



**CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.**

March 23, 2012

**VIA ELECTRONIC DELIVERY**

Elizabeth M. Murphy  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**RE: Study Regarding Financial Literacy among Investors  
(File Number 4-645)**

Dear Ms. Murphy:

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) appreciates the opportunity to respond to the Securities and Exchange Commission’s (“SEC”) request for comments for the study on financial literacy among investors.

The SEC has asked for specific comment regarding methods to improve disclosures to investors, the information investors need prior to engaging a financial intermediary or purchasing an investment product and methods to increase transparency of expenses and conflicts of interest in transactions involving services and products.

CFP Board applauds the SEC for soliciting input on methods for improving disclosures to investors. When investors are educated, they can make more informed decisions regarding who they should engage to help them with their financial decisions, and what financial services and products are most appropriate for them. As outlined below, we propose a series of improvements in the timing, content and format of disclosures to investors. Our comments will focus primarily on the types of disclosures required before an investor enters into any formal agreement with a financial intermediary.<sup>1</sup> We believe that an investor’s choice of a financial advisor is the investor’s most important financial decision and will have a significant impact on the type and quality of services and products that the investor will receive.

Although CFP Board believes that timely and effective disclosures are important to advancing the education and protection of investors, we also believe that an improved disclosure regime alone is not sufficient to fully protect investors. Accordingly, we also encourage the SEC to accompany improved disclosure requirements with a requirement that those who provide investment advice to clients do so with fiduciary accountability.

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<sup>1</sup> CFP Board does not address specific product disclosure recommendations in this comment letter. The timing, content and format of disclosures related to products often depend on the specific product and/or the compensation structure associated with the product. *See e.g.*, Letter from CFP Board of Standards to Elizabeth M. Murphy (August 23, 2010) available at <http://www.sec.gov/comments/s7-12-10/s71210-41.pdf> in which CFP Board recommended a series of specific disclosures related to target date funds.

## **I. Background on CFP Board**

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP<sup>®</sup> certification. Our mission is to benefit the public by granting the CFP<sup>®</sup> certification and upholding it as the recognized standard of excellence for personal financial planning. We currently oversee over 65,000 CFP<sup>®</sup> professionals who agree on a voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

CERTIFIED FINANCIAL PLANNER<sup>™</sup> professionals provide services that integrate knowledge and practices across the financial services industry. Financial planning typically covers a broad range of subject areas, including investment, income tax, education, insurance, employee benefits, retirement, and estate planning. CFP<sup>®</sup> professionals work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources.

CFP<sup>®</sup> professionals provide financial planning services under a fiduciary standard of conduct as set forth in CFP Board's *Standards of Professional Conduct*.<sup>2</sup> CFP Board's Standards include *Rules of Conduct* that establish high standards and describe a level of professionalism that is binding on all CFP<sup>®</sup> professionals. We believe that the CFP Board's *Rules of Conduct*, which include disclosure requirements with prospective clients and clients, are particularly instructive to the questions posed by the SEC in connection with its study on financial literacy among investors and have sited them where appropriate below.

## **II. Financial education is a key factor in protecting investors and building investor confidence in our capital markets.**

Consumer studies have demonstrated that investors lack the basic knowledge to make informed investment decisions. The SEC's Rand study found that most investors do not know the difference between a broker-dealer and investment adviser and are confused as to what duties of care are owed by each financial intermediary.<sup>3</sup> A recent Cerulli survey found that 31% of investors did not know what they were paying their advisers and another 33% didn't think they paid their adviser at all.<sup>4</sup> CFP Board recently conducted a survey that further underscores the need for investors to have access to education,

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<sup>2</sup> Standards of Prof. Conduct (CFP Board of Standards 2010).

<sup>3</sup> RAND INSTITUTE, INVESTOR AND INDUSTRY PERSPECTIVES ON INVESTMENT ADVISERS AND BROKER DEALERS 18, 31 (2008), available at [http://www.sec.gov/news/press/2008/2008-1\\_randiabdreport.pdf](http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf).

<sup>4</sup> Jerry Gleeson, *You Charge What?*, Registered Rep, Mar. 1, 2012, [http://registeredrep.com/advisorland/finance\\_charge/](http://registeredrep.com/advisorland/finance_charge/).

information and consumer protections. CFP Board found that 67% of Americans believe that they are solely responsible for their own financial security, including retirement. At the same time, 67% of survey respondents also agree that the government has a role in protecting investors from fraud and abuse.<sup>5</sup>

CFP Board recognizes and commends the work of the SEC and the Consumer Financial Protection Bureau (“CFPB”) in providing for increased investor education.<sup>6</sup> Yet these and other data underscore the need for additional information and disclosure requirements to provide investors with the information they need to make knowledgeable financial decisions.

An educated and competent investor will build confidence in and strengthen our capital markets. When investors are educated they are more likely to make informed decisions which can help in maintaining financial market stability.<sup>7</sup> As the SEC recognized in releasing the revised Form ADV, Part 2 rule, providing additional relevant information to clients and prospective clients increases their confidence in their advisers. With an increased understanding of the business, practices, and conflicts of an adviser, investors may be more willing to place their trust in investment advisers, seek professional investment advice, and invest their financial assets. This could have benefits for the investors, and possibly impact capital formation and the economy.<sup>8</sup>

We believe that investor education, including timely and effective disclosures, is important to the protection of investors, regardless of who is providing the advice. While an improved disclosure regime for all investors is important and needed, improved disclosures alone are not sufficient to fully protect investors. Accordingly, we also encourage the SEC to proceed with a rulemaking under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) to require all those who provide personalized investment advice to retail clients to do so under a uniform fiduciary standard of conduct.

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<sup>5</sup> CFP Board-commissioned telephone survey of 1,015 Americans ages 18 and older was conducted by KRC Research between March 1-4, 2012. The survey has a margin error of plus/minus 3.1 points at the 95% confidence level. CFP Board- Shifting Economy Survey Results (Mar. 9, 2012) available at [http://www.cfp.net/downloads/Shifting\\_Econ\\_Survey\\_Results.pdf](http://www.cfp.net/downloads/Shifting_Econ_Survey_Results.pdf).

<sup>6</sup> Domestically, the government has played a key role in providing investors with the information they need to make knowledgeable financial decisions through the SEC’s Office of Investment Education and Advocacy and the CFPB’s Financial Education initiative. The need for financial literacy among investors has been established as a fundamental consumer protection issue, particularly by the government. The issue is so important that it has garnered international attention as governments, educators and policy makers are all taking steps to understand and increase financial literacy. See Tennyson, Sharon L., *Consumers’ Insurance Literacy* (July 27, 2011) available at SSRN: <http://ssrn.com/abstract=1896316>.

<sup>7</sup> Multidisciplinary Working Group on Enhanced Disclosure, Final Report (April 16, 2001) available at <http://www.bis.org/publ/joint01.pdf>.

<sup>8</sup> Amendments to Form ADV Release No. IA-3060; File No. S7-10-00 at 23-24 (Oct. 12, 2010) available at <http://www.sec.gov/rules/final/2010/ia-3060.pdf>.

### **III. Timing and Format of Disclosures**

The method and context by which the information is provided to investors is key to their ability to understand and use the information. Some have argued that investors do not read the disclosure materials already available to them, so any attempt to increase disclosure requirements must also seriously consider the format and timing of disclosures. An improved disclosure regime must insure that information is provided to investors at a time and in a format that is meaningful.

- a. Disclosures should be required prior to engagement of a financial intermediary.

The timing of disclosures is a critical consideration for investor protection. CFP Board strongly encourages the SEC to require financial intermediaries to provide sufficient disclosures prior to a financial engagement to allow the particular investor to make a well-informed choice of a financial advisor. As discussed in more detail in Part IV below, disclosures in the areas of conflicts, fees and costs, background of the financial intermediary and scope of representation constitute a baseline set of pre-engagement disclosures. These types of disclosures are needed to allow for an investor to choose a financial intermediary who is best suited to provide the types of services, with the compensation model and standard of care, that is most consistent with the needs and interests of the particular investor. These disclosures must be made prior to engagement because the act of choosing a financial intermediary will be one of the most significant decisions the investor will make. Once an investor has chosen an adviser, the investor typically engages in less independent research and analysis of subsequent decisions related to recommended products and services, and often defers to the judgment and recommendations of the adviser.

The SEC requires investment advisers who are registered with the SEC or state securities authorities to annually file the Form ADV. In 2011, the SEC approved amendments to the form which, among other things, require investment advisers to prepare a narrative brochure to serve as the primary disclosure document to be provided to clients. In the adopting the release for amendments to Form ADV (“Form ADV Adopting Release”), the SEC noted that the brochure provided investment adviser clients with information that was “critically important” in determining whether to engage the adviser. An investment adviser must give the brochure to the client before or at the time the advisory agreement is entered.<sup>9</sup> While we are not endorsing the wholesale application of the Form ADV Part 2 requirements for all financial intermediaries, the types of disclosure requirements that have been deemed beneficial to investment adviser clients are also important for other

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<sup>9</sup> Commodity and Securities Exchanges, 17 CFR §275.204-3 (2010).

clients of financial intermediaries. These types of disclosures, when appropriately tailored to the relevant business model and relevant needs of the clients, can provide a framework for an improved disclosure regime for all financial intermediaries.

Similarly, Rule 1.2 of the CFP Board's *Rules of Conduct* (Defining the Relationship with the Prospective Client or Client), requires that when the CFP® professional is providing financial planning services, the CFP® professional must make a specific set of disclosures (discussed in more detail in Part IV below) prior to entering into an agreement with the prospective client or client.

We urge the SEC to put in place pre-engagement disclosure requirements for all financial intermediaries who provide advice to investors regarding financial products or services consistent with the type of pre-engagement disclosure requirements in the Form ADV Part 2 rule and in CFP Board's *Rules of Conduct* that currently apply to investment advisers and CFP® professionals.

- b. Disclosures should be in plain English, provided in writing and available electronically.

Investors often do not read disclosures because they cannot understand them.<sup>10</sup> A disclosure loses much of its intended purpose if the intended recipient does not or cannot read it. Therefore, disclosures should be in plain English. The SEC has recognized the importance of requiring readable and understandable documentation through regulations like the Plain Writing Act of 2010 (the "Act"). The Act advances the idea of "plain writing," meaning writing that is "clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience."<sup>11</sup>

The SEC requires that the Form ADV Part 2 brochure be in plain English since it is designed to promote effective communication between the adviser and the client. When writing the Form ADV Part 2 brochure, advisers are required to consider the client's level of financial sophistication and should even offer illustrative examples of the firm's practices or policies. The SEC's Office of Investor Education and Advocacy has published A Plain English Handbook that can help facilitate advisers' compliance with this requirement.<sup>12</sup> While we do not propose that all Form ADV Part 2 requirements should be imposed upon all financial intermediaries, we do believe many of the disclosure requirements provide guidance with respect to the key issues relating to

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<sup>10</sup> *Supra* note 2.

<sup>11</sup> H.R. 946, 111th Congress: Plain Writing Act of 2010 (2009).

<sup>12</sup> Rules Implementing Amendments to the Investment Advisers Act, 76 FR 42950 (2011) available at <http://www.sec.gov/about/forms/formadv-part2.pdf>.

investor protect. Indeed, the new disclosure regime should be adapted to the relevant financial intermediaries and client needs. Disclosures should also be made in writing. Oral disclosures are more difficult to prove and may not give investors a clear understanding of their importance. If an investor is provided the disclosure in writing, they have more opportunity to digest the information and are able to revisit it after an initial meeting with a financial intermediary. In requiring the Form ADV Part 2 brochure, the SEC recognized the importance of providing disclosures in a written document. CFP Board has also recognized the importance of written disclosures. Rule 2.2e of CFP Board's *Rules of Conduct* requires that a CFP<sup>®</sup> professional, who is offering to provide financial planning services, must provide pre-engagement disclosures to the prospective client in writing. Prior to the delivery of financial planning services a CFP<sup>®</sup> professional is required to enter into a written agreement with the client that specifies the parties to the agreement, the duration of the agreement, the basis for termination and the services to be provided under the agreement (Rule 1.3). The written disclosure should be provided in 12 point font to assure that investors are able to read it easily and to prevent the disclosure from being overlooked.

As consumers increasingly rely on technology, disclosures can reach the broadest audience through electronic delivery.<sup>13</sup> The SEC has issued previous guidance permitting electronic delivery of proxy materials when there is: (i) notice; (ii) access; and (iii) evidence of delivery.<sup>14</sup> In the Form ADV Adopting Release, the SEC noted that one benefit of electronic disclosures would be that, "Clients will be able to compare business practices, strategies, and conflicts of a number of advisers, which may help them to select the most appropriate adviser for them." With appropriate safeguards, electronic delivery of disclosures can provide investors with meaningful access to information in a manner that makes accessible and user friendly. The electronic delivery option also provides financial intermediaries with the flexibility to take a layered approach to providing disclosures, to the extent such an approach would be consistent with regulatory requirements. For instance, financial intermediaries could provide links to additional information or elaborations of issues brought up in the disclosures.

Consistent with the Form ADV Part 2 rule and CFP Board's requirements, we urge the SEC to establish pre-engagement disclosure requirements that are in plain English and in writing for all financial intermediaries who provide advice to investors regarding financial products or services. We recognize the benefit for many investors of electronic disclosures, particularly given the growing use and comfort with electronic dissemination

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<sup>13</sup> The Investment Company Institute ("ICI") conducted a survey of investors and found that 90% of those surveyed believed that investment information was moving towards an electronic platform and most respondents, irrespective of age, already used the internet to gather financial information. Investment Company Institute, *Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus* (March 14, 2008), available at [http://www.ici.org/pdf/ppr\\_08\\_summary\\_prospectus.pdf](http://www.ici.org/pdf/ppr_08_summary_prospectus.pdf).

<sup>14</sup> Internet Availability of Proxy Materials, 17 CFR §240.14A-16 (2007).

of information. We believe that, with appropriate safeguards to insure notice, access and delivery, electronic disclosures can be a meaningful form of communication for those consumers who prefer and consent to electronic disclosures.

#### **IV. Information Investors Need Before Choosing a Financial Intermediary**

With the adoption of the Form ADV Part 2 rule, the SEC recognized the need for improved pre-engagement disclosures in four main areas: conflicts, fees and costs, background of the financial intermediary and scope of representation.<sup>15</sup> CFP Board has identified the need for disclosure requirements in these same areas. These disclosure requirements, deemed necessary to protect clients of investment advisers and CFP<sup>®</sup> professionals, provide a roadmap for the types of disclosures needed to protect all investors.

##### a. Conflicts

Conflicts of interest are inherent in the financial services industry.<sup>16</sup> Investors should know whether a financial intermediary they are considering engaging has any potential conflicts of interest in the adviser-client relationship or with the products they may be recommending and what those conflicts are. Rules should be established that require financial intermediaries to clearly disclose all conflicts or potential conflicts prior to engagement.<sup>17</sup>

The Form ADV Part 2 brochure must include any conflicts the adviser has or may have. Item 2 and 3 of the Instructions discuss the extent to which conflicts of interest must be disclosed by advisers. Item 3 notes that a client must be provided “with sufficiently specific facts so that the client is able to understand the conflicts of interest you have...”<sup>18</sup> Item 3 goes on to note that a proper disclosure of the conflict may require the

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<sup>15</sup> *Supra* note 6.

<sup>16</sup> See *Best Practices For the Hedge Fund Industry: Report of the Asset Managers’ Committee to the President’s Working Group on Financial Markets* (Jan. 15, 2009) available at <http://www.amaicmte.org/Public/AMC%20Report%20-%20Final.pdf>.

<sup>17</sup> Kumpan, Christoph and Leyens, Patrick C., *Conflicts of Interest of Financial Intermediaries - Towards a Global Common Core in Conflicts of Interest Regulation*, 4.1 EUROPEAN COMPANY AND FINANCIAL L.R., 72-100 (2008).

<sup>18</sup> *Supra* note 10.

adviser to disclose information that is specifically beyond the specific requirements of the form.

Rule 2.2b of CFP Board's *Rules of Conduct* recommend that a CFP® professional disclose conflicts prior to engagement. Specifically, a CFP® professional should disclose among other things "[a] general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship." In other words, the conflict disclosure requirement should be designed to inform the investor whether a financial intermediary has business relationships, partnerships or compensation arrangements that could potentially affect the intermediary's professional judgment or prevent the intermediary from acting in the investor's best interest.<sup>19</sup>

In addition to identifying all conflicts of interest, a financial intermediary should be required to disclose to investors the standard of care the intermediary is obligated to provide the investor when offering advice or making recommendations regarding products or services. Given investor confusion about the difference between a broker-dealer and investment adviser and the differences between a suitability and fiduciary standard of care, the intermediary should be required to explain his or her duties and obligations to the investor in terms that can be easily understood. An investor has a right to know whether the financial intermediary he or she is considering engaging is required by law or, as in the case of a CFP® professional, by a contractual commitment to put the investor's interests first or is operating under a lower standard of care.

#### b. Fees and Costs

As cited in the Cerulli study above, most investors do not understand how their financial adviser is compensated. Requiring disclosure of the financial intermediary's compensation structure can further help an investor determine if the financial intermediary may have any potential conflicts of interests and will help unveil hidden costs that may be associated with compensation arrangements related to services or products.

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<sup>19</sup> A client-focused articulation of the conflict question is found in CFP Board's *Consumer Guide to Financial Planning* ("CFP Board Consumer Guide"). The Guide provides consumers with a list of questions to ask before engaging a financial planner. Consumers are alerted that financial planners who sell insurance policies, securities and mutual funds may have business relationships with companies that provide these financial products, and are encouraged to ask, "Could anyone besides me benefit from your recommendations." *Consumer Guide to Financial Planning* at 17 (CFP Board of Standards 2011) available at [http://www.cfp.net/downloads/CFPBoard\\_Consumer\\_Guide\\_to\\_Financial\\_Planning.pdf](http://www.cfp.net/downloads/CFPBoard_Consumer_Guide_to_Financial_Planning.pdf) (hereinafter, the "Guide").

Item 5 of the Form ADV Part 2 rule requires that advisers describe how they are compensated for their advisory services; provide a fee schedule and disclose whether the fees are negotiable. The Form ADV Part 2 rule also requires that advisers disclose if they receive performance based fees.

Similarly, Rule 2.2b of CFP Board's *Rules of Conduct* requires a CFP® professional to provide a prospective client or client with an "accurate and understandable description of the compensation arrangements being offered." The CFP® professional must also disclose information related to costs and compensation to both the CFP® professional and his or her employers and must disclose whether compensation is received from any other sources, the sources of compensation and on what the compensation is based.<sup>20</sup>

c. Background of Financial Intermediary

Financial intermediaries should be required to disclose relevant background information because it provides critical information for investors in their decision making process. In the Form ADV Adopting Release, the SEC noted that the brochure supplement provides investors "with information about the educational background, business experience, disciplinary history (if any) and conflicts of the individuals providing them with investment advice. This information will allow clients and prospective clients to determine whether there are safeguards or precautions that they would like to take before receiving investment advice from that person or whether they would prefer to receive investment advice from someone else."<sup>21</sup>

Rule 2.2 of CFP Board's *Rules of Conduct* requires that a CFP® professional provide, among other things: (i) relevant information about his or her background with respect to familial, contractual or agency relationships of the CFP® professional or his or her employer that have a potential to materially affect the planner-client relationship and (ii) any information about the CFP® professional or his or her employer that could reasonably be expected to materially affect the client's decision to engage the CFP® professional that the client may reasonably want to know in establishing the scope and nature of the

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<sup>20</sup> The CFP Board Consumer Guide outlines the ways in which planners can be paid and encourages consumers to ask how the planner is paid, how much the planner typically charges and an estimate of the costs based on the work to be performed, including hourly rates, flat fees, and the percentage of commissions received on products that may be recommended. See the Guide at 16-17.

<sup>21</sup> *Supra* note 6 at 98.

relationship, including but not limited to information about the his or her areas of expertise.<sup>22</sup>

To enable prospective clients to easily gather information about financial advisers, CFP Board offers a simple, consumer friendly on-line planner search tool that allows consumers to find a CFP<sup>®</sup> professional in their area. Consumers can search for planners by location, specialty, fee structure and language spoken and can determine if the planner has been subject to any enforcement or disciplinary actions.<sup>23</sup>

d. Scope of the Engagement and Related Material Information

Financial intermediaries should be required to disclose the scope of their representation and other material information related to the relationship. Memorializing the scope of the engagement, namely the services to be provided and the individuals who will be providing the services, will help investors recognize if they are engaging the right type of adviser for their needs and expectations. This in turn will help to build a stronger client adviser relationship.<sup>24</sup>

Rule 1.2 of CFP Board's *Rules of Conduct* requires a CFP<sup>®</sup> professional whose services include financial planning services to discuss the scope of the engagement with the prospective client or client and mutually agree upon the services to be provided by the CFP<sup>®</sup> professional. For example, Rule 1.2a requires a CFP<sup>®</sup> professional to provide written information and/or discuss with the client the obligations and responsibilities of each party with respect to defining goals, needs and objectives; gathering data; recommending actions; implementing recommendations and monitoring. Defining the scope of the engagement in this particular way engages clients to identify their needs and expectations and evaluate whether the prospective adviser is best suited to meet their needs. In defining the scope of the relationship with a client, a CFP<sup>®</sup> professional is also required to provide written information and/or discuss (i) the compensation that any party to the agreement will or could receive, factors or terms that determine costs, and how decisions benefit the CFP<sup>®</sup> professional (Rule 1.2b); (ii) terms under which the

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<sup>22</sup> The CFP Board Consumer Guide also has noted the importance of relevant background information and recommends that investors ask financial planners questions related to their previous experience (length of time in practice, companies, work experience), qualifications (licenses, financial service credentials, continuing education requirements), services (areas of expertise, licenses to provide advice or sell securities or insurance products), approach to financially planning, required standards of conduct, types of clients typically represented and disciplinary history. See the Guide at pp. 15–16.

<sup>23</sup> <http://cfp.net/find/EnhancedSearch.aspx>; <http://www.letsmakeaplan.org/find-certified-financial-planners.aspx>. Additional sources for background information on financial planners or advisors include [www.fpanet.org/PlannerSearch/PlannerSearch.aspx](http://www.fpanet.org/PlannerSearch/PlannerSearch.aspx); [www.napfa.org](http://www.napfa.org) [Find an Advisor]; [www.finra.org/brokercheck](http://www.finra.org/brokercheck); and [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

<sup>24</sup> See *Establishing Trust in the Adviser-Client Relations* (2011) available at <http://www.investmentnews.com/assets/docs/CI7746021.pdf>.

agreement permits the CFP<sup>®</sup> professional to offer proprietary products (Rule 1.2c); and (iii) terms under which the CFP<sup>®</sup> professional will use other entities to meet any of the agreement's obligations (Rule 1.2d).

Finally, investors should be provided with all material information that would be relevant to their selection of an investment adviser and there should be an ongoing duty to report material information relevant to any investment decision, including disclosure of any conflicts of interest related to the recommendation of an investment product. The Supreme Court's 1988 decision in *Basic Inc. v. Levinson*<sup>25</sup> set a materiality standard, stating that an issue was material if there was "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." Public companies, in most jurisdictions, have an ongoing obligation to disclose information that would be material to an investor's investment decision and that is necessary for full and fair disclosure.<sup>26</sup> In a report to the President's Working Group on Financial Markets regarding best practices for the hedge fund industry the Asset's Manager Committee noted that investors need material information to make investment decisions.<sup>27</sup>

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In sum, we urge the SEC to use the disclosure requirements in the areas of conflicts, fees and costs, background of the financial intermediary and scope of engagement as outlined in the Form ADV Part 2 rule and in CFP Board's *Rules of Conduct* as a baseline guide for the types of disclosures that should be required of all financial intermediaries who provide financial advice regarding products and services to investors.

## V. Conclusion

The SEC's Form ADV Part 2 brochure contains the types of disclosures that are designed to improve an investor's ability to make a fully informed decision about a financial intermediary. Disclosures must be written in plain English, delivered before engagement and contain disclosures related to the adviser's conflicts of interest, fees and costs, background, and the scope of representation. CFP Board, in its *Rules of Conduct*, outlines similar disclosure requirements related to the delivery of financial planning services. CFP Board urges the SEC to develop a set of disclosure requirements, closely aligned with those in place for investment advisers and for CFP<sup>®</sup> professionals that would apply to all financial intermediaries who provide financial advice to investors.

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<sup>25</sup> *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

<sup>26</sup> Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities, OICU-IOSCO (Oct., 2002) available at [http://www.sec.gov/about/offices/oia/oia\\_corpfin/princdisclos.pdf](http://www.sec.gov/about/offices/oia/oia_corpfin/princdisclos.pdf).

<sup>27</sup> *Supra* note 14.

As noted earlier, investors do not know the difference between a broker-dealer and investment adviser, they are confused as to what duties of care are owed by each financial intermediary, and many do not know what they are paying or how their advisor is compensated. The basic pre-engagement disclosures required in Form ADV Part 2 brochure and in CFP Board's *Rules of Conduct* will help to decrease investors' confusion about financial intermediaries and provide them with tools to make informed choices about the financial intermediaries they trust with their financial decisions and well-being.

These additional disclosures, coupled with a uniform fiduciary standard of care applicable to all who provide personalized investment advice to investors will provide investors with needed protections and will build desired confidence in our capital markets.

CFP Board appreciates the opportunity to respond to the SEC's request for comments for the study on financial literacy among investors. If you should have any questions regarding this comment letter, CFP Board, or our *Standards of Professional Conduct*, please contact Marilyn Mohrman-Gillis, Managing Director, Public Policy and Communications, at (202) 379-2235, or visit CFP Board's Web site at [www.CFP.net](http://www.CFP.net).

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin R. Keller". The signature is stylized and cursive.

Kevin R. Keller, CAE  
Chief Executive Officer