CFP Board expands fiduciary duty for financial advisers

New rule, effective in 2019, requires best-interest standard in all aspects of financial advice


Mar 29, 2018 By **Mark Schoeff Jr.**

The Certified Financial Planner Board of Standards Inc. has unanimously approved an expanded fiduciary standard as part of a revamp of the designation's conduct requirements.

Under the **new rule**, all CFPs — including brokers — must act in the best interests of their clients when providing financial advice. The previous rule applied a fiduciary standard to CFPs only when they were involved in financial planning with their clients.

Raising the advice bar is the most significant new change to the CFP Board's Code of Ethics and Standards of Conduct. The organization, which grants the mark and enforces related rules, has been reviewing its standards for more than two years and **previously released two versions** of an update.

The final standards will become effective Oct. 1, 2019. They are designed to strengthen the trust that clients have in advisers who use the mark, according to CFP Board officials.

"We are further separating ourselves from the pack to be the leading designation," CFP Board chief executive Kevin Keller said Wednesday on a conference call with reporters. "Once these changes are implemented and enforceable, there will be no equal in terms of our standard for competency and ethics."

The CFP Board released its final rules amid uncertainty about the fate of the Labor Department's fiduciary rule. The DOL has been reviewing its regulation — which requires brokers to act in the best interests of clients in retirement accounts — under a mandate early last year from President Donald J. Trump. In a split decision on March 15, the 5th Circuit Court of Appeals vacated the DOL fiduciary rule, saying the agency exceeded its statutory authority under retirement law in promulgating the measure. It is unclear whether the Labor Department will continue to defend its regulation.

The Securities and Exchange Commission is expected to release its own **advice-standard proposal this summer**.

Under the new CFP rules, a mark holder must disclose and manage conflicts of interest and adopt business practices that are "reasonably designed to prevent material conflicts of interest from compromising their ability to act in the client's best interests," Leo Rydzewski, CFP Board general counsel, told reporters.

The CFP Board set the final rules' effective date for one-and-a-half years from their adoption in order to let them sink in for holders of the designation.

"We're going to be working diligently to ensure that CFP professionals get all the education and guidance they need on these new standards," CFP Board chairman Richard Salmen told reporters. "The board's decision to have an 18-month timetable was because we wanted CFP professionals and the firms they work for to have enough time to live within the standards, truly understanding them and have the time to implement them."

The CFP Board released a **commentary about the changes** Thursday that is meant to provide guidance to CFPs. That document and the follow-up implementation programs for CFPs are likely to be scrutinized by CFP Board critics.

"One concern with the proposed standards is that after holding out all CFPs as trusted advisers for 10 years, the board has still not provided CFPs guidance in avoiding and mitigating conflicts," Knut Rostad, president of the Institute for the Fiduciary Standard, wrote in a March 26 update about the organization's work.

Mr. Salmen stressed that the CFP designation is compensation-neutral. Many of the approximately 80,000 CFPs in the United States work at brokerage firms.

"Every method of compensation has some kind of conflict of interest that has to be managed and dealt with," Mr. Salmen said. "It's possible to earn a commission and be a fiduciary at the same time."

Groups that represent brokers, such as the Securities Industry and Financial Markets Association and the Financial Services Institute, have criticized the CFP Board for advancing its fiduciary rule before the SEC acts.

"We've been waiting for the SEC for nearly a decade," Mr. Salmen said. "We're not confident the SEC is going to act in a timely manner. We've been on a two-and-a-half year journey to update our standards, and that doesn't depend on an SEC timetable."

In response to more than 1,500 comment letters received during the rulemaking process, the CFP Board modified earlier versions of the standards revision to make it easier to implement. For instance, they removed a requirement that financial planners provide a disclosure document prior to signing up a new client. The disclosure can now be presented when an account is opened.

The board also excised a "rebuttable presumption" that CFPs always provide financial planning services, to allow leeway for CFP-client relationships that don't involve planning.

"Deleted, this means an investor should not presume a CFP to be a fiduciary — after many years of CFP Board telling investors the opposite," Mr. Rostad wrote.

But Mr. Rydzewski said such criticism was misguided.

"The removal of the rebuttable presumption from the standards had absolutely no effect on the requirement of a CFP professional to act as a fiduciary at all times when providing financial advice," he said.

The CFP Board will enforce the new fiduciary standard in the same way it has enforced its rules for years, according to Mr. Rydzewski. The organization does not audit compliance, but it does bring enforcement actions for alleged violations of its rules if they are brought to the organization's attention by financial planners or clients. The adjudication of those cases is done through an internal peer-review process.