

Further Explanation of the Changes Relating to the Disciplinary and Ethics Commission of Certified Financial Planner Board of Standards, Inc.

Message from David G. Strege, CFP[®], CFA[®], Chair of CFP Board's Board of Directors

This paper further explains why the Board of Directors of Certified Financial Planner Board of Standards, Inc. (CFP Board) changed the lines of authority for the Disciplinary and Ethics Commission (Commission). The volunteers of the Commission provide a critical function for CFP Board through their participation in CFP Board's professional review and disciplinary process. This process enforces CFP Board's ethical standards, thereby providing legitimacy to the CFP[®] marks by helping to instill public confidence and trust in the services provided by CFP[®] certificants.

The Board of Directors worked for several years on the development of its current strategic plan, and part of that process included efforts to define roles clearly. The name changes made in 2006 (the Board of Governors was renamed Board of Directors, the Board of Examiners was renamed Council on Examinations, and the Board of Professional Review was renamed Disciplinary and Ethics Commission) were introduced in part to reduce the confusion caused by the multiple number of "Boards" that comprised CFP Board. The new names – including commissions, councils, committees and task forces – were added to CFP Board's bylaws and policies, along with descriptions of their intended roles and structures. After these changes were introduced, the members of the Commission posed some questions that they hoped would further clarify the Commission's role. These questions were presented to the Board in January 2008.

The Board of Directors discussed the Commission members' valid questions and reaffirmed its belief that the professional review and disciplinary processes in which the Commission is involved represent vital areas of CFP Board's operations. Because these operations can lead to the permanent revocation of an individual's right to use the CFP[®] marks – a serious matter that can have significant consequences for an individual's career and livelihood – they also represent the area of CFP Board's operations most likely to lead to major lawsuits that could threaten the assets, even the existence, of CFP Board. Over the years, CFP Board has successfully overcome several legal challenges to its authority to regulate use of the CFP[®] marks and challenges to disciplinary actions it has taken. Due to the liability associated with this process, it is vital that CFP Board maintain a valid and defensible process. It is always difficult for volunteers (such as those on the Board of Directors) to manage other volunteers (such as those on the Commission). It is difficult to fire volunteers and, since they are unpaid, cutting compensation is not a remedy. It was important that the process continue to be administered by full-time staff who can monitor its day-to-day operations and support the work of the part-time volunteers on the Commission. Something this important must be have full-time oversight.

To clarify roles and responsibilities, the Board determined that the professional review and disciplinary process, as part of CFP Board's core operations, were properly placed under the oversight of CFP Board's CEO, who reports to the Board of Directors. CFP Board uses the Policy Governance[®] model of governance, which requires the Board of Directors to determine what authority it will hold and what authority it will delegate. The model suggests there are three duties it cannot delegate: 1) the contact and connection between the owners and the organization, 2) developing guiding policy to direct the organization, and 3) assuring the actual performance of those directions by the CEO. In short, the Board of Directors sets the direction of CFP Board, delegates



oversight of the organization's operations to the CEO, and holds responsibility for monitoring and evaluating the CEO's success in aligning the organization's operations with the established policies and direction. The CEO is seen as the Board of Directors' only employee and its direct point of contact with the operational side of the organization. The Board of Directors always has ultimate responsibility for CFP Board. The CEO and the staff have accountability and responsibility to make the business plan happen within prudent and ethical limitations. This model is designed to open the door for innovation and creativity, while assuring the short term safety and long term viability of the organization.

Because the Board of Directors wants the CEO to be fully accountable for all operational performance, it typically delegates authority for all operational decisions to the CEO, so long as those decisions accomplish the policies and directions set by the Board of Directors and stay within the parameters set by the Board of Directors. When staff is accountable for protecting the assets of the organization, they then must have authority over the areas that could bring such threats.

CFP Board's governance structure mandates that the Board of Directors controls only committees that do the work of the Board of Directors and that it avoids controlling or influencing working groups that do the organization's operational work. This assures that the CEO maintains control of all mechanisms for accomplishing the assigned expectations and can be truly and fully accountable for the organization's performance. A primary point of clarification in committees and other working groups is whether the work on which they focus relates to the responsibilities of the Board of Directors (governance) or of the CEO (operational activities). If the focus is operational, the group is properly under the oversight of the CEO. The administration of the four E's of Education, Examination, Experience and Ethics are operational issues. So the CEO has been provided such authority through the Board of Directors' policies and in the bylaws that relate to the professional review and disciplinary process.

In CFP Board's organizational structure, it is therefore appropriate that the CEO hold accountability to make sure the professional review and disciplinary process (and the other processes that represent the organization's operations) functions smoothly and that it is viewed by the public and CFP[®] certificant as valid and fair. In order to fulfill those duties effectively, the CEO must have authority for the administration of the professional review and disciplinary process. Many procedures related to the process are established through CFP Board's *Disciplinary Rules and Procedures (Rules)*, but there are aspects of the process not defined by the *Rules*. The CEO is responsible for ensuring that the *Rules* are followed and that the other procedures used in the administration of the professional review and disciplinary process are fair and valid. Some have expressed concerns about how one person can oversee everything. One person can't. Under the governance model CFP Board uses, the Board of Directors holds ultimate responsibility for the organization and sets policies and directions, and the CEO is responsible for conducting the organization's operations in line with those policies and directions. The CEO is charged with authority to hire qualified staff and outside consultants and to assemble volunteer groups to assist with CFP Board's operations. The CEO functions within the parameters set by the policies and directions set by the Board of Directors and by the limitations imposed in established policies such as those in the *Rules*, which specify, among other things, that Commission members have authority to make decisions and impose discipline in cases brought for hearing before the Commission. **The Commission members still retain the independence to make case decisions.**

CFP Board's clarification of the lines of authority related to the Commission was made as an answer to questions Commission members posed to a Board of Directors member who attended the Commission's November 2007 meeting. The Board of Directors believed the Commission members raised important questions, and it therefore sought to provide clarity about the lines of reporting and authority. We did not anticipate or in any way seek the resignation of Commission members.

Since the Board of Directors made its decision to clarify oversight responsibilities for the Commission, concerns have been raised about the operational decision to assign staff counsel to attend the Commission's ratification meetings to review the recommendations of hearing panels. This decision was made to assist the Commission in continuing its work to maintain a valid and defensible professional review and disciplinary process. The staff counsel assigned to attend the ratification meetings will serve in an advisory role and not participate in the Commission's decisions, which continue to be the responsibility of the Commission members. This staff counsel can only provide clarification assistance for the Commission to consider during the ratification process. Additionally, to reduce the appearance of any conflicts, this staff counsel will not be involved in presenting cases to the hearing panels. Only Commission members will vote on recommended decisions from the hearing panels.

Another issue that has been raised is the announcement of plans to include public representatives who do not hold CFP® certification on the Commission's hearing panels. The proposal to include public representatives on hearing panels has been discussed with the Commission several times over the past several years, and the decision was contemplated by Article 2.3 of the *Rules*, which has for more than 15 years included limitations on the number of non-certificants who may serve on hearing panels and affirmed that CFP® professionals will always represent a majority on hearing panels. While the addition of public representatives adds some additional complexities to the administration of CFP Board's enforcement process, the public view is needed. We will seek professional and knowledgeable people to fill the public representative roles, most likely beginning in 2009. Public members with professional knowledge will add an additional check and balance to CFP Board's professional and disciplinary review process that will help make sure the public is properly served by this process. Some questions have arisen about confidentiality issues related to the involvement of non-certificants in CFP Board's professional review and disciplinary process. It is important to note that all who volunteer or work with CFP Board are required to complete and abide by a confidentiality agreement and that there are already non-certificant volunteers and staff who properly observe this requirement. The inclusion of public members is widely viewed and accepted as best practice and used by many similar organizations.

Clarifying the lines of reporting for the Commission is the latest step in an ongoing process of reviewing CFP Board's professional review and disciplinary process to ensure that it is fair, valid and legally enforceable. This and future improvements to the process will continue to enhance CFP Board's ability to determine when a CFP® certificant may have acted inappropriately and what disciplinary action may be appropriate. CFP Board's enforcement of the ethical standards for CFP® professionals instills confidence in the public that they can trust a CFP® practitioner to help them realize their life goals through proper management of financial resources. It provides a fair process for CFP® certificants and their clients.

Perhaps now more than ever, CFP Board's professional review and disciplinary process is important for the reputation and continued strength of the CFP® marks as CFP Board's updated *Code of Ethics*

and Professional Responsibility and Rules of Conduct become effective July 1, 2008. Professional review cases in the future will define and provide guidance to certificants and the financial planning profession of acceptable practice standards. Beginning on July 1, 2008, CFP® certificants will be held to a higher duty of care standard and be required to place the interest of their clients ahead of their own at all times. This requirement must be backed by a professional review and disciplinary process that applies appropriate penalties in a consistent manner. As cases come forward under the updated ethical standards, they will also define when CFP® certificants' actions involve material elements of financial planning and require them to provide those services with the higher duty of care of a fiduciary – one who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client. These determinations will build case history that sets precedent for the actions of CFP® professionals and for the outcomes of future disciplinary actions issued by CFP Board. To accomplish this in a valid and legally defensible manner that treats both CFP® certificants and their clients with fairness requires the diligent administration of CFP Board's professional review and disciplinary process. If unprofessional activities occur during CFP Board's administration of this process, or if the process results in conflicting or contradictory outcomes, then the financial planning community will become confused. This confusion will slow the growth of the financial planning profession.

If CFP Board's enforcement of its ethical standards creates confusion within the profession or among the public, that has additional potential to create lawsuits challenging the decisions made by Commission. This situation becomes a possible threat to CFP Board's viability. The Board of Directors has the fiduciary responsibility to make sure that CFP Board's assets are protected while it works towards its mission: *To benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning.*