



January 23, 2023

Via CFP Board website @ https://www.cfp.net/ethics/enforcement/Comment-on-2022-Proposed-Revisions-to-Procedural-Rules?_zs=rldxe1&_zl=LiAh8

Certified Financial Planner Board of Standards, Inc.
1425 K Street, NW, Suite 800
Washington DC 20005

**Re: SIFMA comment re: CFP Board’s
Proposed Revisions to Procedural Rules**

Dear Sir / Madam:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the CFP Board’s Proposed Revisions to its Procedural Rules, which outline the process for investigating alleged misconduct by CFP certificants (the “Proposal”).² As you know, SIFMA member firms employ tens of thousands of CFP certificants, representing a significant percentage of the total number of certificants, which current stands at nearly 94,000.³ These certificants provide a wide variety of products and services on behalf of their firms, and are subject to extensive regulatory oversight by the SEC, FINRA, and state securities and insurance regulators, among others. They are also subject to robust supervision by the firms with which they are associated.

The Proposal would revise the Procedural Rules to allow Enforcement Counsel to direct investigative requests *not only* to CFP certificants, *but also* to third parties, including the firms with which CFP certificants are associated. Such requests may include: (i) requests to produce

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² CFP Board’s Proposed Procedural Rules (Nov. 14, 2022), https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/enforcement/2022/Redline-of-Proposed-Revised-Procedural-Rules-2022-11.pdf?_zs=rldxe1&_zl=KiAh8.

³ See <https://www.cfp.net/knowledge/reports-and-statistics/professional-demographics#:~:text=The%20CFP%C2%AE%20professional%20demographic%20data%20below%20is%20drawn,certification%20renewal%20cycle.%20Number%20of%20CFP%C2%AE%20professionals%2089%2C753>.



documents;⁴ (ii) requests to produce information;⁵ (iii) requests for admissions;⁶ (iv) requests for oral examination under oath;⁷ and (v) requests for witness interviews.⁸

CFP Board should avoid making requests to firms for documents and information unless and until the CFP Board and the firm reach a mutual agreement on information sharing.

In connection with investigating alleged misconduct by a CFP certificant, and given that the CFP Board has no legal, business or other formal relationship with the firm with which the certificant is associated, the CFP Board should avoid making requests to the firm for documents and information, particularly documents and information that are the property of the firm and/or confidential in nature, unless and until such time as the CFP Board and the firm reach a mutual understanding on information sharing. Until such time, the CFP Board should limit its investigative scope and its requests for documents and information to documents and information that are the property of the individual certificant. If CFP Board believes it can only complete an investigation by obtaining documents and information that are the property of the firm, then the CFP Board should work cooperatively with the firm to reach a mutual agreement on what the firm may produce to the CFP Board, consistent with the firm's regulatory obligations, client privacy considerations, and internal policies and procedures.

Reciprocally, if a firm requests information from the CFP Board regarding one of its CFP certificants under investigation, then the CFP Board should work cooperatively with the firm to produce mutually agreed upon information including without limitation:

- notifying the firm when the CFP Board: commences an investigation or institutes an enforcement action against a certificant; issues a complaint or makes findings against a certificant; and/or schedules a hearing with and/or issues a consent order to a certificant; and notifying the firm of the final outcome of such investigation and/or enforcement action;
- notifying the firm when the CFP Board makes a document or information request to a certificant; a certificant self-reports to the CFP Board documents or information that are not, or have not yet been, reported on Form U4, Form U5, and/or Form ADV; or

⁴ Proposal at Section 1.2.b.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at Section 1.2.d.4.

⁸ *Id.* at Section 1.2.d.5.



an investor files a complaint about a certificant with CFP Board that is not, or has not yet been, reported on Form U4, Form U5, and/or Form ADV; and

- identifying with specificity for the firm all documents or information requested by, or produced or reported to, the CFP Board.

Accordingly, SIFMA respectfully requests that the CFP Board explicitly incorporate into its revisions to the Procedural Rules the following:

- (i) a requirement that, prior to requesting documents and information that are the property of a firm, the CFP Board shall work cooperatively with the firm to reach a mutual agreement on what the firm may produce to the CFP Board, consistent with the firm's regulatory obligations, client privacy considerations, and internal policies and procedures;
- (ii) an exception stating that CFP certificants are not required to produce documents or information that are the property of his or her firm, or that contain the firm's confidential, privileged or proprietary information;
- (iii) a requirement that the CFP Board work cooperatively to produce to a firm mutually agreed upon information, as described above, regarding a CFP certificant under investigation; and
- (iv) a requirement that certificants use their official firm-provided email address (as opposed to a personal email address) to communicate with the CFP Board, and that the CFP Board notify the firm in the event that a certificant uses a non-firm-provided email address to communicate with the CFP Board.

The CFP Board should not make document and information requests to CFP certificants that would require them to violate their firm's internal policies and procedures.

All firms maintain a range of internal policies and procedures governing the retention, handling, and under certain circumstances, production to third parties (such as the CFP Board) of documents and information of the firm. Some of these policies are required in order to comply with federal and state regulations, including securities and privacy regulations. Other policies are designed to address litigation holds, and pending regulatory and civil actions, and the circumstances under which documents and information relating to those matters may be disclosed.



The CFP Board should avoid making document and information requests to CFP certificants that would require the certificant to violate his or her firm's policies and procedures regarding third-party disclosures. Doing so would put the certificant in the untenable position to either follow his or her firm's policies and procedures and risk disciplinary action by CFP Board, or disclose such documents and information to the CFP Board and risk disciplinary action by his or her firm.

Based on the foregoing, SIFMA respectfully requests that the CFP Board incorporate into its revisions to the Procedural Rules an explicit exception stating that the CFP Board's document and information requests do not supersede the certificant's obligations under his or her firm's policies and procedures and thus, CFP certificants are not required to produce documents or information that are prohibited from disclosure to third parties by the firm's policies or procedures.

* * *

If you have any questions regarding the foregoing, please contact the undersigned at 202.962.7300.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Carroll". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Kevin M. Carroll
Managing Director and Associate General Counsel

cc: Robert W. Cook, President and CEO, FINRA
Robert L.D. Colby, Chief Legal Officer, FINRA