



**NASAA**

November 23, 2001

Rick Adkins, CFP  
Chair, Disclosure Task Force  
Certified Financial Planner Board of Standards  
1700 Broadway, Suite 2100  
Denver, Colorado 80290-2101

Dear Mr. Adkins:

On behalf of the North American Securities Administrators Association (NASAA),<sup>1</sup> I am pleased to offer comments on the proposed changes to the CFP Board's *Code of Ethics and Professional Responsibility*.

NASAA commends the CFP Board for bringing compensation disclosure issues in the financial services profession to a public forum and appreciates the opportunity to have contributed to your Disclosure Task Force via NASAA member Denise Voigt Crawford, Texas Securities Commissioner. We strongly concur in the Task Force's objective "to encourage disclosure that provides consumers with the desired information to make decisions during a financial planning engagement."

Many of the CFP Board's CFP certificants are investment adviser representatives or otherwise securities licensed. It is therefore important that your *Code of Ethics and Professional Responsibility* be consistent with existing regulatory requirements.

NASAA's Model Rule on Unethical Business Practices of Investment Advisers was first approved in 1985 and ratified, with amendments, by the NASAA membership on April 27, 1997. It has been adopted in some form by more than 40 states. A copy is enclosed for your reference. A link to the Model Rule on Unethical Practices of Investment Advisers also may be found on our web site at [http://www.nasaa.org/nasaa/scripts/fu\\_display\\_list.asp?ptid=82](http://www.nasaa.org/nasaa/scripts/fu_display_list.asp?ptid=82). Your attention is specifically called to paragraph 11, which declares the following to be an unethical business practice for an investment adviser:

Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

- (a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

- (b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

NASAA's view is that investment advisers have an affirmative responsibility to make compensation disclosures to clients. Furthermore, NASAA believes this is an ongoing responsibility throughout the relationship with a client.

The proposed changes to Rule 402 of the CFP Board's *Code of Ethics and Professional Responsibility* are similar in many respects to the NASAA Model Rule, but are somewhat ambiguous. As proposed, Rule 402 first requires: "In all circumstances and prior to the engagement, a CFP Board designee shall, in writing: a) disclose [to a client or potential client] conflict(s) of interest and sources of compensation." (Emphasis added.) This is consistent with the NASAA Model Rule. The CFP Board's amended Rule 402 then would include a subsection b), stating that a CFP Board designee must, in writing, "inform the client or prospective client of his/her right to ask at any time for information about the compensation of the CFP Board designee." NASAA would like to confirm that this new language in no way detracts from the obligation of the designee to provide written disclosure, whether or not it is requested, of "all material information relative to the professional relationship," as stated in the bullet points following 402(b). In addition, you may want to make clear for CFP Board designees subject to state investment adviser and/or securities regulation that compliance with Rule 402 does not abrogate their responsibility to ascertain and comply with state disclosure laws.

NASAA's second concern relates to the proposed change to Section 402 of the *Code of Ethics and Professional Responsibility* stating that a CFP Board designee who provides a client or prospective client with Form ADV, Part II, or an equivalent document, "will be deemed in compliance with" the Rule. As you know, Form ADV now must be delivered by investment adviser firms to prospective clients and offered annually to current clients. Pending modifications to Form ADV and accompanying instructions, expected to take effect next year, would require that clients be notified promptly of any changes to information that becomes materially inaccurate, including compensation arrangements. Furthermore, the ADV requires greater detail regarding compensation than Rule 402 would require. We are concerned that the proposed modification of Rule 402 may leave those CFP Board designees subject to investment adviser and/or securities regulation with an incorrect impression about the extent or frequency of their required compensation disclosure.

Thank you for consideration of these concerns. We understand that these proposed changes to the CFP Board's *Code of Ethics and Professional Responsibility* have been released as a working draft that will be revised before being released for further public comment. As you proceed, NASAA would welcome the opportunity to continue working with you to accomplish shared objectives.

Very truly yours,



Joseph P. Borg  
NASAA President  
Director, Alabama Securities Commission

Enclosure