

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

\_\_\_\_\_ :  
In the Matter of :

**CONSENT ORDER**

John P. Harnish, CFP® :

No. 2022-63574

CFP Board ID No. 120897 :  
\_\_\_\_\_ :

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) and John P. Harnish, CFP® (“Respondent”) agree that Respondent has violated CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”), or predecessor versions. 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**

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

*Background*

1. Respondent became a CFP® professional on January 30, 2007, and has been certified since that date.
2. Respondent passed the following FINRA examinations: (a) Series 7 – General Securities Representative Examination (2004); (b) Series 24 – General Securities Principal Examination (2007); (c) Series 63 – Uniformed Securities Agent State Law Examination (2004); and (d) SIE – Securities Industry Essentials Examination (2018).
3. Respondent has been registered as a registered representative with Broker Dealer since July 2004. Respondent is the sole owner and an investment advisor representative of Investment Advisor 1.

*Respondent’s Mutual Fund Share Class Selection Practices*

4. Investment Advisor 2 (“IA2”) was an investment adviser operating as a sole proprietorship. IA2’s prior owner (the “Prior Owner”) founded IA2 in 1994 and sold it to Respondent in February 2020.
5. Respondent was an investment adviser representative of IA2, its director of financial planning and its chief compliance officer from 2004 through August 2021. Prior to January 1, 2020, Respondent was a salaried employee. Once the Prior Owner agreed to sell IA2, Respondent began receiving compensation based on the advisory fees and 12b-1 fees associated with his financial planning clients as early as January 1, 2020.
6. In November of 2018, the Securities and Exchange Commission (“SEC”) began a routine examination of IA2.
7. On or around July 26, 2019, based on some of the concerns raised by the SEC, IA2 and Respondent updated the firm’s ADV Part 2A disclosures regarding compensation and its practice of recommending mutual funds with 12b-1 fees. Respondent reviewed and adopted the amended disclosure language, which was drafted with the assistance of [IA2’s] compliance consultant. Respondent states he believed that the amended disclosure language satisfied the SEC’s concerns, and he continued with purchase of IA2 in or around January/February 2020. Respondent states he would not have proceeded with the purchase if he did not believe the amended language had cured the disclosure deficiencies.
8. In April of 2020, the SEC requested additional information and the parties eventually began discussions to resolve this matter.
9. On June 6, 2022, Respondent and IA2 entered into a Cease and Desist Order with the SEC (“Order”). The Order made the following findings:

- a. Since at least January 2016, and continuing from the date Respondent purchased IA2 in February 2020 and through December 2020, the vast majority of clients' assets were invested in certain mutual funds that paid 12b-1 fees and charged sales load commissions exclusively through an introducing broker-dealer (the "Introducing Broker-Dealer") with whom Respondent was a registered representative. The Introducing Broker Dealer did not allow IA2 to select I Class shares or Load-Waived shares for its clients.
  - b. As a result, IA2's clients paid 12b-1 fees and commissions to the Introducing Broker-Dealer, a portion of which were shared with IA2 and Respondent. IA2 failed to fully and adequately disclose this arrangement and the conflicts of interest arising therefrom.
  - c. IA2's Form ADV Part 2A from January 2016 through March 2019 stated, "Although not a material consideration in recommending and/or selecting a particular mutual fund from the Account, IA2 and its Advisors may receive a portion of the 12b-1 distribution fees or other fees imposed by the mutual fund and paid by the mutual fund or one of their affiliates..." Respondent reviewed and adopted the above disclosure language, which was drafted with the assistance of IA2's compliance consultant.
  - d. As of March 2021, IA2 had approximately 177 advisory clients.
  - e. During the relevant period, February 2020 to December 2020, IA2 and Respondent received a significant percentage of their total compensation from 12b-1 fees and sales loads that the Introducing Broker charged the clients.
  - f. IA2's Brochures and advisory agreement stated that it routinely compares the Introducing Broker-Dealer's order execution with other broker-dealers. IA2 never recommended any other broker-dealers to its non-retirement plan advisory clients with mutual fund assets.
  - g. Furthermore, IA2 failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with (1) the disclosure of the conflicts of interest that arose from its mutual fund and mutual fund share class selection practices and seeking best execution for client transaction in connection with the selection of a broker-dealer. Respondent was the chief compliance officer during this time.
  - h. As a result of the conduct described above, Respondent willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client."
  - i. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.
  - j. Respondent was ordered to pay disgorgement in the amount of \$220,097.30, prejudgment interest of \$5,549.69 and a civil penalty of \$75,000.
10. Respondent states that after he purchased IA2 he was the sole advisor directly servicing all the clients. Respondent admitted that of the 177 advisory clients referenced in the Order, 149 of those clients were financial planning clients.
11. Respondent states that beginning in October 2020, he changed his business model and that he began using mutual funds that do not carry a sales load or a 12b-1 fee and began charging clients a higher direct advisory fee.
12. Respondent paid the disgorgement and fine to the SEC.

## B. GROUNDS FOR SANCTION

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

### FIRST GROUNDS FOR SANCTION (January 2020 through June 2020)

13. There are grounds to sanction Respondent for a violation of Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

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

15. Respondent admits that he was providing financial planning to the clients referenced in the SEC Order.

16. 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, (c) other regulatory authority, or (d) court of civil jurisdiction 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 or allegations contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, a Finding (as defined in the Code and Standards), injunction, undertaking, order to cease and desist, disgorgement, restitution, fine, suspension, bar, or revocation, the temporary or permanent surrender of a professional license or certification in response to a Regulatory action or Regulatory investigation, and statutory disqualification. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent.

17. The SEC is a federal governmental agency and the Order is conclusive proof of Respondent’s Professional Discipline.

18. As stated in the Order, Respondent breached his fiduciary duty to his clients from January 2020 through June 2020 when he continued to have his clients invested in funds that provided Respondent with a 12b-1 fee when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for Respondent’s clients under the particular circumstances in place at the time of the transactions. As a result, Respondent failed to act in the utmost good faith when recommending that clients purchase and hold funds with 12b-1 fees.

19. Therefore, there are grounds to sanction Respondent for a violation of Rule 1.4 of the *Rules of Conduct*.

20. As set forth in Article 7.5 of the *Procedural Rules*, once the Professional Discipline has been conclusively proven, Respondent may not challenge the Professional Discipline and may introduce evidence only concerning an appropriate sanction resulting from the Professional Discipline.

### SECOND GROUNDS FOR SANCTION (July 2020 through December 2020)

21. There are grounds to sanction Respondent for a violation of Standard A.1 of the *Code and Standards*, which provides that at all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. The following duties must be fulfilled: a. **Duty of Loyalty.** A CFP® professional must: i. place the interests of the Client above the interests of the CFP® professional and the CFP® Professional’s Firm; ii. avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client’s informed consent, and properly manage the conflict; and iii. Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional’s Firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interests above the CFP® professional’s.

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



23. Pursuant to Article 7.2 of the *Procedural Rules*, the Order is conclusive proof that Respondent breached his fiduciary duty to his clients from July 2020 through December 2020 when he continued to have his clients invested in funds that provided Respondent with a 12b-1 fee when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for Respondent's clients under the particular circumstances in place at the time of the transactions.

24. Therefore, there are grounds to sanction Respondent for a violation of Standard A.1.a. of the *Code and Standards*.

**THIRD GROUNDS FOR SANCTION**  
**(January 2016 through March 2019)**

25. There are grounds to sanction Respondent for a violation of Rule 2.2(A) of the *Rules of Conduct*, which provides that a CFP® professional shall disclose to a prospective client or client an accurate and understandable description of the compensation arrangements being offered. This description must include terms under which the certificant and/or the certificant's employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based.

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

27. Pursuant to Article 7.2 of the *Procedural Rules*, the Order is conclusive proof that Respondent as the CCO failed to ensure that from January 2016 through March 2019 the ADV disclosures to clients were accurate and understandable because the ADV disclosures failed to adequately disclose that IA2 and its advisers actually received 12b-1 fees. Specifically, the Order conclusively establishes that Respondent made inadequate disclosures to clients and prospective clients.

28. Therefore, there are grounds to sanction Respondent for a violation of Rule 2.2(A) of the *Rules of Conduct*.

**FOURTH GROUNDS FOR SANCTION**  
**(January 2016-June 2020)**

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

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

31. Pursuant to Article 7.2 of the *Procedural Rules*, the Order is conclusive proof that from January 2016 through June 2020 Respondent violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7.

32. Therefore, there are grounds to sanction Respondent for a violation of Rule 4.3 of the *Rules of Conduct*.

**FIFTH GROUNDS FOR SANCTION**  
**(July 2020-December 2020)**

33. There are grounds to sanction Respondent for a violation of Standard A.8.a of the *Code and Standards*, which provides that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services.

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

35. Pursuant to Article 7.2 of the *Procedural Rules*, the Order is conclusive proof that from July 2020 through December 2020 Respondent violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7.

36. Therefore, there are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards*.

**C. MITIGATING AND AGGRAVATING FACTORS**

1. The following are mitigating factors relevant to this Consent Order:
  - a. Respondent has no previous disciplinary history with CFP Board.
  - b. For a significant portion of time Respondent was a salaried employee and not an owner of IA2. When he purchased the company in January/February 2020, Respondent promptly began to meet with clients, personally, and promptly began to transition clients out of mutual fund shares that charged a 12b-1 fee. By the end of July 2021, all clients were transitioned out of such mutual fund shares and Respondent's practice was changed to a 100% fee-only advisory firm.
2. The following are aggravating factors relevant to this Consent Order:
  - a. Respondent's misconduct resulted in monetary harm to customers, which he was required to Disgorge and did personally disgorge.

**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 SANCTION, IN ACCORDANCE WITH ARTICLE 17.7 OF THE PROCEDURAL RULES.**

**F. REQUIRED ACTIONS AFTER SANCTION**

1. 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](mailto:discipline@cfpboard.org), written evidence that Respondent:
  - a. Has advised Respondent's Firm(s), in writing, of the Public Censure;
  - 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; 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 CFP Board 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. 342472 within 30 days from the date of submitting this Consent Order.
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. 3424724.

- 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. 3424724 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. 3424724 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. 3424724, 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: \_\_\_\_\_

By:   
John P. Hurnish, CFP®

#### CFP Board

Date: 8/12/2024 \_\_\_\_\_

By: /s/ Darby Armont, Chair  
Disciplinary and Ethics Commission