Why Making Financial Planning a True Profession May Harm Consumers
December 26, 2019
by John H. Robinson

On December 28, at approximately 10:00pm ET, a correction was made to this article. In the original article, certain statements were misattributed to Ron Rhoades. Specifically, Ron has not written or advocated that the CFP Board should be “at the helm of a future profession” or that it should have “singular authority over policymaking by limiting the ability to practice financial planning exclusively to those who have attained the CFP designation.” This version accurately reflects Ron’s views and prior statements. For more information on Ron’s and JR’s views on this matter, please read this APViewpoint conversation.

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Like many financial planners, I hope for the day when we are accorded the same professional stature as lawyers and accountants. But the CFP Board should not be put at the helm of that future profession. That would harm consumers and erode the public trust we have worked so hard to engender.

This article is a rebuttal to Ron’s December 4, 2019 Advisor Perspectives article, How Financial Planning Can Become a True Profession. Ron is the director of the financial planning undergraduate degree program at Western Kentucky University. He holds a Juris Doctor degree and is a CFP certificant. Ron is a frequent contributor of op-ed commentary advocating for the advancement of the financial planning by making the CFP Board the standard-bearer for the profession.

In his latest piece, Ron provided an outline of the characteristics that elevate an industry to a true profession. In doing so, he explained the value of professional standards to consumers, and why, in his view, the financial planning industry falls short of being a true profession. The central thesis of his commentary is that the public interest would be better served if the financial planning industry were to become “a regulated, true profession.” He wrote positively about the CFP Board of Standards, particularly with respect to its course of study and its fiduciary standard. One might infer that the goal of elevating planning to a profession could be best and most expeditiously attained by granting the CFP Board of Standards singular authority over policymaking and by limiting the ability to practice financial planning exclusively to those who have attained the CFP designation, although Ron did not call for those steps to be taken.

I generally agree with Ron’s assessment that the financial planning industry is not a true profession in the way that law or accounting are regarded as such. I also agree with his view that consumers would benefit and public trust would be gained by having the financial planning industry regulated separately from brokerage and investment advisory services and from the establishment of educational qualification standards.

I do not believe that the CFP Board of Standards is the right organization to assume responsibility for the public trust in the same manner as the American Bar Association does for the legal profession and the AICPA does for the tax and accounting profession. Far from being the solution for advancing the financial planning industry, the CFP Board’s fostering of consumer mistrust and regulatory confusion actually make it the source of many of the industry’s problems.

Some might even claim that the CFP’s Board’s offenses were willful, consistent with the way that term is applied in the law, as in, “willful neglect.” For example, in tort law, if a property owner maintains a dangerous open pit on his property and a person walking on the property is injured or dies from falling in, the property owner may be guilty of willful neglect because he should have known there was a reasonable possibility for harm. The CFP Board knew for decades that some segment of its members used its mark to defraud people, so it could be considered willful when it tells consumers in its advertisements that all CFPs are trustworthy and thoroughly vetted. Similarly, by spending millions of dollars on advertisements implying...
Background: The elements of a true profession

In his AP article, Ron presented a number of characteristics that collectively are needed to elevate the financial planning industry to gain credibility as a profession. They are as follows:

- A unique body of knowledge
- A required course of study
- A membership organization
- A sanctioning professional regulatory organization
- A strong code of ethics
- A commitment to serve the public interest

The list itself is not particularly controversial. Michael Kitces put forth a similar list of criteria in a 2016 Nerd’s Eye View blog entitled, Is Financial Planning an Industry or a Profession?. Dr. Jeff Camarda did the same in a 2017 Financial Services Review paper, The Relation between financial advisory designations and FINRA misconduct. When these criteria are applied to the law and tax accounting, it is quickly evident that both industries operate as true professions and that the monopolistic authority of the ABA and the AICPA as member-based, non-profit, self-governing bodies works to the benefit of the public interest. Consumer confidence is bolstered by an understanding that J.D. and CPA are the standard designations. Consumers understand that holders of these designations have undergone significant academic training and have passed a rigorous professional licensing exam. Both professions also have ongoing continuing education requirements.

However, when these same characteristics are applied to the financial planning industry, most observers, myself included, conclude that it falls far short of the threshold needed to be considered a true profession in the eyes of consumers. Financial planners are specifically regulated by the SEC under the Investment Advisers Act of 1940. Under the act, financial planners are considered a subset of investment advisers and are subject to exactly the same rules. The antifraud provisions of the act provide a standard of conduct that includes a clearly defined fiduciary standard of duty. While these regulatory standards may be viewed as important elements of professional conduct, there are no educational qualification standards or continuing education requirements for investment advisers. The only licensing requirement is the series 66 exam, which tests applicants’ knowledge of state and federal regulations pertaining to Registered Investment Adviser firms and their representatives. In theory, use of the title “financial planner” is restricted to SEC-registered advisers. But regulatory gaps have historically enabled many advisors, most notably large numbers of brokers and insurance agents with CFP credentials, to present themselves to the public as financial planners while operating outside of the SEC’s regulatory reach and thus outside of fiduciary accountability.

The absence of separate and distinct regulation of financial planning as an industry segment, combined with a lack of educational standards and lack of consumer awareness of the fiduciary duty that accompanies the financial planner moniker has led to a proliferation of advisor credentials. According to FINRA, there are currently more than 1,000 professional credentials or designations for financial advisors. As Camarda (2017) noted, “In non-monopolistic markets, Signal Theory purports that agents [financial advisors] signal skills [to consumers] with educational credentials – acquiring a credential is essentially a reputation-for-quality purchase.” In assessing the current state of financial planning regulation, Camarda (2017) further stated, “...the lack of real governmental regulation of a profession promotes unethical and fraudulent activity. While a [financial planning] profession is clearly emerging, a still-nascent commitment to formalized academic development is critical to its success.”

In sum, there is near universal agreement that the financial planning industry lacks the proper structure to function as a true profession. A consequence of this is that consumer confusion and mistrust abound.
According to Motley Fool, a 2016 survey by the American Association of Individual Investors found that 65% of American consumers mistrust the financial services industry.

The CFP Board as savior for the financial planning profession

On the surface, Ron’s suggestion that the CFP Board of Standards represents the perfect solution for building public trust and elevating financial planning to true profession seems well-founded. The organization has been in existence for more than 50 years and owns the Certified Financial Planner designation and CFP service mark. It is structured as a non-profit, member-based organization. Although no prior academic experience in finance, economics or accounting is required to obtain the designation, applicants for the marks are generally required to complete an extensive educational/vocational training program that covers a body of knowledge that goes beyond investment management to include estate planning, insurance planning, tax planning, qualified retirement plans, and education planning. The training program is offered through a number of online learning providers including Kaplan and the American College.

Although neither the training program nor the designation carry any academic accreditation, the CFP Board has successfully fostered and sanctioned a number of accredited financial planning undergraduate degree programs at colleges and universities around the country. Graduates of these programs are permitted to sit for the CFP exam without going through the online training programs. Upon attainment of the designation, certificants are required to satisfy annual continuing education requirements in order to maintain the right to use the designation. Additionally, the Board has a code of ethics and a recently updated standard of conduct policy that states that its members are held to a fiduciary standard of duty in all client dealings.

The CFP Board seems to have most of the characteristics needed to serve as the autonomous governing body for the financial planning profession. Installing the CFP Board into this role, is almost perfectly analogous to the American Bar Association and the AICPA, and making the CFP designation a required standard would give the planning profession a singular industry moniker akin to J.D. and CPA. Indeed, the CFP Board already boasts more than 85,000 members. Further, as a result Board’s annual $10 million-plus advertising budget, the CFP designation is by far the most recognized credential among consumers.

The inconvenient truth about the CFP Board

Unfortunately, there is one critically important characteristic where the CFP Board falls woefully short. It may explain the SEC’s reluctance to cede regulatory authority of the financial planning industry.

That is its commitment to serve the public trust.

The inconvenient truth is that the CFP Board has persistently violated the public’s trust and undermined the regulatory authorities to further its own ambitions. This self-serving, anti-consumer behavior has been part of the CFP Board’s *modus operandi* since its inception.

In the introduction to his article, Ron painted a positive narrative of the founding fathers of the CFP Board as noble practitioners seeking to further financial planning knowledge for the benefit of the consumer. He wrote, “Nearly 50 years ago, at a meeting near Chicago’s O’Hare Airport [where] 13 individuals met to discuss the creation of a new profession.” But the origin of the CFP designation was documented in inglorious detail in Michael Kitces’ July 2018 Podcast, Ben Coombs: 1st CFP on the History of Financial Planning. As Coombs related in the discussion, consistent with signal theory, the CFP designation was created by a group of insurance salesmen to help create the perception of credibility in order to help them sell high-commission products to unsuspecting consumers. Coombs explained how the newfound perception of credibility that accompanied the mark enabled legions of insurance agents to extend their reach into even higher commission-paying sales of ill-fated energy limited partnerships in the early 1980s and later into universal life and variable annuity sales.

Examples of CFPs using the mark to gain credibility in order to mislead and defraud clients abound. In 2009, Judith Zabalouui, who was one of the first CFPs and a fee-only planning pioneer, was sentenced to eight years in prison for operating a Ponzi scheme. Bradford Bleidt held the dubious distinction in the early 2000s of operating the largest Ponzi scheme in the U.S. prior to Madoff. He openly admitted that he used his CFP designation to gain his victims’ trust.

At issue is not the notion that some subset of the universe of CFPs may be “bad apples.” There are, of course, many examples of non-CFP brokers and investment advisers who have exhibited similarly egregious conduct. The issue is that the CFP Board has long been aware that the mark may be used to build false trust, yet its advertising campaigns tell consumers that all of its members are trustworthy. Examples are as follows:
“Trust your finances to someone who isn’t certified? You’d have to be crazy.”

“When you choose a Certified Financial Planner, you’ll know you’re in good hands.”

“If they’re not a CFP Pro, you just don’t know.”

This messaging has proven to be irresponsible and misleading. Increasing consumers’ vulnerability to fraud is inconsistent with serving the public trust.

Worse still, the CFP Board has undermined the SEC’s regulatory authority. In a number of advertisements, the CFP Board has asserted that, “Anyone can call themselves a ‘Financial Planner.’” Only professionals who meet the CFP Board’s rigorous standards can call themselves a Certified Financial Planner.” The implication that financial planners are unregulated is patently false. As referenced previously, the SEC specifically regulates financial planners and its authority is clearly expressed in SEC Interpretive Release 1092 – The Applicability of the Investment Advisers Act to Financial Planners.

In one of its recently produced marketing videos, CFP Board General Counsel, Leo Rydzewski takes this false messaging to an extreme by advising consumers that the CFP Board represents a higher authority than state regulatory authorities, FINRA, and the SEC.

In reality, the CFP Board has no standing as a regulator.

At the same time, in its efforts to grow its membership base to support its multi-million dollar advertising and lobbying campaigns (not to mention millions of dollars of CFP Board executive compensation), the CFP Board has aggressively encouraged thousands of commission-based insurance agents and brokerage reps who operate beyond the SEC’s reach to attain the designation and use CFP mark in their sales and marketing efforts. The potential for consumers to mistakenly believe they are receiving fiduciary advice from an adviser who is not held to the SEC’s fiduciary standard is obvious.

In yet another example of how the Board misled consumers, a recent multi-million dollar CFP Board marketing campaign proclaimed that consumers should trust CFPs because they are “thoroughly vetted” and “held to the highest standard.” On July 30, 2019, the Wall Street Journal published a front-page exposé that I helped develop. The story revealed how the CFP Board’s verification website endorsed as having clean regulatory backgrounds more than 6,000 CFPs with FINRA “broker check” disclosure events, including felony convictions, customer complaints, arbitration awards and bankruptcy filings.

So much for thoroughly vetted. So much for the highest standard.

The negative PR from the story sent the Board into spin control and led it to immediately appoint an independent task force to make recommendations for improving the Board’s oversight of its 85,000 members. On November 1, the task force presented its findings in a 30-page report. As detailed in the report, the task force found that the failings identified in the by the Journal’s investigation resulted from “systemic, long-standing governance level weaknesses” at the CFP Board and warned, that “these weaknesses will inevitably result in a recurrence of the kind of events reported by the Journal unless the Board of Directors acts to implement reforms.”

In its public response, the CFP Board did not commit to implementing the task force’s recommendations and indicated that it needed time to fully analyze their implications. Ironically (and hypocritically), the Board commented that some of the recommendations made by the task force are more suitable to regulatory authorities than to a professional certification group.

The message from CFP advocates, including Dan Moisand, Michael Kitces, and the FPA and NAPFA boards of directors, is that the CFP Board leadership is hard-working and well-meaning and that we should allow the Board to learn from its mistakes. As Ron stated a reply to my comments on APViewpoint. “No organization will ever be ‘perfect’...Yet, I choose to look forward, not backward. The CFP Board leadership, staff, and volunteers have worked hard...to move the ball forward.”

I am far from alone in expressing skepticism over the Board’s willingness to reform its ways. In a 2017 ThinkAdvisor op-ed piece regarding the CFP Board’s new Standards of Conduct, Don Trone, the director of the Corporate Governance society, commented, “The Board doesn’t give a hoot about certificants, nor about the best interests of the public. The Board’s fiduciary initiatives are being fueled by politics, power, ego and greed.” He went on to opine that “integrity is a characteristic that the Board fails to demonstrate,” and that the Board’s practices, “run counter to good governance and to a fiduciary standard of care.” In a linked in post last week, Don reiterated his view that “The CFP Board has caused more harm to the fiduciary movement than just about any other organization.”
Support for skepticism can be found in the fact that, five months after the *Wall Street Journal* story, the 6,000+ CFPs with disclosure events are still endorsed on the CFP Board verification site as clean. Additionally, the CFP Board has continued its public criticism (and misrepresentation) of the SEC’s adoption of the best interest (BI) standard while trumpeting its newly minted fiduciary standard for its members as being superior to the fiduciary standard the SEC applies to investment advisers.

The Board’s stance, particularly in light of the negative publicity surrounding its governance, is deeply troubling.

To set the record straight, a cursory read of the CFP Board’s new self-defined fiduciary standard of care shows that it does not require its members to provide written disclosure of potential conflicts of interest nor does it require its members to disclose the dollar amount of compensation they may receive from the sale of products with opaque commissions. While CFP Board acolytes claim the CFP Board has moved far beyond its insurance sales roots, the careful wordsmithing in its 2012 and 2018 updates to its Standard of Conduct that continue to allow insurance agent CFP members to sell life insurance policies and annuity contracts without being required to disclose the dollar amount of commissions they receive suggests otherwise. Regardless of Ron’s argument (expressed in prior APViewpoint conversations) that the Board’s new conduct standard are a strong set of fiduciary standards, I maintain that most reasonable consumers expect full transparency from a fiduciary adviser.

In contrast, the SEC’s fiduciary standard of conduct requires financial planners to disclose all material facts (as opposed to the weaker “material conflicts of interest” in the CFP Board Rules of Conduct) that may be relevant to the client’s decision-making process (e.g., the amount of compensation), to always place the interests of the clients first, to avoid conflicts of interest where possible, to disclose in writing unavoidable conflicts of interest, and to provide all new and existing clients with detailed plain English background and disclosure information in the form of SEC Form ADV Parts 2A & 2B.

Collectively, this illuminates the CFP Board’s long history of ethical transgressions and of putting its own monopolistic interests ahead of consumers. Its actions have done immeasurable harm to consumers and to the financial planning industry. Granting the CFP Board autonomous authority over the financial planning profession would reward its decade-long multi-million dollar publicity campaign and for its ongoing deception. Its actions make it wholly unqualified to be entrusted to be the standard-bearer for the financial planning profession. While the CFP Board may still serve a valuable educational role, the Board has permanently harmed the financial planning industry and it should be permanently removed from all governance conversations and held financially accountable for its reprehensible behavior.

**The path forward**

In the absence of any alternative membership organization that could be entrusted to fill a role equivalent to that of the ABA or the AICPA, the SEC, as the legal regulatory authority, is the most qualified steward for advancing the financial planning industry toward becoming a true profession. For all of the criticism that has been directed toward the SEC by the CFP Board and other financial planning-related organizations, a careful read of the SEC’s Interpretive Releases reveals that it has been remarkably circumspect in its rulemaking and that it is genuinely proactive in its efforts to reduce consumer confusion.

For example, one SEC rulemaking change that has gone almost entirely overlooked by the financial news media pertains to the significant narrowing of the definition of the “solely incidental” prong of the broker-dealer exclusion. One of the major loopholes in the SEC’s regulation of financial planners had been that dual-registered advisors have been permitted to wear “two-hats.” Prior rulemaking exempted dual-registered financial advisors from their fiduciary obligations when providing financial planning advice that is “solely incidental” to the advisor’s brokerage role. The vagueness of this term effectively allowed dual-registered advisors to avoid being held to a fiduciary standard when it suited their interests. It also created an obvious conflict of interest and potential for confusion with the client who may reasonably expect the financial planner to act in a fiduciary capacity at all times.

SEC Release IA-5249 narrowed the definition of solely incidental advice to the point that virtually all investment advice and certainly all financial planning advice subjects the adviser to regulation under the Advisers Act even if the client’s investments reside in a brokerage account. This effectively closes the “two hats” loophole and holds dual-registered financial planners to the SEC’s fiduciary standard of conduct at virtually all times.

Another relatively simple change that would go a long way toward reducing investor confusion and reducing fraud would be for the SEC to take greater control of the “financial planner” title. At present, the SEC requires all advisors who hold themselves out as financial planners for compensation and whose business models include investment advice pertaining to securities to register with the SEC and be regulated under the Advisers Act. However, the latter “investment advice pertaining to securities” requirement effectively allows non-securities-licensed CFP insurance agents and certain other advisors who provide flat-fee...
financial planning guidance that excludes securities advice to operate beyond the reach of regulators. The SEC taking sole ownership of the “Financial Planner” title by prohibiting use of the term outside of its regulatory reach would go a long way toward eliminating misuse of the term. It would also create a single unifying title similar to Juris Doctor and CPA.

However, as I previously discussed, the absence of any educational requirements to call oneself a financial planner will remain a significant barrier to gaining public confidence. One way to address this shortcoming would be for the SEC to institute a minimum standard of an undergraduate degree in finance, economics, accounting, or financial planning or attainment of an accepted designation, such as CFA, CFP, CPA, ChFC, etc. This standard would actually be higher than CFP Board’s applicant standards, and would go a long way toward giving SEC-registered financial planners credibility in the eyes of consumers.

In previous debate forums, some CFP acolytes have challenged the applicability of finance, economics and accounting degrees as too narrowly focused on investing. An effective counter argument is that these degrees provide valuable quantitative investment management skills and that the broader-based knowledge topics covered by the CFP curriculum are both qualitative and ephemeral in nature. For instance, the tax planning, qualified plan, college planning, and estate planning rules that were taught when I enrolled in the CFP training program through the College for Financial Planning in the 1990s were obsolete within the next 10 years.

While these ideas for advancing the financial planning industry closer to a professional standard through the SEC are reasonably implementable, a more robust solution would be to lobby the SEC to create a new self-regulatory agency that would govern financial planners separately from investment advisers in much the same way that FINRA governs broker dealers. In his AP commentary, Ron is critical of the FINRA model because its membership is comprised of broker-dealer firms representing their own commercial interests. While the CFP Board’s individual membership model has proven to be no less prone to placing consumer interests behind those of its members, as a practical matter, financial planning firms tend to be much smaller in size than broker-dealers and RIAs. As such, any SEC-created financial planning self-regulatory agency would likely be comprised primarily of individual financial planners working in concert with representatives of the SEC.

This concept for advancing the financial planning profession would also have the critical benefit of an existing enforcement mechanism. While the CFP Board and many of its supporters have long criticized the SEC for lax enforcement, in 2019 the SEC Enforcement Division brought 862 enforcement actions (up from 821 in 2018) and obtained judgements and orders of over $4.3 billion in disgorgement and penalties. In contrast, in a follow up to the July Wall Street Journal report, investigative journalists Jason Zweig and Andrea Fuller found that the CFP Board reviewed far fewer planners for potential misconduct in recent years than it had a decade ago with investigations falling by three quarters even as the number of CFPs rose by almost one-third.

Conclusion

I rebut any suggestion that the CFP Board should be given autonomous authority over the financial planning industry. The CFP Board is unworthy of the public trust and I have provided a reasonable alternative path that will advance our industry closer toward a true profession over time. I have been engaged in this debate for many years and realize that passions run high on both sides. As always, I look forward to reader comments.

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Related Reading

The CFP Board’s Misdeeds Demand Accountability (Advisor Perspectives 8/12/2019)
CFP Board Chief Executive Kevin Keller Joins $1million Compensation Ranks (Investment News 2/27/2019)
Michael Kitces is Wrong About the CFP Board. Here’s Why (Financial Planning, January 2019)
Does the CFP Board Choose Advertising over Enforcement (Financial Planning, 9/24/2018)
Why the CFP Board Should Not Govern the Financial Planning Profession (August 2018)
CFP Board: Fiduciary Hypocrites (ThinkAdvisor 6/28/2018)
Most CFPs are brokers. Fiduciary Advocates say that's a problem. (Financial Planning, 3/9/2018)


The CFP Board Code of Conduct Standards are a "A Mess" (FA magazine, 3/9/2018)

Just Say No to CFP Board’s New Standards (Think Advisor, 7/11/2017)

CFP Board Commission On Standards Expands CFP Fiduciary Duties... But Can It Enforce Them? (Kitces 6/26/2017)

Board to Death: IS the CFP Board’s New Fiduciary Standard Really Better Than No Standard at All? (ThinkAdvisor 6/21/2017)

Secret recording: A CFP at JPMorgan pushed high-priced products (Financial Planning 10/13/2016)

Show me the money: Financial advisory trade groups pay handsomely (Investment News 12/2015).

Why Aren't CFPs Always Subject to a Fiduciary Standard (ThinkAdvisor, 12/3/2014)

How the CFP Board is getting its $40 million's worth from its Advertising Campaign (RIA Biz 7/24/2014)

Is the CFP Board Losing Credibility in the Eyes of Advisors? (Wealth Management 4/11/2014)

Did CFP Board Shorten Exams to Lure Certificants? (Think Advisor 1/17/2014)

Is the CFP Fiduciary Promise for Real? (Financial Planning, 10/29/2013)

When Your Financial Planner Doesn’t Tell All (Wall Street Journal, 10/4/2013)

Is the Fiduciary Standard a Joke (Wall Street Journal, 9/12/2012)

CFP Board chairman steps down amid ethics concerns (Reuters 11/2/2012)

The Curious Case of the CFP Board and a Double-Dipping CFP (Think Advisor 9/24/2012)

What’s Behind The CFP Board’s Big Fee Increase (RIA Biz 4/11/2011)