

A Layman Examination of CFP® Certification Renewal Terms And Conditions

Know What You Are Signing Before Binding Yourself

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DISCLAIMER: I'm not a lawyer! I looked at this from my perspective and got a legal opinion for myself, which is good for me only... I suggest all who read this article consider the prudence in doing the same for themselves.

This article was originally written in 2008 and, while I had planned to publish an entire series of articles titled "CFP Board Watch (Keeping 'em Honest)," I ended up not doing because of the damage I thought the truth might cause if certain facts came to light and forwarded this and other articles to the Financial Planning Association leadership instead. I had requested and hoped back then that the FPA would hire counsel and question CFP Board more closely about the terms and conditions of Certification renewal as well as other problems I had uncovered that were never disclosed to Stakeholders. The FPA leadership promised to do so but instead, jumped together with NAPFA into CFP Board's bed in December 2008 and formed the Financial Planning Coalition. Concurrently, CFP Board revised and republished their Terms And Conditions (T&C) of Certification. Since then the FPA has, in my opinion, consistently represented the opinions and edicts of CFP Board to Certificants, rather than the opinions and growing discontent of FPA members **to** the CFP Board. This is reflected according to their own press releases in their dwindling membership numbers since the ICFP-IAFP merger of 2000. Certainly, as a former chairman of the LA Chapter, I felt no need to continue paying dues to two organizations both saying the same thing with no representation and I relinquished my membership of the FPA in 2001.

For those who do **not** know me and have just learned I am no longer willing to support this organization by remaining a CFP® Certificant, I think I've paid my dues to the profession. I opposed the CFP lite and created enough opposition within the industry to have that misguided initiative rescinded. There were other initiatives I uncovered back then that most Stakeholders are still unaware of. I'll be writing more about them later because they are important to current actions of CFP Board. For my efforts to maintain high standards for CFP® Certificants in the face of a watering down of the marks by CFP Board, I was honored with a front cover and a 7 page biographic feature in Financial Planning magazine titled "A Place In The Sun" in February of 2000, which rehabilitated my image that had been tarnished by the vitriol some so-called "leaders" of our profession openly spewed about me to try and make my opinions less valid. They couldn't criticize the message because the truth was out, so they tried character assassination instead. In 1999 as ICFP President, I led the Los Angeles Society to the prestigious "David M King Award" as outstanding Society of the Year. I've often been described as CFP Board's most vociferous opponent on many issues. However, all my writings had until now been aimed at one thing, namely; making the CFP® Marks the first choice for financial planners and the market brand as strong as it could possibly be.

I've paid my dues and have over 28 years of experience to base my opinions on, but it's up to each of you to decide what the truth is and to act on that truth, not my article or a CFP Board press release. It's time for financial planners to understand the **"politics"** of financial planning and act to save this fledgling profession from implosion and irreparable harm.

It's now August 2015 and I have edited and revised some of my thoughts based on additional information that has come to my attention, some of which has helped me to better understand why CFP Board is doing what they do and why Stakeholders need to be more vigilant and begin to question CFP Board and its oligarchic approach to governance. I believe it is time to say **"enough"...**

Rather than give in to CFP Board, which continues to do further damage to the marks with their indefensible positions in the ongoing Camarda lawsuit and other possible lawsuits to follow, I recently voluntarily relinquished the marks completely and broke away from the brand and the increasingly negative publicity surrounding CFP Board.

I surrendered the marks I have cherished, supported and defended so vigorously for two reasons.

First: CFP Board opened an investigation against me personally regarding my separately registered Investment Adviser Firm calling itself "Fee-Only." Now, CFP Board's guidelines are clear on this issue. CFP Board regulates "individuals," not firms because firms cannot be Certificants. CFP Board's own rules also prohibit a Certificant from relinquishing the marks during an open investigation. As soon as I informed the Board I intended to voluntarily relinquish the marks, in violation of their own rules, they discontinued their investigation?

I demanded they continue their investigation but they refused. Personally, I am **not** fee-only and have always declared myself to be "fee and commission" in my firm's ADV Form Part II and on the CFP Board website. However, my firm cannot and does not accept commissions and I and my compliance counsel believe CFP Board's seeking to coerce my RIA firm into changing its disclosure of compensation methods on my ADV Form Part II to "fee and commission" would force me to make fraudulent and deceptive disclosures. I believe CFP Board is pandering to NAPFA elements within the Board, their demands violate their own terms and conditions of licensing and I cannot and will not sign on to this a moment longer.

Second, CFP Board is once again out of control, in my opinion. Even back in 1998-99 during the height of the CFP lite controversy I stuck with the program and paid my dues because I felt it was worth it... However, I no longer believe this loyalty and support to be warranted. CFP Board's seemingly reckless disregard as to how they spend stakeholder dues to defend what I believe is indefensible defies belief, particularly when one sits down, reads and digests their terms and conditions of renewal for their certification marks.

It is once again time for stakeholders to sit up, take notice and act again before it's too late.

One of the greatest strides forward for all of us has been the use of technology to make life easier. A great example is the on-line CFP® certification renewal process, which has made things significantly easier for stakeholders. BUT, **how many** of you stakeholders are actually reading and digesting the significantly expanded terms and conditions of Certification that have been in place since 2008 now that it comes in a tiny box you just scroll down and hit “accept” on? I wager the answer is, as many of you who actually read your software licensing agreements for each Microsoft update you install i.e., likely zero to none!

My reading of the current terms and conditions had me questioning whether CFP Board actually believes in their own vision and, whether stakeholders should risk complying with CFP Board mandatory standards of practice and its’ “financial planning process” in the first place. Certainly, I am not willing to do so under these conditions. I complained and asked for waivers in 2011. (CFP Board ignored my written waiver) My following thoughts are the reason I will no longer blindly agree to be bound by what I see as certain unconscionable provisions in their Certification terms and conditions of renewal.

It should be noted that I did request significant clarification from CFP Board on many occasions from 2008 onwards, but my stakeholder E-mails and letters were ignored, so all I have is my layman interpretation and a whole bucket of questions and concerns that CFP Board has chosen not to address.

The following is not a legal opinion. I strongly urge each Stakeholder to get one... I did and while my lawyer thinks most of the really awful stuff is just not enforceable, one thing may be; Namely, the choice of law and venue, which means that if you ever want to fight these terms and conditions, you may be doing so at your own expense in federal court in Washington D.C. in accordance with their terms and conditions. And, unless you can get them ruled unconscionable, you may end up paying your lawyers **AND** theirs to do it!

UPDATE August 2015: As you are aware, The Camardas filed suit in federal district court Washington D.C. with similar set of facts to mine. They were declaring themselves to be fee and commission but their firm, a separately registered Investment Advisory Firm (NOT a CFP Certificant) is fee-only. They were subject to investigation and despite changing their firm disclosure, something I personally believe they should not have done, they were told they were to receive a public letter of admonishment. To date and despite spending hundreds of thousands, they have not had their day in court and the case has been dismissed in its entirety on a summary judgment motion. Basically, the judge opined that CFP Board is a private “membership” organization and that he had no intention of second guessing how they interpret their rules. The judge expended no energy actually reading through all the documentary evidence submitted or reading the depositions taken at great expense. In fact he found a legal precedent to excuse himself from acquainting himself with any of the facts of the case. Basically then, he opined that as a private “membership” organization and since you don’t have to belong, if you sign the forms, the organization can do what it likes with you without judicial oversight or redress.

This might be fine for your run of the mill masonic lodge, or girl scout troop, but we're talking about a non-profit quasi regulatory organization that denies it is a "membership" organization and it seems, only reverts to being one on paper if it needs to wiggle out of a lawsuit! So now we know that the terms and conditions set forth below are written in stone and not subject to judicial scrutiny. Unless the Camardas are successful on appeal, you can forget filing lawsuits because they'll be dismissed out of hand without any evidentiary hearings. And the most incredible part of all this is, somehow the CFP Board has managed to get all the records sealed so we'll never know just how many misrepresentations they made to the court to get that dismissal.

Here are a few thoughts for you to ponder and to also possibly act on if you deem it prudent:

CFP Board Terms and Conditions of Renewal (T&C) Paragraph G.¹ was the first paragraph to catch my eye and primarily because it walks and quacks like a comprehensive UCC disclaimer, I sought understanding of the potential implications of this new language with the help of UCC § 2-316 (3)(a). My personal interpretation of Paragraph G is:

- a. CFP Board cleverly demands we *voluntarily* adopt and implement "**mandatory**" standards of practice developed exclusively by them and governed by binding federal trademark licensing agreements incorporating standards of practice, which modify and govern the methodology we employ in practicing financial planning with our clients in the areas of net worth and budgeting, insurance analysis, investment advice, retirement and estate planning, among other things.
- b. CFP Board does **NOT**, however, stand behind the value of the marks, the fitness of their financial planning educational program, CFP Board mandated ideology, methodology and skill sets we must employ in our dealings with the public and our clients and, sadly, they refuse to obligate themselves to renew, maintain or register marks that ALL CFP® Certificants have worked hard to try and make distinctive and famous over 30 plus years. (More about why this may be the case in my article "A House Built On Sand")

I believe it is disingenuous of CFP Board to demand what are otherwise State and Federally licensed or registered professionals to change the way they interact with and advise their clients when CFP Board for their part, won't stand behind their work product, or warrant its merchantability or fitness for a particular purpose, i.e., the practice of financial planning. Their

¹ CFP Board Terms and Conditions of Renewal Sub g. Disclaimer of Warranty. THE USE OF THE CERTIFICATION MARKS ARE PROVIDED ON AN "AS IS" BASIS. CFP BOARD DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE, EMPLOYABILITY OR NON-INFRINGEMENT, EXCEPT TO THE EXTENT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. CFP BOARD HAS NO DUTY OR OBLIGATION TO REGISTER, RENEW OR OTHERWISE MAINTAIN ANY REGISTRATION FOR THE CERTIFICATION MARKS.

disclaimer of warranty is clearly at odds with their boastful claim that CFP® Certification represents the gold standard of excellence in financial planning.

Effective July 1, 2008 a great majority of CFP® Certificants were forced to take on the mantle of a fiduciary and be judged at a far higher standard than the licenses or registrations they hold demand of them. (Insurance agents and Broker Dealer registered representatives in particular) Where will stakeholders stand if and when plaintiff lawyers file claim alleging the mandatory standards of practice Stakeholders are forced to follow may be flawed, the course of education insufficient, the advice given unacceptable... even though stakeholders may have followed CFP Board's standards of practice to the letter?

As a former stakeholder, I always imagined I would be able to rely on CFP Board for assistance, you know, **"Follow The Code,"** utilize practice standards and create an affirmative defense of claim. I still have the published written promises of former CFP Board Governors who pontificated and claimed that initiatives and carefully crafted rules and standards would decrease liability rather than increase it thereby saving me from potential liability. Apparently CFP Board does not back this up with affirmative action. Not only do their lawyers utilize comprehensive UCC style disclaimers to waive any express or implied fitness or merchantability warranties, a luxury we **do not** enjoy when actually providing the advice to clients under CFP Board practice standards, they take this whole thing a step further under T&C Paragraph L² by demanding we stakeholders defend their standards for them by putting **"your"** money where **"their"** mouths are? And if they are sued, we now know they just run for the hills and pretend to be a membership organization in order to achieve a summary judgment without being forced to defend themselves on the merits.

Again, if I'm understanding this correctly as a layman, when combined with Paragraph G, CFP Board refuses to stand behind the marks, their fitness or appropriateness for use in our daily practice of financial planning, but, if a stakeholder is ever sued while providing services in the manner CFP Board prescribes, in compliance with its T&C Paragraph H³... AND, CFP Board is named as a co-defendant in that suit, stakeholders are expected to reimburse CFP Board's expensive lawyers and entire defense costs from their own pockets! Furthermore, CFP Board

² Terms and Conditions of renewal sub L.; "I further covenant and agree to defend, indemnify and hold harmless CFP Board and its directors, officers, employees and agents from and against any and all claims, demands, judgments, awards and expenses related thereto (including court costs and reasonable fees of attorneys and other professionals) brought or threatened by any third parties, including my clients, arising out of: (i) any breach by me of my Application or these Terms, (ii) any failure by me or my authorized agents to comply with applicable laws, (iii) the services provided by me, (iv) any unauthorized representation, warranty, agreement or the like, express or implied, made by me or my authorized agents to or with any third party with respect to any acts or omissions (including statements, representations or warranties not authorized by CFP Board), or (v) acts or omissions taken by me in connection with the use of the Certification Marks."

³ Terms and Conditions of renewal Sub H. Compliance with Rules and Policies. I have read, understand and will comply with all rules and policies contained in CFP Board's Standards of Professional Conduct, which is incorporated herein by reference, as it presently exists and as it may be amended from time to time.

reserves the right to retain their own expensive counsel separately because, I'm thinking, they will probably want to maintain that "their interests" are not aligned with the Certificants. Better yet, if practice standards or the educational program is found to be flawed or deficient, stakeholders wouldn't be able to sue for recovery from CFP Board because these UCC style merchantability and fitness waivers and disclaimers may be legal and stakeholders agree to use the education, skill sets, methodology and marks "AS-IS" and entirely at their own risk. That is, ***unless a stakeholder has the money to challenge these provisions in federal court in Washington D.C. and prevail in having them set aside...*** How's your defense fund for this kind of legal action? And in light of the most recent Camarda ruling, what's the chance YOUR lawyer will be able to get any further than the motion for summary judgment and actually have the facts of the case heard?

QUESTION: Should a Board that touts itself as the purveyors and champions of the "Gold Standard of Excellence in Financial Planning," operating worldwide as a non-profit that supposedly benefits only consumers in such a litigious industry, have the right to disclaim all liability to the detriment of the stakeholders who facilitate its very existence through the payment of Certification renewal fees? After all, while they exist as they state to serve only the public good, the public didn't form the organization or request this non-agency, non-regulatory oversight from people with no legal authority to discipline real miscreants, other than by means of revocation of their Certification. In fact, CFP Board **only** exists because stakeholders formed it and gives them money each year, not the public! Should stakeholders be risking their entire net worth defending the education requirements, ethics, Certification marks and mandatory standards of practice developed by CFP Board? In my humble opinion, CFP® Certificants are beginning to look and feel more and more like infantrymen leaping from the foxholes into a hailstorm of bullets as their Captain sits in a comfy bunker blowing his whistle and screaming charge!

Some lawyers would opine that the disclaimer of warranty is unconscionable and would not hold water. Great, but who wants to be first in spending a few hundred thousand dollars litigating that ditty to establish the precedent for stakeholders? And, if this were true, why put it in there? And we now know that some judges won't even bother to avail themselves of the facts and will just rule in favor of the non-profit because there's enough case law to allow him to do that. So you waste all that money and effort suing the Board while the judge won't even let you through to a trial to get the facts out there. Better yet, the judge seals the records so you cannot share what you've learned during the process, that's truly scandalous... An organization that demands full disclosure from Certificants and provides NONE itself!!

Paragraph M states: "IN NO EVENT WILL CFP BOARD BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES, LOSS OF BUSINESS, REVENUE, PROFITS OR OTHER ECONOMIC ADVANTAGE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE OR THE INABILITY TO USE ANY OF CFP BOARD'S MARKS, INCLUDING WITHOUT LIMITATION THE IMPLEMENTATION OF THE FORMS OF DISCIPLINE,

EVEN IF CFP BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CFP BOARD'S LIABILITY UNDER THIS DECLARATION AND AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND DEFAMATION) OR OTHERWISE, EXCEED THE AMOUNT I PAID IN APPLICATION FEES. LIABILITIES SHALL BE LIMITED AND EXCLUDED, EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE." In other words... even if a stakeholder were to prevail, CFP Board would seek to have damages limited to \$350.00, which amounts to less than an hour of billed time for a decent attorney. So, a stakeholder would have to get Paragraph M overturned as well... Food for thought! Pretty tough if you can't even get the judge to read the transcripts of depositions, interrogatories or any documentation you've submitted that would clue him in to the facts of the case.

In 2008, after significant changes were made to the renewal T&C, in an effort to minimize my personal exposure to future potential liability, I contacted my errors and omissions insurer and requested they add CFP Board as an additional insured under my errors and omissions policy. I was informed they would **not** be adding CFP Board and that I should evaluate privately how this would affect my personal exposure to liability when using the marks in public practice. I knew how this would affect me and I didn't like it.

CFP Board describes their practice standards as "best practices of financial planning professionals providing professional services related to the six elements of the financial planning process" and claims they "developed the *Practice Standards* to advance professionalism in financial planning and enhance the value of the financial planning process, for the ultimate benefit of consumers of financial planning services."

Noble, lofty and visionary, but if CFP Board is really serious, don't tell Stakeholders to "**do as you say, then run away**". All stakeholders should demand the CFP Board stand behind their work product in the same way we professionals in the trenches do. Stakeholders don't get the luxury of a UCC style disclaimer for giving comprehensive financial planning advice; Therefore, why should CFP Board enjoy this luxury for developing, requiring, supervising and disciplining non-compliance with the methodologies employed and the advice given to clients by Stakeholders in conformance with CFP Board standards of practice, while disclaiming all liability?

I wrote to CFP Board asking why stakeholders were being asked to defend its course of education and standards of practice, particularly since it so clearly inserts itself into the planner-client relationship through *mandatory* standards of practice in the provision of financial planning services, while disclaiming any responsibility and waiving any liability for the consequences of this intrusion. I received no response and if there is a "perfectly acceptable explanation" I've yet to hear it. I also asked whether CFP Board carries any liability insurance whatsoever, for acts and omissions to their programs of education and examination and if so, in what amounts and, whether it covers the stakeholders if potential flaws or omissions in their Certification program creates any liability for Certificants in public practice. Again, no response.

All I have left, rather than a clear statement of position from CFP Board, is wording in the renewal terms and conditions. On the one hand, stakeholders agree under paragraph H to ***“comply with all rules and policies contained in CFP Board’s Standards of Professional Conduct, which is incorporated herein by reference, as it presently exists and as it may be amended from time to time.”*** This would include compliance with CFP Board’s practice standards placing them squarely between the stakeholder and its dealings with the client, under penalty of discipline, up to and including revocation of the Certification marks.

On the other hand... under paragraph D it states: ***“Notwithstanding, CFP Board has no right to control incidents of actual services provided or participate in the rendition thereof.”***

So, each Stakeholder needs to fathom exactly what CFP Board is trying to say. After all, services are provided in investment, insurance, retirement and estate planning by otherwise licensed or registered professionals under penalty of discipline by CFP Board, while at the same time it states that it has **no right** to do so? Oh and... Do they really have the right to publicly discipline planners because their “firms” correctly advertise as fee-only even if they themselves declare their method of compensation as fee and commission... Apparently YES, because their terms and conditions now say so and the judge is not going to interfere or read your paperwork when you file suit... You’ll spend a fortune to have the case tossed before trial...

In layman’s terms, when combining Paragraph H with Paragraph D, are they saying:

*“Look, we have **no** right to get between you and your clients, but the foregoing notwithstanding we’ve given ourselves the right to examine, investigate, inspect and hold disciplinary hearings against you for anything you do with your client. We’ll charge you money before you can defend yourself. (This used to be \$500.00, it’s now \$1,500.00) Under 18.4 of the Disciplinary rules: **“In all disciplinary cases wherein a proceeding is initiated, the DEC will assess against the Respondent the costs of the proceedings. In addition, a Respondent who desires an appearance, whether telephonically or in person, or a paper review, or who submits an Offer of Settlement pursuant to Article 14, will be required to submit hearing costs (\$1,500.00) not less than 45 days prior to the date of the scheduled hearing. In the event that the hearing results in a dismissal without merit, the hearing costs shall be refunded to the Respondent. Hearing costs will not be refunded if the hearing results in any action other than a dismissal without merit.”** We’ll apply a guilty until you prove yourself innocent doctrine to ensure your participation in the disciplinary process. This means if you don’t like and don’t want to answer our questions we’ll assume “adverse inference,” defined in Article 6.2(b) as **“an inference, adverse to the concerned party, drawn from silence or absence of requested evidence.”** We’ll also retain the right to discipline you in any way we deem fit, revoke your rights to the marks and send out press releases to media outlets in your area you if you don’t practice according to our standards in the way we’ve taught you... EVEN YEARS after you voluntarily relinquish the marks!”*

Or, did I miss something? The objective of this article is to make anyone think enough to pause for a moment and decide to get legal advice regarding the renewal terms and conditions before they need legal counsel before some disciplinary hearing.

A quick word regarding CFP Board's investigation regarding my RIA firm: Under Paragraph C, Restrictions on Use it states: *"I will not, directly or indirectly: (v) use the Certification Marks in a manner that implies another individual **or company (emphasis added)** is qualified to use the Certification Marks"* By capitulating to CFP Board's demands that I change my ADV Form Disclosure on compensation for my RIA firm to fee and commission I am clearly, "indirectly implying" that my RIA firm is somehow a co-signatory to a CFP® Certification licensing agreement that would subject it to the rules promulgated by CFP Board under its federal trademark licensing agreement. **IT IS NOT, nor will it ever be because my RIA cannot be a CFP® Certificant** and when I signed my agreement I did so in my individual capacity, as **ALL** Stakeholders do.

At the beginning of this article I referred to other failed initiatives that CFP Board tried to foist on stakeholders back in 1998-99. One of them was the "CFP Accredited Firm" USPTO filing. The idea behind this filing was to create a method of subjecting RIA firms to CFP Board's rules. Had this initiative succeeded, they could have forced RIA Firms to do whatever they said up to and including misstating their method of compensation under penalty of discipline. Thankfully, when the other initiatives were rescinded, so was this one and CFP Board has no power or authority to force anyone to change how their RIA's method of compensation is to be disclosed. It's why I personally believe they'll lose the Camarda case and any other they litigate based on these sets of facts. (Update) Of course, when I wrote those words, I naively believed that a judge would actually allow a trial, listen to the facts at issue and rule based on his interpretation of the law. Boy, I couldn't have been more wrong. The Camardas have not had their day in court and must fight an uphill battle to get the court to rule on the merits but actually reading some of the evidence presented. If their appeal is turned down it will be a most dangerous precedent, which will embolden this incestuous and oligarchic board to new abuses of Certificants.

CFP Board is blind to the fact that they don't, despite their most fervent desires, regulate Investment Advisers... The S.E.C. and States do. Regulators demand compensation disclosures be complete and truthful, anything else is considered a "fraudulent and deceptive practice." On CFP Board's website and in my ADV Form Part II, I declare myself to be fee and commission. My RIA firm is, however, a fee-only investment advisory firm that cannot take commissions under any circumstances.

Now we come to the most disturbing part of the renewal terms and conditions:

It appears CFP Board can change any of the terms and conditions of the agreement by merely notifying a stakeholder after he/she has already signed the agreement (Paragraph N (1)).

It also appears CFP Board can, even if a stakeholder voluntarily relinquish the marks, open up a disciplinary proceeding against them within 5 years after relinquishment, keep the file open and punish them with adverse publicity or other punitive proceedings any time they feel like it for years thereafter. (Paragraph J coupled with Paragraph I (iii))

As an interesting aside, they can also punish people that oppose them in other ways using the same paragraphs. For example, in my case they have told me they are “suspending” my investigation. They consider me “not certified” as of July 15, 2014. They have told me they will reopen the investigation if I pay my annual licensing fees and sign their terms and conditions of renewal. Of course, I’ll be happy to pay my renewal fees once they’ve finished their investigation and have found I have no case to answer. If they have faith in their processes and regulatory authority over my Firm, not just me, then let them bring the investigation to a close and issue their ruling. I’ve informed CFP Board that their suspension of the investigation against me is rejected and that I will continue my investigation of them because Stakeholders need to know what is happening to the marks and the organization they are investing in. However, I will not give them any money to do so. I still live in America where people are free and a presumption of innocence is the law, not this rubbish they’ve stitched together.

CFP Board’s actions in my case are an interesting twist. After all, when CFP Board is tough on talk but soft on action, real criminals can use the marks to promote their schemes then relinquish the marks voluntarily when their purpose is served. By allowing voluntary relinquishments against their own policies and suspending investigations, CFP Board has the ability to manipulate numbers in their favor. Could there be far more rotten apples in the barrel than we’ve been led to believe? I have no idea, but it might behoove all stakeholders to ask questions about why they start investigations but are only prepared to complete the investigations when they get their 20 pieces of silver. I can only speculate that any decision in my case, which is in many ways identical to the Camarda’s case, will leave them in an awkward situation. In the case of “no case to answer” they paint themselves into a tight corner in the Camarda case. In the case of an adverse finding against me, they buy themselves more adverse publicity and another plaintiff. No wonder they seem to be willing to make deals with other Certificants all of a sudden. I sincerely hope the Camardas will get their day in court and win this appeal they’ve just filed. If they don’t, all of you would have to be mad to sign these terms and conditions of renewal. Stop being sheep, fight for your rights!

Additionally, CFP Board seeks to, in perpetuity, impose almost all the conditions of renewal Certification upon anyone who signs on, specifically under Paragraph N (5), which states: ***“Upon termination, revocation or relinquishment of the right to use the Certification Marks, my obligations under paragraphs e, f, g, i, j, k, l, m and n of these Terms will remain in effect.”*** Doesn’t say for how long, just “in effect”... You might say, my lawyer thinks that is an unconscionable provision; However, remember that would first have to be decided in federal court in Washington D.C. and right now, the only indication we have is that federal judges just don’t want to be bothered reading the paperwork and will grant summary motions without learning the facts of the case first.

The aforementioned paragraphs deal with, among other things, the ownership and protection of the marks in ways that made me suspicious that they are having trouble hanging on to that ownership... (More about those problems in another article titled: "A House Built On Sand") They also seek to prevent any former CFP® Certificant from using any other professional mark or certification that is "confusingly similar" so that anyone setting up some competition, such as the Chartered Financial Planner ChFP, for example, might have an issue, especially if their numbers got any larger. (I don't know what triggers paranoia at CFP Board, since it is not defined or disclosed) In biblical terms, this is almost akin to: "You shall have no other gods before me. You shall not make for yourself an idol, or any likeness of what is in heaven above or on the earth beneath or in the water under the earth..." (NASB, Exodus 20:3-4). Patently ridiculous!

Of course, they also include their disclaimer of warranty clause and how they can, if they so desire, keep one subject to the rules and regulations, adverse publicity and anything else they want, for basically long as they want by simply keeping an open investigation on file. (Paragraph I) And as always, they indemnify everyone associated with the organization from any liability for anything they do no matter what the legal theory or how much you are potentially maligned in the press (I read this into their paragraph M limitations of liability under the portion reading "INCLUDING WITHOUT LIMITATION THE IMPLEMENTATION OF THE FORMS OF DISCIPLINE.")


In conclusion, while I am no longer a stakeholder and I will continue to NOT be a stakeholder for as long as this current Board remains on their chosen course, I encourage each current stakeholder to perform the same due diligence on any contract **THEY** sign in the same way one would for a client. I encourage stakeholders to obtain legal advice and heed that advice. I would encourage dually registered Stakeholders to speak with their Broker Dealer compliance departments and **absolutely** discuss any concerns they may have with their errors and omissions and liability insurance carriers. Be responsible in all things!



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

Terms and Conditions of Certification

I covenant and agree that:

- a. **Authorization.** Upon acceptance of my Certification or Renewal Application (Application) by CFP Board and subject to these terms and conditions of certification (Terms), CFP Board grants to me a limited, personal, non-transferable, non-sub licensable, royalty-free, non-exclusive, revocable license to use the Certification Marks (as defined below) solely in connection with the promotion and conduct of the offering of services I perform in relation to my certification in the United States. No other rights are granted except for those explicitly granted herein.
- b. **Term of Use.** Permission to use CFP Board's Certification Marks, including specifically CFP[®], CERTIFIED FINANCIAL PLANNER[™] and  exists solely for the certification period, as defined by CFP Board. At the end of such certification period, if the certification is not renewed, the certification expires; all rights to use the Certification Marks terminate; and I will immediately cease use of the Certification Marks. CFP Board may terminate any rights I have in the use of the Certification Marks if I fail to maintain current certification status.
- c. **Restrictions on Use.** Without limiting the other terms and restrictions set forth in these Terms, unless otherwise approved by CFP Board in writing, I will not, directly or indirectly: (i) use the Certification Marks in conjunction with the promotion and/or provision of any services, or in any other way, outside the United States unless I have met cross-border requirements, (ii) use the Certification Marks in conjunction with the sale of any tangible goods, (iii) state or imply that CFP Board has made a determination on the merits or quality of any education, testing or review program with which I may be associated, (iv) certify individuals to use the Certification Marks, (v) use the Certification Marks in a manner that implies another individual or company is qualified to use the Certification Marks, or (vi) use the Certification Marks in violation of CFP Board's policies and procedures, which are incorporated herein by reference.
- d. **Quality Control.** The nature and quality of all advertising, promotional or other uses of the Certification Marks, and services associated therewith, will conform to the quality and standards specified by CFP Board (as modified from time to time) and will be in full compliance with CFP Board's *Standards of Professional Conduct* and all applicable laws and regulations. CFP Board has the exclusive right to monitor the manner in which I use the Certification Marks and the quality of services associated therewith. Such monitoring may, at the election of CFP Board, be done in accordance with the procedures outlined in CFP Board's *Standards of Professional Conduct*, including but not limited to, examination, investigation, inspection and formal hearings. CFP Board retains, at all times, the right to withdraw its approval of my use of the Certification Marks if the quality, accuracy or other characteristics of any of the services associated therewith ceases to be acceptable in accordance with certain standards defined by CFP Board. Notwithstanding, CFP Board has no right to control incidents of actual services provided or participate in the rendition thereof.
- e. **Protection of the Certification Marks.** CFP Board shall have the sole right to file applications to register, and to obtain registration for, the Certification Marks. I further agree to cooperate fully with CFP Board in filing such applications and obtaining such registrations, including providing CFP Board with specimens of use of the Certification Marks and executing any documents requested by CFP Board, or in protecting, enforcing and defending the Certification Marks. I will notify CFP Board in writing of any infringements, imitations, claims or other problems with respect to the Certification Marks which may arise or otherwise come to my attention. CFP Board shall have the sole right, but not the obligation, to take any action on account of any such infringement, imitation, claim or problem. I will not institute any suit nor take any other action on account of such infringements, imitations, claims or problems without the prior express written consent of CFP Board.
- f. **Ownership; Goodwill.** The right to use the marks of CFP Board is limited to those rights to use the Certification Marks and does not extend to any other marks of CFP Board. Any goodwill attaching to the trademarks of CFP Board as a result of my use of the Certification Marks will inure to the benefit of CFP Board. I will conduct my business in a way that does not adversely affect CFP Board's reputation or goodwill. I will only display or use the Certification Marks as permitted in these Terms and the *Guide to Use of the CFP[®] Certification Marks* (as updated from time to time). The right to use the Certification Marks does not grant right, title or interest in or to any trademark, service mark, logo or trade name of CFP Board. I further agree not to: (i) challenge CFP Board as the sole, absolute or exclusive owner of all right, title and interest in and to the Certification Marks and the goodwill associated therewith, (ii) challenge the validity, control or use of any mark owned by CFP Board, (iii) register, use, adopt or promote any mark that is confusingly similar to any mark owned by CFP Board, (iv) take or encourage any action which would impair the rights of CFP Board in and to the Certification Marks or any goodwill associated therewith, or (v) infringe the Certification Marks or any other marks owned by CFP Board.

- g. **Disclaimer of Warranty.** THE USE OF THE CERTIFICATION MARKS ARE PROVIDED ON AN “AS IS” BASIS. CFP BOARD DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE, EMPLOYABILITY OR NON-INFRINGEMENT, EXCEPT TO THE EXTENT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. CFP BOARD HAS NO DUTY OR OBLIGATION TO REGISTER, RENEW OR OTHERWISE MAINTAIN ANY REGISTRATION FOR THE CERTIFICATION MARKS.
- h. **Compliance with Rules and Policies.** I have read, understand and will comply with all rules and policies contained in CFP Board's *Standards of Professional Conduct*, which is incorporated herein by reference, as it presently exists and as it may be amended from time to time.
- i. **Relinquishment of Certification.** I may voluntarily relinquish my certification through a formal written notice submitted to CFP Board at any time, provided such relinquishment shall not take effect until: (i) 30 days after receipt thereof by CFP Board, (ii) all indebtedness due CFP Board is paid in full, and (iii) any complaint or action pending under CFP Board's *Standards of Professional Conduct* is resolved. CFP Board, however, may in its discretion declare a relinquishment effective at any time.
- j. **Retention of Jurisdiction.** Notwithstanding any termination or relinquishment of my right to use the Certification Marks, I shall continue to be subject to the filing of a complaint under CFP Board's *Standards of Professional Conduct* based upon acts or omissions commenced prior to the effective date of termination or relinquishment, provided that any such complaint shall be filed within five (5) years after the effective date of termination or relinquishment.
- k. **Revocation of Right to Use.** CFP Board has the absolute and unrestricted right to revoke, at its sole discretion, any rights I have to use the Certification Marks, if CFP Board, in its sole discretion, finds that I have failed to comply with CFP Board's *Standards of Professional Conduct* or these Terms. In addition, if CFP Board, in its sole discretion, determines that I have misused the Certification Marks, I further understand and agree that such action may cause irreparable harm and I will immediately stop using the Certification Marks or change the manner in which I use them, whichever CFP Board requests.
- l. **Indemnification.** Neither CFP Board nor its directors, officers, employees and others acting on its behalf shall be liable to me for any actions taken or omitted in an official capacity or in the scope of employment, except to the extent that such actions or omissions constitute willful misconduct or gross negligence, and I hereby release CFP Board and the persons identified above from any liability for any such actions or omissions. I further covenant and agree to defend, indemnify and hold harmless CFP Board and its directors, officers, employees and agents from and against any and all claims, demands, judgments, awards and expenses related thereto (including court costs and reasonable fees of attorneys and other professionals) brought or threatened by any third parties, including my clients, arising out of: (i) any breach by me of my Application or these Terms, (ii) any failure by me or my authorized agents to comply with applicable laws, (iii) the services provided by me, (iv) any unauthorized representation, warranty, agreement or the like, express or implied, made by me or my authorized agents to or with any third party with respect to any acts or omissions (including statements, representations or warranties not authorized by CFP Board), or (v) acts or omissions taken by me in connection with the use of the Certification Marks. Notwithstanding the above, CFP Board expressly reserves the right to retain separate counsel to participate in the defense or settlement of any such claims.
- m. **Limitation of Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL CFP BOARD BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES, LOSS OF BUSINESS, REVENUE, PROFITS OR OTHER ECONOMIC ADVANTAGE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE OR THE INABILITY TO USE ANY OF CFP BOARD'S MARKS, INCLUDING WITHOUT LIMITATION THE IMPLEMENTATION OF THE FORMS OF DISCIPLINE, EVEN IF CFP BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CFP BOARD'S LIABILITY UNDER THIS DECLARATION AND AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND DEFAMATION) OR OTHERWISE, EXCEED THE AMOUNT I PAID IN APPLICATION FEES. LIABILITIES SHALL BE LIMITED AND EXCLUDED, EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- n. **Miscellaneous.**
1. **Integration.** My Certification or Renewal Application, these Terms, and the documents incorporated herein by reference constitute the complete agreement and supersede all prior or contemporaneous oral or written representations and warranties. CFP Board may modify these Terms upon notification to me. No modification by me to these Terms shall be binding upon CFP Board unless in writing and signed by CFP Board.
 2. **Assignment.** I will not assign or transfer any of my rights or obligations under these Terms. Any assignment or delegation by me of these Terms or any of my rights or obligations hereunder shall be null and void. CFP Board may assign its rights herein, without my prior consent.
 3. **Relationship.** My relationship with CFP Board is that of a certificant granted the right to use the certification marks of a certifying body and in no way does the relationship constitute an independent contractor, partnership, franchise, joint venture, agency or employment relationship.
 4. **Interpretation.** These Terms, which I understand are binding upon me in consideration of CFP Board processing my Application, shall be interpreted in such a manner as to aid in effectuating the purposes and business of CFP Board. No third party private right of action shall be permitted against CFP Board for acts or omissions taken by

CFP Board in the furtherance of its purposes and business or in connection with these Terms. Failure of CFP Board to insist on strict performance of the provisions contained herein does not prevent CFP Board from later enforcing its rights under these Terms.

5. **Enforcement; Survival.** If I do not stop using the Certification Marks immediately upon revocation, relinquishment or termination, or violate the provisions of these Terms, such actions shall be considered exceptional and I will pay any expenses, including, but not limited to, attorney's fees, which CFP Board may incur while enforcing this provision. Upon termination, revocation or relinquishment of the right to use the Certification Marks, my obligations under paragraphs e, f, g, i, j, k, l, m and n of these Terms will remain in effect.
6. **Choice of Law; Forum.** These Terms and any action relating thereto shall be governed by and construed and enforced in accordance with the District of Columbia and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. I will not bring any action arising from or relating to these Terms except in a court of appropriate subject matter jurisdiction in the District of Columbia, and I expressly consent to personal jurisdiction and proper venue by and in such court.
7. **Headings; Severability.** The headings of sections and paragraphs herein are for convenience of reference only and are without substantive significance. In the event that any provision of these Terms shall for any reason be held invalid, illegal or unenforceable in any respect, such validity, illegality or unenforceability shall not affect any other provision and these Terms shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

Revised 12/2008