



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

December 11, 2014

Michael P. Shaw  
Managing Director, Professional  
Standards and Legal  
Certified Financial Planner Board of  
Standards, Inc.  
1425 K Street, NW #800  
Washington, DC 20005

**Re: Certain Disclosures of Information to the CFP Board**

Dear Mr. Shaw:

In your letter dated December 10, 2014, on behalf of the Certified Financial Planner Board of Standards, Inc. ("CFP Board"), you request assurance that staff of the Securities and Exchange Commission ("Commission") would not recommend that the Commission take enforcement action under Regulation S-P<sup>1</sup> if broker-dealers or investment advisers registered with the Commission provide Background Documents<sup>2</sup> to the CFP Board in the manner and for the purposes described in your letter.

As in your March 10, 2011 letter to which we responded with a no-action letter on March 11, 2011, you represent that the Background Documents disclosed to the CFP Board would consist primarily of consumer complaints and responses by broker-dealers and investment advisers to those complaints, statements of claim (including arbitration claims) and claim resolution documents. You also represent that some broker-dealers and investment advisers have been reluctant to provide the CFP Board with Background Documents not specifically listed. We understand you would like to clarify that the Background Documents covered by our March 11, 2011 no-action letter also would include related documents such as those listed in your December 10, 2014 letter, including any attachment or exhibit to, any document referenced in the text of, and any document material to, a complaint, statement of claim, response or claim resolution document.

---

<sup>1</sup> 17 C.F.R. Part 248, Subpart A.

<sup>2</sup> Capitalized terms used herein have the same meaning as in your letter unless otherwise noted.

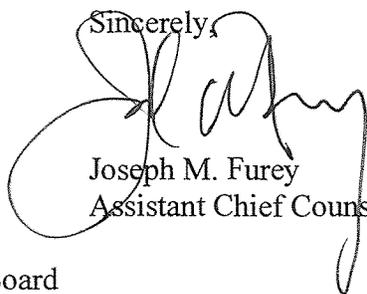
Mr. Michael P. Shaw  
December 11, 2014  
Page 2 of 2

Also as in your March 10, 2011 letter, you represent that the CFP Board would use the Background Documents to process applications for CFP certification and to investigate and possibly take action against holders of the CFP certification. In addition, you represent that many broker-dealers and investment advisers employ individuals who have obtained the CFP certification, and that more than 70,000 financial planning professionals have obtained the CFP certification.

You further represent that you believe the disclosure of Background Documents to the CFP Board for the purpose of assessing compliance with CFP Board's ethical standards should be covered by the exception provided by Section 248.15(a)(3) of Regulation S-P. Accordingly, you represent that the CFP Board will treat the information contained in Background Documents as if it were received pursuant to this exception and limit the redisclosure and reuse of the information as specified in Section 248.11(a) of Regulation S-P. In other words, the information will be used only for the purpose of assessing compliance with CFP Board's ethical standards, and it will not be used or redisclosed for other purposes such as marketing. You also recognize that certain Background Documents may contain sensitive personal information, and represent that the CFP Board has in place policies and procedures for safeguarding and properly disposing of such documents.

Based on the facts and representations set forth in your letter and without necessarily concurring in your analysis, the staff of the Division of Trading and Markets would not recommend that the Commission take enforcement action against a broker-dealer under Regulation S-P if the broker-dealer discloses Background Information to the CFP Board in the manner and for the purposes described in your letter. In addition, the Division of Investment Management has asked us to inform you that it would not recommend that the Commission take enforcement action against an investment adviser registered with the Commission if the investment adviser discloses Background Information to the CFP Board in the manner and for the purposes described in your letter.

Because this position is based on the facts presented and the representations you have made, any different facts or conditions might require a different response. Furthermore, this response expresses our position on enforcement action only, and does not purport to express any legal conclusions on the question presented.

Sincerely,  
  
Joseph M. Furey  
Assistant Chief Counsel

cc: John Loesch, Director of Investigations, CFP Board

Howard L. Kramer, Partner, Willkie Farr & Gallagher

# CFP BOARD

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

December 10, 2014

## Via Electronic Mail

Joseph M. Furey  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Certified Financial Planner Board of Standards, Inc. Regulation S-P Request**

Dear Mr. Furey:

Certified Financial Planner Board of Standards, Inc. ("CFP Board") respectfully requests assurance that the staff of the Securities and Exchange Commission ("SEC") will not recommend enforcement action under Regulation S-P<sup>1</sup> if a broker-dealer or registered investment adviser provides Background Documents (as re-defined below) to CFP Board in the manner described in this request.

## Description of CFP Board and CFP Certification

CFP Board is a non-profit corporation organized under the laws of Colorado, with its headquarters in Washington, DC. It 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® certification. Its mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP® professionals agree on a voluntary basis to comply with CFP Board's competency and ethical standards, and subject themselves to the disciplinary oversight of CFP Board.

Financial planning professionals provide services that integrate knowledge and practices across the financial services industry. Financial planners work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources. Financial planning typically covers investment, income tax, education, insurance, retirement, and estate planning.

---

<sup>1</sup> 17 CFR Part 248, Subpart A.

Joseph M. Furey  
December 10, 2014

All CFP® professionals are required to comply with CFP Board's *Standards of Professional Conduct* ("Standards"). The *Standards* contain, among other things, the *Rules of Conduct*, which are binding on all CFP® professionals, and the *Financial Planning Practice Standards*, which require compliance by all CFP® professionals providing financial planning services or material elements of financial planning services to customers. Compliance with CFP Board's *Standards* is critical for CFP® professionals to maintain the right to use the CFP® certification.

Many broker-dealers and investment advisers employ individuals who have obtained the CFP® certification. As indicated above, the CFP® certification has become a widely-accepted standard in the securities industry for financial planning. This is evidenced by, among other things, the fact that more than 70,000 professionals have obtained the CFP® certification.

### **Previous No Action Request Has Been Granted**

On March 11, 2011, the staff of the Division of Trading and Markets issued a letter stating that it would not recommend to the SEC that enforcement action be taken if a broker-dealer or registered investment adviser provides CFP Board with copies of any customer complaint involving the applicant and the employer's response to the customer complaint, and any statement of claim (including arbitration claims) involving the applicant and the resolution of the claim (collectively, the "Background Documents").<sup>2</sup>

CFP Board believes, based upon its experience in conducting investigations since March 11, 2011, that the definition of Background Documents can be clarified further, in order to provide comfort to broker-dealers and investment advisers that certain documents are included within the scope of Background Documents. Without such clarification, CFP Board's ability to efficiently and effectively process applications of candidates for CFP® certification, and to more efficiently and effectively investigate and possibly bring disciplinary actions against current CFP® professionals, is impeded by the reluctance of entities to provide Background Documents other than those specifically referenced in the 2011 No-Action Letter. While CFP Board believes that the documents referenced below are already encompassed by the definition of Background Documents, further clarity would be helpful in assisting broker-dealers and registered investment advisers in implementing the no-action relief granted by the SEC in its March 11, 2011 letter by providing a more extensive list of the types of documents encompassed by the term Background Documents.

First, the definition of Background Documents does not include a specific reference to exhibits or attachments to the customer complaint, the statement of claim, or the response to either. CFP Board receives Background Documents but is unable to properly evaluate the claims and defenses to the claims raised in the Background Documents because the documents frequently rely heavily on exhibits and attachments. The same reasoning would extend to any document referenced in the text of the customer complaint, statement of claim or the response to either. Therefore, it is

---

<sup>2</sup> See attached March 11, 2011 SEC No-Action Letter.

Joseph M. Furey  
December 10, 2014

necessary for CFP Board to have the ability to review any exhibits, attachments or other documents specifically referenced in the customer complaint, the statement of claim or the response to either to properly evaluate any customer complaint or customer arbitration.

Second, an overwhelming majority of the customer complaints and customer arbitrations CFP Board reviews involve allegations of suitability. For investigations involving this issue, CFP Board often will want to obtain "know your customer" information to evaluate a claim involving suitability. CFP Board's ability to properly evaluate a suitability claim is effectively limited unless access is provided to the documents that contain the relevant information.

Third, CFP Board imposes additional responsibilities on a CFP® professional who provides financial planning services or material elements of financial planning services. These obligations include, among other things, the requirement to enter into a written agreement with the client, provide certain written disclosures, adhere to CFP Board's fiduciary standard and comply with CFP Board's *Financial Planning Practice Standards*. Thus, a critical inquiry in every case CFP Board investigates is to determine whether the CFP® professional is engaged in the provision of financial planning services.

To conduct an investigation involving this issue, CFP Board often finds it helpful to obtain access to client notes and correspondence and/or the written agreement governing the services. The lack of such documents inhibits CFP Board's ability to determine the client's intent and understanding when engaging the CFP® professional.

Finally, CFP Board has been limited to receiving only public information regarding actions taken by a federal or state legal authority or regulator and employer discipline. CFP® professionals and their employers frequently tell CFP Board that much of the information underlying an action taken by a federal or state legal authority or regulator is subject to Regulation S-P. For many of the reasons previously discussed, CFP Board needs to review the information underlying an action taken by a federal or state legal authority or regulator, such as correspondence between the federal or state legal authority or regulator and the CFP® professional and any documents reviewed by, or provided to, the federal or state legal authority or regulator.

Accordingly, CFP Board seeks to clarify that the definition of Background Documents includes, but is not limited to, the following:

- A customer complaint involving the applicant or CFP® professional, including any attachments or exhibits, the employer's response to the customer complaint, including any attachments or exhibits, any document evidencing the resolution of the claim and any document material to the customer complaint, which would include, but not be limited to:
  - any document specifically referenced in the customer complaint or the employer's response to the customer complaint;
  - any account opening forms and/or investor questionnaire when the customer complaint involves allegations of suitability;
  - any document containing the recommendations made by the CFP® professional;

- any confirmations, including account statements, deemed relevant to the investigation;
  - any written financial plan or documents reflecting the financial plan presented to the customer;
  - any written financial planning agreement or written agreement to provide investment advice; and
  - any client notes or correspondence relating to the allegations in the customer complaint.
- A Statement of Claim (including arbitration claims) involving the applicant or CFP® professional, including any attachments or exhibits, the employer's response to the Statement of Claim, including any attachments or exhibits, any document evidencing the resolution of the claim and any document material to the Statement of Claim, which would include, but not be limited to:
  - any document specifically referenced in the Statement of Claim or the employer's response to the Statement of Claim;
  - the account opening forms and/or investor questionnaire when the Statement of Claim involves allegations of suitability;
  - any document containing the recommendations made by the CFP® professional
  - any written financial plan or documents reflecting the financial plan presented to the customer;
  - any written financial planning agreement or written agreement to provide investment advice; and
  - any client notes or correspondence relating to the allegations in the Statement of Claim.
- A copy of any correspondence, including attachments, between the applicant or CFP® professional and a federal or state legal authority or regulator (including self-regulatory organizations), any complaint, injunctive order, or cease and desist order, including attachments, filed by a federal or state legal authority or regulator (including self-regulatory organizations), any response to the complaint, injunctive order, or cease and desist order, including attachments, any document evidencing the outcome of any investigation or action by the federal or state legal authority or regulator and any document material to the investigation or action by the federal or state legal authority or regulator.

#### **Safeguarding and Handling of Background Documents**

CFP Board acknowledges that certain Background Documents may contain sensitive personal information and will take reasonable and appropriate steps to maintain the confidentiality of such Background Documents. CFP Board has stringent policies and procedures in place covering both Data Security and Document Retention/Destruction, and its confidentiality policies have been promulgated to all CFP Board staff. These policies and procedures address, among other things, the handling of investigative files. Safeguards include maintaining hardcopy investigative files in locked storage cabinets and applying password protection and encryption when transferring electronic files. Investigative files can be accessed by members of CFP Board's

Joseph M. Furey  
December 10, 2014

Professional Standards and Legal staff only. Members of the Disciplinary and Ethics Committee and the Appeals Committee of the Board of Directors are provided with certain documents from investigative files as part of the CFP Board's disciplinary process. When an investigation is closed, only an electronic copy of the case file is maintained, while all hardcopy documents in the file, including those provided to the Disciplinary and Ethics Commission and the Appeals Committee of the Board of Directors, are destroyed.

As stated in our March 10, 2011 letter, we believe that the disclosure of Background Documents to CFP Board for the purpose of assessing compliance with CFP Board's ethical standards should be covered by the exception provided by Section 248.15(a)(3) of Regulation S-P. Accordingly, CFP Board will treat the information contained in Background Documents as if it were received pursuant to this exception and limit the redisclosure and reuse of the information as specified in Section 248.11(a) of Regulation S-P. In other words, the information will be used only for the purpose of assessing compliance with CFP Board's ethical standards and will not be used or redisclosed for other purposes, such as marketing.

#### Conclusion

For the reasons set forth above, we request that the staff of the SEC adopt the above-described no-action position regarding Regulation S-P. We appreciate your consideration of this request. If you have any questions regarding this letter, please do not hesitate to contact me directly at (202) 379-2230.

Sincerely,



Michael P. Shaw  
Managing Director, Professional Standards and Legal