

**CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.
WASHINGTON, D.C.**

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| In the Matter of | : | CONSENT ORDER |
| | : | |
| Thomas Foster, CFP® | : | No. 2021-62557 |
| _____ | : | |

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) and Thomas Foster, CFP® (“Respondent”) agree that Respondent has violated CFP Board’s *Rules of Conduct*. Respondent consents to the entry of this Consent Order and to CFP Board issuing the below listed sanction(s) against Respondent. The relevant details are set forth below in this Consent Order.

A. FINDINGS OF FACT

1. The Findings of Fact to which the Respondent consents are set forth below:

a. Background Information

i. Respondent became a CFP® professional on February 28, 2012 and has been certified since that date.

ii. Respondent has passed the (a) Series 52 – Municipal Securities Representative Examination (1996); (b) Series 63 – Uniform Securities Agent State Law Examination (1996); (c) Series 7 – General Securities Representative Examination (1996); (d) Series 65 – Uniform Investment Adviser Law Examination (1998); (e) Series 9 – General Securities Sales Supervisor – Options Module Examination (2005); (f) Series 10 – General Securities Sales Supervisor – General Module Examination (2005); (g) Series 3 – National Commodity Futures Examination (2006); and (h) SIE – Securities Industry Essentials Examination (2018).

iii. Respondent was previously associated with Firm A (the “Firm”) as an investment advisor representative and broker from June 2009 until April 2021.

iv. Respondent is currently associated with Firm B as an investment advisor representative and broker and has been associated with that firm since May 14, 2021.

b. Respondent Improperly Changes the Joint Production Number for 150 Trades

i. In approximately June 2012, while Respondent was employed with Firm A, he entered into an agreement pursuant to which he agreed to service certain client accounts under a Joint Production Number that he shared with a retired representative (the “Former Advisor”).

ii. The agreement set forth the percentages of commissions that Respondent and the retired representative would earn in connection with trades placed under the Joint Production Number.

iii. For trades in accounts covered by the agreement, Firm A’s system prepopulated trades with the applicable Joint Production Number.

iv. Firm policy in effect during the period of Respondent’s agreement prohibited Respondent from changing the Joint Production Number without proper notice and authorization.

v. Respondent improperly changed the Joint Production Number that had been correctly populated by the Firm’s system to his personal representative code for 150 trades during the period September 2013 through May 2017 (the “Relevant Period”).

vi. Respondent did not obtain the requisite authorization before changing the Joint Production Number for the 150 trades at issue.

vii. Respondent contends that he made any coding errors unintentionally because he believed new assets added to client accounts subject to the agreement were not required to be coded under the Joint Production Number.

viii. However, Respondent was obligated to use the Joint Production Number for new assets in client accounts subject to the agreement and was therefore obligated to use the Joint Production Number for the 150 trades at issue.

ix. As a result of Respondent changing the Joint Production Number to his personal representative code for the 150 trades at issue, Respondent:

1. violated the Firm's policies with respect to the agreement;
2. caused the Firm to maintain inaccurate trade confirmations; and
3. received approximately \$21,831 in commissions that should have been credited to the Former Advisor.

c. Firm A Terminates Respondent

i. In April 2021, the Firm terminated Respondent and filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that Respondent was terminated due to "[c]oncerns that the representative submitted transactions under production numbers that were inconsistent with [an] agreement with another representative resulting in a shortfall of revenue credited to the other representative. No client impact."

ii. In May 2021, Respondent reimbursed Firm A for the \$21,831 in commissions that he received as a result of changing the Joint Production Number for the 150 trades at issue.

d. Respondent Enters into a Letter of Acceptance, Waiver and Consent with FINRA

i. The Financial Industry Regulatory Authority ("FINRA") conducted a review as a result of the Form U5 filed by [REDACTED]

ii. On January 31, 2022, Respondent entered into an AWC with FINRA for violations of FINRA Rules 4511 and 2010.

iii. In the AWC, Respondent accepted and consented to, without admitting or denying, findings that:

From September 2013 through May 2017, Foster placed a total of 150 trades in accounts that were covered by the agreement using his own personal representative code. Specifically, although the firm's system correctly prepopulated the trades with the applicable joint representative code, Foster changed the code for the 150 trades to his personal representative code. Foster did so because he mistakenly believed that his agreement with the retired representative did not apply to new assets added to accounts subject to the agreement, and thus, he mistakenly believed he was authorized to enter the 150 trades using his personal representative code. The firm's trade confirmations for the 150 trades inaccurately reflected Foster's personal representative code.

iv. Respondent further consented to FINRA's findings that his actions resulted in him receiving higher commissions from the 150 trades than what each was entitled to receive pursuant to the agreement.

v. Respondent consented to FINRA's findings that he caused Firm A to maintain inaccurate trade confirmations and therefore violated FINRA Rules 4511 and 2010.

vi. Respondent consented to the imposition of the following sanctions: (a) a one-month suspension from associating with any FINRA member in all capacities; and (b) a \$2,500 fine.

B. GROUNDS FOR SANCTION

1. The Grounds for Sanction to which the Respondent consents are set forth below:

a. *First Ground for Sanction*

i. There are grounds to sanction Respondent for a violation of Rule 4.3 of the *Rules of Conduct*, which provides that a CFP® professional must be in compliance with all applicable regulatory requirements governing professional services provided to the client.

ii. Article 7.2 of the *Procedural Rules* provides that a record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent (“Professional Discipline”) is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent (“AWC”).

iii. FINRA is an industry self-regulatory authority. The AWC is a record of Professional Discipline by FINRA, and Respondent is the subject of that record. Therefore, the AWC conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline of Respondent.

iv. Respondent was a CFP® professional at all times relevant to this violation.

v. The AWC is conclusive proof that Respondent failed to comply with FINRA Rules 4511 and 2010, which are regulatory requirements governing professional services provided to the client.

vi. Therefore, Respondent violated Rule 4.3 of the *Rules of Conduct*.

b. *Second Ground for Sanction*

i. There are grounds to sanction Respondent for a violation of Rule 5.1 of the *Rules of Conduct*, which provides, in relevant part, that a CFP® professional who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal.

ii. Respondent was a CFP® professional at all times relevant to this violation.

iii. Respondent was an employee of Firm A at all times relevant to this violation.

iv. Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he violated the Firm’s policy by changing the Joint Production Number to his own personal representative code in 150 transactions for client accounts during the Relevant Period without obtaining the requisite authorization.

v. Therefore, Respondent violated Rule 5.1 of the *Rules of Conduct*.

C. **MITIGATING AND AGGRAVATING FACTORS**

1. The following are mitigating factors relevant to this Consent Order:

a. Respondent’s conduct did not harm his clients.

2. The following are aggravating factors relevant to this Consent Order:

a. Respondent’s conduct led to his termination from his firm.

D. **SANCTION**

1. CFP Board imposes the following sanction(s) on Respondent: **Public Censure**

E. **PUBLICATION OF SANCTION**

1. CFP Board will publish this Consent Order and a press release on CFP Board's website, and in any other form of publicity that CFP Board determines is appropriate.

2. **RESPONDENT CONSENTS TO THE PUBLICATION OF THIS PUBLIC CENSURE, A PUBLIC SANCTION, IN ACCORDANCE WITH ARTICLE 17.7 OF THE PROCEDURAL RULES.**

F. REQUIRED ACTIONS AFTER SANCTION

1. **Required Action After Public Censure.** Pursuant to Article 11.2 of the *Procedural Rules*, within 45 calendar days of the effective date of this Consent Order, Respondent must deliver to Enforcement Counsel, by sending an email to discipline@cfpboard.org, written evidence that Respondent:

- a. Has advised Respondent's Firm(s), in writing, of the Public Censure in the manner set forth in Standard D.3 of the *Code and Standards*;
- b. Has advised all Clients (as Client is defined in the Glossary to the *Code and Standards*) of the Public Censure and provided all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history in the manner set forth in Standard A.10 of the *Code and Standards*; and
- c. Will advise all future Clients of the location of CFP Board's website that sets forth Respondent's disciplinary history, according to Standard A.10 of the *Code and Standards*.

2. **Default for Failure to Take Required Action After Public Censure.** If Respondent fails to provide the information required by Section F of this Consent Order within the required time frame, then Enforcement Counsel may declare Respondent in default and move for an Administrative Order under Article 4.2 of the *Procedural Rules*.

G. PAYMENT OF DEC REVIEW FEE

1. Respondent agrees to pay the DEC Review Fee as reflected in invoice no. 3301575 within 30 days from the date on the invoice.

2. If Respondent is unable to pay the required DEC Review Fee, Respondent agrees to submit a Fee Waiver Request to CFP Board within 30 days from the date on invoice no. 3301575.

- a. If CFP Board determines that Respondent does not qualify for a fee waiver, Respondent agrees to pay the DEC Review Fee as reflected in invoice no. 3301575 within 30 days from the date of CFP Board's fee waiver determination.
- b. If CFP Board determines that Respondent qualified for a reduction of the DEC Review Fee, Respondent agrees to pay the reduced DEC Review Fee as reflected in invoice no. 3301575 within 30 days from the date of CFP Board's fee waiver determination.
- c. If CFP Board determines the Respondent qualified for a waiver of the DEC Review Fee, CFP Board will void invoice no. 3301575, and Respondent will not be responsible for the DEC Review Fee.

H. WAIVER OF PROCEDURAL RIGHTS

1. Pursuant to Article 8.2.a.6. of the *Procedural Rules*, Respondent specifically and voluntarily waives the following rights granted under CFP Board's *Procedural Rules*:

- a. To have the opportunity to answer the allegations contained in the Complaint in writing;
- b. To defend against the allegations in a disciplinary hearing before a hearing panel of the DEC, to have a written record of the hearing made, and to have a written decision issued;
- c. To appeal to CFP Board's Appeals Commission; and
- d. To challenge or contest any issue related to the Consent Order or the Article 17.7 publication of any public

sanction in any other contractual or judicial forum, including an arbitration, in an action or proceeding in which CFP Board is a party.


2. Respondent will not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, (a) denying, directly or indirectly, any finding in the Consent Order or any statement in the Article 17.7 publication of the public sanction, or (b) creating the impression that the Consent Order or the Article 17.7 publication of the public sanction is without factual basis.

I. EFFECTIVE DATE OF CONSENT ORDER

1. The effective date of this Consent Order shall be the Effective Date of the Amendment to the *Terms and Conditions of Certification and Trademark License*, to which this Consent Order is attached.

Respondent

Date: 9/26/23

By: 
Thomas Foster, CFP®

CFP Board

Date: 12/19/2023

By: /s/ Joel L. Konigsberg
Disciplinary and Ethics Commission