V. Raymond Ferrara, CFP®
611 Druid Rd E, Suite 105
Clearwater, FL 33756

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To: CFP Board

RE: Comments regarding (1) CFP Board Proposed Revised Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement and (2) Proposed Revised Sanction Guidelines

First, let me thank CFP Board for the opportunity to respond to the proposal put forth. Even more so, I want to personally thank all of the volunteers and staff that put in many hours, days and weeks working on these important matters. As a volunteer myself, I fully understand the personal sacrifices made.

As you reflect on this submission, please keep in mind that for the past 35 years I have acted as the Chief Compliance Officer for my firm where we have an authentic culture of compliance.

CFP Board Proposed Revised Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement

My comments here are relatively short as in general I agree with the document. I suggest that in C. Conduct that Requires an Applicant to File a Petition for Order Finding Ethical Fitness for CFP® Certification, Section 1. Professional Discipline that, subsection e be changed from $5,000 to $10,000. While I understand that this level is used by others, it is very antiquated and should be raised. We can be a leader instead of a follower. Under Section 10 is it fair to withhold approval if something is "pending"?

In the Sanction Determination area, I would clearly separate Dismiss and Dismiss with Caution. They should not be lumped together.

Proposed Revised Sanction Guidelines

General Factors:

3. Character Evidence – Why should a CFP® professional's personal reputation be ignored? What does Rehabilitative Conduct General Factor mean? It is not defined CFP Board anywhere that I can find.

5. Conceal or Attempt to Conceal – What if the firm for which the CFP® works, which is not controlled by the CFP® professional, will not cooperate? It would help to make this clearer.

6. Cooperation with CFP Board – Subsection a) Providing documents and information that Respondent is not required to provide and is material to CFP Board's investigation – While I totally get why CFP Board would like to have this information, is it fair for the Respondent to provide evidence against one's self that is not requested?

Under the current 37 Sanction Guidelines there are 7 (18.9%) for Private Censure, 19 (51%) for Public Censure, 8 (21.6%) for Suspension and 3 (8.1%) for Revocation. Under the Proposed Sanction Guidelines there are a total of 51 with 2 (3.9%) for Private Censure, 13 (25.5%) for Public Censure, 25 (43.8%) for Suspension, and 11 (21.6%) for Revocation. In essence, the Disciplinary Ethics Commission (DEC) will deal with life altering and reputational harm in about 69% of all cases. In reality, however, since breach of fiduciary duty will likely be mentioned in all cases, it could easily approach 100%.

Where is the opportunity for a plea deal when you start so high? I would just as soon take my chances with the DEC rather than agree to a suspension or revocation up front. This will lead to more cases being heard in my opinion which in turn we lead to more hard and soft costs for CFP Board and the respondent.

Breach of Fiduciary Duty (Standard A.1) – The sanction of "revocation" does not make sense. Every cause of action that I have seen over 52 years in the financial business begins with "breach of fiduciary duty". Does this mean when one settles with a client or when one "neither admits nor denies" the accusation in an order with a regulator that it will automatically cause revocation? You will severely shrink the number of CFP® professionals which will harm the public. Maybe you start with suspension, but not revocation. However, public sanction is a better place to start. I do not feel CFP Board fully understands the significance and power of a public sanction on a CFP® professional.

Lack of Integrity – same as above

Lack of Diligence – same as above

Failure to Disclose or Manage Conflicts of Interest – same as above

Failure to Exercise Sound and/or Objective Professional Judgement -this feels like a "piling on" conduct as it really is not fulfilling one's obligation to function as a fiduciary and a lack of diligence.

Violations of Law, Rule or Regulation Governing Professional Services – I like the way this is phrased as the proposed sanction guideline. Maybe use this logic in more situations.

Unauthorized Outside Business Activity – when done intentionally, I have no issue with Public Censure, but often it is something simply overlooked. Generally, the regulator is going to slap one on the wrist, not make a public outcry about it.

Violation of Duty when Recommending, Engaging, and Working with Additional Persons – this should be a public censure.

Violation of Financial Planning Practice Standards – public sanction, not suspension – again this feels like it would occur in many situations that do not rise to the level of suspension.

Bankruptcy – One – this feels too harsh. Yes, there are mitigating circumstances listed, but just feel it is too severe for the first time.

Inaccurate Submission of Request for Continuing Education Credit – should be public at most. Where is the harm to the client?

Misuse of CFP Board Marks – public censure because I forgot a TM or registered mark? Please be more reasonable and change this.

On a personal note, I am speaking not only as a CFP® professional, but as the Chair of the Commission on Standards. I remember well the moment in time that the Commission made the decision to require a CFP® professional to act as a fiduciary when providing financial advice which was broadly defined. I even stopped the meeting for a moment of reflection on what we just proposed unanimously.

In my opinion, not one member of the Commission intended for the fiduciary standard to have such draconian consequences except in the most abusive situations. Combine the proposed sanction for breach of fiduciary duty with Procedural Rule 7.2 which states that settlement with a regulator is not a presumption, but a conclusive proof of guilt, it puts any respondent that comes before the DEC at a point of revocation. I understand that CFP Board does not want to "re-try" the events in question, but please keep in mind that often it is better from a business perspective to settle than to fight even when one does not feel they did anything wrong. CFP Board says one is "guilty", even though the respondent says they, "neither admits, nor denies" wrong doing.

From the outside looking in, CFP Board counsel will use this in EVERY situation around the fiduciary standard to win a case. That is their job and from my experience of being a member of the DEC, they do a good job as a prosecutor.

In short, the sanction guidelines are too strict in many situations. They are definitely harsher than what a regulator would hand out in most situations. Maybe that is the intent, but if it is, I urge you to reconsider. It is easier for the DEC to aggravate up one or two sanctions, then it is for the DEC to mitigate down one or two sanctions. I can hear it now, "But the sanction guidelines say suspension/revocation, how can you step back down to a lower sanction?" Revocation and suspension should be for the most egregious situations, not the standard for almost two-thirds of the sanctions.

Once again, thank you for the hard work and the opportunity to comment.

Respectfully submitted,

V. Raymond Ferrara, CFP®