

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC.

1235 Jefferson Davis Highway, Suite 602, Arlington, Virginia 22202 P: 703-414-5811 F: 703-414-5815 E: govrelations@CFP-Board.org W: www.CFP.net

By Electronic Mail

August 9, 2004

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 2006

Dear Ms. Sweeney,

I am contacting you to provide comment on National Association of Securities Dealers (NASD) proposed rules to impose sales practice standards and supervisory requirements on members for transactions in deferred variable annuities. CFP Board¹ appreciates the opportunity to provide information it hopes is helpful.

Like NASD, CFP Board is concerned about the increasing problem of unsuitable recommendations and inadequate supervision of transactions in deferred variable annuities. CFP Board commends NASD for proposing a rule to provide targeted and comprehensive protection to investors in these complex investment products.

In reviewing the rule, CFP Board observes that some of the key provisions regarding Appropriateness/Suitability, Disclosure and Prospectus Delivery, and Supervisory Procedures are similar to what CFP Board requires of CFP[®] certificants in the *Code of Ethics and Professional Responsibility (Code of Ethics)* and *Financial Planning Practice Standards (Practice Standards)*. CFP Board's *Code of Ethics* describes the minimum standards of acceptable professional conduct for individuals authorized to use CFP Board's CFP certification marks. CFP Board determines who is certified and thus authorized to use the marks. Implicit in the acceptance of this authorization is an obligation not only to comply with the mandates and requirements of all applicable federal and state laws and regulations but also to take responsibility to act in an ethical and professionally responsible manner in professional services and activities. The *Practice Standards* establish the level of professional practice that is expected of a CFP certificant engaged in personal financial planning.

As you may know, the practice of financial planning involves a process which typically includes, but is not limited to, six elements: 1) Establishing and defining the client-planner relationship; 2) Gathering client data including goals; 3) Analyzing and evaluating the client's financial status; 4) Developing and presenting financial planning recommendations/or alternatives; 5) Implementing the financial planning

¹ Founded in 1985, Certified Financial Planner Board of Standards, Inc. (CFP Board) is a nonprofit professional regulatory organization that fosters professional standards in personal financial planning so that the public values, has access to and benefits from competent and ethical financial planning. CFP Board currently authorizes nearly 45,000 individuals to use its marks in the United States and 16 international affiliates certify additional thousands of qualified persons in other countries. CFP Board also serves as an educational resource to federal and state lawmakers and regulators on personal financial planning issues.



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recommendations and; 6) Monitoring the financial planning recommendations. Specifically, CFP Board notes the following similarities in some of the key concepts in the NASD proposed rule.

Appropriateness/Suitability

CFP Board supports increased efforts to ensure that variable annuity product recommendations are appropriate and suitable for investors. *Practice Standard 200-1: Determining a Client's Personal and Financial Goals, Needs and Priorities* addresses appropriateness and suitability by requiring that prior to making recommendations to the client, the financial planning practitioner and the client shall mutually define the client's personal and financial goals, needs and priorities. In order to make this determination, the practitioner will need to explore the client's values, attitudes, expectations, and time-horizons as they affect the client's goals, needs and priorities. This principle also relates to CFP Board's *Code of Ethics* Rule 703 which requires a financial planning practitioner to "make and/or implement only recommendations which are suitable for the client."

The client's goals, needs and priorities help determine the direction of the financial planning process. This focuses the practitioner on the specific tasks that need to be accomplished. Ultimately, this will facilitate the development of appropriate recommendations. The public is served when the relationship is based upon mutually defined goals, needs and priorities.

Additionally, *Practice Standard 400-2: Developing the Financial Planning Recommendation* requires the financial planning practitioner to develop the recommendation(s) expected to reasonably meet the client's goals, needs and priorities. This *Practice Standard* relates to the *Code of Ethics* through Rule 201 which states "A CFP Board designee shall exercise reasonable and prudent professional judgment when providing professional services. Rule 202 also states "a financial planning practitioner shall act in the interest of the client."

Disclosure and Prospectus Delivery

CFP Board is supportive of the proposed risk disclosure provision to help customers understand the main features of variable annuity transactions and associated risks in a clear, easy-to-read manner. CFP Board's *Practice Standard 400-3: Presenting the Financial Planning Recommendation* states that the practitioner shall communicate the recommendations in a manner and to the extent reasonably necessary to assist the client in making an informed decision. When presenting a recommendation, the practitioner shall make a reasonable effort to assist the client in understanding the client's current situation, the recommendation itself, and its impact on the ability to meet the client's goals, needs and priorities. The practitioner shall communicate the factors critical to the client's understanding of the recommendations. These factors may include but are not limited to: Material; Personal & economic assumptions; Interdependence of recommendations; Advantages and disadvantages; Risks; and/or Time Sensitivity. The practitioner shall indicate that even though the recommendations may meet the client's goals, needs and priorities, changes in personal and economic conditions could alter the intended outcome.

This *Practice Standard* relates to *Code of Ethics* Rule 201 that states "...a CFP Board designee shall not knowingly make a false or misleading statement to a client..." Additionally, Rule 607 states "A CFP Board

designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee...”

Presenting recommendations provides the practitioner the opportunity to further assess whether the recommendations meet client expectations, whether the client is willing to act on the recommendations, and whether modifications are necessary. CFP Board believes the public is served when strategies and objective recommendations are communicated clearly to meet client’s individual financial planning and investment goals.

Supervisory Procedures

Unlike the proposed rules, CFP Board’s *Code of Ethics* does not require certificants to establish and maintain specific, written supervisory procedures, however, Rule 705 does require that a CFP certificant properly supervise subordinates with regard to their delivery of financial planning services, and shall not accept or condone conduct in violation of the *Code of Ethics*.

In general, CFP Board believes the proposed rules will positively impact the application of its *Code of Ethics* and *Practice Standards* in cases involving variable annuities. We believe the rules are mostly necessary, and not unduly burdensome for financial professionals, although an effort should be made to ensure that the costs of compliance are not excessive. CFP Board supports regulatory efforts to raise industry practice standards that will provide greater protections to investors and help CFP Board to more effectively regulate the financial planning profession and enforce its *Code of Conduct* and *Practice Standards*.

If you should need additional information regarding, CFP Board or its standards of professional conduct, please visit www.CFP.net or contact Mashari Whitfield at (703) 414-5813.

Sincerely,

Mashari Whitfield
Manager, Government Affairs