



December 14, 2018

Christopher W. Gerold  
Bureau Chief  
Bureau of Securities  
PO Box 47029  
Newark, New Jersey 07101

Mr. Gerold:

The Financial Planning Coalition (“Coalition”)<sup>1</sup> – comprised of Certified Financial Planner Board of Standards (“CFP Board”),<sup>2</sup> the Financial Planning Association® (“FPA”),<sup>3</sup> and the National Association of Personal Financial Advisors (“NAPFA”)<sup>4</sup> – appreciates this opportunity to comment on the Bureau’s consideration of a pre-proposal to adopt a state-based fiduciary standard for personalized investment advice.

This comment letter echoes many of the points made by John Crosby, CFP®, ChFC, CLTC, CRPC, on behalf of the Financial Planning Association, in testimony on November 19, 2018 before the Bureau.

The Coalition’s position on a fiduciary standard for personalized investment advice is based upon the real-world business experience of the more than 82,000 CFP® professionals who are stakeholders and members of the Coalition organizations. Importantly, CERTIFIED FINANCIAL PLANNER™ professionals provide fiduciary-level services across business models – as investment advisers, broker-dealers, and insurance agents – and across compensation models – including commission and fee models. It is this unique perspective that we bring to the discussion about the proper standard of conduct for investment advice.

---

<sup>1</sup> The Financial Planning Coalition is a collaboration of the leading national organizations representing the development and advancement of the financial planning profession. Together, the Coalition seeks to educate policymakers about the financial planning profession, to advocate for policy measures that ensure financial planning services are delivered in the best interests of the public, and to enable the public to identify trustworthy financial advisers. See, <http://financialplanningcoalition.com>.

<sup>2</sup> CFP Board is a non-profit certification and standard-setting organization, which sets competency and ethical standards for more than 82,000 CERTIFIED FINANCIAL PLANNER™ professionals throughout the country. CFP® professionals voluntarily agree to comply with CFP Board’s rigorous standards including education, examination, experience and ethics, and subject themselves to disciplinary oversight of CFP Board.

<sup>3</sup> FPA® is the largest membership organization for CFP® professionals and those who support the financial planning process in the U.S. with 23,000 members nationwide. With a national network of 88 chapters and state councils, FPA® represents tens of thousands of financial planners, educators and allied professionals involved in all facets of providing financial planning services. FPA® works in alliance with academic leaders, legislative and regulatory bodies, financial services firms and consumer interest organizations to represent its members.

<sup>4</sup> NAPFA is the nation’s leading organization of fee-only comprehensive financial planning advisors with more than 3,000 members nationwide. NAPFA members are highly trained professionals who adhere to high professional standards. Each NAPFA advisor annually must sign and renew a Fiduciary Oath and subscribe to NAPFA’s Code of Ethics.

Since its inception in 2007, the Coalition has been an unwavering advocate in support of regulatory reforms to increase protections for “Main Street” retail investors, in particular by advocating for a fiduciary standard for all personalized investment advice. The Coalition actively supported Congressional adoption of Section 913(g) of the Dodd-Frank Act, and for nearly a decade has urged the Securities and Exchange Commission (“SEC” or “Commission”) to move forward in rulemaking to accomplish what that provision contemplates. In comment letters submitted in 2013 and 2017, the Coalition urged the SEC to adopt a uniform fiduciary standard that would apply to both broker-dealers and investment advisers, when providing personalized investment advice to retail investors, that is no less stringent than the existing fiduciary standard under the Investment Advisers Act of 1940 (the “Advisers Act”). The Coalition emphasized that “disclosure alone” is not sufficient to reduce retail investors’ confusion and harm, and that a “best interest” standard should integrate the duties of loyalty and care as they are articulated in the Advisers Act and subsequent case law.

While we waited for the SEC to act, the Coalition supported the Department of Labor’s (“DOL”) 2016 Fiduciary Rule for retirement investment advice. Most recently, the Coalition advocated for a robust fiduciary standard in comments submitted to the SEC in response to the agency’s proposed Regulation Best Interest (“Reg BI”) and related rule proposals. The Coalition expressed concern that, as introduced, the package of rule proposals may offer the appearance, but not necessarily the reality, of increased investor protection.

The Coalition strongly encouraged the agency to improve and strengthen proposed Reg BI so that the Commission may realize its goal of increasing investor protection and the quality of advice. Toward that end, the Coalition recommended that the Commission consider CFP Board’s practical approach to a fiduciary standard that accommodates various business models while providing a clear and explicit fiduciary obligation to CFP® professionals.

CFP Board first adopted a fiduciary duty in 2007, when it issued revised *Standards* requiring a CFP® professional to act as a fiduciary when providing financial planning or material elements of financial planning. In March of this year, CFP Board adopted a revised *Code of Ethics and Standards of Conduct*, which will become effective in October 2019. The new *Code and Standards* extends the application of the fiduciary duty from financial planning services to **all** Financial Advice. Financial Advice is broadly defined to include virtually everything but order taking. A CFP® professional’s fiduciary duty under these new *Standards* includes a duty of loyalty, a duty of care, and a duty to follow client instructions. The *Standards* provide explanations of each of these duties drawn from common law fiduciary concepts.

The updated *Standards* enjoy strong support among CFP® professionals and their membership organizations. More than 96 percent of CFP® professionals who responded to a recent survey agreed that a CFP® professional should be required to act in the client’s best interest when providing “Financial Advice.” Likewise, FPA and NAPFA support the expanded CFP Board fiduciary obligation. FPA applauded CFP Board “for taking the bold and necessary step in expanding the fiduciary standard for CFP® professionals.”<sup>5</sup> NAPFA commented that it “supports CFP Board’s efforts to [broaden] fiduciary requirements for CFP® professionals. Working under fiduciary principles is the most transparent – and we believe the most objective – way of serving the public. Consumers have come to expect advice delivered in their best

---

<sup>5</sup> Letter from FPA to CFP Board, dated Aug. 21, 2017, available at <https://www.cfp.net/docs/default-source/for-cfp-pros---professional-standards-enforcement/2017-proposed-standards/fpa-comments-2017-08-21.pdf>.

interest and will now be able to count on a CFP® professional to provide it at all times when giving financial advice.”<sup>6</sup>

CFP Board adopted this broader application of a fiduciary duty to provide the public with clarity. The public will not need to guess whether their CFP® professional is working in their best interest depending on the service provided. In short, we believe the fiduciary duty is the crown jewel that animates a CFP® professional’s commitment to high standards.

It is against the backdrop of the new *Code and Standards* adopted by CFP Board that the Financial Planning Coalition evaluated the SEC’s proposed Reg BI and related rule proposals.

There are similarities between the two, including:

- A recognition of working in the client’s best interests;
- The duty of care;
- Recognition of the importance of firms’ written policies and procedures;
- A principles-based approach to documentation of decision-making; and
- An educational materials exception to the definition of financial advice.

While there are similarities, what is perhaps most important are the significant differences between the two approaches.

**“Best Interest.”** Under CFP Board’s new *Standards*, “best interest” clearly and unambiguously means a fiduciary duty. This fiduciary standard encompasses both the duty of loyalty and the duty of care, only the latter of which is found as a distinct and detailed provision in the SEC’s proposed Reg BI. The concepts behind the duty of loyalty and duty of care in CFP Board’s new *Standards* stem directly from the traditional fiduciary duty applicable to RIAs under the Advisers Act.

The fiduciary duty is clearly and prominently stated and defined in the new *Standards*. The fiduciary duty must be satisfied through behavior and actions, and not just through disclosures or written policies and procedures. All CFP® professionals owe the fiduciary duty to their clients whenever providing financial advice, regardless of the business model under which they operate.

Under the proposed Reg BI, “best interest” is not clearly defined and leads one to wonder if it is the best interest standard in FINRA’s suitability rules, or the fiduciary obligation under the Advisers Act, or something entirely different. That the term “best interest” lacks a definition results in an unclear standard.

**Duty of Loyalty.** Similar to best interest, there is no distinct and well-defined duty of loyalty in Reg BI, as proposed. By contrast, the duty of loyalty is prominently featured in the CFP Board’s new *Standards* and incorporates traditional fiduciary standard interpretations under the Advisers Act and fiduciary language found in Section 913(g) of Dodd-Frank. Under the duty of loyalty, a CFP® professional must:

- Place the interests of the client “above” his or his firm’s interests;

---

<sup>6</sup> Letter from NAPFA to CFP Board, dated Aug. 21, 2017, available at <https://www.cfp.net/docs/default-source/for-cfp-pros---professional-standards-enforcement/2017-proposed-standards/napfa-comments-2017-08-21.pdf>.

- Avoid conflicts of interest, or fully disclose material conflicts of interest to the client, obtain the client’s informed consent, and properly manage the conflict; and
- Act “without regard to” the financial or other interests of himself or his firm, or any individual or entity other than the client.

Reg BI lacks a separate, stand-alone duty of loyalty and instead attempts to incorporate the concept of loyalty in the requirement to not put the broker-dealer’s interests “ahead of” those of the customer and mitigate financial incentives, a requirement that is also largely undefined.

**Conflicts of Interest.** The new *Standards* have a single, uniform method of dealing with conflicts of interest, regardless of how they originate. Reg BI distinguishes between different types of conflicts of interest, providing disparate ways of handling them. As described in the duty of loyalty, CFP® professionals have two choices when it comes to handling conflicts: either 1) avoid the conflict or 2) fully disclose material conflicts to the client, obtain the client’s informed consent, and properly manage the conflict. The *Standards* make clear that the duty to act in the customer’s best interest is not satisfied by disclosure alone.

**“Client” v. Retail Customer.** The new *Standards* define “Client” as “Any person, including a natural person, business organization, or legal entity, to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement.” This definition covers a broad range of individuals and organizations, regardless of their accredited investor or similar status, and regardless of the purpose for which they seek the services of a CFP® professional. This type of broad coverage is closer to the concepts outlined in the RIA Interpretation, rather than those outlined in Reg BI or Form CRS.

In conclusion, in today’s complex financial marketplace, many consumers turn to a financial professional to help them make good decisions. Yet when they seek financial advice, they find it is virtually impossible to distinguish a salesperson from an advisor or between those advisors who are legally obligated to act as a fiduciary when providing financial advice and those who are not. As a result, the fiduciary duty in the new CFP Board *Standards* reflects the simple and unambiguous principle that CFP® professionals operating under all business models must always provide Financial Advice to Clients under a fiduciary standard. An effective rulemaking package for broker-dealers will do the same.

Thank you.

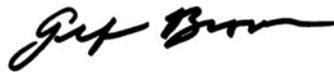
Sincerely,



Kevin R. Keller, CAE  
Chief Executive Officer  
CFP Board



Lauren Schadle, CAE  
Executive Director/CEO  
FPA®



Geoffrey Brown, CAE  
Chief Executive Officer  
NAPFA