December 4, 2023

Certified Financial Planner Board of Standards
1425 K Street NW #800
Washington, DC 20005

Re: Sanction Guidelines and Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement

Dear Sir or Madam:

Better Markets Inc.[1] appreciates the opportunity to comment on the proposed revisions to the Sanction Guidelines and Fitness Standards (Proposed Revisions) issued by the CFP Board (Board). These Proposed Revisions will help the Disciplinary and Ethics Commission (DEC) decide the appropriate sanction when a planner holding the CFP certification is alleged to have violated the Code of Ethics and Standards of Conduct. They will also assist in determining which applications for CFP certification, or those seeking reinstatement, should be granted.

The Proposed Revisions incorporate a comprehensive set of changes. They include a revised inventory of the conduct standards; a new list of general aggravating and mitigating factors, along with a set of specific aggravating and mitigating factors that are tied to specific conduct categories; a revised framework for evaluating fitness that identifies when an applicant for CFP certification is permanently barred, currently ineligible, or required to petition so the DEC may determine whether the applicant is fit; and enhanced parity between the sanction guidelines and the fitness standards.

We strongly support the Proposed Revisions, and we compliment the Board for the thorough and transparent process it is pursing as it updates and strengthens its approach to enforcement of the standards applicable to certified financial planners. We furthermore urge the Board to resist any calls to roll back or weaken the Proposed Revisions as it evaluates comments and finalizes them. Finally, we highlight a number of areas where the Proposed Revisions should be further strengthened.

The Proposed Revisions are part of a commendable effort by a group of financial professionals to set and enforce the high standards of competence and loyalty that all clients who

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

rely on financial advice and financial planning expect and deserve. It stands in stark contrast to others in the financial services industry who, far from voluntarily assuming appropriate conduct requirements, relentlessly fight against such reforms in Congress, at the regulatory agencies, and in the courts.

1. **<u>Strengthening the Sanction Guidelines and Fitness Standards is appropriate and necessary to better serve the important goals that the CFP Board seeks to achieve.</u>**

The Board has clearly articulated the core principles that have guided the development of the Proposed Revisions. The Board "intends for a sanction to be meaningful and to reflect the seriousness of the misconduct." The Sanction Guidelines and Fitness Standards are intended to advance multiple important goals: "CFP Board's sanctions benefit the public, advance the financial planning profession, hold a Respondent accountable for misconduct, educate about conduct that will result in a violation, deter Respondents from committing violations in the future, and promote public confidence in CFP certification." Ultimately, these objectives serve the interests of investors.

The Proposed Revisions are necessary to more effectively advance all of these goals. The current Sanction Guidelines and Fitness standards are simply not sufficiently strong to enforce the high standards of competency and ethics that the CFP Board mark is meant to represent. Even the highest standards of conduct will have little impact if they are not vigorously enforced through a strong sanctions and fitness regime that reflects the seriousness of the violations that occur. The Proposed Revisions will help achieve all of these goals more effectively, to the benefit of all investors. And they will benefit those planners who embrace and adhere to the Board's requirements for certification, instilling client confidence.

These Proposed Revisions matter more than ever as Americans increasingly struggle to manage their assets in increasingly complex financial markets. And it is especially important that high standards prevail among planners and advisers for the benefit of those who are trying to save for a secure retirement.

2. **<u>The process for developing the Proposed Revisions has been thorough and deliberative, and it has involved the collection and consideration of a broad range of perspectives.</u>**

The Proposed Revisions to the Sanction Guidelines and Fitness Standards are the culmination of nearly two years of work by the Commission on Sanctions and Fitness — an advisory body comprised of 15 members, reflecting a diverse set of views, including members of the planning industry, public interest advocates, former members of the DEC, and those who serve or have served as regulators. The Commission met regularly for extensive analysis and debate over appropriate changes to the current guidelines and fitness standards. Each proposed revision was carefully considered in light of past experience, current laws and regulations, the standards adopted by other standard-setting organizations, and case law. These meetings were driven by a search for consensus while maintaining respect for all points of view. The proposals are also being subject to a months-long public comment period. This process will enhance the quality of the Proposed Revisions and it should also inspire confidence in the fairness of the outcome.

3. <u>The resulting Proposed Revisions reflect many important enhancements, along with a commitment to fairness to financial planners.</u>

The Proposed Revisions are comprehensive, covering a wide range of potential misconduct. They strengthen the Sanctions Guidelines, increasing sanctions for virtually all 52 categories of misconduct or rule violations across the spectrum of private censure, public censure, suspension for various lengths of time, and revocation.

The Proposed Revisions more appropriately match sanctions with the seriousness of the violations. A prime example is the approach in the Proposed Revisions to a breach of fiduciary duty. Even though adherence to the fiduciary duty is among the most important obligations of a planner, the current guidelines provide for a mere suspension of certification in the event a planner breaches that core duty. The Proposed Revisions correct for this inappropriately lenient response to breach of the fiduciary duty by providing instead for revocation. And, as it does across the board, they account for gradations in the seriousness of violations by allowing for both mitigation and aggravation of the sanction according to the facts. But establishing the higher baseline will send an important message and more effectively deter such abuses.

We also support the improved list of aggravating and mitigating factors. The Proposed Revisions incorporate a more extensive and, in some instances, targeted set of aggravating and mitigating factors. These factors will assist the DEC in determining when a sanction should be increased above the baseline recommendation, or lowered, based on factors that reflect the level of culpability involved in a violation. These factors will thus promote fairness and flexibility by tailoring the sanction to the specific facts and circumstances surrounding each violation. In addition, more explicitly delineating the aggravating and mitigating factors will promote consistency in outcomes by systematizing the consideration of the aggravating and mitigating factors.

The Proposed Revisions will also improve the CFP Fitness Standards, which help determine whether an applicant should be certified. The Proposed Revisions establish parity between applicants and current CFP professionals by applying the Sanction Guidelines uniformly to both applicants and current CFP professionals. The Proposed Revisions provide an improved framework for evaluating fitness that identifies when an applicant is (1) permanently barred from seeking CFP certification, (2) currently ineligible from seeking CFP certification, or (3) required to file a Petition for Fitness so that the DEC may determine whether the applicant is fit for CFP certification.

Overall, the revised fitness guidelines and standards provide a more expansive and appropriately tailored description of the types of conduct that will result in disciplinary action from the Board and the nature of the proposed sanction. These changes will help establish a more effective disciplinary framework for certified financial planning professionals, and we commend the board for these changes.

4. **<u>The Guidelines must not be diluted as they progress to final form; rather, they should be strengthened.</u>**

Rolling back any of the Proposed Revisions as they progress to final form would undermine the stated goals of the CFP Board. Any weakening or dilution would result in less deterrence against misconduct and would therefore afford less protection to investors. Moreover, this would signal a lack of resolve within this industry sector to establish a strong self-regulatory framework.

In fact, the Proposed Revisions should be *strengthened* as they progress to final form. For example, the Commission's proposed sanction guideline for the commission of fraud or misrepresentation involving professional services, where there is a failure to provide financial planning to a client notwithstanding contrary representations to the client, is suspension for at least a year and a day. This sanction is inadequate, given the gravity of the offense. Any fraud or misrepresentation involving professional services, including failure to provide financial planning to a client notwithstanding contrary representations to the client, should be subject to a baseline sanction guideline of *revocation*, subject as always to mitigation.

Other proposed sanctions that are appropriate candidates for tougher sanctions include the following:

- The baseline sanction for failure to disclose or manage conflicts of interest should be elevated from the proposed level of a suspension to revocation, as this violation represents in essence a breach of the fiduciary duty, for which the Guidelines elsewhere provide revocation.
- For the same reason, the baseline sanction for failure to exercise sound and/or objective professional judgment where there has been the solicitation or acceptance of consideration that could be expected to compromise objectivity should be similarly elevated.
- The baseline sanction for books and records violations should be elevated from public censure to at least suspension, since although often underappreciated in the context of financial regulation, books and records requirements are vitally important to policing misconduct and the failure to adhere to those requirements may enable other serious misconduct to go undetected.
- The baseline sanction for conviction of a felony or relevant misdemeanor should be elevated from suspension to revocation, since such convictions on their face, and absent a mitigating factor, clearly indicate a lack of fitness to bear the CFP mark.
- Similarly, the baseline sanction for a finding of fraud, theft, misrepresentation, or other dishonest conduct — even if not involving professional services — should be elevated from suspension to revocation.
- Finally, the sanction for failure to cooperate with the CFP Board, or obstruction, should clearly be elevated to revocation, as such conduct is in principle inconsistent with the high standards the Board seeks to establish. Furthermore, it is serious as a practical matter, because such conduct prevents the Board from determining whether or not

> misconduct has occurred in the first instance, disabling the entire framework for detecting and responding to violations of the standards.

Finally, in the interest of promoting transparency for the benefit of investors, we urge the Board to dispense with the private censure as a permissible sanction and to make the minimum sanction a public censure. Although the Board has appropriately decided that it should never remove *public* sanctions from the CFP Board's website, it has also made a policy decision to continue to allow the DEC to issue *private* sanctions. Specifically, private censure is the recommended sanction for two violations, violation of employer policies and misuse of the CFP Board marks. But this approach undermines transparency in a way that conflicts with the interests of investors, clients, and ultimately the Board itself. Each of these forms of misconduct are potentially serious, the former possibly involving harassment and the latter threatening the integrity of the CFP mark, the very thing the Sanction Guidelines and Fitness Standards are intended to protect and preserve.

Eliminating the private censure would better serve all of the goals that underlie the Sanction Guidelines and Fitness Standards, including deterrence and investor protection. Planners have an especially strong incentive to avoid conduct that will result in a public sanction, which can harm their reputations and businesses. Public sanctions are therefore more effective as deterrents. At the same time, ensuring that all sanctions are public would also serve the interest of investor protection by allowing clients and prospective clients to determine for themselves whether an instance of misconduct warrants a change in their relationship with their planner.

We hope the comments will assist the Board as it finalizes the Proposed Revisions, with a view above all to the public interest.

Sincerely,

Brady Williams

Brady Williams
Legal Counsel

Better Markets, Inc.
2000 Pennsylvania Avenue, N.W.
Suite 4008
Washington, D.C. 20006
www.bettermarkets.com