



# **White Paper: CFP Board's Regulatory Regime for CFP Certificants**

Overview of the Risks Imposed by CFP Board on Financial Services Firms That Employ or Associate with CFP Certificants

Recommendations to CFP Board and Securities Regulators to Mitigate or Eliminate Risks for These Firms

**October 2024**

# Contents

Executive Summary .....	3
Introduction.....	3
Purpose .....	3
Recommendations .....	4
I. CFB Board Increasingly Functions as a De Facto Private Regulator for CFP Certificants. ....	6
II. CFB Board Regulatory Regime Imposes Significant Risks on Highly Regulated, Dually-Registered Firms That Employ or Associate with CFP Certificants. ....	8
1. CFP Certificant Reporting of Reportable Events to CFP Board .....	9
2. CFP Board Document and Information Requests to CFP Certificants .....	10
3. CFP Certificant Productions to CFP Board To Reduce Sanctions .....	11
III. CFB Board Should Act to Alleviate the Risks That Its Regulatory Activities Impose on CFP Certificants' Firms. ....	12
1. Recommendations re: Treatment of CFP Board Document and Information Requests, and Firm Materials CFP Certificant Reporting of Reportable Events to CFP Board.....	12
2. Recommendations re: Additional Notices to the CFP Certificant's Firm .....	13
3. Recommendations re: Publication of Public Sanctions .....	14
IV. The SEC and FINRA Should Likewise Provide Relief to CFP Certificants' Firms. ....	15
Conclusion.....	16

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 for 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>.

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## Executive Summary

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### Introduction

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is comprised of hundreds of member firms that employ tens of thousands of individuals who hold the Certified Financial Planner (“CFP”) private certification (“CFP Certificants”) issued by CFP Board<sup>2</sup>. SIFMA member firms employ a significant percentage of the total number of CFP Certificants, which currently stands at over 100,000<sup>3</sup>. CFP Certificants provide a wide variety of products and services on behalf of their firms, and many serve as financial advisors to their firm’s clients in their capacity as a registered representative of a broker-dealer (“BD”) and/or as a representative of a registered investment adviser (“RIA”). CFP Certificants, and their firms, are subject to extensive regulatory oversight by the SEC<sup>4</sup>, FINRA<sup>5</sup>, and state securities regulators, among others, as well as the associated, robust standards of conduct imposed by those regulators.

### Purpose

The purpose of this White Paper is to:

- document the growing concern of financial services firms<sup>6</sup> with CFP Board’s self-created and expanding role as a de facto, private regulator of CFP Certificants by establishing separate rules, guidance and standards, conducting

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<sup>1</sup> 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 one 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).

<sup>2</sup> See <https://www.cfp.net>.

<sup>3</sup> See <https://www.cfp.net/knowledge/reports-and-statistics/professional-demographics>

<sup>4</sup> See <https://www.sec.gov>

<sup>5</sup> See <https://www.finra.org>

<sup>6</sup> This White Paper focuses exclusively on firms that employ or associate with CFP Certificants and the risks imposed on those firms by CFP Board’s regulatory regime. The related risks and burdens that may be imposed on individual CFP Certificants by virtue of CFP Board’s regulatory regime are beyond the scope of this Paper.

investigations, bringing enforcement actions, imposing sanctions, and publishing related information about CFP Certificants online<sup>7</sup>;

- identify the various ways that CFP Board's regulatory activities: (i) duplicate, conflict with, and/or impose obligations in addition to, existing SEC and FINRA rules, guidance and standards governing the advisory activities of BDs and RIAs; and (ii) create significant regulatory, compliance, supervisory, reputational, and third-party risks for the firms that employ or associate with CFP Certificants; and
- recommend specific courses of action that CFP Board could, and should, take to ameliorate and/or eliminate these risks for financial services firms, and also encourage the SEC and FINRA to address the risks associated with CFP Board's regulatory activities, and provide appropriate regulatory relief and/or exercise regulatory forbearance in appropriate circumstances.

### Recommendations

As a threshold matter, we recommend that CFP Board eliminate its rules and standards that duplicate, conflict with, and/or impose obligations in addition to, existing SEC and/or FINRA rules and standards. Our specific, additional recommendations to CFP Board include the following:

1. Implement safeguards around CFP Board document and information requests, and the production of Firm Materials:\*

*\* The term "Firm Materials" means documents and information that are: (i) the property of the CFP Certificant's firm, and not the property of the individual CFP Certificant; (ii) confidential, privileged and/or proprietary documents of the CFP*

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<sup>7</sup> Since 2007, SIFMA has regularly submitted written comments to CFP Board to highlight its regulatory creep. *See* Comment re: Code of Ethics (Apr. 25, 2007), <https://www.sifma.org/resources/submissions/sifma-submits-comments-to-the-cfp-board-of-standards-on-code-of-ethics/>; Comment re: Standards of Conduct (Aug. 21, 2017), <https://www.sifma.org/resources/submissions/proposed-revisions-to-cfp-boards-standards-of-professional-conduct/>; Comment re: Standards of Conduct (Jan. 31, 2018), <https://www.sifma.org/resources/submissions/sifma-comments-on-cfp-boards-revised-proposed-standards-of-conduct/>; Comment re: Sanctions Guidelines (Sep. 21, 2021), <https://www.sifma.org/resources/submissions/cfp-board-proposed-revisions-to-sanctions-guidelines/>; Comment re: Procedural Rules (Jan. 23, 2023), <https://www.sifma.org/resources/submissions/cfp-boards-proposed-revisions-to-procedural-rules/>; Comment re: Sanctions Guidelines (Dec. 1, 2023), <https://www.sifma.org/resources/submissions/proposed-revisions-to-cfp-board-sanctions-guidelines/>.

*Certificant's firm, or documents that contain client personal information, or (iii) prohibited from disclosure to third parties by the CFP Certificant's firm's policies or procedures (collectively, "Firm Materials").*

- a. Give timely notice and copies of any CFP Board document and information requests to the CFP Certificant's firm.
  - b. Do not request, collect, or use Firm Materials unless the CFP Certificant's firm provides prior written consent.
  - c. Give instructions to CFP Certificants re: Firm Materials.
  - d. Prohibit the use of Firm Materials produced by CFP Certificants.
  - e. Subject CFP Certificants to sanctions for producing Firm Materials to CFP Board without the firm's prior written consent.
  - f. Strike the CFP Board standards provision to not discipline CFP Certificants for violating their firms' policies.
2. Provide additional notices to the CFP Certificant's firm re: CFP Board investigative and enforcement milestones, and other currently unreported events.
  3. In connection with publishing a public sanction against a CFP Certificant, publicly disclose that the sanction relates only to the individual CFP Certificant and not to his or her firm, and that the sanction does not constitute a violation of federal, state, or self-regulatory organization law.
  4. Give timely notice and copies of any Regulatory Materials\*\* produced to CFP Board to the CFP Certificant's firm.

*\*\* The term "Regulatory Materials" means documents and information that are produced by a CFP Certificant to CFP Board, without the knowledge or involvement of the CFP Certificant's firm or a securities regulator, and which have regulatory significance, or potential regulatory significance, including without limitation information that is reportable on CRD/IARD (collectively, "Regulatory Materials").*

## I. CFB Board Increasingly Functions as a De Facto Private Regulator for CFP Certificants.

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CFP Board is a private credentialing organization that sets requirements for individuals to qualify to receive CFP Board's CFP certification. Prior to 2007, CFP Board operated under, and CFP Certificants were subject to, a standard of conduct that required a CFP Certificant to act as a fiduciary only when holding custody of client assets when providing financial planning. In 2007, CFP Board amended its conduct standards to further extend a CFP Certificant's fiduciary duty to all times when providing financial planning to a client. In 2019, CFP Board went still further, amending its conduct standard to extend a CFP Certificant's fiduciary duty to all times when providing financial advice – regardless of whether the CFP Certificant is providing financial planning – and regardless of whether the CFP Certificant is acting in his or her capacity as a broker or an adviser<sup>8</sup>.

In 2021, CFP Board revised its sanctions guidelines to increase the sanction for failure to timely report potential misconduct to CFP Board, and for filing an inaccurate ethics declaration to CFP Board, from a private censure to a public censure. In 2023, CFP Board revised its procedural rules to allow its enforcement counsel to extend investigative requests not only to CFP Certificants, but also to third parties, including the CFP Certificant's firm. Such requests may include requests to produce documents and information; requests for admissions; requests for oral examination under oath; and requests for witness interviews. In late 2023, CFP Board further revised its sanctions guidelines to increase the recommended/default sanction for many of the listed sanctions, and to shift the burden to the CFP Certificant to prove mitigating circumstances, or disprove aggravating circumstances, in order to justify a lesser sanction<sup>9</sup>.

Over the past several years, CFP Board has expended significant resources to expand its enforcement program, including hiring numerous, full-time enforcement staff, and developing extensive procedural rules and sanctions guidelines.<sup>10</sup> CFP Board also maintains a database of case histories that includes information about orders issued by its disciplinary

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<sup>8</sup> See <https://www.cfp.net/knowledge/industry-insights/2020/03/the-history-of-cfp-board-fiduciary-standard>

<sup>9</sup> See *supra* fn 7, citing SIFMA's written comments on all of the foregoing revisions to CFP Board's conduct standards, procedural rules, and sanctions guidelines over the years.

<sup>10</sup> See <https://www.cfp.net/ethics/enforcement/the-enforcement-process>.

## **I. CFB Board Increasingly Functions as a De Facto Private Regulator for CFP Certificants.**

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commission.<sup>11</sup> Most recently, in November 2023, CFP Board summarily announced that whenever it issues a public sanctions news release, CFP Board would also publish the disciplinary commission order imposing the public sanctions.<sup>12</sup>

In all of the foregoing respects, CFP Board currently operates in a manner that is essentially indistinguishable from – but that competes and conflicts with – the SEC, FINRA and other securities regulators, in terms of performing core regulatory functions, such as creating their own rule sets, conducting their own investigations, bringing their own enforcement actions, adjudicating their own cases, imposing their own sanctions, and publicizing their own case outcomes and disciplinary actions online. No private credentialing organization – other than CFP Board – undertakes or aspires to infringe upon the core regulatory functions of government securities regulators in this manner. Although SIFMA has raised the significant risks that CFP Board’s ever-expanding regulatory regime imposes on the firms that employ or associate with CFP Certificants, CFP Board has not meaningfully responded to or addressed our concerns to date.

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<sup>11</sup> See <https://www.cfp.net/ethics/enforcement/case-history>

<sup>12</sup> See <https://www.cfp.net/news/2023/11/cfp-board-takes-step-to-enhance-accountability-and-transparency-of-public-sanctions>. In its news release, CFP Board stated that it would not publish the name of the CFP Certificant’s firm, or the names of other individuals, when issuing public sanctions.

## II. CFB Board Regulatory Regime Imposes Significant Risks on Highly Regulated, Dually-Registered Firms That Employ or Associate with CFP Certificants.

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Both RIAs and BDs are pervasively regulated at the federal level, particularly when providing investment advice to retail clients. RIAs are subject to a comprehensive fiduciary standard under the Investment Advisers Act of 1940, which applies to RIAs' entire relationship with their clients and prospective clients.<sup>13</sup> Likewise, BDs are subject to a best interest standard under the SEC's Regulation Best Interest when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities, including recommendations of account types.<sup>14</sup>

For firms that are dually-registered as BDs and RIAs, and that employ or associate with CFP Certificants, CFP Board layers on yet another (a third) private standard with which dually-registered CFP Certificants must comply in order to use the CFP mark. CFP Board's stated intent is that its conduct standards be "business model neutral."<sup>15</sup> CFP Board has even formed and maintained a Business Model Council to advise on the effect of its standards on different business models.<sup>16</sup> Notwithstanding these efforts, however, CFP Board's conduct standards and regulatory regime necessarily have a greater impact on large, dually-registered, full service firms that offer a variety of brokerage and advisory products and services, as compared to smaller, financial planning only, or investment adviser only firms.

CFP Board's conduct standards in most cases duplicate, conflict with, and/or impose obligations that are in addition to, existing SEC and FINRA rules governing the advisory activities of RIAs and BDs. CFP Board's regulatory activities in many cases impose significant risks on firms that employ or associate with CFP Certificants. Following are several key examples:

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<sup>13</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (construing the Advisers Act as imposing a federal fiduciary duty on RIAs). *See also Transamerica Mortgage Advisors, Inc.*, 444 U.S. 11, 17 (1979) (“[T]he Act’s legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations.”).

<sup>14</sup> 17 CFR § 240.151-1.

<sup>15</sup> *See* <https://www.cfp.net/initiatives/driving-public-policy/our-priorities>.

<sup>16</sup> *See* <https://www.cfp.net/about-cfp-board/councils-and-commissions/business-model-council>.



## II. CFP Board Regulatory Regime Imposes Significant Risks on Highly Regulated, Dually-Registered Firms That Employ or Associate with CFP Certificants.

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### 1. CFP Certificant Reporting of Reportable Events to CFP Board

CFP Board's conduct standards require CFP Certificants to report certain events to CFP Board within 30 calendar days.<sup>17</sup> Among other things, the CFP Certificant must report if he or she: is the subject of a regulatory investigation, regulatory finding, civil action, or an arbitration award or settlement; has been terminated for cause or permitted to resign; is the subject of or is named in a customer complaint alleging sales practice violation of \$15,000 or more; filed for personal bankruptcy; or failed to satisfy liens. The CFP Certificant must also provide a narrative statement describing the material facts underlying the reportable event.<sup>18</sup>

Although many of these reportable events are duplicative of existing CRD and IARD reporting requirements for BDs and RIAs, respectively,<sup>19</sup> CFP Board not only requires CFP Certificants to report regulatory, legal, and other matters more broadly, but also requires that they be reported earlier in the process, than the SEC and FINRA. For example, neither the SEC nor FINRA require a firm or financial advisor to disclose disciplinary information, including pending regulatory, civil, or criminal matters, until that matter is resolved based on its merits, unless specific criteria apply.<sup>20</sup> This approach provides a degree of protection against frivolous or meritless lawsuits or complaints unnecessarily tarnishing the reputation of the firm or the financial advisor. CFP Board, however, requires a CFP Certificant to report such events at the time an investigation is commenced, or a complaint is filed, and prior to any hearing on the merits of the matter and its final resolution before a court of competent jurisdiction or before the appropriate regulatory authority.

Most firms that employ or associate with CFP Certificants, however, have internal policies and procedures regarding when a pending regulatory or civil action may be disclosed to a third party such as CFP Board. These policies exist because the

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<sup>17</sup> See CFP Board Standards of Conduct, Section E, Item 3 (Reporting).

<sup>18</sup> *Id.* at Section E, Item 4 (Provide Narrative Statement).

<sup>19</sup> Information about the professional and disciplinary backgrounds of BDs and their representatives, and RIAs and their representatives, is maintained on BrokerCheck (<https://brokercheck.finra.org/>), a free online tool maintained by FINRA, whose data is drawn from CRD (<https://www.finra.org/registration-exams-ce/classic-crd>), and IARD (<https://www.iard.com/>), respectively. Information about investment adviser firms and investment adviser representatives is also maintained on the Investment Adviser Public Disclosure (IAPD) website (<https://adviserinfo.sec.gov/>), a free online tool maintained by the SEC, whose data is drawn from IARD. Under most circumstances, the information required to be reported by firms, financial advisors and regulators is available in BrokerCheck and IAPD on the business day following its upload to CRD and/or IARD.

<sup>20</sup> See Disclosure Questions Form U4 ([finra.org](https://www.finra.org)) and Form ADV Part 2B ([sec.gov](https://www.sec.gov)).

## **II. CFB Board Regulatory Regime Imposes Significant Risks on Highly Regulated, Dually-Registered Firms That Employ or Associate with CFP Certificants.**

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documents and information relating to these matters are the property of the firm, and not the property of the CFP Certificant. Other firm policies are designed to address litigation holds or non-disclosure of information or documents relating to the matter. Still other firm policies are designed to comply with regulatory requirements such as state and federal privacy regulations. The documents and information protected by these internal policies may be privileged, may contain trade secrets and/or may contain client or employee personal information, which would be unlawful for the CFP Certificant (or any other party) to share with unaffiliated third parties, such as CFP Board, under many state and federal privacy regulations.

When disclosure to a third party (i.e., CFP Board) is not permitted under firm policy, a CFP Certificant should not be required – or worse, encouraged – to violate his or her firm’s policy in order to comply with a CFP Board requirement. But that is exactly what the CFP Board has done. The CFP Board’s standards state that a CFP Certificant “[w]ill not be subject to discipline by CFP Board for violating policies and procedures of the CFP [Certificant’s] Firm that conflict with these Standards.”<sup>21</sup> (emphasis added). This statement essentially instructs CFP Certificants to choose compliance with CFP Board’s standards over their firms’ policies and procedures, in the event there is a conflict between the two. Most would agree that it is both inappropriate to incorporate such a conflict in a professional conduct standard, and inappropriate to impose such a predicament on a CFP Certificant.

### **2. CFP Board Document and Information Requests to CFP Certificants**

In connection with conducting regulatory investigations and enforcement actions, CFP Board regularly makes document and information requests to CFP Certificants (as well as to their firms). In many cases, these requests are fairly broad in scope and breadth. When requests are made directly to CFP Certificants, without the knowledge, involvement or participation of their firm, the CFP Certificant has a strong incentive to cooperate and produce whatever documents and information are requested by CFP Board.

CFP Board does not give notice or copies of document and information requests made to a CFP Certificant to the CFP Certificant’s firm. CFP Board does not instruct the CFP Certificant to share the request, or the CFP Certificant’s production, with his or her firm. CFP Board does not limit its requests to, or otherwise instruct the CFP Certificant to produce, only such documents and information that are the property of the CFP Certificant, and not the property of the

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<sup>21</sup> See CFP Board Standards of Conduct, Section D, Item 2 (Duties Owed to Firms and Subordinates).

## **II. CFB Board Regulatory Regime Imposes Significant Risks on Highly Regulated, Dually-Registered Firms That Employ or Associate with CFP Certificants.**

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firm (i.e., Firm Materials). Likewise, CFP Board does not provide any instruction or guidance to CFP Certificants regarding the appropriate handling and treatment of Firm Materials or Regulatory Materials.

As a result, from time to time, CFP Certificants produce to CFP Board Firm Materials that should not be produced, absent the firm's informed written consent, and/or Regulatory Materials that may trigger regulatory reporting obligations by the firm (but which the firm cannot act upon if it is unaware of the existence or production of such Regulatory Materials).

### **3. CFP Certificant Productions to CFP Board To Reduce Sanctions**

In recent years, CFP Board has heightened its recommended sanctions for a fairly extensive range of its listed offenses, and shifted the burden to CFP Certificants to prove mitigating factors or disprove aggravating factors applicable to various sanctions. These recent changes also incentivize CFP Certificants to voluntarily produce documents and information to CFP Board. Again, the significant concern for the firms that employ or associate with CFP Certificants is that in certain cases, CFP Certificants will likely produce Firm Materials to CFP Board that should not be produced, absent the firm's informed consent, and/or Regulatory Materials that may trigger regulatory reporting obligations by the firm without the firm's knowledge.

### **III. CFB Board Should Act to Alleviate the Risks That Its Regulatory Activities Impose on CFP Certificants' Firms.**

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There are numerous specific actions that CFP Board can and should take to ameliorate and/or eliminate some or all of the risks imposed on CFP Certificants' firms by virtue of CFP Board's regulatory activities.

As a threshold matter, we recommend that CFP Board eliminate its rules and standards that duplicate, conflict with, and/or impose obligations in addition to, existing SEC and/or FINRA rules and standards. To accomplish this, and given that CFP Board's rules and standards are better tailored for smaller, financial planning only, and state-registered investment advisers, we recommend that CFP Board create a safe harbor for SEC-registered investment advisers and FINRA-registered broker-dealers. Under the proposed safe harbor, if a CFP Certificant is associated with a SEC-registered investment adviser, then compliance with SEC rules shall constitute compliance with CFP Board's rules and standards, and if a CFP Certificant is associated with a FINRA-registered broker-dealer, then compliance with FINRA and relevant SEC rules shall constitute compliance with CFP Board's rules and standards.

In addition, SIFMA recommends that CFP Board take the following actions and implement the following procedures, which would provide helpful and necessary relief for firms, but without in any way compromising the integrity of CFP Board's conduct standards or its enforcement thereof:

#### **1. Recommendations re: Treatment of CFP Board Document and Information Requests, and Firm Materials CFP Certificant Reporting of Reportable Events to CFP Board**

- a. Give Timely Notice and Copies of Any CFP Board Document and Information Requests to the CFP Certificant's Firm. CFP Board should provide contemporaneous notice to the CFP Certificant's firm whenever CFP Board makes a document or information request to a CFP Certificant, and should also provide the firm with a courtesy copy of such request.
- b. Do Not Request, Collect, or Use Firm Materials Unless the CFP Certificant's Firm Provides Prior Written Consent. If CFP Board asserts that it is necessary for its investigative purposes to request certain Firm Materials, then CFP Board should reach a mutual written agreement with the CFP Certificant's firm in advance regarding the terms and conditions of the request, production, and/or use of such materials.
- c. Give Instructions to CFP Certificants re: Firm Materials. In connection with a CFP Board request to a CFP Certificant to produce documents or information, CFP Board should instruct the CFP Certificant

### **III. CFB Board Should Act to Alleviate the Risks That Its Regulatory Activities Impose on CFP Certificants' Firms.**

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in writing that they are not being requested to and shall not produce to CFP Board any documents or information that are Firm Materials without obtaining the firm's prior written consent.

- d. Prohibit the Use of Firm Materials Produced by CFP Certificants. CFP Board should prohibit its own review or use of any Firm Materials produced by a CFP Certificant in connection with an investigation, enforcement action, or otherwise. If CFP Board receives Firm Materials, then it should notify the firm and await instructions from the firm on how to handle the Firm Materials.
- e. Subject CFP Certificants to Sanction for Producing Firm Materials to CFP Board. CFP Board should discipline and impose sanctions on CFP Certificants who produce Firm Materials to CFP Board without their firms' prior written consent.
- f. Strike the Provision to Not Discipline CFP Certificants for Violating Their Firms' Policies. CFP Board should strike the provision in its standards that states that a CFP Certificant "[w]ill not be subject to discipline by CFP Board for violating policies and procedures of the CFP [Certificant's] Firm that conflict with these Standards." (emphasis added).

#### **2. Recommendations re: Additional Notices to the CFP Certificant's Firm**

- a. Provide Notice to CFP Certificant's Firm re: CFP Board Milestones. CFP Board should provide written contemporaneous notice to the CFP Certificant's firm of the following significant milestone events: (i) CFP Board commences an investigation or initiates an enforcement action against a CFP Certificant; (ii) CFP Board issues a complaint or makes findings against a CFP Certificant; (iii) CFP Board schedules a hearing with, or issues a consent order to, a CFP Certificant; and (iv) CFP Board concludes an investigation of, or enforcement action against, a CFP Certificant.
- b. Provide Notice to CFP Certificant's Firm re: Unreported and Pending Events. CFP Board should provide written contemporaneous notice to the CFP Certificant's firm of the following unreported events: (i) A CFP Certificant self-reports to CFP Board documents or information that are not, or have not yet been, reported on Form U4, Form U5, and/or Form ADV to CRD and/or IARD; and (ii) An individual files a complaint with CFP Board about, or that references, a CFP Certificant that is not, or has not yet been, reported on Form U4, Form U5, and/or Form ADV to CRD and/or IARD. Similarly, CFP Board should provide written notice to the CFP Certificant's firm if it intends to evaluate a pending civil or regulatory action involving the CFP Certificant prior to the action being heard and resolved by the appropriate court or regulator.

### **III. CFB Board Should Act to Alleviate the Risks That Its Regulatory Activities Impose on CFP Certificants' Firms.**

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#### **3. Recommendations re: Publication of Public Sanctions**

As discussed above,<sup>22</sup> in November 2023, CFP Board unilaterally announced that when it issues a public sanction news release, CFP Board will also publish the Disciplinary and Ethics Commission (DEC) orders imposing the public sanctions. CFP Board provided no notice or opportunity to comment on this change. We recommend that CFP Board provide notice and opportunity for public comment on all prospective changes to its rules, standards, and processes. Absent notice and opportunity to comment, neither CFP Certificants nor their firms (nor other interested parties) can share their considerable knowledge and experience, including additional considerations and potential alternative approaches to the proposed change, among other things.

In this particular case, SIFMA would have shared our concern about the prospective reputational risks to CFP Certificants' firms posed by this change. To ameliorate this risk, we recommend that, prior to CFP Board's publication of a public sanctions news release and/or disciplinary order imposing a public sanction, CFP Board should provide the firm with a pre-publication copy for the firm's review and comments, and CFP Board should reasonably consider those comments.

In addition, we recommend that CFP Board's release should publicly state: (i) The sanction relates only to the CFP Certificant and does not in any way relate to or involve the conduct of the CFP Certificant's firm; and (ii) The sanction relates only to a finding of a violation by the CFP Certificant of CFP Board's private standards, and does not constitute a violation of any federal, state and/or self-regulatory organization's laws, rules, or regulations.

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<sup>22</sup> See *supra* fn 12 and accompanying text.

## **IV. The SEC and FINRA Should Likewise Provide Relief to CFP Certificants' Firms.**

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There are also steps that the SEC and/or FINRA could take to provide relief for firms that employ or associate with CFP Certificants and that are thereby subject to a range of regulatory, compliance, supervisory, reputational, and third-party risks as a result of CFP Board's regulatory activities.

The first step is to take notice of and formally recognize the risks and adverse consequences that result from the privately-run CFP Board acting as a de facto, adjunct regulator, operating entirely outside the purview of the SEC/FINRA regulatory regime. In connection with investigating, enforcing, and imposing sanctions for violations of its conduct standards, CFP Board requests CFP Certificants to produce to CFP Board documents and information, which may include Firm Materials and/or Regulatory Materials. In most cases, the CFP Certificant's firm – and securities regulators alike – have no notice or awareness of or involvement in this process, or that it may be occurring in advance of or contemporaneously with a pending civil or regulatory action.

In the case of Regulatory Materials produced by CFP Certificants to CFP Board – without the knowledge or involvement of the CFP Certificant's firm or securities regulators –neither the CFP Certificant's firm nor securities regulators, through no fault of their own, has the ability to satisfy their regulatory obligations with respect to such Regulatory Materials.

The SEC and FINRA should strongly encourage full transparency from CFP Board with respect to Regulatory Materials. We recommend that CFP Board should share a notice copy of any Regulatory Materials with the CFP Certificant's firm immediately upon receipt and await instructions from the firm.

The SEC and FINRA should be cognizant that when Regulatory Materials produced by a CFP Certificant to CFP Board are later revealed to securities regulators and/or the CFP Certificant's firm, the CFP Certificant's firm in most cases did not have an adequate opportunity to take appropriate action with respect to such materials at the time they were produced to CFP Board. Accordingly, under these circumstances, we recommend that the SEC and FINRA should forbear from naming the CFP Certificant's firm as a respondent and/or from imposing sanctions on the CFP Certificant's firm in any subsequent regulatory action relating to Regulatory Materials.

## Conclusion

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Over the past nearly two decades, CFP Board has continued to expand and grow in its role as a de facto private regulator for CFP Certificants. In assuming and expanding its regulatory function, CFP Board has increasingly exposed CFP Certificants' firms to significant regulatory, compliance, supervisory, reputational, and third-party risks, even though these firms have no formal relationship with CFP Board. CFP Board's regulatory intervention also undermines the SEC's and FINRA's ability to perform their own regulatory functions, and in certain cases, it undermines investor protection. SIFMA and its members are committed to addressing and ameliorating these significant risks, inefficiencies and complications. We look forward to working constructively and collaboratively with CFP Board, as well as the SEC and FINRA, to develop long-term workable solutions that benefit and serve all affected parties.