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

IN THE MATTER OF

WILLIAM J. BLYTH,

Respondent.

CFP Board Case No. 2022-63664

January 18, 2024

ORDER OF ADMINISTRATIVE REVOCATION

On October 26, 2023, pursuant to Article 4.2 of Certified Financial Planner Board of Standards, Inc.'s ("CFP Board") *Procedural Rules*, Enforcement Counsel filed a Motion for Order of Administrative Revocation[1] ("Motion"), enclosed with this order, requesting that Counsel for the Disciplinary and Ethics Commission ("DEC Counsel") issue an Administrative Order of Revocation to William Blyth ("Respondent").[2] Respondent did not file a Response to the Motion, so Enforcement Counsel did not file a Reply.

For the reasons stated below, Enforcement Counsel's Motion is granted.

I. Background

Respondent became a CFP® professional on January 25, 1988, and has been certified since that date.

On April 5, 2022, Enforcement Counsel issued a Notice of Investigation to Respondent ("NOI") related to the March 11, 2019 Cease and Desist Order issued against Blyth and Associates by the U.S. Securities and Exchange Commission ("SEC."). Respondent acknowledged and provided responses to the NOI. Enforcement Counsel continued its investigation requesting additional information and documents from Respondent. Respondent provided responses to those requests.

On August 21, 2023, Enforcement Counsel notified Respondent that the next step in its investigation was to take his testimony by Oral Examination in accordance with the *Procedural Rules*. Respondent requested additional time to secure representation for his oral examination. Enforcement Counsel issued a Notice of Oral Examination on September 11, 2023, setting the examination date for September 29, 2023. In response to the Notice of Oral Examination, on September 15, 2023, Respondent informed Enforcement Counsel that he would no longer participate in its investigation. On September 19, 2023, Respondent confirmed his intent to neither further participate nor cooperate with Enforcement Counsel's investigation.

[1] The Motion, any response to or reply in support of the Motion, and any Exhibits to the Order are not subject to publication under Article 17.7 of the *Procedural Rules*.

[2] Enforcement Counsel certified in their Motion that they had met and conferred with Respondent via email in a good faith attempt to resolve or narrow the issues on September 18-19, 2023, but Enforcement Counsel and Respondent were unable to resolve the issue of Respondent's default.

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As demonstrated by Respondent's clear intent to no longer participate in the investigation, Enforcement Counsel determined that Respondent was in default pursuant to Article 4.1.b. of the *Procedural Rules*. Enforcement Counsel filed a Motion for Administrative Order of Revocation on October 26, 2023. As noted, Respondent did not file a Response to the Motion, so Enforcement Counsel did not file a Reply.

II. <u>Discussion</u>

a) Respondent is in Default

Pursuant to Article 4.1.b. of the *Procedural Rules*, if Respondent indicates a clear intention not to participate or to cease participation in CFP Board's investigation then Respondent is in default. Respondent indicated his clear intention to cease participation in CFP Board's investigation. (*See* Exhibit 1 to Motion at 16: "I do not intend to either participate in or co-operate with your investigation any further. I understand the consequences of my decision.") As a result of Respondent's clear intention to cease participation in CFP Board's investigation, Respondent is in default under Article 4.1.b. of the *Procedural Rules*.

b) Respondent's Alleged Conduct Warrants an Administrative Revocation

Respondent's alleged misconduct concerned the following:

Respondent founded Blyth and Associates, Inc. in 1995, has acted as the President and Chief Compliance Officer ("CCO") of Blyth and Associates at all relevant times, and exercised control with regard to the content of Blyth and Associates' disclosures of conflict-of-interest information and compensation methods included in Blyth and Associates' Form ADV.

Between January 1, 2014 and December 31, 2016, Respondent provided the firm's Form ADV to all of Respondent's clients; however, the Form ADV contained equivocal language that its representatives, individually naming Respondent, "may" receive 12b-1 fees, although Respondent understood that 12b-1 fees actually would be received if the client purchased shares of qualifying mutual funds.

On February 12, 2018, the Securities and Exchange Commission ("SEC") published a press release titled "SEC Launches Share Class Selection Disclosure Initiative to Encourage Self-Reporting and the Prompt Return of Funds to Investors" ("Announcement"). The Announcement outlined the SEC's initiative to "identify and promptly remedy," through self-reporting, potential violations of federal securities laws by investment advisers who failed to make required disclosures to their clients with respect to their selection of mutual fund share classes that paid the adviser (as a dually registered broker-dealer), or its related entities or individuals, a fee pursuant to Rule 12b-1 of the Investment Company Act of 1940 when a lower-cost share class for the same fund was available to clients. The SEC concluded in its Announcement that disclosures informing clients that 12b-1 fees "may" be paid to the adviser, or its affiliates, were inadequate when the fees are actually paid to the adviser or its affiliates.

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The Announcement stated that, through the Share Class Selection Disclosure Initiative ("SCSD Initiative"), the SEC's Division of Enforcement would provide investment advisers who had failed to properly disclose their receipt of 12b-1 fees in their Forms ADV with a grace period to self-report information about particular payments of 12b-1 fees to the SEC's Division of Enforcement. In return for this self-disclosure, the SEC's Division of Enforcement would recommend that the SEC accept favorable settlement terms for the issuance of an enforcement action against the eligible adviser to include: a cease-and-desist order and censure based on findings that the adviser had violated Sections 206(2) and 207 of the Advisers Act of 1940 ("Advisers Act"); disgorgement of the gains from the 12b-1 fees with prejudgment interest; and undertakings for corrective actions.

On June 11, 2018, Blyth and Associates submitted a letter to the SEC providing notice of the firm's intent to participate in the SCSD Initiative. Respondent signed this letter as the President and CCO of Blyth and Associates.

Following an inquiry by the SEC, on January 3, 2019, Respondent signed an Offer of Settlement for Blyth and Associates, as President and CCO of the firm, to resolve the SEC's allegations rising from the SCSD Initiative and to consent to the SEC issuing a Cease-and-Desist Order to the firm. Pursuant to Respondent's agreement under the Offer of Settlement, on March 11, 2019, the SEC issued an Order Instituting Administrative Proceedings and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Blyth and Associates ("Order"). The Order found that Blyth and Associates had breached its fiduciary duty and made inadequate disclosures in connection with its mutual fund share class selection practices and the fees its associated persons received pursuant to Rule 12b-1 under the Investment Company Act of 1940. The SEC found that "[a]t times during the Relevant Period, [Blyth and Associates] did not disclose adequately to its clients either in its Forms ADV or otherwise its associated persons' conflicts of interest related to (a) their receipt of 12b-1 fees, and/or (b) their selection of mutual fund share classes that pay such fees."

The SEC found that Blyth and Associates 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." Further, the SEC found that Blyth and Associates willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Beyond his firm's actions, between January 1, 2014, and December 31, 2016, Respondent individually had 151 then-existing clients or former clients that were placed in mutual funds affected by the 12b-1 fees described in the SEC Order. Respondent had discretion over his clients' accounts as Blyth and Associates only managed client assets on a discretionary basis, and between January 1, 2014, and December 31, 2016, Respondent purchased, recommended, or held for

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advisory clients, mutual fund share classes that charged 12b-1 fees instead of lower-cost share classes of the same funds for which the clients were eligible.

Respondent personally received 12b-1 fees in connection with these investments. Although Respondent disclosed his receipt of these 12b-1 fees through Blyth and Associates' Form ADV, the Form ADV only informed clients that Respondent "may" receive 12b-1 fees even though Respondent knew, based on investments in certain mutual funds and share classes, that he would actually receive 12b-1 fees. Respondent provided no other disclosures to clients regarding his receipt of 12b-1 fees as part of his compensation arrangement. Respondent informed clients of the conflict of interest that 12b-1 fees raised through Blyth and Associates' Form ADV, but the disclosure only informed clients that receipt of 12b-1 fees "could represent an incentive for Mr. Blyth" when Respondent knew a conflict of interest was actually created due to his receipt of 12b1 fees and that clients should have the opportunity to consent to or reject such conflicted transactions.

Respondent's conduct may have violated:

- Rule 1.4 of the *Rules of Conduct*, which requires a certificant to act as a fiduciary and, at all times, place the interest of the client ahead of his or her own;
- Rule 2.2(A) of the *Rules of Conduct*, which requires a certificant to disclose to a client or prospective client an accurate and understandable description of the compensation arrangements being offered. This description must include: (1) information related to costs and compensation to the certificant and/or the certificant's employer, and (2) 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.;
- Rule 2.2(B) of the *Rules of Conduct*, which requires a certificant to disclose to a client or prospective client a general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship.; and
- Rule 4.4 of the *Rules of Conduct*, which requires a certificant exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent intentionally chose not to continue participating in CFP Board's investigation. As a result, Respondent's clear intention to cease participation in CFP Board's investigation warrants the issuance of an Order of Administrative Revocation.

III. Conclusion

Respondent is in default pursuant to Article 4.1.b. of the *Procedural Rules*, Enforcement Counsel's Motion is **GRANTED**, and DEC Counsel issues this Order of Administrative Revocation ("Order") wherein Respondent's right to use the CFP Board certification marks is permanently revoked. An administrative revocation is the termination of a Respondent's Certification and

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Trademark License, imposed pursuant to Article 4 of CFP Board's *Procedural Rules*. CFP Board publishes an administrative revocation in accordance with Article 17.7. A Respondent whose Certification and Trademark License is revoked is permanently barred from applying for or obtaining CFP® certification. A revocation is permanent; there will be no opportunity for reinstatement.

IV. Compliance with Order

Pursuant to Article 11.2 of the *Procedural Rules*, Respondent is required to submit to Enforcement Counsel, within 45 calendar days of issuance of this Order, or by **March 4, 2024,** written evidence that Respondent:

- Has advised Respondent's Firm(s), in writing, of this Order of Administrative Revocation in the manner set forth in Standard D.3 of the *CFP Board's Code of Ethics and Standards of Conduct ("Code and Standards")*; and
- Has advised all Clients (as Client is defined in the Glossary to the *Code and Standards*) of this Order of Administrative Revocation 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*.

Pursuant to Article 11.3 of the *Procedural Rules*, within 45 calendar days from the date of this Order, or by **March 4, 2024**, Respondent is required to submit to Enforcement Counsel, by sending an email to discipline@cfpboard.org, Respondent's statement of assurance that Respondent will not use the CFP Board certification marks and proof that Respondent has removed the CFP Board certification marks from all internet sites or other tangible materials that Respondent exposes to the public, including screenshots of the businesses, social media, and third-party financial advisor listing website profiles that Respondent controls, pictures of signage, and when applicable, copies of Respondent's business cards, letterhead, and marketing and promotional materials, as well as pictures of any other materials Respondent controls in which the CFP Board certification marks previously appeared publicly in reference to Respondent or Respondent's services. Failure to do so may result in further disciplinary or legal action regarding the unauthorized use of the CFP Board certification marks.

Ordered by:

Counsel to the Disciplinary and Ethics Commission
Date: January 18, 2024

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