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CFP Board
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Dear CFP Board:

On behalf of TD AMERITRADE Institutional (“TDAI”), I submit this comment letter to the Certified Financial Planner Board of Standards, Inc. (“CFP Board”) on the Exposure Draft that the CFP Board released for comment on July 24, 2006. The Exposure Draft contains a variety of proposed changes to the CFP Board’s ethical standards. It clearly reflects a great deal of hard work and thoughtful analysis, for which I would like to commend the CFP Board.

My comments in this letter will focus on one aspect of the Exposure Draft that is of particular relevance to the clients we serve, which is the default fiduciary standard. We believe that all CFPs providing fee-based financial advice should be held to the fiduciary duty standard.

TDAI provides services to over 4,000 Registered Investment Advisors (“RIAs”) across the country, many of whom hold the CFP designation. As of the end of June, their clients have more than \$58 billion in assets on our platform. All are fiduciaries as a result of being RIAs.

In connection with the so-called Broker-Dealer Exemption Rule, which allows broker-dealers to provide fee-based brokerage accounts without being registered as investment advisors, we commissioned a prominent national polling firm to survey investor perceptions of the regulation of brokerage firms and investment advisors. The first such survey was done in 2004 and the second in 2006. Highlights of the 2006 survey of 1,000 U.S. investors include the following:

- Substantial numbers of investors do not understand that investment advisors and broker-dealers offer different levels of investor protection from a legal standpoint.
 - a. In 2006, only 43% of the investors surveyed understood that the two types of firms offered different levels of investor protection.
 - b. Only 26% of the investors surveyed were aware that broker-dealers did not have to disclose all conflicts of interest before providing financial advice.
 - c. And only 26% of the investors surveyed knew that only investment advisors have a fiduciary responsibility to act in investors’ best interests in all aspects of their financial relationship.

- The differences in investor protection between broker-dealers and investment advisors are highly material to investors.
 - a. In 2006, when told that broker-dealers provide fewer investor protections than investment advisors, 63% of investors surveyed said they would not seek financial advice from broker-dealers.
 - b. When told that broker-dealers are not required to disclose all conflicts of interest, 70% of investors surveyed said they would not seek financial advice from broker-dealers.
 - c. When told that broker-dealers are not required to act in customers' best interests in all aspects of the financial relationship, 70% of investors surveyed said they would not seek financial advice from broker-dealers.
- The investors surveyed had a clear view as to how fee-based financial advice should be treated in terms of a standard of care.
 - a. 93% of the respondents thought that stockbrokers offering fee-based financial advice should have a fiduciary responsibility to act in the investor's best interest in all aspects of the financial relationship.
 - b. 95% of the respondents think that all financial professionals that offer fee-based financial advice should be subject to the same industry regulation.

These findings highlight the importance that investors attach to fiduciary responsibility. They further demonstrate how much more investors would like to be dealing with financial advice providers that are fiduciaries.

At a recent TDAI conference with more than 300 RIA clients in New York, a number of advisors voiced their concerns about the CFP Board proposals set out in the Exposure Draft. In general, they noted that establishing only a broad default standard as to CFPs being fiduciaries would allow many CFPs to opt out and likely would generate further investor confusion. We note that RIAs are fiduciaries already by virtue of being investment advisors, so they are not in a position to opt out, but CFPs associated with other types of firms would be able to opt out. The RIAs see this broad opt out feature as potentially diluting the value of the CFP mark in the eyes of the investing public.

As we see it, the basic thrust in the Exposure Draft of making CFPs fiduciaries is a very desirable step forward. We are troubled, however, that the accompanying broad ability for CFPs to opt out of the fiduciary standard would take away much of the progress. To use a newspaper analogy, the headline "CFPs are fiduciaries" sounds great, but with subtext saying "unless they choose not to be" is likely to further confuse the public and dilute the value of the CFP mark.

The approach taken by the CFP Board in the Exposure Draft tends to continue the current dual standard of care in the realm of fee-based advice. We do not agree with this dual standard and believe that, at a minimum, all those providing fee-based advice¹ should be subject to the same care standard. This approach should provide additional protection to public consumers of fee-based advice and enhance the status of the CFP designation.

Thank you for your attention.

Sincerely,

J. Thomas Bradley, Jr.
President
TD AMERITRADE Institutional

¹ This includes fee-based brokerage accounts that appear to be advised accounts but are characterized as brokerage accounts through SEC-required disclosures.