INSTITUTE FOR THE FIDUCIARY STANDARD

Fiduciary Reference

Analysis of Investment Fiduciary Issues

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CFPB Standards: "The Ethical Foundation for CFP Certifications"

CFPB is reviewing its "Ethical foundation for CFP certification." This review is timely. The advice market is undergoing a basic transformation. New technologies, the DOL Rule, more demanding investors and lowering costs are change agents. Higher ethical standards are in demand. CFPB should answer the call and lead.

Knut A. Rostad *

Executive Summary

Ethics have long been integral to financial and investment advice and securities regulation. The Supreme Court noted in 1963 that the authors of the Advisers Act of 1940 called for the "highest ethical standards." Years later, the FPA suit against the SEC argued the Investment Advisers Act of 1940 must "protect investors and honest advisers" and the "public's confidence in investment advisers." Today, with the very definition of the fiduciary duty of loyalty in transition under federal regulation, ethics are again at the forefront of the industry. CFP Board (the Board) has a unique opportunity to lead and support the highest standards.

This paper discusses research on investor distrust and investor views on how the industry can raise standards and regain their trust. The Board's ethical standards are also reviewed here. Recommendations are offered to strengthen Board standards.

<u>Skepticism and distrust of financial services.</u> Research suggests that many investors continue to view financial services and advisors with distrust. The conservative leaning American Enterprise Institute went so far as to say, "Americans see Wall Street as a culture apart, one that operates by a foreign code of conduct." By last year, though public confidence edged up from 2013, Gallup still measured public opinion of the "ethics and honesty" of financial occupations as very low. Near the bottom of the list, stock brokers and insurance agents are close to car sales people and real estate agents.

<u>CFA Institute research offers guidance for raising ethical standards.</u> In the 2016 "Global Survey of What Investors Want", eleven attributes retail investors find important are ranked. Five attributes are associated with "transparency, clear communications." Full and transparent and clear communications about fees and conflicts of interest (issues of ethics) rank above all other attributes.

<u>CFP Board of Standards (the Board).</u> The Board formed a Commission on Standards to offer "proposed changes to the Standards of Professional Conduct" back in December 2015. Board CEO Kevin Keller then underscored that the standards are the "Ethical foundation for CFP certifications."

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The Institute applauds the Board for taking a fresh look at ethics issues. Three issues stand out:

One, the Board discusses at length its one standard for all CFPs and its other standard for CFPs who do financial planning. Yet, it's hard to tell the standards apart by what they are called and do. One standard requires CFPs meet "the highest of standards," while the other standard requires CFPs act in "the best interest of the client." Differences are modest. CFPs doing financial planning are held to the Board's definition of fiduciary and required to make some disclosures and the engagement agreement in writing.

This ambiguity and lack of clarity is stressed by fiduciary expert, Ron Rhoades when he writes, after viewing CFP webinars on when the Board believes financial planning exists, "I cannot understand the fine lines which the CFP Board attempts to draw…I come away befuddled."

Two, the Board appears to view conflicts of interest as ubiquitous and unavoidable -- and benign. This view departs sharply from longstanding views of jurists, academics and advisors who have viewed conflicts of interest as, essentially, toxic to fiduciary advice.

The Supreme Court in Capital Gains Research versus SEC underscores the Advisers Act of 1940 was crafted in large part to differentiate advisers from conflicted sales agents. The rationale is well known. As Carlo V. di Florio, then Director of the SEC Office of Compliance and Inspections put it in 2012, "Conflicts of interest can be thought of as viruses that threaten the organization's well-being…. And if not eliminated or neutralized, even the simplest virus is a mortal threat to the body."

Yet, the Board essentially offers implicit support for conflicts. It is implicit by what the Board does not say or urge or require. There is no discussion suggesting conflicts are comparable to "viruses" that are a "mortal threat" and should be "eliminated," and neither as to why conflicts can undermine objective advice. CFPs are not urged to avoid conflicts nor is there discussion of why many CFPs already do avoid conflicts – and make a point of doing so. Further, there is no discussion – not even a mention – of the concrete steps CFPs must take to mitigate conflicts. Lastly, there is no discussion of why attaining truly informed client consent is important.

Three, compensation and expense disclosure requirements reflect a minimum standard. They only require disclosure of "compensation methods" and "information related to costs and compensation" by the CFP and his / her firm. They do not require, as a matter of course and without specifically being asked, disclosure of actual fees and investment costs nor a good faith estimate of these total costs.

These shortcomings can be addressed. The Board can ensure the CFP mark remains *the* financial planning mark by taking several important steps to incorporate the following recommendations:

Require that all CFP registrants do what most investors believe they do – meet a single rigorous fiduciary standard that is plainly written. ACTION STEP: Eliminate CFPBOS 'two standard' standard whereby CFP registrants have different conduct standards depending on whether they are offering financial planning advice or not. Communicate this standard in plainly written language.

Require transparency and clarity in fee disclosure. ACTION STEP: Stop allowing a 'general description of compensation arrangements' and 'information related to costs upon request.' Instead, require clear disclosure of what the client will pay in underlying investment costs in $ or AUM % and what the CFP registrant and the firm will be paid as a result of the advisor's advice or product recommendation, along with a good faith estimate of these fees and costs.

Adopt a rigorous standard on conflicts of interest that discusses the well-recognized risks and potential harms to clients that conflicts create. Clearly urge avoiding or eliminating them. ACTION STEP: Insert a robust discussion on why CFP registrants should avoid conflicts that reflects history, law and plain commonsense. Provide guidance on how conflicts that are not avoided must be managed. Outline the burden advisors must overcome. Include guidance on disclosure and informed consent. Replace allowing a 'general summary of likely conflicts of interest' with the SEC policy requiring written disclosure with 'sufficiently specific facts so the client is able to understand the conflicts of interest…and can give informed consent.' Honor the principle that, though no one can be free of all conflicts, everyone can avoid most conflicts. Conflicts cannot be taken lightly or accepted as a norm.

Introduction

The advice marketplace is changing rapidly. New technologies, regulations and investor attitudes translate to new demands and competitors. Many investors plainly seek more transparency and clarity around conflicts and costs.

Financial planners have a choice. They can stick with business practices that came of age when Neil Armstrong walked on the moon, or they can acknowledge a transformed financial services market, embrace what clients today want, and change and adapt. CFPB can lead by raising standards and thrusting all CFPs in the forefront of making strong fiduciary practices the only standard.

An uncomfortable conversation. Advisors who are confidants to their clients are good at 'uncomfortable conversations.' These conversations may be about unrealistic retirement spending, "personal" issues like taking away Dad's drivers' license, or the advisors' services and fees! These can be uncomfortable, yet necessary, conversations.

This is how Institute for the Fiduciary Standard leaders view publicly commenting on the CFP Board's standards. It's without doubt an uncomfortable conversation. It's a conversation initiated with the utmost respect for the Board and the many volunteer leaders who have worked tirelessly with the Board to make financial planning the true profession it should be.

The opportunity. The Board Commission on Standards will offer "proposed changes to the CFP Board's Standards of Professional Conduct." CFPB CEO Kevin Keller notes the standards' importance as the "Ethical foundation for CFP certifications."

The centrality of ethics in financial advice is hardly new. The Supreme Court noted in 1963 that the authors of the Advisers Act of 1940 reflected the view that investment advisers must meet the "highest ethical standards."[1] Just six years later in December 1969, thirteen financial services executives met at a Chicago airport to discuss raising "the level of professionalism in retail financial services." The meeting has been called "Financial planning's official birth."[2]

Fast forward to 2004 when the Financial Planning Association (FPA) sued the SEC over a rule that exempted certain BDs from registering as investment advisers. The suit was explicitly over whether the agency overstepped its authority (It did. FPA won the suit in 2007.). Yet, the core issues in the legal cross-fire were ethical in nature.

The FPA's legal brief notes how the Investment Advisers Act of 1940 stated goal is "to protect investors and honest advisers" and "protect the public's confidence in investment advisers." The Board can make a major contribution to this goal by adopting strong fiduciary practices investors need.[3]

These fundamental ethical issues are now finally being addressed by the DOL, SEC and the Board. A review of the research in the following sections suggests a major reason why.

To "Protect the Public's Confidence in Investment Advice"

Does public confidence in investment advice need "protection?" Put more directly, how confident is the public in finance and investment advice? Notable reports of misdeeds of high profile firms and executives have become too commonplace. This is not news. What may be news is how negative views from the 2008 financial crisis have hardened and investor confidence has not recovered much at all.

<u>Investor trust very low in 2013.</u> Research from the conservative leaning American Enterprise Institute is relevant here. A 2013 paper, *Five Years after the Crash: What Americans Think About Wall Street, Banks, Business and Free Enterprise* (AEI) is revealing.[4] It summarizes numerous independent surveys of retail investors. Noting from a Harris survey, 70% of the public agrees that "Most people on Wall Street would be willing to break the law if they believed they could make a lot of money and get away with it." One AEI conclusion: "Americans see Wall Street as a culture apart, one that operates by a foreign code of conduct."

<u>The public thinks all advisors are like Madoff.</u> This assessment is not an outlier. The State Street 2013 *Forgotten Man Investor Survey* found just 15% of respondents reported trusting their advisor.[5] Separately, Robert Fronk, author of the 2013 Harris Reputation Survey, noted how large financial services firms largely received the lowest grades among major corporations and concluded, "One thing the public is screaming loud and clear about financial services: Be more sincere, be more honest, be more transparent."[6] Industry consultant Chip Roame put a sharp point on it when he told finance executives that the public believes, "The whole industry is evil…you are lumped in with Madoff."

That was 2013. Today? There's been some – but not much – improvement.

<u>Investor trust improved by 2016, but not by much</u>. In August, Gallup published results of their annual survey of confidence in different industries and institutions.[7] In net positive ratings, the restaurant, computer industries lead (with +59, and + 53 points). Grocery (+36), farming (+35) and accounting (+33) followed. Twelve more industries followed and scored between +32 and + 6. Then television/ radio, (+2) banking (+2), and advertising followed (0) (Banking's rating improved from -10 in 2013).

In December, Gallup measured public opinion of the "ethics and honesty" of different occupations.[8] Stock brokers (12%) and insurance agents (11%) compete with car sales people (9%) and real estate agents (20%) at the low end. (There is no category for "financial advisors.") For a comparison, accountants rank higher (39%), medical doctors better still (67%) and nurses lead all occupations (85%). In 2016 the reputation of financial services, stock brokers and insurance agents remains at very low levels – seven years after the stock market reached the bottom March 9, 2009.

<u>Comment:</u> This research should concern investment advisers, private wealth managers and financial planners whose services depend on investor trust. "Trust" is at the heart of the capital markets and advice. Currently, advisors remain stuck at historically low levels – apparently well behind the trust investors place in algorithms (robos).

CFA Institute Global Survey of What Investors Want

The CFA Institute released "From Trust to Loyalty: A Global Survey of What Investors Want" in 2016. It is a "study of trust in the investment community and the evolving needs of investors."[9] The survey finds "Trust levels among investors have risen since our first survey in 2013, but it is not all good news." CFA Institute's balanced assessment here is noteworthy. Their research suggests a clear strategy to address the death of investor trust and confidence in financial and investment advice.

Among the survey's findings, eleven of the most important attributes retail investors value are ranked. Each attribute was deemed important by 70% to 80% of investors. (Less important attributes were rated less than 70%.) Five of the 11 attributes (underlined below) "relate to transparency and open communications," CFA points out:

"How important are the following attributes when it comes to working with an investment firm"? **(Top tier attributes, 70% + important)**

<u>Fully discloses fees and other costs</u>	80%
Has reliable security measures to protect my data	79%
<u>Clearly explains all fees and costs before they are charged</u>	79%
Generates returns similar to or better than … (other firms)	73%
Protects my portfolio from losses	73%
Generates returns similar to or better than a target benchmark	73%
<u>Is forthright about disclosing and managing conflicts of interest</u>	72%
<u>Provides investment reports that are easy for me to understand</u>	72%
Charges fees that reflect the value I get from the relationship	71%
Has never had regulatory or compliance violations	71%
<u>Helps me understand why my portfolio is positioned as it is</u>	70%

The CFA notes, "Transparency and consistent communication are more important than ever…By transparency, investors mean forthright communication: regular, clear communications on fees; upfront conversations about conflicts of interest; and easy to understand investment reports."

On the issue of fee transparency, the survey is clear to distinguish investors' willingness to pay fees from investors' desire to have all fees clearly explained. The CFA Survey points out "Providing this context (explaining fees) is critical for investment managers to deepen trust and articulate a value proposition." CFA adds, "Retail investors are prepared to pay fees, even higher fees, if they feel these costs will add value or deepen existing services."

The survey then compares the importance investors place in several attributes with how well they believe firms deliver on these attributes. Here are the findings regarding transparency and clear communications:

	Importance	Delivery Performance
Clearly explains all fees and costs before They are charged.	79%	47%
Fully discloses fees and other costs.	80%	49%
Fees reflect the value I get in the relationship.	71%	43%
Forthright in disclosing, managing conflicts.	72%	44%

Investors prioritize transparency and clear communications far more than they believe firms deliver on these attributes.

Comment: Two observations. First, attributes embodying full and transparent and clear communications about fees and conflicts of interest (issues of ethics) tower over others. Even performance measures (issues of performance) are not as relatively important to investors.

Second, as retail investors believe that firms fall well short in meeting their expectations on issues of ethics, it may explain why just 51% of retail investors would recommend their current firm. This suggests, according to the survey, "An underlying weakness in loyalty."

The bottom line is clear for CFA President & CEO, Paul Smith. He states succinctly, "Investment managers who truly want to differentiate themselves from the competition will need to do much more to demonstrate their value proposition."

Investors Want Greater Transparency and Clarity; They Need True Fiduciary Advice

The CFA Institute research highlights investors' strong desire for greater transparency and clear communication regarding fees and conflicts of interest. These findings are important as they reveal the other side of the investor research data that reveals investors' need for fiduciary practices.

In summarizing the "need" for true fiduciary duties, the Institute for the Fiduciary Standard highlights the underlying factors in a 2016 paper.
http://www.thefiduciaryinstitute.org/wp-content/uploads/2016/02/Fidcuiary-Duties-in-2016-Jan-28.pdf

The key factors show that investors:

- Fail to understand basic financial concepts
- Do not discern the differences between sales brokers and fiduciary advisors
- Do not understand or heed conflicts disclosures, even those that are brief and succinct
- Do not distinguish good advice from bad product recommendations.

Comment: Investors' stated desire for greater transparency and clarity around fees and conflicts mirrors their unquestioned need for competent and ethical fiduciary advice.

CFP Board Standards, Code of Ethics and Rules of Conduct

Investor distrust and dissatisfaction stand out long after the financial crisis. CFA Institute research provides a clear picture of what investors want and clear guidance on what the industry can do to restore investor trust in finance.

Therefore, a review of the CFP Board Code of Ethics and Rules of Conduct, the FAQ, Conflicts of Interest Between CFP Professionals and Clients and the Importance of Accurate Compensation disclosure is warranted.[10]

This four-part review discusses two distinct but related, strategies. First, strengthening core requirements. Second, expressing these requirements with clarity and in plain language.

1. Overview: The Board has two standards that seek to differentiate CFPs. One standard applies to all CFPs. Another standard applies to CFPs who do financial planning and is what the Board says is "fiduciary." Much discussion seeks to explain when the financial planning standard applies. However, much ambiguity remains.

First standard. The first set of standards apply to all CFPs. The second set of standards applies to CFPs who do financial planning. All CFPs are held to standard practices that CFPBOS states "[place] the interest of the client ahead of their own at all times," which means CFPs "are held to the highest of standards."

Second standard. The second set of standards applies to CFPs who are deemed by CFPBOS to be engaged in financial planning and thus meet CFPBOS' definition of fiduciary. These CFPs, as CFPBOS explains, are engaged in "material elements of financial planning." (Here, these CFPs are referred to as "CFP fiduciaries".) This set of standards requires CFP fiduciaries to "Act in utmost good faith in a manner he or she reasonably believes to be in the best interest of the client." The standard practices required of all CFPs and CFP fiduciaries are set in the "Rules of Conduct."

The two standards differences are modest. Descriptions of the two standards' actual duties suggest modest differences. Rule 1.2 lists certain items (goals, basic data to determine "suitability," information about compensation, etc.) required of CFP fiduciaries: to "provide written information or discuss with the prospective client or client." Rule 1.2 can, unfortunately, be fulfilled in a casual conversation that has no record. None of these disclosures are required to be in writing.

Rule 2.2 lists disclosures that must be made in writing. These disclosures include a "description of the compensation arrangements" that is "understandable" and "information related to costs and compensation" as well as "other sources of compensation."

Also, "a general summary of likely conflicts of interest" and "any information about the firm that could reasonably be expected to materially affect the relationship" is required. The agreement between the CFP and investor must be in writing. Apart from these disclosures and a written agreement, CFPs' and CFP fiduciaries' required duties are the same.

<u>Comment:</u> The labels and importance that separate all CFPs from CFP fiduciaries are hard to distinguish. Their purpose is unclear. This comes in contrast to descriptions delineating a brokerage product recommendation ("suitable") from fiduciary advice (the client's "best interest").

<u>An initial question:</u> How do all CFPs who are directed to meet "The highest of standards" meet a lesser standard than CFP fiduciaries who act "in the best interest of the client?"

2. <u>By CFPBOS' own reckoning, distinguishing financial planning from nonfinancial planning can be difficult and confusing.</u>

In the CFPBOS FAQ document, there is much attention regarding how financial planning services differ from non-financial planning services. A key factor involves identifying "material elements" of financial planning. Yet, despite this substantial attention, there is no clarity, as noted in these FAQs:

FAQ 1-8. "The primary factors on which CFP Board relies for determining whether "material elements" (of financial planning) exist are: … *the client's understanding and intent in engaging the CFP® professional* (emphasis added); the degree to which multiple financial planning subject areas are involved; the comprehensiveness of data gathering; the breadth and depth of recommendations.

FAQ 1-9. "CFP® professionals should consider whether *the client's understanding and intent in engaging the CFP® professional would give the client reason to believe the services provided are financial planning* (emphasis added) …. For example, answering a question of a specific nature – such as "How much money do I need to set aside each month to send my two-year-old to Notre Dame in sixteen years?" – would probably not be considered financial planning. However, answering a broader question that involves multiple aspects of a client's situation – such as "How much do I need to save so I'll have a secure retirement?" … would likely rise to the level of financial planning.

FAQ 1-10. "The question of whether a client relationship involves financial planning is one that CFP Board determines on a case-by case basis. CFP Board urges CFP® professionals who are unsure if a particular service or client relationship rises to the level of financial planning to embrace CFP Board's fiduciary standard and provide services in ways they believe are in the best interest of the client.

Yet, determining when "advice" meets the Board fiduciary definition is difficult – even for an industry expert. Ron Rhoades, an attorney and compliance officer and CFPs, explains in a November 2014 column that he has listened "several times" to CFPB webinars on when "financial planning" exists. Rhoades concludes: "I come away each time befuddled. I'm trained as a lawyer, a compliance officer, and I am an academic. Yet, I cannot understand the fine lines which the CFP Board attempts to draw … nor can I discern how they are founded in established principles of law."

<u>Ambiguity, uncertainty and subjectivity:</u> The ambiguity and uncertainty and apparent subjectivity designed into CFPBOS rules defining "financial planning" is perplexing. That an association of practitioners of an occupation cannot clearly say what its practitioners do raises questions and engenders confusion. This ambiguity stands in contrast to professions that distinguish and communicate professional standards.

3. <u>The Boards' discussion of conflicts of interest is a sharp departure from prior discussions of established principles on conflicts. The Board does not discuss conflicts as inherently harmful, as do leading practitioners, regulators and jurists through history. Instead, the Board advocates a policy of "neutrality," which implicitly brands conflicts as acceptable.</u>

The Supreme Court in Capital Gains Research versus SEC (noted above) underscores how the Advisers Act of 1940 was crafted to differentiate advisers from conflicted sales agents.

This heritage remains at the SEC today. The instructions for the SEC's Form ADV note, "As a fiduciary you must also seek to avoid conflicts of interest with your customers, and, at a minimum, make full disclosure of all material conflicts of interest between you and your clients that could affect the advisory relationship. The obligation requires that you provide the client with sufficiently specific facts so the client is able to understand the conflicts of interest you have and the business practices in which you engage and can give informed consent to such conflicts or practices or reject them."

The rationale for requiring "informed consent" for material conflicts is well known. As Carlo V. di Florio, then Director of the SEC Office of Compliance and Inspections said in 2012, "Conflicts of interest can be thought of as viruses that threaten the organization's well-being…. And if not eliminated or neutralized, even the simplest virus is a mortal threat to the body."

<u>Yet, the Board is implicitly neutral on conflicts; jurists, academics and ordinary investors are not</u>.

The sentiments embedded in the di Florio's statement parallels views of noted jurists and academics and leading advisors throughout history. It is not, however, reflected in CFPBOS sentiments and requirements. In the CFPBOS paper *Conflicts of Interest between CFP Professionals and Clients,* the topic is introduced by stating, "In their day-to-day business, it is not uncommon for CFP professionals to face decisions about whether a particular action or circumstance constitutes a conflict of interest."

<u>The Board does not urge CFPs to avoid conflicts</u>. Instead, two questions are posed. First, "What constitutes a conflict of interest under CFP Boards definition of conflicts of interest?" Second, "How and when should a CFP professional discloses a conflict of interest to a client or prospective client?" The Board suggests that the CFP "may want to consider obtaining written consent from the client" and then goes further and states, the CFP should consider that "some conflicts of interest" may not be sufficiently addressed by a disclosure and the client "is not protected" as the CFP "will not be able to offer objective advice." In this case, the CFP "should end the client relationship."

This comment is good, but remains insufficient. It does not provide any context or explain the "why." It does not capture the depth and breadth of potential harms that conflicts inherently entail.

<u>The Board is neutral on the conflicts associated with proprietary products.</u> In the discussion (FAQ 5-1, 5-2) on principal trades and proprietary products, it states it is: "Neutral as to the type of investment or planning strategies a CFP® professional may use to achieve a client's objectives and goals, as long as those strategies comply with CFP Board's *Standards* and with any applicable federal or state regulatory requirements related to the activities they undertake."

<u>Comment:</u> The Board implicitly supports conflicts of interest. "Support" of conflicts is implicit by what the Board does not state or urge or require. There is no discussion that states or suggests conflicts' harms are comparable to "viruses" that are a "mortal threat" and should be "eliminated." There is no discussion about why conflicts can greatly undermine objective advice. There's no discussion urging that CFPs avoid conflicts. There is no discussion of why many CFPs already avoid conflicts. There is no discussion – even a mention – of the concrete steps CFPs must take to mitigate conflicts. Lastly, there is no discussion of why attaining truly informed client consent is so important – and why it still may be inadequate to serve clients best interests.

Instead, the discussion on the role of conflicts of interest represents a sharp departure from established assumptions and legal principles. Instead, conflicts of interest are deemed ubiquitous and unavoidable. Instead, conflicts are effectively branded as acceptable and okay. This is a very material shortcoming that represents rejecting a core premise of the Advisers Act.

4. <u>CFPBOS compensation disclosure requirements reflect a minimum industry standard. They only require disclosure of "compensation methods" and "information related to costs and compensation" by the CFP and his / her firm. They do not require, as a matter of course, disclosure of actual fees and investment costs in % or in $ in writing – or a good faith estimate of these total costs.</u>

Investors view fee transparency as important. In addition to CFA Institute research discussed above, research from State Street Global Advisors and Carson Wealth Management highlighted in an Institute Fiduciary September webinar in 2016 address this topic. http://www.thefiduciaryinstitute.org /2016/10/05/myths-and-realities-of-investor-distrust-causes-and-cures/. A key message from this research: opaque fees undermine client trust. An anecdote underscores this point. Former Merrill Lynch chief, John Thiel, told Investment News about a Merrill client who refused to consolidate his accounts with Merrill because he did not know what he paid. "Put it (fees) out front and then I'll trust you and start to consolidate with you."[11]

CFPBOS requires that CFPs "provide an accurate and understandable description of the compensation arrangements…[and] this disclosure requirement allows the client to make an informed decision." Further, the CFP, if asked by the client, must provide a client "specific dollar amounts or percentages of compensation." If the cost is not yet known, it must be made available "as it is determined."

The inadequacy of this standard industry policy was vividly captured by Wall Street Journal reporter Andrea Fuller in a May 8, 2017 article, *What's My Investing Fee? A Frustrating Quest*. Fuller describes in detail the numerous calls and wrong answers and incomplete answers she was given. She never did get a complete answer. In closing Fuller notes the last email from her adviser: "'I am trying to find a client-approved document that provides you with the internal expenses on the portfolio you are invested in,' my adviser wrote. I am still waiting."

<u>Comment:</u> Much of the industry still lags far behind what investors want in fee and cost transparency. Clearly a "description" of "compensation arrangements" alone is inadequate. In most other similar professional service contexts it would be considered not just inadequate, but a basis for not hiring a professional. The local attorney or medical professional could not possibly engage a client for a similar engagement on this basis.

Conclusions and Recommendations

An uncomfortable conversation is *uncomfortable*. This commentary paper comes after more than two years of consideration and discussion within and outside the Institute for the Fiduciary Standard. And it still isn't easy to do.

Since its inception, the CFP Board has been a leader in investor-centered advice. In recent years, however, the rapidly growing movement within the financial services industry toward a full-time and rigorous fiduciary standard has outpaced the Board.

Those who support the Board should act now to speak out to its leaders. They should underscore that a client-centered, single, rigorous standard embodying the "highest ethical standards" is the only choice. The alternative is no alternative. It puts financial planning on the wrong side of a true or "bona fide" or "rigorous" fiduciary standard.

The Board has a unique opportunity to strengthen the CFP mark. The regulatory and market environments provide a strong supporting wind. Getting to a fiduciary standard consistent with historic standards and concrete investor demands is not just possible, it is inevitable. In time, market forces and regulatory requirements will make it all but certain. The Board can ensure the CFP mark remains *the* financial planning mark by taking several important steps to incorporate the following recommendations:

<u>Require that all CFP registrants do what most investors believe they do – meet a single rigorous fiduciary standard that is plainly written.</u> ACTION STEP: Eliminate CFPBOS 'two standard' standard whereby CFP registrants have different conduct standards depending on whether they are offering financial planning advice or not. Communicate this standard in plainly written language.

<u>Require transparency and clarity in fee disclosure.</u> ACTION STEP: Stop allowing a 'general description of compensation arrangements' and 'information related to costs upon request.' Instead, require clear disclosure of what the client will pay in underlying investment costs in $ or AUM % and what the CFP registrant and the firm will be paid as a result of the advisor's advice or product recommendation, along with a good faith estimate of these fees and costs.

<u>Adopt a rigorous standard on conflicts of interest that discusses the well-recognized risks and potential harms to clients that conflicts create. Clearly urge avoiding or eliminating them.</u> ACTION STEP: Insert a robust discussion on why CFP registrants should avoid conflicts that reflects history, law and plain commonsense. Provide guidance on how conflicts that are not avoided must be managed. Outline the burden advisors must overcome. Include guidance on disclosure and informed consent. Replace allowing a 'general summary of likely conflicts of interest' with the SEC policy requiring written disclosure with 'sufficiently specific facts so the client is able to understand the conflicts of interest…and can give informed consent.' Honor the principle that, though no one can be free of all conflicts, everyone can avoid most conflicts. Conflicts cannot be taken lightly or accepted as a norm.

Notes

[1] https://www.sec.gov/divisions/investment/capitalgains1963.pdf

[2] On December 12, 1969, thirteen men met at Chicago O'Hare Airport. "In *The History of Financial Planning*," Denby Brandon and Oliver Welch write, "These men came out of curiosity and a sense of shared mission: to raise the level of professionalism in retail financial services and to make "financial consulting" rather than salesmanship the driving force of their industry" (Pg. 3).

[3] The March 30, 2007 Court of Appeals decision: https://www.cadc.uscourts.gov/internet/opinions.nsf/30871035C2F3AD8F85257440004537F8/$file/04-1242a.pdf

[4] https://www.aei.org/publication/five-years-after-the-crash-what-americans-think-about-wall-street-banks-business-and-free-enterprise/

[5] Investment News, July 31, 2013

[6] HarrisInteractive.com, NBC Nightly News, February 27, 2012

[7] http://www.gallup.com/poll/12748/business-industry-sector-ratings.aspx

[8] http://www.gallup.com/poll/200057/americans-rate-healthcare-providers-high-honesty-ethics.aspx

[9] https://www.cfainstitute.org/learning/future/Pages/investor_trust_study.aspx

[10] As discussed in these CFPBOS documents: *Code of Ethics*, *Rules of Conduct*, *FAQ*, *Conflicts of Interest Between CFP Professionals and Clients and Importance of Accurate Compensation Disclosure.* See at http://www.cfp.net/

[11] April 10, 2014