RE: File Number S7-08-18

Dear SEC:

I am writing to comment on **Release No. 34-83063, *Form CRS Relationship Summary; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles*.**

In terms of professional background and experience, I am the owner/founder of Financial Planning Hawaii, a Hawaii-registered RIA that provides flat-fee planning guidance. I am also a registered rep and investment advisor representative with J.W. Cole and J.W. Cole Advisors, respectively. I have been a registered rep since 1989 and an investment adviser rep since 1996. I hold Series 3, 7, 9, 10, 24, and 63 brokerage registrations, as well as a Series 65 advisory license. As the name of my company suggests, I hold myself out as a "Financial Planner" and my ADV is presented prominently on the FPH website. I am also a co-founder of Nest Egg Guru, a maker of software for financial advisor websites. In addition to my nearly 30 years in the industry, I have a degree in economics from Williams College and have published numerous research papers in peer-reviewed academic and professional journals. Germane to this discussion, I have also written a number of articles on the ethics of advisor compensation and regulation of the financial planning profession.

My comments on the Issues Discussed in this Release are as follows:

"Two-Hat"/Dual Registration Regulation – One of the more notable statistics cited in the releases was the FINRA data showing that 87.6% of all IARs are dually registered along with 50% of registered reps. These figures clearly indicate that financial advisors as a group feel a need for both brokerage and advisory models. My own practice is approximately 85% advisory (mostly AUM and some flat-fee). However, I am compelled to maintain both brokerage and insurance licenses in order to better and more completely serve the interests of our clients. For instance, there has been a fair amount of published academic research suggesting that the inclusion of single premium immediate annuities and deferred income annuities in retirement spending portfolios may enhance sustainability. However, for the most part, these products are only available through insurance companies that pay tuitions [Note: As a financial planner, I am compelled to disclose this conflict to clients along with the amount of commission paid on each product].
As an example from the brokerage side, it is not uncommon for us to maintain a brokerage corporate cash management account in which we purchase CDs and/or T-bills for small business owner clients in addition to their separate investment advisory retirement accounts. Because of the short-term nature of the investments in the brokerage account, it makes little sense to charge an AUM fee, and we are happy to provide the corporate cash management as a value-added service for which we receive no compensation.

At the same time, the SEC has done an excellent job in this Release of documenting the ways in which the current bi-furcated regulatory structure has created confusion among consumers. There is little disagreement that consumers do not have a firm grasp of the circumstances under which a financial

advisor may be acting as a fiduciary versus being bound by the suitability or proposed "best interest" standard. The "two-hats" scenario only complicates understanding further. Similarly, it is well established that consumers are justifiably confused by the myriad advisor titles and designations.

The CFP Board of Standards is a Big Part of the Problem

On this score, a point that appears to have been overlooked by the SEC is the role the CFP Board of Standards has played in fostering investor confusion by actively recruiting brokerage reps and insurance agents to obtain and use the CFP marks, even if/when they are not licensed to act as IARs. In using the marks, it is not surprising that consumers might conclude that the advisor is being held to the SEC's fiduciary standard, when, in fact, they may be acting as commission-based sales agents. Additionally, the CFP Board has created confusion surrounding the fiduciary standard by suggesting that it's standard is equivalent to or higher than the fiduciary standard described under the Advisers Act. Specifically, the "fiduciary standard" promoted by the CFP Board only requires certificants to disclose potential conflicts of interest, but for CFP marks holders who fall outside of the purview of the SEC, there is no requirement that the certificants disclose the *amount* of fees or commissions they may receive (for instance on the sale of insurance products, where commissions are inherently opaque). In contrast, under the SEC's fiduciary standard, advisors are obligated to clearly disclose all income they receive, as the amount of compensation is clearly "material information" to the client.

The CFP Board has also acted irresponsibly and deceptively in its multi-million dollar *"Can You Tell The Difference*" marketing campaign, which falsely suggests that CFP holders are somehow more qualified and/or ethical than non-CFP holders. For the record, ALL financial advisors who hold themselves out as "financial planners" are regulated by the SEC and are held to the SEC's fiduciary standard. The same cannot be said for CFP's who practice beyond the reach of the Advisers Act. The recklessness and irresponsibility of the CFP Board in airing these ads cannot be understated, as there are numerous high profile examples of CFPs who have used the marks to gain trust and credibility in order to defraud their clients. The CFP designation has no academic standing. In fact, prior to 2008 a college degree was not a pre-requisite to earning the marks. Even today, no prior academic experience in finance or economics is required to become a CFP.

A Solution to End the "Two-Hats" Confusion

Rather than attempting to juggle and explain three different standards of care, I believe there is a solution that will both recognize the distinction between the brokerage and advisory business models and ameliorate investor confusion. **The solution involves holding financial advisors to the highest standard applicable among the registrations they hold. Thus, instead of wearing two hats, all dual-registered investment advisors would be deemed to be Advisers Act fiduciaries.** While all non-SEC licensed registered reps and insurance agents would continue to be held to their respective regulatory standards.

As a practical matter, what this means is that all dual-registered FAs (myself included) would be required to provide our ADVs to ALL clients and to disclose in advance (preferably in writing) the

amount and/or percentage of commissions we might receive from the sale of insurance or brokerage products. For instance, if an advisor was to receive a $10,000 commission on the sale of a whole life policy or a 7% commission on the sale of a private equity offering, such commissions would need to be disclosed in advance to the client. Although such disclosure, might make some dual-registered advisors uncomfortable it is entirely in keeping with existing SEC rules, as the Commission has never objected to commissions as a form of compensation – so along as the potential conflict of interests and the amount of compensation are clearly disclosed in advance.

Relationship Summaries – The SEC's goal of aiding consumers in understanding the differences between brokerage and advisory platforms is laudable, and it is clear from the 471 pages of this Release that the Commission has gone to great lengths to document the sources of investor confusion. However, **I believe the mock-up Relationship Summaries provided as Appendices C, D, and E are ill-conceived and, if implemented, will be completely ineffective in resolving investor confusion.**

There are two basic reasons for this assertion. First, there is a mountain of marketing research that finds that **consumers will not read text-heavy disclosure documentation**. In fact, as any website-designer can attest, the digital age is making consumers increasingly visual and increasingly averse to written text. Anecdotally, I deliver my ADV each year to all clients electronically and have found that the open and engagement rates for this disclosure are exceedingly low. If the SEC were to survey clients of RIAs, I believe it would find that only a very small percentage have actually read these "Plain English" disclosures.

The second reason why the Relationship Summaries are, in my ardent opinion, doomed to fail is that they are unnecessarily arcane and are more likely to create further consumer confusion than clarity. It is also worth pointing out that the mock-ups seem to view compensation through an extremely narrow lens in suggesting that the only compensation models are transaction-based and asset-based. Flat-fee, retainer, and hourly billing are increasingly common in the planning profession as well.

In my opinion a far better approach would be to provide a single, concisely written **Uniform Regulatory and Conflict of Interest Disclosure** document that would be required to be provided to all prospective clients in advance of establishing a business relationship with a brokerage firm, RIA, or hybrid B-D/RIA. An example of the outline for such a document is provided as "**Exhibit A"** at the end of this document.

Restrictions on the Use of Titles – As noted above, it is established that consumers do not understand the implications of different titles. At present, brokerage reps and IARs are commonly and collectively referenced as financial advisors (FAs), financial consultants, and wealth managers.

Brokers/registered reps are free to use these titles if they choose. However, use of the titles "investment adviser" and "financial planner" are restricted to IARs. Meanwhile, the CFP Board allows its certificants to use the marks regardless of the whether the FA is acting as an IAR, is dual registered, or is purely a brokerage rep or insurance agent. As the Release noted, of all these various monikers, the one title that consumers seem to hold in higher regard than the rest is "financial planner."

In my opinion, it would be beneficial for the SEC to provide clarity to consumers by specifically limiting the use of the term financial planner to IARs (i.e., to advisers who are registered with the SEC and fall under the Commission's regulatory reach). The effect of this would be to prohibit CFPs who are not SEC registered (i.e., who are acting exclusively as insurance agents or brokerage reps) from both using the CFP marks/designation and referring to themselves as "financial planners."

Conversely, it is public knowledge that both the CFP Board and the Financial Planning Association are actively lobbying the SEC to restrict the use of the "financial planner" title to only those who have attained the CFP marks. The SEC and all readers of this commentary should understand that doing so would effectively grant regulatory authority of the financial planning industry to the CFP Board as the owner of the marks. Although the CFP Board is technically a non-profit organization, its executive leadership has been criticized in the financial press for its million-dollar executive pay packages, lavish board member travel junkets, murky business disclosures, and for generally failing to practice the fiduciary standard it purports to promote. As described earlier, the CFP Board has a long history of promoting its own self-interests above those of consumers and even its own membership. **It is my sincere hope that SEC will see the CFP Board for the wolf in sheep's clothing that it truly is.**

An Educational Qualification Standard

As a final suggestion, a legitimate criticism of existing investment advisor regulation is that there is currently no educational or experience requirement to become and IAR/financial planner. As noted earlier, there is no requirement for CFP holders to have any prior academic experience in finance or economics either (though there is a nominal work experience requirement). As a practical matter, if an IAR has no relevant experience, it would be disclosed in his/her IRA, and I believe there is some research to support the assertion that IARs as a group are generally more academically qualified than CFPs, a case can nonetheless be made for introducing some baseline educational requirement for becoming an IAR. **In my opinion, a reasonable standard would be an undergraduate degree in finance or economics, and MBA, or the attainment of the CFP or CFA designations.** Such a regulatory requirement would go a long way toward improving IAR competency. For individuals who would like to enter the industry but do not have prior academic experience, the CFP curriculum would still offer a legitimate path to a career. Thank you for the opportunity to provide this commentary.

Respectfully,
John H. Robinson, Financial Planner

Enclosure: Exhibit A – Uniform Conflict of Interest Disclosure

EXHIBIT A
UNIFORM REGULATORY AND CONFLICT OF INTEREST DISCLOSURE

This document is to be provided to all prospective brokerage and Registered Investment Advisor clients in advance of establishing a business relationship. Its purpose is to educate and inform consumers about different platform choices and to inform them of potential conflicts of interest that may arise under common compensation models.

PLATFORM CHOICES – Brokerage vs. Registered Investment Advisor (RIA)
[Insert plain English summary of how brokerage firms are regulated by FINRA and held to suitability/best interest standard.

[Insert plain English summary of how RIAs regulate IARs and financial planners and introduce the fiduciary standard and what it means (this should include more than just the "put the interest of the clients first" and should include requirement to provide ADV and obligation to disclose all compensation and potential conflicts of interest.

CONFLICTS OF INTEREST
Consumers should be aware that there are many different means by which financial advisors may be compensated and that all compensation models involve certain inherent conflicts of interest. The key to a successful advisor-client relationship is to have full disclosure of the compensation models offered and of the potential conflicts that may arise in advance of establish the business relationship. The following is a summary of the primary compensation models used by brokerage firms and RIAs

Commission/Transaction-Based Based Compensation – [provide plain English disclosure of when commissions may be transparent and when they may not and of the potential conflicts that may arise from such models (e.g., incentive to churn, informational asymmetry when commissions are opaque, etc.)]

Asset-Based Fees – [Provide plain English summary of how this model works and how the fees may be higher or lower than other models. Include disclosure of potential conflicts of interest (i.e., incentive to gather assets, disincentive to encourage clients to sell assets under management, etc.)

Hourly Billing – [Include disclosure of conflict of interest – "value billing," incentive for FA to bill high hours, disincentive for client to spend time sharing information with advisor, etc.)

Flat-Fee/Retainer Billing – [include disclosure of conflict of interest – incentive for advisor to do minimal amount of work necessary to earn the fee, disincentive for taking on time intensive research/projects that might benefit the client, etc.]

QUESTIONS YOU SHOULD ASK [a couple of sample questions are as follows

- In our relationship, will you be acting as a fiduciary and regulated by the SEC or will you be acting as a broker regulated by FINRA?
- Will you clearly disclose all compensation you receive in advance of all transactions?
- Do you take discretion over trading in my account or must you review all transactions with me before executing them?

REGULATORY AGENCY CONTACT INFO