Former CFP Board Chair Strikes Back

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by Knut A. Rostad

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The firestorm started March 3. An *Investment News* story reported that the CFP Board erased compensation methods from its website.

A week later the decision looks even worse.

Industry outlets have reported the news widely. Criticism of the CFP Board (CFPB) has been sharp. On Friday, the *Wall Street Journal's* Jason Zweig wrote a piece, "It Just Got Tougher to Know How Your Adviser Gets Paid." The CFPB leaped to defend its decision. Board CEO Kevin Keller has repeatedly insisted that what drove the decision was, "about fiduciary, not about fees."

The CFPB choice to retreat to more opacity in this decision was tough. Absent having the law or facts or commonsense, it's tougher still.

Susan John, chair of the CFP Board in 2019, sent a letter to CFPs to explain her support.

Over the weekend I spoke with Ms. John, now past-CFPB chair. She was not speaking for the Board, but "for herself, alone." Ms. John is a unique figure in this drama. A life-long (34 years) fee-only planner, she also chaired NAPFA in 2012.

We talked for an hour on the issues of fees and commissions, fee-only status, the new CFP standards and the Board's erasing the compensation tool. Ms. John was frank, forthcoming and clear – no holds barred. She did not muddle. She unabashedly supports the decision.

I asked Ms. John *why.* Here is what I learned. Ms. John says consumers should look to fiduciary and not to fees. She says they do not put seeking out fee-only planners as their priority. Also, Ms. John says it's difficult to verify fee-only planners. So, why do it?

Ms. John did not say compensation method is unimportant to consumers, and noted that the CFPB is "compensation neutral." The CFPB says just 7% of searches use compensation method as the preliminary search criterion. Also, CFPs are required to provide "detailed compensation information, which explains how clients play for products and services." Actually, that data does not necessarily mean only 7% of consumers care about fee-only. It could mean other variables steered the initial search while the compensation method was also used. After all, by a margin of 51% to 22%, the SEC's own research say retail investors think fee-only compensation is important.

Of course "compensation neutral" is the rallying cry of CFPB. Unfortunately, it's been wrongly interpreted to mean all conflicts are the same. It should be interpreted to mean all conflicts should be treated fairly and objectively.

Ms. John told the *WSJ* that a planner's compensation is, "very difficult to verify." Actually, reasonably verifying fee-only status can be completed in 30 minutes – or less, according to NAPFA. This entails a review of the CFPs website and its ADV Part 2, item 5 (fees and compensation) and item 10 (other financial industry activities and affiliations). This vetting uses a firm's statement to the SEC. There is a basis to rely on it.

Ms. John also contends that consumer focus should be *fiduciary* – and not fees. She's correct in principle. In practice, with the CFP Board's standards, it is another story. Its' not just that consumers can't recognize fiduciary conduct when they see it in the market place. Most CFPs can't either and they are not to blame. While all CFPs have been obliged to meet a fiduciary standard as of October 1, 2019, only relatively few are likely knowledgeable and able to do so today, as the June 30 enforcement date approaches.

Case in point: The Board requires CFPs to address material conflicts by getting informed consent of the customer and then managing the conflict. The CFPB requires a CFP adopt his or her own policies and procedures, separate from firm policies and procedures. To date, sufficient guidance on what this means and what the Board expects CFPs to do to manage conflicts has not been provided, much less disseminated and discussed. This is unfair to CFPs. It leaves them in the lurch.

In a subsequent email exchange, Ms. John noted that the CFP Board continues to provide guidance about specific situations that advisors could find themselves in and will continue to do so. She wrote, “I don’t see other “concerned” organizations jumping in to help advisors have a better understanding of what ‘fiduciary’ truly means. That might really move the ball forward.”

Ms. John was engaging. Our conversation informative. We spoke of how the Institute may be helpful to CFPB and has volunteered to do so. We talked about our disagreements. Ms. John, for example, says removing the compensation tool is unimportant – it’s a “nit.” Nope, I say, it’s huge. It helps investors. It reflects the importance fees play in fiduciary. We agreed to disagree – and to continue talking.

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