceeded this minimum, the role and authority of public directors has been inadequate to ensure that the public interest is of paramount importance.

Ensuring a public orientation in the CFP Board's policy and practices is particularly important in connection with its enforcement program because it is only through a stronger public presence can necessary enforcement expertise be brought to the Board of Directors. CFP® certificant directors are likely to have greater interest and expertise in two of the three core functions of the Board: the process for awarding the certificate and promulgating standards of conduct. Their financial planning practices intersect with each of these functions on a regular basis. CFP® certificant directors are usually senior members of the financial planning profession who bring extensive experience and expertise to the Board of Directors in relation to the certification process and standards of conduct.

In contrast, CFP® certificant directors have less experience with or expertise in, if any, the CFP Board's third core function: the enforcement of its standards of conduct. They usually will not have had frequent exposure to disciplinary matters or training in the procedural and organizational needs of assuring a strong enforcement program covering 85,000 CFP® certificants. An effective enforcement program incorporates investigative processes, evidentiary standards, procedural and due process protections, and motion, trial and appellate practices that are the province of trained attorneys and experienced enforcement officials. These areas of expertise are not typically found in the portfolio of a CFP® certificant or other financial professional.

Populating the Board of Directors with a critical mass of directors with prior financial services regulatory experience would provide the competency and perspective that is necessary for the CFP Board to fulfill the enforcement duties that it has assumed. These directors would bring expertise to the Board of Directors that historically has been largely absent. Ideally, some of these directors would have experience in enforcement in a supervisory role.

CFP® certificants are also less likely to have the perspective of a member of the public that the CFP Board exists to serve. The same industry perspective that makes experienced CFP® certificants well suited to set certification and standards of conduct can result in an organizational blind spot regarding the CFP Board's enforcement responsibilities. The Task Force finds that this susceptibility has been reflected in the inadequate attention paid to enforcement in the Board of Directors' meeting agenda setting, strategic planning and enterprise risk management functions.

Public directors and members of adjudicating and appellate bodies will likely have a different perspective of misconduct that may be more in line with public expectations. For example, a financial professional reportedly was certified by the CFP Board despite its knowledge of his reportedly having been fined and suspended by FINRA for impersonating customers in 2012 and having surrendered his insurance license in 2013.⁷ Having the perspective of public

members in Board discussions on whether or not impersonating a customer should preclude certification by the Board may result in different outcomes that benefit the investing public and the work of the Board. Ensuring that public representatives have majority decision-making authority in this type of evaluation may result in better decisions while also mitigating the perception that decisions by CFP® certificants are compromised by inherent conflicts of interest.

A strong public orientation on the Board of Directors is an especially critical predicate to an effective enforcement program. Public directors with regulatory experience in the financial services industry should play the leading role in the oversight of enforcement and related strategic planning, as well as in determining the minimum outcomes necessary for the CFP Board to fulfill its public enforcement responsibilities and have a primary role in evaluating whether and to what extent program outcomes have been achieved. And a public director's perspective should be represented at each level of adjudication and appeals.

Recommendations:

1. The CFP Board should strengthen the role and authority of public members on the Board of Directors.

- a) The CFP Board should transition toward requiring that either: (1) the Board of Directors have a majority of public members or (2) assign primary responsibility for monitoring and evaluating the CFP Board's enforcement program to a committee of the Board of Directors that has a majority of public members, in each case to include directors with financial services regulatory experience.***
- b) The CFP Board should retain an outside governance expert to make recommendations regarding membership of the Board of Directors, with special attention paid to the purpose of ensuring strong, effective oversight of the enforcement program (and related public communications) by the Board of Directors.***
- c) The Board of Directors should include some public members who have had supervisory experience in enforcement at a financial services regulatory entity.***
- d) The CFP Board should require that the Appeals Committee have public members.***

2) Board of Directors Experience and Continuity

Members of the Board of Directors serve one 4-year term with the exception that the Chair may serve in that capacity during a fifth or sixth year. Neither Directors nor Chairs serve more than one term. The Chair Elect becomes Chair at the end of the year, and the Chair Elect Elect becomes the Chair Elect. The Chair Elect and Chair Elect Elect often participate in Chair matters, although the degree varies depending on the particular Chair's preferences.

The Board of Directors' effectiveness is constrained by its term structure and the short tenure of directors. The Board is foregoing the substantial benefits that come when directors serve for longer periods of time and gain a deeper understanding of the organization they oversee. The first year or two of a single 4-year term is likely to be spent learning the Board's processes and

procedures, leaving only a few years to be fully engaged in Board of Director matters. The Board's effectiveness is further constrained by the short term of the Chair, who serves for only a year.

The Task Force finds that the short tenure of Directors and Chair adversely affects the ability of the Board of Directors to exercise strong, independent oversight, particularly with respect to the enforcement program. As noted above, CFP® certificants come to the board with expertise and experience that is directly related to the role of the Board of Directors in overseeing the certification process and the promulgation of standards of conduct. They also have a natural interest in these subjects. This experience, expertise and natural inclination are typically not present with respect to the enforcement program, which reduces the likelihood that the Board of Directors will be independent and proactive as to enforcement matters and increases the likelihood that Directors will defer to staff in this area. In fact, the Board of Directors has not been sufficiently independent and proactive with respect to enforcement matters, as evidenced by the lack of sufficient reporting and time spent regarding oversight of the enforcement program at Board meetings. This problem may be exacerbated by the short tenure of members of the Board of Directors and Chair.

It is common practice among nonprofits to structure the length and renewability of terms for the members and the Chair of a Board of Directors for purposes of balancing the need for flexibility, continuity and commitment. The CFP Board's limit for Board of Director members to a total of 4 years may result in the loss of experience and expertise that are essential to ensuring the kind of continuity that is necessary for strong governance. This term limit also may adversely affect members' commitment to the work of the CFP Board. At the same time, a 4-year term may limit members' and the CFP Board's flexibility to address evolving needs and ensure that each member is a good fit. The CFP Board should consider shortening the term for members with the option of re-election for two or three terms.

These issues are particularly acute for a Chair who only serves one year. The Chair assumes the key leadership role ensuring that the CFP Board fulfills its public responsibilities, but limiting the Chair's term to one year may substantially impair the Chair's ability to exercise strong leadership of the Board of Directors and its work. The Task Force believes that changes are necessary because the current policies of the Board of Directors on Chair and member terms and renewability risk delegating de facto control of the strategic goals and direction of the CFP Board to staff. The leadership role of Chair would be greatly strengthened if the Chair's term were extended beyond one year. Indeed, it is not uncommon among nonprofits for the Chair to serve a term that exceeds one year and can be renewed for more than one term. In this case, the Board of Directors could designate a Vice Chair to assume the role of the current Chair elect should the Chair be indisposed and to forego electing a Chair Elect since the term of a Chair may vary.

The Task Force finds that the allocation of a significant amount of ambassadorial responsibilities to the Chair rather than to other members of the Board of Directors may interfere with the Chair's ability to provide strong, effective leadership. The CFP Board Chair

traditionally has assumed the role of the face of the organization, which entails a substantial commitment of time to activities that fall outside of the core governance duties of the Chair. This practice not only undercuts the Chair's ability to provide strong, effective leadership, but also may deter applicants from considering a time commitment as Chair of more than one year. Ideally, the Chair would serve two or three years, and for multiple terms if reelected.

Recommendation:

2. The CFP Board should retain an outside governance expert to make recommendations regarding the term of service and limits on reelection for the Chair and Directors and work with the Board of Directors on other possible improvements in the structure and operation of the Board, in each case, with special attention paid to the enforcement program and related public communications, for the purpose of ensuring the continuity, commitment and flexibility necessary for the Board of Directors to exercise strong, effective oversight.

3) Role of Chief Legal Officer

It is common practice for a General Counsel to serve as the entity's chief legal adviser. One advantage of this arrangement is that the General Counsel usually works closely with an entity's leadership and staff and therefore has a deeper understanding of the entity's day to day operations that improves the Counsel's ability to advise the entity. Outside counsel typically does not have that depth of knowledge to bring to bear when analyzing an entity's legal risk. A General Counsel, unlike outside counsel, is singularly well-positioned to recognize precisely the risks that were realized at the CFP Board and then publicly discussed in the Journal. It is also important that a General Counsel be able to report to the Board independently, and in executive session, if needed, and also to communicate directly and confidentially with the Chair, a relevant committee, or the full Board, thereby assuring that a General Counsel feels comfortable alerting the Board to important issues. These best practices do not reflect the current practices of the Board of Directors.

The Task Force finds that the CFP Board's General Counsel, as that position is currently defined, serves in too many roles to provide effective monitoring and evaluation of legal risks.

The CFP Board has assigned the General Counsel too many roles, some of which create an internal conflict. The Board's General Counsel should monitor and evaluate legal risks to the CFP Board, including risks presented by the enforcement program, but as the position is currently defined the General Counsel serves as the de facto director of enforcement, which puts the General Counsel in the position of reviewing their own work. Similarly, the General Counsel has been assigned the lead role in producing revised standards of conduct, a process that, again, should be subject to impartial oversight. Under these circumstances, it would not be possible for any person to assume the internal audit function that the General Counsel ordinarily would be best suited to assume. Nor is it possible for any General Counsel to serve at the highest level in both that capacity and as Director of Enforcement.

The Task Force finds that the role of chief legal officer for the CFP Board has not been clearly established and that the Board of Directors has not ensured that proper communication channels with the General Counsel have been maintained. It is the Task Force's understanding that outside counsel to the Board of Directors serves regularly as the primary source of legal counsel regarding issues raised by the Board of Directors. It is not clear that outside counsel monitors CFP Board activities as a general matter for purposes, for example, of bringing matters *sua sponte* to the attention of the Board of Directors. It appears that, as a matter of practice, the General Counsel is not expected to bring appropriate matters directly to the Board of Directors, although this is normally an important part of a General Counsel's duties. As a case in point, the CFP Board's outside counsel reviewed this Report prior to the Board of Directors meeting at which it was presented, whereas the General Counsel had not been given an opportunity to review the Report. Both the CEO and outside counsel were present (the latter telephonically) at the entire meeting and had the opportunity to respond to the Report, while the General Counsel was asked to be present for only an initial part of the meeting and had not seen the Report. Nor was the Task Force given an opportunity to meet in executive session with the Board of Directors without the CEO or outside counsel present.

Recommendations:

3. The CFP Board should clarify the role of chief legal officer, with due consideration given to the efficacy of relying on outside counsel to serve in that role.

a) The General Counsel should periodically report directly to the Board of Directors in executive session without the CEO present.

B. Enterprise Risk Management

The Task Force finds that weaknesses in the CFP Board's enforcement program resulted partly from the lack of an adequate enterprise risk management program created and overseen at the level of the Board of Directors. The CFP Board's response to reported weaknesses and external analyses of its promotional activities and enforcement program has generally comprised operational fixes that reflect a discrete, reflexive approach to risk management. Modern enterprises recognize that risk management is more than the sum of its parts. Discrete risks are often interrelated; integrated management of different risks can create efficiencies and improve outcomes.

Enterprise risk management has the added benefit of ensuring that enterprise risk is managed through a disciplined, standardized process that drives an entity's strategic plan. Risk management has not been a prominent element of the CFP Board's strategic planning process. It appears that the enterprise risk management function has been largely left to management and needs to be strengthened. Without a strong risk management system, management and the Board will all too often be put in a reactive versus proactive position, focusing on putting out fires rather than developing mitigation approaches and strategic solutions. Enterprise risk management is a joint responsibility of the Board of Directors and management. By adopting a stronger approach in this area, the Board of Directors will gain the vantage point necessary for

managing risk through the systematic identification of root causes and development of enterprise-wide risk management strategies.

The Task Force requested and reviewed documents relating to the CFP Board's enterprise risk management. The materials provided do not reference the enforcement program. The Enterprise Risk Management presentation to the Board of Directors in 2017 and 2018 comprises 4 PowerPoint slides. While the slides in the 2017 presentation list "Reputation" as an "exposure area," the only statement regarding reputation is as follows:

- Reputation – In an effort to protect CFP Board's reputation increased communication with certificants and the media related to the CFP Board standards including the Center for Financial Planning, the Public Awareness Campaign and Public Policy initiatives continue.

Thus, reputational risk was essentially presented only as a matter of effective promotion of the CFP mark, with no reference to the enforcement program or the risks attendant upon such promotional activities. The 2018 presentation included a virtually identical statement:

- Reputation – In an effort to protect CFP Board's reputation increased communication with certificants and the media related to the *Code and Standards*, [sic] the Center for Financial Planning, the Public Awareness Campaign and Public Policy initiatives continue.

The CFP Board's letsmakeaplan.org website creates such reputational risks. Yet, the Task Force found no evidence of any systematic risk assessment of letsmakeaplan.org. Responses to inaccurate information appearing on letsmakeaplan.org took the form of short-term fixes, which resulted in the same problems resurfacing over a number of years. A principal purpose of an enterprise risk management program is to ensure that all entity activities are assessed as potential sources of risk and strategies are put in place to mitigate any identified risks. The letsmakeaplan.org website was developed without any formal process whereby its risks were properly assessed and addressed.

Recommendations:

4. The CFP Board should develop and implement an ongoing enterprise risk management program; incorporate enterprise risk management into its strategic plan; and schedule regular internal and external reviews and assessments to determine whether the program's expected outcomes are being achieved.

- a) The CFP Board's enforcement program should be a primary focus of the risk management program.***
- b) The CFP Board should ensure that its enterprise risk management program is aligned with staff incentives.***

C. Publicizing the CFP® Mark

The Task Force finds that the CFP Board's enforcement program has not met the reasonable expectations created by its Bylaws and reinforced by its public characterization of the program. The most recent reporting on weaknesses in the CFP Board's enforcement program does not reflect a recent aberration. In 2013, the same journalist at the same newspaper reported on the same problems that were described in his article published earlier this year. He reported that publicly available information showed that a significant percentage of CFP® certificants employed by broker-dealers were claiming to be "fee only" on letsmakeaplan.org.⁸ The same journalist discussed these issues again in a 2017 article, in which the CFP Board reportedly stated that it had "taken steps" to ensure that CFP® certificants claiming to be "fee only" on the Board's website and said that it was a "concern for us when someone is representing their method of compensation in a way that's inaccurate."⁹ Yet, as shown in the 2019 article, stated concerns regarding the mismatch between public expectations and reality have not been addressed.

In the 2019 article, the CFP Board is said to have acknowledged the errors and removed CFP® certificants from the website until their profiles were brought into compliance. But as of this writing, letsmakeaplan.org continues to provide a hyperlink to "fee only" CFP® certificants, despite the absence of an adequate mechanism for ensuring that this designation is reasonably accurate.¹⁰ It is our understanding that the CFP Board has completed a manual review of disciplinary and other reportable events on FINRA's BrokerCheck and/or IAPD for more than 65,000 CFP® certificants – a Herculean task for which the CFP Board should be lauded – but this review does not cover, for example, disciplinary actions brought by state insurance or banking entities. As noted, reasonable public expectations do not mandate perfection; it may not be possible or economically feasible to obtain information about every possible source of CFP® certificants' disciplinary history.

But reasonable expectations do include the expectation of a prominent warning as to the material limitations of a letsmakeaplan.org representation that a CFP® certificant has no disciplinary events. Yet, as of this writing, search results on letsmakeaplan.org continue to include representations that CFP® certificants have no disciplinary events where no disclaimer of any kind is provided on the search page or the results page regarding the inherent, material limitations of such representations (see Appendix A). It is imperative that the CFP Board warn not only that its reporting on certificants' disciplinary history will inevitably include some inaccuracies, but also that the Board may well have initiated an investigation of misconduct by a certificant that may not be public. These warnings need to be prominent and err on the side of overstating the risks attendant upon overreliance on information on letsmakeaplan.org.

The CFP Board has previously obtained external evaluations of problems relating to its enforcement program and responded with partial, piecemeal fixes that failed to recognize, much less address, the systemic weaknesses in the structure and operation of CFP Board governance. When the CFP Board initiated investigations and brought enforcement actions regarding improper "fee only" claims by CFP® certificants, it was discovered that its own Chair

had engaged in the same misconduct. We understand that the CFP Board has substantially strengthened its review process for potential directors, but the CFP Board's enforcement actions, again, reflect a piecemeal response where the primary cause of the Board's inadequate director vetting procedures was the same systemic governance weaknesses that, since 2013, have allowed for misleading claims to be made on letsmakeaplan.org. Like promotional activities, peer review and enforcement processes are fraught with conflicts risk, especially for a public interest organization.

Recommendations:

5. Oversight of CFP Board activities that are intended to promote the CFP® mark, including letsmakeaplan.org, should be a significant element of the CFP Board's strategic plan and reported on at every Board of Directors meeting and meeting of the committee that is responsible for enterprise risk management.

- a) Promotional activities should be subject to independent evaluation by the Board of Directors' public members and approval of a majority thereof.***
- b) Promotional activities should be subject to separate, affirmative findings by the Board of Directors, including a majority of public members, that (1) the activities are intended and designed for the benefit of the public, and (2) the accuracy of the information has been confirmed pursuant to a systematic, periodically reviewed, assessed and audited, empirically based review process.***
- c) The CFP Board should consider, as to each type of express or implied representation regarding a CFP® certificant that appears on letsmakeaplan.org:***
 - 1) Will it reasonably be expected by the public to have been confirmed by the Board,***
 - 2) Has it been adequately confirmed as accurate, as appropriate, by the Board, and***
 - 3) Is it accompanied by appropriate, prominent warnings and disclaimers.***
- d) The CFP Board should test letsmakeaplan.org and any similar promotional communications with consumers to determine whether users' understanding of the information conveyed is consistent with what the Board intends to communicate.***

D. Enforcement Program

The Task Force finds that the CFP® Board's enforcement program is not reasonably designed to ensure that CFP® certificants are held to an appropriate level of compliance with the standards of conduct. As discussed above, the CFP Board must ensure that its enforcement program is consistent with representations that it makes about the program and reasonable public expectations. Additionally, the enforcement program must meet a minimum objective standard that necessarily arises from its public charge. Of course, simply holding out CFP® certificants as being subject to standards of conduct while making no effort to enforce compliance with those rules would render them meaningless and the CFP Board in material breach of its public duties.

To its credit, the CFP Board has placed a high priority in its Bylaws on maintaining the integrity of the CFP® mark and enforcing the CFP Board's standards of conduct.

(b) To protect the value and integrity of the corporation's registered marks and to safeguard their status;

(c) To license use of the marks to professionals who have met the corporation's certification standards and criteria; . . .

*(f) To establish, conduct and enforce **investigatory** and disciplinary procedures to regulate the professional conduct of CFP® professionals for the benefit and protection of the general public; . . .*

(g) To lessen the burdens of government by cooperating with and assisting state and federal regulatory agencies to appropriately, effectively and uniformly regulate financial planning professionals . . .

(emphasis added)

These are core responsibilities of the CFP Board, but in some ways the current enforcement program is not adequate to fulfill them.

The Task Force finds that the oversight, operation and structure of the CFP Board's enforcement program are not adequate to ensure reasonable compliance by certificants with the CFP Board's standards of conduct. This finding reflects concerns on two levels. First, the Board of Directors has not made the CFP Board's enforcement program a core part of its oversight function. Nor has it taken ownership of the goals of the enforcement program or regularly evaluated the program to ensure that those goals are being met. Second, the enforcement program lacks elements that are necessary for it to ensure a minimum level of compliance by CFP® certificants. The Task Force's recommendations accordingly address both the oversight and specific elements of the program.

1) Oversight by the Board of Directors

The Task Force finds that the Board of Directors has not taken steps necessary to ensure that oversight of the CFP Board's enforcement program is treated as a core Board of Directors' governance responsibility. The CFP Board's enforcement program cannot be effective without proactive, independent oversight by the Board of Directors. The Board of Directors must itself, after consulting with and receiving recommendations from management, determine the goals it expects the enforcement program to achieve, design a process of evaluating whether the program has been successful, and receive regular reporting at every meeting on key metrics and trends so that the Board may effectively monitor and oversee the enforcement program. The CFP Board has not taken these steps, possibly as a result of inadequacies in the Board's membership, structure and enterprise risk management program, as discussed above.

First, the Board defines outcomes to be achieved. Next, the Board defines the boundaries of ethical and prudent operational behaviors and conditions in

policy, which serve as the Executive Limitations. Then the Board assigns these expectations (outcomes and boundaries as defined in policy) to the CEO and formally and rigorously monitors the CEO's performance against those expectations.

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The Board of Directors should carefully review recommendations from management before approving them as to the CFP Board's strategic goals and metrics for determining if those goals have been met. As a core CFP Board responsibility, the oversight of the enforcement program must be one of the Board's top governance duties, to which it devotes its time and resources. The enforcement program requires a systematic form of oversight that affords it the same priority given to the certification process and the promulgation of standards of conduct.

It is especially ill-advised to rely on the initiative and forcefulness of staff for subject matter with which directors are least comfortable. CFP® certificants are passionate about and often enjoy discussing and debating what constitutes high quality financial planning, both in terms of the application of technical expertise and exercise of professional, ethical judgment. This orientation naturally lends itself to more rigorous director-level oversight of the certification and standard setting process. In contrast, enforcement matters are inherently unpleasant. Professionals may naturally find misconduct by their peers to be an uncomfortable topic and exercise oversight of enforcement processes with less enthusiasm. Professional staff may be least likely to say what directors are least inclined to hear.

Recommendations:

6. The Board of Directors should ensure that its enforcement program is subject to a systematic process, and that this process is a Board-level function.

- a) The Board of Directors should identify specific, expected outcomes for its enforcement program, establish and apply objective metrics for evaluating the achievement of outcomes, and regularly evaluate the program's outcomes.***
- b) The Board of Directors should receive reports on its enforcement program at every Board meeting.***
- c) New members of the Board of Directors should receive training on all aspects of the Board's enforcement program including its necessity as part of fulfilling the CFP Board's public responsibilities; its history, including its past successes and failures; and its detection, monitoring and investigative processes.***
- d) The CFP Board should retain a seasoned Director of Enforcement, as discussed below, who should periodically report directly to the Board of Directors in executive session and who does not also serve as General Counsel.***

2) Enforcement Program Operation

The Journal identified instances in which CFP® certificants had engaged in conduct and/or been subject to discipline that was inconsistent with the CFP Board's standards of conduct, yet the

Board had not taken any public enforcement action. The Journal did not, however, adequately acknowledge that there is no reasonable expectation that CFP Board action occur immediately upon the occurrence of a sanctionable event, that enforcement proceedings may be (and in some cases were) underway but not yet completed, or that the Board may have imposed private sanctions. In this respect, the Journal presented a distorted view of the efficacy of the CFP Board's enforcement program. A reasonably designed enforcement program is one that is deliberative, provides CFP® certificants with appropriate due process protections, and observes proper confidentiality concerns.

Nonetheless, it is the Task Force's understanding that the CFP Board agrees that the Journal identified instances of CFP® certificant misconduct where no enforcement action had been taken that reflected weaknesses in the Board's detection and investigative processes. The CFP Board's staff on its own initiative has engaged in a thoughtful review of its enforcement program and implemented measures to address operational weaknesses. The staff should be applauded for its focus and diligence in this respect, which is consistent with the Task Force's assessment of the quality and work ethic of the staff in general. However, the problems reported in the Journal resulted partly from executive management failures; the Board of Directors should identify those failures and determine whether and how its oversight of the CEO can be strengthened.

While it is for the Task Force to consider whether the CFP Board has dedicated adequate resources to support its enforcement program, it is not for the Task Force to attempt to micromanage precisely how such resources should be deployed. Nor would the time constraints to which the Task Force was subject have allowed for a thorough review of the implementation of the CFP Board's specific enforcement processes. The Task Force has a good understanding of general operational deficiencies in the CFP Board's program, but how these deficiencies are specifically addressed should be left to forces on the ground, ***provided that the Board of Directors ensures that the governance issues discussed above are addressed and the enforcement program is subject to rigorous, continuous, goals-based oversight.***

The CFP Board's Articles of Incorporation include the following as one of the "purposes and objectives" that the Board seeks to achieve:

To lessen the burdens of government by cooperating with and assisting state and federal regulatory agencies to appropriately, effectively and uniformly regulate financial planning professionals;

This goal reflects an aspiration to fill a quasi-regulatory role that is somewhat akin to the role of a governmental financial service regulatory entity while also implicitly acknowledging the practical limitations to which the CFP Board is subject as it seeks to lessen – not assume – burdens of government. Indeed, it would be neither appropriate nor practicable for the CFP Board to develop an enforcement program that is comparable in scope to a regulatory entity's program.

Nonetheless, the CFP Board is obligated to commit sufficient resources to its enforcement program to fulfill its public responsibilities, and it has the resources to do so. While its enforcement program cannot approach the *scope* of a government enforcement program, it should seek to incorporate the essential *methods* that government enforcers have found to be effective in policing regulated persons.

The Task Force finds that the CFP Board's enforcement program lacks a process whereby factors that are correlated with noncompliance are identified and CFP® certificants are scored on such risk factors. The CFP Board's enforcement program does not incorporate the risk-based assessment model that is widely used in the enforcement community. Regulators and financial services firms routinely apply empirical methods to identify factors that are correlated with a higher incidence or likelihood of compliance problems. These risk factors are then applied to guide the allocation of investigative resources to where they will be most effective. The CFP Board's enforcement program should similarly seek to identify the characteristics of CFP® certificants that indicate a greater likelihood of misconduct. Its information collection processes should be modified -- possibly through a requirement for certificants to complete and submit annual questionnaires -- to ensure that the Board is able to determine which CFP® certificants' risk scores suggest the highest likelihood of noncompliance.

The Task Force finds that the CFP Board's enforcement program should incorporate proactive elements to improve its ability to spot trends that help lead to the detection of CFP® certificant misconduct. The CFP Board's enforcement program should incorporate more proactive elements that do not depend on a triggering event such as a customer complaint or regulatory action. For example, the risk-based assessment approach discussed above could be used to identify CFP® certificants for proactive examination/review. This review could begin with the collection of publicly available information about certificants, including, for example, the certificants' representations in their regulatory documents and website, which could be compared to their regulatory filings. A full "desk audit," i.e., an inspection performed from the CFP Board's offices, could then be conducted on a sampling of high-risk certificants by requesting additional information from them that is related to the basis for the high-risk score.

The Task Force finds that the CFP Board's enforcement program has not taken full advantage of available and emerging technology. Government regulators routinely use technology to optimize their enforcement programs. The CFP Board should do the same to improve its review of CFP certificants' background and the detection of noncompliance. The risk-based assessment approach discussed above would benefit from greater use of technology, as would a proactive review of publicly available information about certificants. The CFP Board staff has already begun to evaluate technological solutions to the daunting task of continuously scraping public information to detect CFP® certificant reportable events. Technology can also be used to help detect misconduct, and it will not be long before artificial intelligence can expand the capacity of the enforcement program, for example, the review of technologically accessible information.

The Task force finds that the CFP Board has not committed sufficient resources to its enforcement program, in terms of both funding and the size and expertise of its enforcement staff. The CFP Board's existing enforcement program has not kept pace with the enormous growth in the number of CFP® certificants over the last decade. The identification and application of risk factors, the integration of proactive examination/review procedures, and greater use of available technology will require the expenditure of greater resources and hiring of specialized personnel.

The Task Force finds that primary oversight of the CFP Board's enforcement program should be the responsibility of a Director of Enforcement who (1) has had supervisory enforcement experience with a financial services regulator, (2) does not also act as General Counsel, (3) reports directly to the CEO, and (4) may, as appropriate, request meetings with the Board of Directors in executive session. The discussion above regarding the diverse elements of an effective enforcement program demonstrates the need for a dedicated Director of Enforcement who does not act as General Counsel. The requirements attendant upon the CFP Board's core enforcement responsibilities necessitate that a Director of Enforcement who reports to the CEO be appointed who is exclusively committed to the enforcement function. The Task Force strongly believes that the enforcement function cannot be adequately staffed by a person who also serves as General Counsel.

Recommendations:

7. The CFP Board should ensure that its enforcement program incorporates the elements that are minimally necessary to ensure reasonable compliance by CFP® certificants with the CFP Board's standards of conduct.

- a) The CFP Board should substantially increase the resources devoted to ensuring that its enforcement program is reasonably designed to achieve an appropriate level of compliance by CFP® certificants with CFP standards of conduct.***
- b) The CFP Board should retain a seasoned Director of Enforcement who has prior supervisory enforcement experience with a financial services regulatory entity, reports to the CEO, does not also serve as General Counsel and may, as appropriate, meet with the Board of Directors in executive session.***
- c) The CFP Board should substantially expand the use of technology to ensure that CFP® certificants' compliance with the CFP Board's standards of conduct is continuously evaluated as appropriate.***
- d) The enforcement program should include: (1) data-based analysis and identification of risk factors that help spot trends or indicate a higher likelihood of noncompliance and (2) systematic application of risk factors in identifying and initiating desk audits of certificants and, as appropriate, on-site examinations.***
- e) The enforcement program should include proactive elements, including periodic audits of certificants based on: (1) risk factors, history of noncompliance and other systematically applied objective indicators and (2) random sampling.***

- f) *The enforcement program should be designed to identify emerging, systemic compliance issues and provide for issue-based information gathering and CFP® certificant inspections.***

a) CFP® Certificant Reviews

The weaknesses identified by the Journal resulted partly from the CFP Board's over-reliance on self-reporting by CFP® certificants. The importance of self-reporting was heightened by the 2-year gap between background checks of certificants by the Board's enforcement staff. It is our understanding that the CFP Board recognizes these problems. The CFP Board staff has already taken steps to ensure that more frequent background checks are conducted and that other sources of public information are considered. It further intends to use technology to improve the scope and efficiency of information collection efforts. To some extent, the recommendations below reflect reforms that are already well underway.

The problem of over-reliance on self-reporting may have been exacerbated by CFP® certificants' perception that a failure to self-report or to self-report on a timely basis would not create a significant risk of incurring sanctions. Certificants may view such failures as minor administrative matters, a view that may be reinforced by a lack of vigorous enforcement of the self-reporting requirement by the CFP Board. A self-reporting failure is not a minor administrative infraction. Rather, it is a form of obstruction that violates core principles of ethics that underpin all of the CFP Board's standards of conduct.

When a CFP® certificant has been sanctioned by a regulator or has filed for bankruptcy, the issue is squarely presented as to whether the certificant will abide by the standards of conduct and accept responsibility for their actions or avoid self-reporting and thereby personally benefit from possibly escaping punishment. This is an ethical decision the import of which rises commensurately with the seriousness of the reportable event. Self-reporting failures should be treated as major rule violations that are at least equivalent to the misconduct that the CFP® certificant has effectively sought to conceal. The CFP Board should take the default position, in the absence of extenuating circumstances, that *all* self-reporting failures shall be subject to at least suspension if not revocation and take steps to communicate this position to the CFP® certificant community. The most significant self-reporting violations should be subject to severe public sanctions, including revocation.

Recommendations:

8. *The CFP Board should ensure that a review of every CFP® certificant is conducted at least once each year and seek to deploy systems that allow for continuous searching of publicly available information about CFP® certificants.*

- a) *The CFP Board should require CFP® certificants to certify annually that they have no reportable events and consider including certifications regarding specific misconduct risk factors.***

- b) *The CFP Board should require that reportable events be reported to the Board within 30 days of the occurrence of the event, and violations of this requirement should be subject to severe public sanctions up to and including revocation.***

b) Private Sanctions

The CFP Board's enforcement program provides for public and private sanctions. A private sanction typically would entail issuing a private censure, which is an "unpublished written reproach" sent by the DEC to the certificant.¹¹ There may good reasons to choose a private rather than public sanction, including the perceived de minimis nature of the infraction. However, a private sanction implies a finding of fault by the CFP Board, which raises the question of why that information is withheld from the public. There are compelling arguments for making public every finding of misconduct by a CFP® certificant that warrants any form of sanction.

A second risk is that the preference for a private rather than public sanction may be susceptible to improper influence, such as a member of the Board of Directors being given more favorable treatment due to their relationship with the Board and/or oversight role as to enforcement staff. This is, of course, a risk with respect to any misconduct-related matter, but it is of greater concern here because any improper influence regarding the severity of a *public* sanction is subject to public inspection. In contrast, a decision to impose a private sanction is confidential. The question of whether imposing sanctions that are private is ever in the CFP Board's best interests should be given careful consideration.

Recommendation:

9. The CFP Board should consider whether, when a CFP® certificant's misconduct is found to warrant some form of sanction, the sanction should always be made public.

c) Consistent and Fair Treatment

The CFP Board should ensure that CFP® certificants are treated fairly and consistently in connection with misconduct-related matters. This is a heightened concern when a CFP® certificant's employer refuses to provide documents that have been requested by the CFP Board in connection with an investigation of the certificant. In some cases, there is no insurmountable legal or ethical basis for the employer's position. The documents requested by the enforcement staff may be important or even necessary for the CFP Board to fulfill its enforcement responsibilities. The CFP Board's current practice is not to impose any sanction in connection with a CFP® certificant's employer's refusal to provide documents.

This situation raises two concerns. First, the CFP Board's inability to obtain documents may compromise the integrity and efficacy of its enforcement program. At worst, an inability to obtain documents may render the CFP Board unable to impose sanctions for serious misconduct because of the documents' evidentiary importance. If there are no adverse

consequences for a failure to provide documents, the CFP® certificant may be able to circumvent the CFP Board's standards of conduct.

Second, if a CFP® certificant experiences no adverse consequences when their employer does not provide documents, the appearance of a two-tiered enforcement program is created. On one tier, CFP® certificants with a non-cooperating employer may enjoy a degree of immunity from being held accountable for misconduct. On another tier, CFP® certificants may be subject to sanctions for which documents provided by the certificant provided a necessary foundation. This problem raises concerns regarding whether all CFP® certificants are treated fairly and consistently.

The Task Force finds that the noncooperation of CFP® certificants' employers with document requests may undermine its ability to achieve its enforcement-related goals and be inconsistent with the fair and consistent application of its standards of conduct. At a minimum, the CFP Board should determine the circumstances in which a failure to produce documents so obstructs the effective enforcement of its rules that sanctions, including revocation, should be imposed. Additionally, the CFP Board should determine the circumstances in which not imposing sanctions for noncooperation by a CFP® certificant's employer creates a de facto two-tier enforcement program such that not imposing sanctions is unfair to cooperating certificants.

Recommendations:

10. The CFP Board should ensure that enforcement standards are applied consistently and fairly to all CFP® certificants.

- a) The CFP Board should ensure that the minimum level of mandatory cooperation that is necessary for the Board to fulfill its enforcement responsibilities has been identified, that compliance with that level of cooperation is consistently applied to all certificants, and that noncompliance is subject to consistently applied, appropriately severe public sanctions, including the possibility of revocation.***

d) Treatment of Complaints

An important source of information about possible CFP® certificant misconduct is complaints submitted by the public. It is especially important that the CFP Board communicates to public complainants that the Board thoroughly evaluates and, if appropriate, investigates complaints and that its decisions reflect the careful consideration of all relevant factors. This enhances the value of the CFP® mark, facilitates the evaluation, investigation and adjudication of possible misconduct, and fulfills a fundamental Board responsibility to the public.

It is not clear that the treatment of public complaints meets this standard. A public complainant should receive an immediate acknowledgment of receipt of the complaint that, among other things, states that it will be thoroughly evaluated and, if appropriate, investigated. It should note that, while confidentiality and due process concerns must be respected by the

process, the complainant will be regularly updated regarding the status of the complaint. An update may be able to include no more than a reiteration of the Board's commitment to conduct a thorough evaluation and achieve an appropriate resolution, but it is important that updates be provided nonetheless. Updates should continue until a final communication is sent that indicates that the matter has been closed, which should include a description of public sanctions as applicable.

Recommendations:

11. The CFP Board should ensure that communications with complainants demonstrate the Board's commitment to thoroughly evaluating and, if appropriate, investigating the complaint and imposing sanctions for conduct violations as appropriate.

- a) The CFP Board should establish a process whereby staff: (1) promptly notify complainants of receipt of their complaint and explain the review process, (2) periodically update complainants regarding, to the extent appropriate considering confidentiality and the integrity of any ongoing investigation, the status of the matter, and (3) continue such updates until the complainant is provided with a closing communication that sets forth, as appropriate, the final resolution of the matter.***

e) Use of Settlement Amount Cutoffs

In certain instances, the CFP Board's enforcement process turns on the size of a conduct-related settlement. The CFP Board's Investigation Team Handbook states that the Board "does not investigate" a "single customer complaint, arbitration, or civil action that settled for less than \$25,000." This cut-off applies to CFP® certificants and when considering whether prospective certificants should be certified. The CFP Board's standards of conduct identify events that CFP® certificants are required to self-report, which include certain settled matters where the certificant or entity the certificant controls is mentioned adversely -- "other than a settlement for an amount of less than \$15,000." Similarly, settled customer complaints involving alleged sales practices violations are reportable only if "settled for an amount of \$15,000 or more." These policies might seem minor, but the Task Force believes that they may have outsized adverse ramifications. The policies' foreclosing of further investigation may forestall the discovery of significant misconduct that might otherwise come to the Board's attention.

The Task Force finds that the amount of a settlement is not an appropriate basis on which to determine whether (1) the settlement should be considered in evaluating a prospective or current certificant's background or (2) an event should be reportable under the standards of conduct. The \$25,000 and \$15,000 cutoffs may be intended to avoid the expenditure of resources on or reporting of small matters, but that amount could only be considered small from the perspective of a financially well-off person. The settlement amount could represent 100% of the value of a small client account. The amount also may understate the degree of harm alleged by the settling client. The cutoff amounts therefore are not necessarily indicative

of the severity of the misconduct, which may constitute egregious ethical failures on the part of the certificant that a customer would find material.

Additionally, extreme misconduct that warrants a severe sanction might well cause very little economic harm in the specific instance of the settlement. There is no necessary connection between the size of a settlement and the degree to which the alleged misconduct implicates the public interest of the CFP Board's core mission. A settlement may be the canary in the coal mine, a public instance of systemic misconduct that simply has not generated an extensive record. Further investigation of a small settlement may uncover other misconduct that warrants further investigation.

Recommendation:

12. The CFP Board should require that neither the decision as to whether to investigate a customer complaint, arbitration, or civil action, nor the self-reportability of an event under the standards of conduct, depend solely on the amount of a settlement.

IV. CONCLUSION

The Task Force trusts that its findings and recommendations will assist the CFP Board in its ongoing effort to ensure that CFP® certificants are held to the highest standard of conduct. Our discussions with members of the Board of Directors and CFP Board staff have revealed a strong commitment to protecting the public. Financial planning is of increasing importance in the lives of all Americans, and the CFP Board for decades has played a positive role in helping people realize their personal goals and achieve financial security. We greatly appreciate the opportunity to help the CFP Board achieve its mission and are available to provide further assistance as needed.

¹ New rules adopted by the CFP Board in March 2018 hold CFP® certificants to a fiduciary standard when providing financial advice. See CFP Board Code of Ethics and Standards of Conduct (Oct. 1, 2019). Previously, the fiduciary standard applied only in connection with financial planning. The new rules became effective on October 2, 2019.

² CFP Board website at <https://www.CFP.net/about-CFP-board/about-CFP-board/mission-and-objectives> (October 23, 2019).

³ Policy 4.11, Governance Policy Manual of CFP Board's Board of Directors.

⁴ See Section E(3), CFP Board Code of Ethics and Standards of Conduct (Oct. 1, 2019).

⁵ CFP Board website at <https://www.CFP.net/about-CFP-board/ethics-enforcement> (October 19, 2019).

⁶ CFP Board website at <https://www.CFP.net/about-CFP-board/ethics-enforcement> (October 19, 2019).

⁷ Jason Zweig and Andrea Fuller, *CFP Board Omits Thousands of Regulatory, Criminal Problems of Its Certificants on Consumer Site*, WSJ.com (July 29, 2019) at <https://www.investmentnews.com/article/20190729/FREE/190729932/cfp-board-omits-thousands-of-regulatory-criminal-problems-of-its>.

⁸ Jason Zweig, *'Fee-Only' Financial Advisers Who Don't Charge Fees Alone*, WSJ.com (Sep. 20 2013) at <https://www.wsj.com/articles/feeonly-financial-advisers-who-dont-charge-fees-alone-1379714516>.

⁹ Jason Zweig, *Some 'Fee-Only' Advisers Charge Commissions Too*, WSJ.com (Oct. 20, 2017) at <https://blogs.wsj.com/moneybeat/2017/10/20/some-fee-only-advisers-charge-commissions-too/?guid=BL-MBB-63933&mod=searchresults&page=1&pos=1&dsk=y>

¹⁰ www.letsmakeaplan.org (visited Nov. 17, 2019).

¹¹ Article 4.1, CFP Board Disciplinary Rules and Procedures.

Appendix A

Find a CFP® Professional

Use the search below to find a CERTIFIED FINANCIAL PLANNER™ professional near you.

SEARCH

[Advanced Search](#)

This search function allows you to find individuals who are currently authorized by CFP Board to use the CFP® certification marks, who have indicated they currently provide financial planning services to clients, and who accept new clients.

DON'T SEE THE CFP® PROFESSIONAL YOU'RE LOOKING FOR?

Search by an individual's name and verify certification status and CFP Board disciplinary history.

[» Verify Certification Status](#)

RESEARCH A PROFESSIONAL'S BACKGROUND

FINRA'S BrokerCheck and the SEC's Investment Adviser Public Disclosure (IAPD) databases are free tools that may be used to conduct additional research on the background and experience of CFP® professionals and those who held CFP® certification at one time, including with respect to employment history, regulatory actions, and investment-related licensing information, arbitrations, and complaints.

[» Search FINRA's BrokerCheck](#)

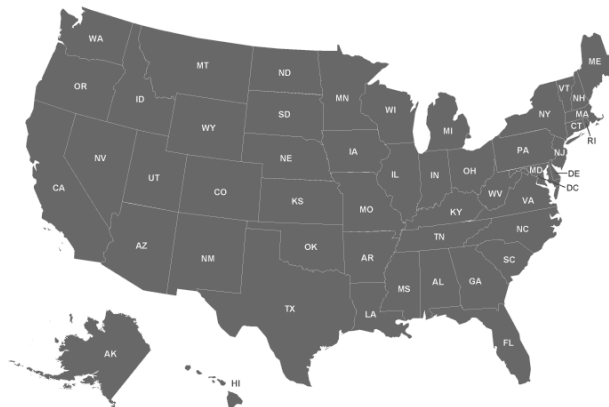
[» Search the SEC's IAPD database](#)

ARE YOU A CFP® PROFESSIONAL?

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Let's Make A Plan.

FIND YOUR CFP® PROFESSIONAL.

SEARCH

Find a CFP® Professional

[WHY CHOOSE A CFP® PRO](#)[FIND A CFP® PRO](#)[LEARNING CENTER](#)[NEWSLETTER](#)

the zip code, followed by CFP® professionals within a gradually increasing radius from the zip code's center point. Results within the selected zip code and within each 1-mile radius of the zip code are displayed in a random order that is updated frequently. If you receive too few or too many search results, use the "Refine Your Search" button to modify your search.

Zip Code: within 5 miles

[REFINE YOUR SEARCH](#)

- YOUR INVESTABLE ASSETS

- \$0 - \$99,999
- \$100,000 - \$249,999
- \$250,000 - \$499,999
- \$500,000 - \$999,999
- \$1,000,000 - \$4,999,999
- \$5,000,000+

- SELF-DISCLOSED FOCUS AREA

- Accounting
- Asset Allocation
- Banking
- Budget Development
- Business Succession Planning
- Charitable Giving
- more...

- LANGUAGE

- American Sign Language
- Arabic
- Armenian
- Cantonese
- English
- French
- more...

- COMPENSATION

- Commission and Fee
- Commission Only
- Fee Only

DON'T SEE THE CFP® PROFESSIONAL YOU'RE LOOKING FOR?

Search by an individual's name and verify certification status and CFP Board disciplinary history.

[Verify Certification Status](#)

[CONDUCT A NEW SEARCH](#)

Sort By: [A-Z](#) | [Minimum Investable Assets](#)

[CONTACT](#)

Compensation Method:
Commission and Fee
Minimum Investable Assets: None Provided
Languages: English

CFP Board Disciplinary History:
No
Bankruptcy Disclosure in Last 10 Years: No
Additional Disclosure Information: Visit [FINRA](#) and the [SEC](#) (for those who are subject to FINRA or SEC oversight)

Self-disclosed Focus Areas: Accounting, Asset Allocation, Budget Development, Comprehensive Financial Planning, Education Planning, Investment Management, Investment Planning

[CONTACT](#)

Compensation Method: None Provided
Minimum Investable Assets: \$250,000
Languages: English

CFP Board Disciplinary History:
No
Bankruptcy Disclosure in Last 10 Years: No
Additional Disclosure Information: Visit [FINRA](#) and the [SEC](#) (for those who are subject to FINRA or SEC oversight)

Self-disclosed Focus Areas: Accounting, Business Succession Planning, Comprehensive Financial Planning, Education Planning, Estate Planning, Investment Management, Retirement Planning

Let's Make A Plan.

FIND YOUR CFP® PROFESSIONAL.

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