

Illegal Practices Of Fee-Only Financial Planners In The Business Of Insurance (Problems & Solutions)



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INTRODUCTION:

Overwhelming media focus on “methods of compensation” for financial services in the recent past, rather than competence and regulatory compliance, has fueled an ever increasing, consumer-driven demand for FEE-ONLY advice in insurance planning. Media and marketing hype has influenced the consumer’s perception and led many to conclude that; “fee-only planners” are the **only** planners capable of giving objective, unbiased advice relating to insurance matters because they receive no compensation from third parties, are not affiliated with, represent or take compensation from insurers and therefore, have **no** conflicts of interest and loyalty that could impair their ability to provide objective and unbiased information. Unfortunately however, many fee-only financial planners in California and 38 other States with similar regulations are operating outside the law in order to provide this “objective and untainted” advice. This discussion will highlight these illegal insurance activities and provide potential solutions, (initially for California, although the suggested solutions could be used as a model for other States) to increase compliance with current California insurance law. It will also discuss developing trends in the business of offering insurance advice in California, particularly in relation with the provision of insurance advice as a component of a “Comprehensive Financial Plan”. All Statutes herein are California statutes unless otherwise indicated.

INSURANCE LICENSING:

The three most widely held insurance licenses issued to individuals who provide general advice to families and consumers on general insurance matters in California are; The Life Agent License,(LX) the Fire and Casualty Broker-Agent (FX) and, to a negligible degree, the Life and Disability Analyst License.(LA) A full list of other licenses is available at www.insurance.ca.gov.

Life Agent (LX)

The licensing requirements for a Life Agent license are set forth in Chapter 5, Part II, Division 1 of the Insurance Code and are attached hereto as Exhibit I. A Life Agent (LX) is defined as: *a person authorized by and on behalf of a life or disability, or life and disability insurer, to transact life, disability or life and disability insurance.*¹

Generally, a life agent advises consumers as to the benefits and disadvantages of life, health, disability and long term care insurance etc. and transact business on behalf of one or more insurance companies, offering products to consumers. A Life Agent must be compensated

by the insurer on the sale of product in the form of commissions and cannot accept fees for service from the consumer. There are approximately 154,664 resident and non-resident LX agents serving Californians.²

Fire & Casualty Broker-Agent (FX)

A fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license so to act. The FX licensee's authority to act is determined by which documents are initially submitted:

- A \$10,000 Bond of Insurance Broker, form 417-5, authorizes the licensee to act as an insurance broker. An insurance broker is a person who, for compensation and on behalf of another person transacts insurance other than life with, but not on behalf of an insurer.
- An Action Notice of Appointment, form 447-54, authorizes the licensee to act as an insurance agent. An insurance agent is a person authorized by and on behalf of an insurer to transact all classes of insurance, except life insurance.
- An Action Notice of Solicitor, form 417-31, authorizes the licensee to act as an insurance solicitor. An insurance solicitor is a natural person employed to aid an insurance agent or insurance broker in transacting insurance other than life.

There are approximately 88,300 resident and non-resident FX agents serving Californians.³

Life & Disability Analyst (LA)

The licensing requirements for a Life and Disability Analyst license are set forth in Chapter 8, Part II, Division 1 of the Insurance Code and are attached hereto as Exhibit II. A Life and Disability Insurance Analyst is defined as: *a person who, for a fee or compensation of any kind, paid by or derived from any person or source other than an insurer, advises, purports to advise, or offers to advise any person insured under, named as beneficiary of, or having any interest in, a life or disability insurance contract, in any manner concerning that contract or his or her rights in respect thereto.*⁴

Generally, a LA is trained to a significantly higher level than a LX and can advise a consumer not only as to the advantages and disadvantages of all forms of insurance, but can also provide competent, unbiased comparative analysis of various policies for a fee, as well as interpret the rights of consumers under any insurance contract. The LA must, among other things;

- Have been licensed as a Life Agent (LX) for a period of at least 5 years preceding a LA application⁵ and
- Must complete a comprehensive course of education covering significantly more topics than the LX and,
- Pass a rigorous examination before obtaining the LA license.

It should be noted that the LA license currently authorizes a person to provide advice for a fee on all insurance related matters, but does not currently require **any** training or examination in Long-Term Care insurance, or require a minimum number of hours of continuing education credit in each licensing period. In the past ten years, the number of CA Life And Disability Analysts has remained stable at approximately 44 (forty four) for the entire State's population.⁶

“FINANCIAL PLANNERS” OFFERING INSURANCE ADVICE

There are over 34,000 (thirty four thousand) Registered Investment Advisors and Investment Advisor Representatives in California.⁷ An Investment Advisor in California is authorized under §25009(b), California Corporations Code⁸ to utilize the title of “financial planner” (without any statutory requirement to substantiate his / her competence to perform the tasks of a financial planner) and perform comprehensive financial planning services on a fee-only basis. The examination and qualification requirements for the Series 65 (Uniform Investment Adviser Law Examination) are attached hereto as Exhibit III. **NO knowledge of insurance products or the business of insurance is required** in order to register as an Investment Advisor. “Financial Planning” and “Financial Planners” are having an ever increasing and significant impact on the provision of insurance services in California. It is important that State Agencies and boards such as the CA Dept of Insurance (CDI) Agent and Broker Advisory Committee (ABAC) provide input to regulators and legislators alike, regarding allied “professions” impacting the business of insurance to ensure that consumers are properly protected. A copy of this discussion will, therefore, be forwarded to both the CDI and the ABAC for their consideration.

Many fee-only planners offer “**comprehensive**” financial planning services that, by definition, include risk management analysis and recommendations as part of the planning process. These recommendations include calculations regarding the amounts and types of life insurance, recommendations with regard to the benefits and disadvantages of various individual and/ or group health insurance plans, disability and long term care plans etc. In some cases advice is provided on a fee basis regarding homeowners, auto and other types of property, casualty and general liability coverage.

To avoid real and “perceived” conflicts of interest, many fee-only financial planners choose **not** to maintain affiliations or representation agreements with any insurer and, therefore, are unable to license themselves as LX's or FX's. Some let their LX or FX licenses lapse when they transition to fee-only planning. In both these cases, California law is clear. Any person accepting fees for insurance related matters from any third party other than an insurer, unless otherwise exempt, must be licensed as a LA.⁹ In an attempt to circumvent the law, other planners obtain a LX and / or FX license to create the appearance of legal compliance, but never have any intention of actually “transacting business” or utilizing the license for the purpose for which it was originally issued or intended. This practice is prohibited under CA law,¹⁰ because it is the fee-only planner's true intention to **charge the consumer** for

insurance advice rather than to be compensated by an “insurer” as CA Insurance Code Sections 32 & 1622 (supra) require.

Many fee-only planners quote an often-abused section of California's Insurance code, Section 1831(e), which provides a limited exemption from insurance licensing for Registered Investment Advisers to justify their unlawful behavior. The following is an excerpt from a letter originally addressed to Errold Moody, CFP™, (A California Life & Disability Analyst who has concerned himself with the illegal activities of fee-only financial planners in insurance matters for over 10 years in California) on July 27, 1995, by Patricia Staggs the then Assistant General Counsel and Chief, Compliance Bureau of the Legal Division, Compliance Bureau of the California Department of Insurance, who wrote regarding the Investment Adviser exemption:

*"That exemption appears at Insurance Code Section 1831(e) and provides an exemption to the chapter regarding life and disability analysts for "an investment adviser as defined in section 25009 of the Corporations Code, **when acting in that capacity.**" (Emphasis added) Section 25009 of the Corporations Code provides as follows:*

"Investment adviser means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of regular business, publishes analyzes or reports concerning securities. "Investment Adviser" does not include (a) a bank, trust company or savings and loan association; (b) an attorney law, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer whose performance of the services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; or (d) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation and the agents and servants thereof, but this clause (d) does not exclude any person who engages in any other activity which would constitute him as an investment adviser within meaning of this section.

A life and disability insurance analyst is defined in insurance code 32.5 as follows:

"Life and disability insurance analyst" means a person who, for a fee or compensation, paid by or derived from any person or source other than an insurer, advises, purports to advise, or offers to advise any person insured under, named as a beneficiary of, or having any interest in, a life or disability insurance contract, in any manner concerning that contract or his or her rights in respect thereto."

*The Department's view to that exemption set forth in insurance code 1831(e) is that an investment adviser need not submit to regulation by the Department of Insurance so long as the activities engaged in by the investment adviser fall within the defined activities of an investment advisor as set forth in Corporations Code section 25009. It is noteworthy that the definition of an investment **adviser contains no reference to insurance related activities.***

(Emphasis Added) Therefore, any activities included within the definition of life and disability analyst, such as advising as the life insurance products, are clearly outside the "capacity" of an investment adviser, and would subject the person to the provisions of law relating to life and disability insurance analysts.

*Very Truly Yours,
Patricia Staggs*

Since as early as 1995, the CDI has taken the documented position that the Investment Advisor exemption applies ONLY when a Registered Investment Advisor acts "in that capacity" and, as defined in section 25009 of the Corporations code. It is the author's conclusion based on conversations with CDI staff counsel Jody Miller, therefore, that the only time a Registered Investment Advisor in the State of California may lawfully provide "insurance" related advice to a consumer for a fee would be, **for example**, if he were advising a client as to the allocation of sub accounts containing regulated securities within an already existing variable life insurance or variable annuity policy.

This exemption does **NOT**, however, permit a Registered Investment Advisor to discuss the merits or disadvantages of any type of insurance including Life, Health, Disability, Long Term Care, Property / Casualty, Homeowners, General Liability, Auto insurance etc. that do not contain any elements related to the provision of investment advisory services. Under current law then, any Registered Investment Advisor who provides such advice and is compensated directly by the consumer without having first obtained a LA license, is guilty of a misdemeanor.¹¹

The position of the CDI was illuminated in a letter addressed to representatives of the financial services sector who attended a series of meetings held with the Dept. of Insurance in late 1997. In a letter dated February 3, 1998, Assistant Ombudsman and Legislative Liaison Jeffrey Kenny wrote:

February 3, 1998

On July 30, 1997, a discussion concerning the life and disability insurance analyst license was held between the California Department of Insurance (CDI) and members of the financial planning industry. As you participated in this dialog, I am writing to communicate CDI's policy on this matter.

The focal point for this issue is consumer protection, not the interests of the individual factions. With all parties based in customer service, it is sad that this detail has been lost in much of the discussion. As defined by insurance code Section 32.5, a life and disability insurance analyst is

"... a person who, for a fee or compensation of any kind, paid by or derived from any person or source other than the insurer, advises, purports to advise, or offers to advise any person

insured under, named as beneficiary of, or have any interest in, a life or disability insurance contract, in any manner concerning that contract or his or her rights in respect thereto."

The fact that there are only 46 life and disability analyst in California is not a valid argument for repealing this code. In fact, the limited number of licensees and population in noncompliance begs for increased education and enforcement. While the easy solution for those in noncompliance may be to repeal this law, consumers who pay for fee advise on insurance matters deserve an analyst educated in insurance per CDI standards. The current licensing requirements ensure that relationship. Any legislative effort to repeal this law will likely be opposed, on the basis that such action is harmful to consumers, by consumer groups, insurers, agents and brokers, and the California Department of Insurance.

At the July 30, 1997 meeting, representatives from the financial planning industry raised two additional suggestions concerning CDI's examination requirement. The first seeks to allow issuance of a Life and Disability Analyst license to Certified Financial Planners and Certified Public Accountants following the successful completion of their own professional examinations. Again, this is an idea that requires legislation and will certainly face opposition. CDI's position remains at only those individuals who pass CDI's exam are to be issued a life and disability analyst license. CDI is the agency charged with enforcing this license and will remain, via its examination and related or regulatory functions, the authorizing agency for this license.

The final suggestion request a waiver of the requirement than an examinee must have five (5) years experience as a life licensee, or employment experience under said licensee, to sit for CDI's examination. Again, this is an idea that requires legislation. CDI will reserve judgment until the full breadth of this proposal has been introduced to the state legislature.

Despite some groups interest in changing current law, there is an existing law which is, and has always been, quite clear. While a financial planner may be illegally engaging in insurance analyst activities and may not be aware of their violation, it is my hope that this the explanation of policy will provide them with the impetus to come into compliance or cease the illegal activity immediately. Per insurance code Section 1844, " any person who acts, offers to acts, assumes to act, as a life and disability insurance analyst when not licensed by the commissioner per this article..... is guilty of a misdemeanor." Consistent with current practice, information obtained on individuals in noncompliance will be aggressively pursued.

Sincerely,

*Jeffrey Kenny
Assistant Ombudsman and Legislative Liaison*

However, successful criminal prosecutions for a violation of CIC §1844 are apparently rare because the CDI must turn these matters over to local district attorney's offices Statewide. Their failure to enforce the law is probably attributable to a lack of funding to prosecute

non-violent, misdemeanor counts of this nature where no victim can be produced. Unfortunately and to the detriment of California's consumers, this lack of enforcement has had the effect of creating a Cavalier attitude towards compliance with State law that, essentially, seems to tolerate this unlawful activity, permitting fee-only planners to operate almost with impunity.

There are a number of fee-only financial planners who claim in their firm's disclosure form that they have no affiliations or representation agreements with any insurance carriers and, that they do not represent or offer for sale, any kind of insurance products. However, in reality, they maintain LX or FX licenses and have contracts with life insurance carriers who do not require a minimum annual production level **without any intention** of "transacting" on behalf of an insurer, (a violation of CA Insurance code section 1668 sub. (c) & (g) supra) while making no disclosures anywhere on their disclosure statements or advertising materials as to their active insurance licenses, which is in and of itself a violation of Section 1725.5 of the Insurance Code.¹²

Other fee-only financial planners claim that any insurance advice given by them to their clients as part of a comprehensive financial plan is given "free of charge". They claim that a fee is charged for all the other elements (investment, tax, retirement & estate planning), but **not** for the risk management portion of the plan. They point to the fact that they never "act in any of the capacities defined in Article 1 (commencing with Section 1621)" because they do not appoint themselves with, or represent an insurance company or any particular insurance product and, do not actually "transact" insurance business. (Thereby avoiding, in their minds, a licensing requirement under CIC Sections 32 & 1622) Furthermore they claim, they **do not** charge the consumer a fee for the advice they provide, regardless of the complexity of that advice. (Charging a fee would trigger a licensing requirement under section 32.5, Insurance Code) The result, if the courts upheld this logic, would be that the Dept. of Insurance would lose all control and authority for the provision of insurance advice to consumers by fee-only financial planners in California to the California Dept. of Corporations. Worse still, the only recourse damaged consumers would then have against fee-only financial planners in the business of insurance would be the California Dept. of Corporations, a state agency woefully equipped to enforce state insurance laws.

One problem that requires statutory revision is the lack of a suitable definition for "transacting" in the business of insurance. While the Dept. of Insurance has considerable leeway in determining what constitutes "transacting", the code itself provides little or no useful information or guidance for fee-only planners who often feel, based on the wording of the current definition, that they acting inside the law when performing certain services. Transaction is defined under §35 of the Insurance code as:

35. "Transact" as applied to insurance includes any of the following:

- a) Solicitation.
- b) Negotiations preliminary to execution.
- c) Execution of a contract of insurance.
- d) Transaction of matters subsequent to execution of the contract and arising out of it.

While the requirements under sub(s) b, c, & d, is self-explanatory, “Solicitation” (sub. A) Is not defined and the legislature has, to date, been loathe to define it, leaving the interpretation to the CDI and creating a “fact at issue” that requires administrative or judicial interpretation and determination in cases where fee-only planners dispute their activities as “transacting”. This is not the first time the issue of defining “solicitation” has been brought to the attention of the Department of Insurance. In a discussion paper dated September 25, 1998, the Producer Licensing Working Group recommended defining “solicitation” in the following manner:

Solicitation: Any oral or written statement or image (1) made by any person, either directly or by another person acting pursuant to the first person's authorization, direction, or control; (2) which statement is made with the intention or likely effect of provoking, directly or indirectly, a recipient's interest in potentially purchasing an insurance product.

This author believes a clarification of what constitutes Solicitation under the Insurance Code will assist Registered Investment Advisors, fee-only financial planners and others in assessing which license, if any, would be appropriate given their particular facts and circumstances. If the legislature decides not to act, the Dept. of Insurance should issue authoritative guidelines or advisory opinions, similar to those of other regulatory agencies such the SEC, NASD and IRS in an effort to bolster compliance. This is extremely important given recent trends and developments in the delivery methods and current practices of individuals providing insurance services in California.

The issue of “transacting” and what constitutes “solicitation” aside and with regard to the practice of giving advice in insurance for free; CIC Section 1631 does not mention compensation as a criteria for triggering a licensing requirement.¹³ Even setting aside the current CDI determination of what constitutes “transacting” which is ambiguous, California’s Insurance code, for purposes of interpretation, is also governed by Section 1858 of the California code of Civil Procedure (CCCP)¹⁴. There is voluminous precedent under CCCP section 1858 supporting the author’s opinion that the interpretation of a statute that produces an absurd or anomalous result will not prevail when used as a defense. *In interpreting a statute, Supreme Court avoids any construction that would produce absurd consequences.*¹⁵ *In construing statute, state Supreme Court will not parse each literal phrase of statute if doing so contravenes obvious underlying intent, or leads to absurd or anomalous result*¹⁶

Since it is already well settled in law that, “The business of Insurance is a business affected with a public interest,”¹⁷ this author believes the circumvention of State Insurance licensing laws by fee-only financial planners in **any** manner, irrespective of compensation or level of competence, presents a clear and present danger to California’s consumers and is contrary to the public interest. The intent and desire of the Legislature to require State licensure for insurance professionals is clearly set forth in CA Insurance Code Sections 1631, 1633 & 1633.5¹⁸, and is unambiguous in the author’s opinion.

UNLICENSED INSURANCE ADVICE, CURRENT REMEDIES

CA Insurance Code Section 1668 applies in the case of fee only planners who maintain a license but do not intend to actively transact business as LX's. The sole remedy for such conduct is that under this section; ***“ the commissioner may deny an application for any license issued pursuant to this chapter if:***

..... (c) The applicant does not intend actively and in good faith to carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;

..... (g) The applicant seeks the license for the purpose of avoiding or preventing the operation or enforcement of the insurance laws of this state;”

CA Insurance Code Section 1668 is problematic in that; it is difficult if not impossible to enforce unless insurers are “required” to terminate **all** LX's & FX's not actively “transacting” insurance business, and, unless the Dept. of Insurance requires proof be provided to the department by the insurer that a LX or FX **is**, in fact, actively transacting business. The code could require insurers to review commissions paid to appointed agents on an annual basis and terminate the appointments of all agents who do not “transact” over a period of 12 months unless valid cause can be shown. Exceptions could be made for salaried employee of insurers and persons engaged in the regulation of insurance business in whatever form.

CA Insurance Code Section 1844 is applicable to fee only planners who provide insurance advice for a fee, or, “for free” and provides that; ***any person who acts, offers to act, or assumes to act, as a life and disability insurance analyst when not licensed by the commissioner as provided by this article, or after the license granted to him or her has been suspended or revoked, unless proceedings are pending in the courts to review the act of the commissioner, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or by both such fine and imprisonment.***

Again, this is difficult if not impossible to enforce because the Dept. of Insurance must rely on local district attorney's offices, most of which have no funds to prosecute non-violent misdemeanor counts, particularly when most D.A.'s offices consider this a matter for the Insurance Commissioner in the first place. Therefore, rather than seek prosecution under this section, the Dept. of Insurance should actively enforce State law against violators under the recently introduced CIC section 12921.8. (discussed below) It makes no sense for the Dept. to refer these cases to local district attorney's offices if their decision to prosecute under the State's criminal statutes is based on “financial considerations”, rather than the evidence of malfeasance.

There are two other remedies available to the Dept. of Insurance. The first is California Insurance Code (CIC) 790 et. Seq., The Unfair and Deceptive Trade Practices Act. The second is the aforementioned and recently introduced CIC Section 12921.8.

Prosecution under CIC 790 et. Seq does not require compensation because, under section 790.01, the Insurance Code applies to all persons engaged in the “business” of insurance.¹⁹ Under section 790.04, the Dept. of Insurance is authorized to investigate any person engaged in the business of Insurance in California.²⁰ Transacting in the business of insurance without a valid license with or without compensation is clearly an unfair and deceptive, competitive practice because violators seek to avoid and evade ascertainable standards in training, examination, licensing and continuing education required by the State for agents and brokers appointed by insurers who are performing, essentially, the same tasks, while at the same time claiming to take the “ethical high ground” in terms of the advice given. State licensing places the agent at a competitive disadvantage because a licensed agent can only accept compensation from an insurer unless that agent is also a Life and disability Analyst. Section 790.035 provides substantial administrative penalties including fines and restraining orders for persons violating this Act.²¹ The provision of unlicensed insurance advice, whether for a fee or “free of charge” by fee-only planners is detrimental to the consumers of California because there is no ascertainable standard of education, or requirement to keep current present unless such planners are subjected to the licensing requirements of the CA Dept. of Insurance.

The second remedy available is authorized under CIC Section 12921.8²², which provides for greater administrative remedies against those individuals who transact the business of insurance without proper licensure. A CA Life & Disability analyst whose business has been severely impacted filed complaints in early 2002 against prominent California fee-only planners who are flagrantly violating the law. To date, the CDI has taken no action against these planners and it remains unclear whether these new powers will be utilized on a **proactive** basis to seek out fee-only financial planners offering insurance advice, or, whether the Dept. of Insurance will remain **reactive** to “consumer” complaint only in the enforcement of California’s insurance laws

On a final note, the CDI is considering proposed regulations pursuant to the authority granted to the Insurance Commissioner under the provisions of in SEC. 8 of Assembly Bill 393, Chapter 321, Statutes of 2000 that, among other things, address the necessity for licensing. These new regulations include a proposed section 2192.3

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Section 2192.3 - Necessity of License

The following activities are not exempt from licensure under CIC Insurance Code Section 1631, because they are directly related to solicitation, negotiation, or effecting the sale of insurance:

- (a) Explanations, discussions, or interpretations of, and offering of opinions or recommendations on, insurance coverages, exposures,**

limits, premiums, rates, deductibles, payment plans, or any other insurance contract, or potential insurance contract, terms.

- (b) Recommending and/or advising, or urging applicants/potential applicants/policyholders applicants for insurance coverage, potential applicants for insurance coverage, or policyholders to buy particular insurance policies or to insure with particular companies or insurers.
- (c) Binding of insurance coverages.

Note: Authority cited: Section 8 of AB 393, Chapter 321, States of 2000.
Reference: Insurance Code Section 1631 of the Insurance Code.

Should section 2192.3 be enacted, any perceived ambiguities associated with the giving of “unlawful” advice by fee-only planners would be eliminated. While the author applauds all these efforts to increase compliance through enforcement and regulation, the consumer’s total ignorance of California Insurance law and the reactive nature of insurance enforcement will bring few, if any, real-world changes for consumers. There have, to date, been few complaints regarding the illegal practices of fee-only financial planners by consumers because, a) a licensed life insurance agent is always eventually involved in the “sale” of a specific product to the consumer, and b) the client has already received a written affirmation from the fee-only planner that he is acting in a fiduciary capacity as their trusted advisor. The client, therefore, places greater value on the fee advice given by a fee-only planner, than the advice of a licensed life agent “selling” the same product the fee-only planner recommends, simply because the licensed individual is an agent of the insurer.

Of course, the consumer is paying twice for the same advice, once in the form of fees and a second time in the form of commissions to a licensed “agent”. Providing there is no relationship between the fee-only planner and the insurance agent and no referral fee is payable by the agent to the planner, this fact is never disclosed to the client. It is the author’s personal experience that many fee-only financial planners refer these clients to out-of-state insurance agencies who have declared themselves willing to provide substantial discounts from their commissions. While the author views these discounts are “only fair in light of the circumstances”, it does not excuse the illegal conduct and the fact that the client is not receiving any favorable **contractual** benefits on their insurance policy such as; shorter exclusion periods, shorter surrender penalties, lower mortality and expense fees or lower percentage monetary penalties for early termination of the product.

The already established fiduciary relationship between a fee-only financial planner and his / her client creates a bond of trust that implies, by its very nature that the planner is fully complying with all federal and state laws. In fact, many fee-only planners subscribe to written codes of ethics established by credentialing bodies and professional membership organizations such as the CFP Board of Standards, the Financial Planning Association and the National Association of Personal Financial Advisors (NAPFA), which demand their members comply with all federal and state licensing laws. However, the aforementioned

professional membership and regulatory bodies are conflicted in their response to the problem of illegal activity because both organizations, as mentioned previously on page 5 & 6 of this report, are lobbying for a change in the law that will allow such fee-only planners, particularly those holding the CFP® Certificate, to qualify for a waiver from licensing. These professional membership and regulatory bodies refuse to investigate or discipline such planners unless the State first prosecutes them. The State of California, for reasons stated elsewhere in this report, have been loathe to take action against these fee-only planners despite repeated complaint filings by life and disability analysts over the most recent ten year period, whose income is being severely impacted by such illegal activities.

From a consumer's perspective, there would be absolutely no reason to question the integrity of their fee-only financial planner. In fact, organizations such as the National Association of Personal Financial Advisors (NAPFA) have marketed their fee-only planner members as the "only" planners capable of providing clear, untainted, unbiased advice on all financial matters including insurance and have disseminated brochures since the 1980's claiming that commissioned based advice is somehow tainted and a totally flawed delivery method that could harm consumers. NAPFA's position has been supported and publicized to a great extent by the media, including magazines such as Bloomberg and Money, to newspapers such as the Los Angeles Times, which requires "fee-only" as a pre-requisite "method of compensation" for any planner participating in it's popular "Money Makeover" series of consumer assistance feature articles. It has also been supported by non-profit organizations such as the Consumer Federation of America. Negative consumer perceptions of insurance licensed individuals, has to a great extent, been unfairly tainted by such media hype and marketing tactics.

The recent introduction of section 12921.8²² coupled with an acceptance of proposed section 2192.3 would, absolutely, provide the CDI with additional needed powers to regulate the business of insurance. It will not in the author's opinion, however, increase compliance in any meaningful manner. Continued consumer ignorance of State insurance laws and reactive rather than pro-active enforcement by the CDI will almost certainly maintain the current status quo.

This author applauds the sentiment of the recently introduced statute, but believes it has no real-world practical value. This license requirement will continue to be ignored by most fee-only planners because of the incredible burden it places on them in terms of initial compliance and qualification. In addition, the statute, to date, remains un-enforced because the CDI lacks the manpower and funding within the civil enforcement division to even begin to attack this widespread problem. Simply stated, this recently introduced legislation demands aggressive investigation, large fines and numerous prosecutions to achieve even partial compliance. The CA Department of Insurance has instigated a consumer-complaint driven "reactive" role, rather than a consumer-protective "proactive" enforcement campaign even after the introduction of CIC section 12921.8.

One major reason for continued non-compliance is the requirement that applicants be registered as LX agents for five years preceding their examination and licensure as LA's.

(Fee-only planners view this as being forced to move back into a house they have already sold) Secondary reasons include, fee-only planners view the LA license as an over-qualification to perform the tasks they desire to perform, there are no schools or colleges currently teaching the course work required to become LA's because a total lack of enforcement by the CDI of this statute has created a total lack of interest on the part of fee-only planners. Also, there are no teaching materials or publications available for purchase to prepare for the examination. These problems and potential solutions are discussed in more detail in the section below.

Finally, it is fascinating and significant to note that, while many fee-only planners firmly believe State and SEC investment adviser regulations are outdated, irrelevant and sorely in need of a complete revision and overhaul if they permit planners to "perform comprehensive financial planning", few if any fee-only financial planners actually violate the Investment advisory statutes. One major reason for this almost total compliance is because of the rigorous enforcement efforts of the Dept. of Corporations, the NASD and the SEC in regards to the Investment Adviser Act of 1940, and the severe penalties including imprisonment it imposes for offenders.

In light of the foregoing, this author has concluded that, the only way consumers will be substantially protected from unlicensed insurance activities is if; (a) meaningful reforms are enacted that make statutory compliance desirable, and, (b) cooperation is sought with other State agencies such as the Dept. of Corporations and private, professional regulatory organizations such as the CFP Board of Standards (discussed later) who regulate activities in related financial service categories, to facilitate the sharing of information crucial in establishing which activities fee-only financial planners are engaging in.

RECOGNIZING NEW DELIVERY METHODS IN THE BUSINESS OF INSURANCE

It is the author's belief that licensing compliance in the business of insurance will only become a reality when States recognize the recent, rapid developments in the "methods of delivery" of insurance advice nationwide, particularly those associated with the emerging profession of financial planning. More and more consumers have recognized the advantages of employing one trusted advisor for all their financial affairs and view insurance advice as part of an overall financial plan. California's consumers are cognizant that conflicts of interest exist in insurance planning because LX & FX agents are only compensated by insurers and represent the insurer's interests to the client, not the client's interests to the insurer. Such agency relationships impact the fee-only planner's ability to honor his/her fiduciary obligation to act in the client's best interests at all times.

Fee-only planners desire to perform the tasks and functions of an LX & FX licensee. Few, if any, desire to perform the more complex tasks and analysis normally expected of a Life and Disability Analyst. Fee-only planners are committed to eliminating the conflicts of interests associated with representing an insurer, and many consumers in California desire to employ one fee-only planner to handle all their affairs, including the insurance planning portion of their financial plan, rather than multiple professionals. The net effect of this is that many

consumers seek out fee-only planners to reduce conflicts, while ostensibly obtaining objective and untainted advice. Unfortunately, they are instead, often given incompetent advice by unlicensed individuals. In order, then, to benefit and protect consumers, substantial but beneficial reform is necessary.

Fee-only planners with established financial planning credentials equate obtaining the LA license with “moving back into a house they are trying to sell”. They feel competent and qualified to assist consumers in insurance planning and may have held insurance licenses for years prior to allowing them to lapse. State law, however, demands they be licensed for five years preceding their application for licensing as Analysts and, during that time they would need to “transact” insurance as a licensed LX agent, something they do not feel they can do.

As the author sees it, the State has two choices in this matter. It can either; crack down on fee-only planners and others offering unlicensed insurance advice for a fee, (hardly feasible based on lack of funding, staffing or voluminous consumer complaints) or, seek ways to legalize, regulate and supervise these planner’s activities. Currently, financial planners are regulated at the state level under Section 25009(b) of California’s Corporations Code. Which states;

Section 25009 (b) (b) "Investment adviser" also includes any person who uses the title "financial planner" and who, for compensation, engages in the business, whether principally or as part of another business, of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities.....”

While consumers nationwide have embraced the concept of comprehensive financial planning, California, along with most other States, has been slow to recognize that financial planning has developed far beyond the simple giving of “investment” advice. Financial planners in California are still regulated, supervised and audited by the Dept. of Corporations which, while skilled in terms of overseeing regulated securities transactions, is woefully under equipped to supervise the activities of a planner engaging in insurance, investment, tax, retirement, estate and asset protection planning. The Series 65 Investment Advisor Examination is the only legal requirement for those who desire to use the term “financial planner” in California. However, as the Series 65 training and education requirements²³ illustrate, the current State educational requirements for “financial planners” are far removed from the level of competency actually required to practice “financial planning”.

RECOGNITION OF “FINANCIAL PLANNING” AS A PROFESSION

The State of California is well known for its innovative and forward thinking and has a unique opportunity, as the bell-weather State of this nation, to lead the way for other States to follow. It is time for California’s regulatory and licensing bodies such as the Dept. of Insurance and Dept. of Corporations to recognize “financial planning” as an **“emerging**

allied profession” that is having a significant impact on the provision of services traditionally regulated by their agencies. Recognizing the emerging profession of financial planning and, recommending to the legislature the necessity of developing regulations that will govern professionals who desire to practice the profession of financial planning, is the only viable, sensible and logical long-term solution for protecting California’s consumers from harm.

As with any other emerging profession the State, in developing any such regulations, should recognize and seek the counsel of long established national and international organizations that have developed, rules, guidelines, ethics, and ascertainable standards of education, examination criteria, credentialing and continuing education requirements. Consideration should also be given as to whether a new or existing State agency should regulate the activities of financial planners, or, whether these activities should be regulated independent of agencies in allied professions such as those agencies governing insurance and securities. As an example, lawyers, accountants and bank employees etc. are provided limited exemptions from registration under insurance and securities laws because the State has concluded that their existing professional State licensing requirements contained in the Business and Professions Code, established standards of practice and a written codes of ethics and professional responsibility, provide sufficient protection to consumers without requiring multiple State licensure.

Regulations governing investment advisers are inadequate to address the multitude of tasks performed by comprehensive financial planners. The question therefore arises as to whether a separate state license and new regulations should be developed within the Business & Professions Code to govern comprehensive financial planners, that is separate and distinct from investment advisory services, in order to adequately protect California’s consumers. **Should the use of the commonly touted investment industry term “financial planner” be reserved for individuals who have been State certified as competent to perform comprehensive financial planning?** The greatest obstacle to the recognition of financial planning as an emerging profession requiring some form of licensure is; by what standards should such a profession be measured? Many fee-only financial planners have no professional accreditation whatsoever, other than the investment adviser registration overseen by the CA Dept. of Corporations. Have ascertainable and acceptable standards been developed?

FINANCIAL PLANNING AND THE CERTIFIED FINANCIAL PLANNER® CERTIFICANT

The most widely recognized professional financial planning designation worldwide is the CFP® Certificate. The CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.²⁴ (Hereafter, CFP Board) has licensed its CFP® and CERTIFIED FINANCIAL PLANNER® trademarks to over 67,000 individuals in 19 countries. There are currently 4,578 CERTIFIED FINANCIAL PLANNER® Certificants licensed in California.²⁵ Most CFP® Certificants hold multiple State or federal licenses (insurance, securities, Registered Investment Advisor etc.) and are already supervised in their professional activities by

multiple federal and / or state agencies. Sadly, not one auditor of any supervising federal or state agency possesses the knowledge base or skill sets to supervise the overall activities of a comprehensive, fee-only financial planner. It should be stated that while the CFP Board has established a code of ethics and uniform standards of practice for CFP® Certificants that could be used as a yardstick by legislators, the CFP Board does not currently supervise, investigate or audit any CFP® Certificant's activities, unless a formal complaint is filed against a Certificant with the Board.

The CFP Board, defines a **“financial planner”** as a person; “who is capable and qualified to offer objective, integrated comprehensive financial advice to or for the benefit of individuals to help them achieve their financial objectives.” A financial planning professional must have the ability to provide competent financial planning services to the client utilizing the **“financial planning process”**²⁶, which covers basic **“financial planning subject areas”**.²⁷

With specific regard to the business of insurance, it is important to understand the benefits provided by the CFP® Certificate course of education, as well as its shortcomings. The CFP Board has developed a course curriculum (Attached as Exhibit IV) in insurance planning as an integral part of the CFP® Certificate examination requirement. This educational requirement exceeds the training currently required by the California Department of Insurance on all levels. There are, however, shortcomings to the CFP Board's program that cannot be overlooked. There is no training in State insurance regulations or any State's insurance code provisions governing the business of insurance. Furthermore, while there is a mandatory requirement that each CFP® Certificant complete 30 hours of continuing education for each two year certification period, there is currently no requirement that all of these hours be approved by the CDI for insurance continuing education credits.

The CFP Board of Standards is willing to cooperate with the CDI to address and correct the shortcomings in its program. Once these problems have been corrected, there are two potential solutions that, if implemented, could encourage full compliance with State licensing laws, certainly on the part of CFP® Certificant, fee-only planners not currently licensed.

SOLUTION 1: PROVIDE A FULL EXEMPTION FROM INSURANCE EXAMINATION AND LICENSING TO CFP® CERTIFICANTS WHO ARE LICENSED AS REGISTERED INVESTMENT ADVISORS

Currently, section 1831(e) provides a limited exemption from insurance licensing for Registered Investment Advisors, (RIA's) but **only** **“when acting in that capacity”**. (Discussed in detail earlier) This suggestion would expand the relevant code section and remove any limitation from RIA's performing the tasks of a LX or FX agent providing the following conditions are met;

1. The person is and remains a licensed Registered Investment Advisor either with the State or by the S.E.C., AND,

2. The person remains a CFP® Certificant in good standing, AND,
3. The person, in addition to any continuing education requirements of the CFP Board of Standards in other areas of financial planning, completes no less than 30 hours of continuing education in each two-year period that is approved by the CA Dept. of Insurance, 8 hours of which must be a qualified and state approved long-term-care planning course, AND,
4. The person provide to the CA Dept. of Insurance proof of his current licensing status as a Registered Investment Advisor and CFP® Certificant, together with a list of all approved continuing education courses completed for each two year period, or whenever required to do so by the Dept. of Insurance, AND,
5. Obtain a surety bond to protect consumers in the amount of \$100,000 (one hundred thousand dollars), AND,
6. Carry at least \$2,000,000 (two million dollars) of errors and omissions insurance, proof of which must be submitted annually, or whenever required to do so by the CA Dept. of Insurance.

EFFECT OF THIS EXEMPTION

As previously illustrated, the Registered Investment Advisor license **alone** does not qualify a person to offer insurance advice for a fee. The CFP® Certificate alone, even once enhanced to provide training in statutory law and the regulation of the business of insurance in California, would be insufficient because the CFP® Certificate is not an official **State regulated** license. However, a combination of the CFP™ Certificate and the Registered Investment Advisor license, coupled with the other suggestions made above, will provide a sound, educational basis for any person desiring to offer insurance advice for a fee, while protecting the public from harm to a **far greater degree** than they are protected under current law. In addition, this proposed exemption would alleviate the need for fee-only CFP® Certificants to become licensed LA's in order to be compensated by the consumer, thereby eliminating the requirement that they license themselves as LX's for 5 years before meeting licensing qualification requirements. By NOT forcing fee-only planners to move into a house they've already moved out of, BUT RATHER, demanding competence in return for a waiver from LA licensing requirements, the CA Dept. of Insurance would protect the consumer while facilitating an opportunity for immediate compliance without expensive investigation of illegal activities, prosecution and supervision of future activities. Compliance would go up, the cost of supervision, investigation and prosecution would go down.

It is important to note that any advice given would be limited under this proposed change, to the typical advice offered by LX or FX licensees, who generally provide explanations, discussions, or interpretations of, and offering of opinions or recommendations on, insurance coverages, exposures, limits, premiums, rates, deductibles, payment plans, and

insurance contract, or potential insurance contract, terms, as well as recommending and/or advising potential applicants/policyholders on insurance coverage to buy particular insurance policies or to insure with particular companies or insurers. **The advice given should not be allowed to encroach on the more complex tasks a Life & Disability Analyst provides.**

This exemption will:

- Permit Registered Investment Advisors with a CFP® Certificate to offer insurance advice without the need for appointment by an insurer, and allow them to be compensated by a third party other than the insurer for that advice. (A Variant of this model already exists in Connecticut and New Hampshire. A very POORLY structured derivative (that this author does **NOT** support) has just been signed into law in Idaho. The Idaho statute gives a Registered Investment Advisor carte blanche to offer insurance advice for a fee without any training, examination or continuing education requirement in insurance planning, a clear violation of the public trust. In addition, CFP® Certificants will shortly be given an exemption from registration as Insurance Counselors (LA equivalent license for Texas) in Texas. The author finds this unacceptable because, again, no instruction will be mandatory in insurance regulation and insurance law)
- Require the candidate to complete a comprehensive course of education in, among other things, all aspects of insurance planning, and, demand state licensing (as an investment adviser) before qualifying for the exemption.
- Require continuing education of 30 hours in insurance planning, a significant improvement over the LA license which requires **NO** continuing education currently
- Leaves intact, the State Insurance Commissioner's authority (under CIC§790 et. Seq. And CIC§12921.8 (supra)) to supervise, audit, fine, punish and bar from the business of insurance in CA, any person who violates the public's trust

COMPARISON OF THE "CFP® PLUS REGISTERED INVESTMENT ADVISOR" EXEMPTION, TO THE LIFE AND DISABILITY ANALYST LICENSE REQUIREMENT

There will still be a need for the Life & Disability Analyst license in California. LA's provide a valuable service to the public by:

- **Offering expert testimony in court regarding all insurance related matters**
- **Providing complex, expert comparative analysis and interpretation of the terms and conditions of various insurance contracts to consumers, accountants and lawyers**

- **Explanation of the rights of the parties under an insurance contract, a service otherwise reserved exclusively to members of the Bar.**

The proposed exemption would not obviate the need for LA licensees. It will provide a means for fee-only, Registered Investment Advisor financial planners who have earned the CFP® Certificate, a professional financial planning credential that has course work superior to the current minimum standard requirement by the CA Dept. of Insurance, (with the noted exceptions listed above, which must be addressed before an exemption would be granted) to serve their clients basic insurance needs without appointment by an insurer and the inherent conflicts of interest this may represent.

EFFECT OF THIS PROPOSED EXEMPTION ON CONSUMERS

This proposed exemption would have a substantially positive effect on consumers, with no negative impact whatsoever. They will be able to seek out a professional on a fee basis that has complied with an ascertainable standard in terms of education, licensing, examination, competency and continuing education. It will further provide greatly enhanced protections for the public against wrongdoing by requiring a bond in the amount of \$100,000 (one hundred thousand dollars) and mandatory Errors and Omissions insurance in the amount of \$2,000,000 (two million dollars), neither of which is currently required under law for LX, FX or LA licensees licensed by the CA Department of Insurance. (It should, however be noted that most if not all CFP® Certificants meet all the above criteria already in terms of E&O insurance etc., and obtaining a \$100,000 bond would not place an undue burden on any fee-only, CFP® Certificant planner) Finally, it recognizes the fact that most consumers do not require the sophisticated level of assistance offered by an LA in planning their insurance matters.

POTENTIAL PROBLEMS ASSOCIATED WITH THE GRANTING OF AN EXEMPTION FOR CFP® CERTIFICANTS MEETING THE ABOVE CRITERIA

One possible problem would, of course, be that other financial service professionals with professional insurance or financial planning credentials would seek to block any such legislation unless their credential were to be included. Some other designations worthy of exemption would be:

The Chartered Life Underwriter (CLU)
The Chartered Financial Consultant (ChFC)

The author, based on the knowledge and skill sets required to hold such designations, has no objections to the inclusion of these designations for purposes of the aforementioned suggested exemption, providing these professionals meet ALL the other criteria.

SOLUTION 2: PERMIT STATE LICENSING AS A LX OR FX WITHOUT INSURANCE COMPANY APPOINTMENT AND AUTHORIZE PLANNERS TO BILL CLIENTS DIRECTLY.

Under California law, a person who “for a fee or compensation of any kind, ***paid by or derived from any person or source other than an insurer.***”(emphasis added) must register a Life and Disability Insurance Analyst under CIC Section 32.5. As previously illustrated in this discussion, however, Life and Disability Insurance Analysts are required to

- Pass an antiquated examination that has not been substantially revised since 1983
- Self-Study, in some cases, already repealed statutes because no examination revisions have been undertaken since 1983. Furthermore, no educational courses are available from any college, school or professional educational institution because there is simply no demand for the license, due to a complete lack of enforcement of LA laws by the CDI
- Self Study to familiarize themselves with many topics including Long Term Care and other more recently introduced exotic and hybrid insurance products because candidates are not tested on these products due to lack of LA examination revision

Oddly, once licensed, Life and Disability Insurance Analysts are **NOT** required to complete **any** continuing education requirements of any kind. There is no requirement, other than one imposed by “potential liability” through civil action, for a LA to “remain current” as a LA licensee.

In light of the foregoing, a far more sensible alternative and second potential solution would be; to allow all LX & FX agents to be licensed with the CDI without the requirement for appointment to transact on behalf of an insurer. LX or FX agents desiring to be compensated directly from the consumer, (for purposes of this discussion, the author will refer to such agents as FLX & FFX agents) would subject themselves to the same CDI licensing and examination requirements as traditional LX & FX agents. FLX & FFX agents would also be subject to the same continuing education requirements as traditional LX & FX agents. The function of FLX & FFX licensed individuals would be to act “quasi” in the capacity of a personal representative of the client with the authority to negotiate and effect all insurance coverages on their behalf, at the best possible terms, with any company they choose. (As fiduciaries, such FLX & FFX licensees would be subject to regulations similar to the NASD’s “best execution” rules. They would be required to perform extensive due diligence and seek the best coverages at the most reasonable prices on behalf of their clients)

Currently, such activities allowed under CIC §33 are restricted to “***a person who, for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer.***” (Emphasis added) In essence then, a similar but new and distinct section would be created, expanding the role of an “insurance broker” as defined under CIC §33 to that of a FLX & FFX, who would be authorized to solicit and negotiate all forms of insurance including property / casualty, life, health, disability, long-term-care and other forms of insurance.

This new Code section would make additional demands on any person seeking to license him/herself as a FLX & FFX licensee to protect consumers from harm. Among other things such licensees would be required to;

- Complete ***BOTH*** LX and FX courses of education and the appropriate licensing examinations. (Based on the CFP Board's program of education in insurance planning, fee-only comprehensive financial planners provide information regarding all aspects of a consumer's risk management needs.
- Be a licensed Registered Investment Advisor with the State, AND,
- Complete no less than 30 hours of continuing education in each two-year period that is approved by the CA Dept. of Insurance, 8 hours of which must be a qualified and state approved long-term-care planning course, AND,
- Provide to the CA Dept. of Insurance proof of current licensing status as a Registered Investment Advisor, together with a list of all approved continuing education courses completed each two year period, or whenever required to do so by the Dept. of Insurance, AND,
- Obtain a surety bond to protect consumers in the amount of \$100,000 (one hundred thousand dollars), AND,
- Carry at least \$2,000,000 (two million dollars) of errors and omissions insurance, proof of which must be submitted annually, or whenever required to do so by the CA Dept. of Insurance.

EFFECT OF THIS NEW LICENSE

This proposed license would have a substantially positive effect on consumers, with no negative impact whatsoever. Consumers will be able to seek out a "licensed" professional on a fee basis that has complied with an ascertainable standard in terms of education, licensing, examination, competency and continuing education. The examination requirement supports the CDI's position as stated in the February 8, 1998 letter written by Jeffrey Kenny (Supra) that only those individuals who pass CDI's exams are to be issued licenses and, that the CDI will remain, "***via its examination and related or regulatory functions, the authorizing agency.....***" in the business of insurance. It will further provide greatly enhanced protections for consumers against wrongdoing by requiring a California surety bond in the amount of \$100,000 (one hundred thousand dollars) ***in addition to*** mandatory Errors and Omissions insurance in the amount of \$2,000,000 (two million dollars), neither of which is currently required under law for LX, FX or LA licensees licensed by the CDI. Finally, it recognizes the fact that most consumers do not require the sophisticated level of assistance offered by an LA in planning their basic insurance needs on a fee-only basis.

SUMMARY AND CONCLUSIONS

The California Dept. of Insurance has, essentially, four choices.

1. Maintain a Status Quo approach, do nothing to address the illegal activities of fee-only financial planners, remaining a reactive, rather than proactive regulator of the business of insurance.
2. Implement a program of rigorous investigation and enforcement of illegal activities in the business of insurance utilizing current and newly introduced sections of the California Insurance Code, to stamp out the widespread and growing problem of illegal activities on the part of fee-only financial planners offering advice in insurance matters for a fee in California.
3. Consider implementation of one or more of the solutions suggested in this discussion
4. Develop meaningful initiatives such as those suggested herein, to combat and/or provide solutions to illegal activities in the business of insurance.

Maintaining the status quo and doing nothing to address the illegal activities of fee-only planners will eventually cause the CDI to lose control and regulatory authority over the business of providing insurance advice to consumers to other state agencies such as the Dept of Corporations, an agency ill equipped and hardly qualified to supervise and monitor such activities. More and more broker-dealer registered financial planners and life agents are transitioning to the more profitable fee-only model. Without aggressive enforcement of the law, many of these planners may eventually surrender their insurance licenses to avoid multiple state licensure, layering of regulation, supervision and audit. The current lack of any enforcement by the CDI against prominent planners who have already been reported to CDI's investigations division by Errold Moody, CFP® and others over the past ten years is an encouragement to other transitioning planners to ignore and violate State law. Inaction equates to state condoned tolerance and silent approval in the eyes and minds of many fee-only financial planners.

Rigorous investigation and enforcement, while preferable, is also the most difficult policy to enforce. The CDI has neither the manpower, nor the consumer driven complaints necessary to actively enforce insurance laws against fee-only planners violating state law. Simply put, these planners are "off the radar" and rarely generate complaints. Since they are not licensed, they do not fall under the authority of the CDI and, unless they are brought to the attention of the CDI by virtue of consumer complaints, these planners will continue to remain extremely difficult to find. Additionally, the CDI lacks proper funding and manpower to effectively enforce Insurance laws in California at this time. Therefore, any consideration for rigorous investigation and enforcement must be viewed as impractical, given the current budget deficit and the apparent lack of will on the part of the CDI and local district attorney's offices to prosecute violators when they are reported.

By implementing one or more of the suggestions contained in this discussion, the CDI will facilitate voluntary and willing compliance with state law, while ensuring that their mandate to protect consumers from harm by insisting that CDI established examination, licensing and continuing education requirements, would be met. Fee-only planners would be able to offer the advice they desire to offer on a fee basis with direct client billing, the CDI would be in a far better position to supervise, control, audit and discipline these planners if and when the need arises. More importantly, consumers would be able to turn to the CDI for assistance without hearing the phrase; "I'm sorry, that individual is not licensed and does not fall under our jurisdiction".

In conclusion, the CDI has the opportunity to solicit opinions and suggestions from state sponsored agencies and boards such as the CA Agent and Broker Advisory Commission to the Dept. of Insurance. Some members of the CDI Agent and Broker Advisory committee are fee-only CFP® Certificants and have an understanding of the issues involved. These professionals and other insurance professionals, whose livelihoods also depend, in part, on ethical conduct in the business of insurance are in a position to provide valuable input to the CDI regarding these suggestions.

It is hoped that this discussion will generate concern and renewed scrutiny of the illegal activities of fee-only planners in California and that this, in turn, will lead to a necessary, beneficial and long overdue overhaul of California's insurance licensing laws for the benefit of not only California's consumers, but eventually Consumers nationwide who reside in States with similar insurance advisory statutes.

Respectfully submitted.

Nigel B. Taylor graduated from the College for Financial Planning in CO, was Certified as a Financial Planner in 1993 and held the CFP® marks from 1993 until 2014 when he voluntarily relinquished them due to the odious terms and conditions of renewal. He is a former President of the Award Winning Institute of Certified Financial Planners, Los Angeles Society, (1999) and Former Chairman of the Financial Planners Association – Los Angeles Chapter. (2000) Mr. Taylor has published numerous articles regarding proposed regulation, compliance, ethics and professionalism for financial planners. He is based in Santa Monica, California. Taylor & Associates has been registered as a CA Investment Advisory Firm since January 1, 2003

¹ CA Insurance Code Sections 32 & 1622

² Source, Dept. of Insurance Annual Report 2000

³ Source, Dept. of Insurance Annual Report 2000

⁴ CA Insurance Code Section 32.5

⁵ CA Insurance Code Sections 1849

⁶ Source. CA Dept. of Insurance, March 2002

⁷ Source, CA Dept. of Corporations, March 2002

⁸ 25009. (b) "Investment adviser" also includes any person who uses the title "financial planner" and who, for compensation, engages in the business, whether principally or as part

of another business, of advising others, either directly or through publications or writings, as to the value of securities.....(Excerpt)

⁹ *CA Insurance Code Section 32.5*

¹⁰ *CA Insurance Code Section 1668: The commissioner may deny an application for any license issued pursuant to this chapter if:*

..... (c) The applicant does not intend actively and in good faith to carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;

..... (g) The applicant seeks the license for the purpose of avoiding or preventing the operation or enforcement of the insurance laws of this state;

¹¹ *CA Insurance Code Section 1844. Any person who acts, offers to act, or assumes to act, as a life and disability insurance analyst when not licensed by the commissioner as provided by this article, or after the license granted to him or her has been suspended or revoked, unless proceedings are pending in the courts to review the act of the commissioner, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or by both such fine and imprisonment.*

¹² *CA Insurance Code 1725.5. (a) For purposes of Sections 32.5, 1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every licensee shall prominently affix, type, or cause to be printed on business cards, written price quotations for insurance products, and print advertisements distributed exclusively in this state for insurance products its license number in type the same size as any indicated telephone number, address, or fax number.*

CIC 1725.5 (c) Any person in violation of this section shall be subject to a fine levied by the commissioner in the amount of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third and subsequent offenses. The penalty shall not exceed one thousand dollars (\$1,000) for any one offense. These fines shall be deposited into the Insurance Fund.

¹³ *1631. Unless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the commissioner authorizing the person to act in that capacity.*

¹⁴ *1858. In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.*

¹⁵ *Flannery v. Prentice (2001) 110CalRptr.2d 809, 26Cal 4th 572, 28P.3d 860*

¹⁶ *People v. Martinez (1995) 45CalRptr.2d 905, 11Cal.4th 434, 903P.2d 1037*

¹⁷ *Caminetti v. State Mut. Life Ins. Co. (1942) 126P.2d.809,26Cal 4th 572, 28P3d, 860.*

¹⁸ *1631. Unless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the*

commissioner authorizing the person to act in that capacity. The issuance of a certificate of authority to an insurer does not exempt an insurer from complying with this article.

1633. Any person who acts, offers to act, or assumes to act in a capacity for which a license is required without a valid license so to act is guilty of a misdemeanor.

1633.5. It is hereby declared to be the intent of the Legislature in enacting this chapter that the regulations prescribed herein be the exclusive regulations relating to the conduct of insurance business by persons licensed to act in any of the capacities defined hereunder, any local regulations or ordinances notwithstanding.

¹⁹ *790.01. This article applies to reciprocal and interinsurance exchanges, Lloyds insurers, fraternal benefit societies, fraternal fire insurers, grants and annuities societies, insurers holding certificates of exemptions, motor clubs, nonprofit hospital associations, life agents, broker-agents, surplus line brokers and special lines surplus line brokers **as well as all other persons engaged in the business of insurance.** (color & emphasis added)*

²⁰ *790.04. The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in the State in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 790.03 or determined pursuant to this article to be an unfair method of competition or an unfair or deceptive practice in the business of insurance. Such investigation may be conducted pursuant to Article 2 (commencing at Section 11180) of Chapter 2, Part 1, Division 3, Title 2 of the Government Code.*

²¹ *790.035. (a) Any person who engages in any unfair method of competition or any unfair or deceptive act or practice defined in Section 790.03 is liable to the state for a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars (\$5,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of this section.*

²² *12921.8. (a) The commissioner shall have the authority to issue a cease and desist order against any person acting as, or holding himself, herself, or itself out as, an insurance agent or broker without being so licensed, and against any person holding out that person as transacting, or transacting, the business of insurance without having been issued a certificate of authority. The commissioner may issue a cease and desist order without holding a hearing prior to issuance of the order. The commissioner may impose a fine of up to five thousand dollars (\$5,000) for each day the order is violated.*

²² *Supra*

²³ *See Exhibit III of this memorandum*

²⁴ *CFP Board, a 501(c)(3) certifying organization, fosters professional standards in personal financial planning so that the public values, has access to and benefits from competent financial planning. CFP Board owns the certification marks CFP™, CERTIFIED FINANCIAL PLANNER™ and federally registered CFP (with flame) logo, which it awards to individuals who successfully complete initial and ongoing certification requirements. CFP Board has currently authorized more than 39,214 individuals to use these marks in the United States and 27,343 individuals outside the United States. For more about CFP Board, visit www.CFP.net.*

²⁵ Source. CFP Board of Standards, Inc. Colorado

²⁶ *Financial Planning Process denotes the process which typically includes, but is not limited to, the six elements of; establishing and defining the client-planner relationship, gathering client data including goals, analyzing and evaluating the client's financial status, developing and presenting financial planning recommendations and monitoring the financial planning recommendations. (CFP™ Board Code of Ethics – Definitions)*

²⁷ *Financial planning subject areas denotes the basic subject fields covered in the financial planning process which typically include, but are not limited to; financial statement preparation and analysis (including cash flow analysis / planning and budgeting), investment planning, (Including portfolio design i.e. asset allocation and portfolio management), income tax planning, education planning, **Risk Management** (emphasis added), retirement planning and estate planning. (CFP™ Board Code of Ethics – Definitions)*

EXHIBIT I

LIFE AGENT (LX)

Licensing Information

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APPLICABLE FORMS

Individual Application for Insurance License ([Form 441-9](#))
 Application for Business Entity License ([Form 441-11](#))
 Action Notice of Appointment* ([Form 447-54](#))
 Organization Endorsement* ([Form 411-8A](#))
 Non-Resident Insurance License Stipulation and Agreement ([Form 447-68](#))

*These forms are also included in the Individual and Business Entity applications.

AUTHORIZING ACT

California State Insurance Code Chapter 5, Part 2, Division 1.

A life agent (LX) is a person authorized by and on behalf of a life, disability, or life and disability insurer to transact life, disability or life and disability insurance.

QUALIFICATIONS

Minimum Age: 18 years

Residency: California residency is not required

Entity Types: Individual, corporation, partnership, nonprofit corporation, unincorporated association, limited liability company.

Prelicensing Experience/Education:

- 1) Require a minimum of 40 hours of approved prelicensing classroom study. A new California resident applicant who had a current life license in another state and completed 40 hours of prelicensing education for life insurance in order to obtain that license, or an applicant holding either a Life Underwriter Training Council Fellowship (LUTCF) or Chartered Life Underwriter (CLU) designation is exempt from the 40 hours of prelicensing education.
- 2) Require 12 hours of approved prelicensing classroom study on ethics and the California Insurance Code. Where an applicant seeks both the Fire and Casualty broker-agent license and the Life agent license, the applicant shall only be required to complete one 12-hour course on ethics and the California Insurance Code.

Continuing Education:

- 1) During each of the first four 12-month periods following the date of original issue of license, satisfactorily complete approved courses or programs of instruction or attend seminars equivalent to a minimum of 25 hours.
- 2) Any licensee who has complied with the above or was licensed as of 12/31/91, shall satisfactorily complete approved courses or programs of instruction or attend seminars equivalent to 30 hours of instruction during each two-year license period.
- 3) Any agent that markets long-term care insurance must complete an 8-hour California specific long-term care continuing education course. Check with your insurer regarding long-term care insurance requirements.
- 4) Effective January 01, 1998, any person who is 70 years of age or older **and** who has been licensed for 30 continuous years as a licensee in good standing in this state, may be exempt from continuing education requirement. Any licensee that markets individual long-term care contracts is still required to meet the specific education requirements for marketing such contracts.

The agent who is limited by the terms of a written agreement with the insurer to transact only specific life insurance policies or annuities having an initial face amount of \$10,000 or less that are designated by the purchaser for the payment of funeral or burial expenses will be exempted from the prelicensing and continuing education requirements. The commissioner may require the insurer appointing those life agents to certify as to the limitation of the agents' representations.

FILING REQUIREMENTS: INDIVIDUAL - RESIDENTS

Application: Application for Insurance License, form [441-9](#)

Action Notice: Action Notice of Appointment, form [447-54](#), completed by the sponsoring insurance company admitted to California. This form is also included in the Individual and Business Entity applications.

AND/OR

Organization Endorsement, form [411-8A](#), completed by the sponsoring organization licensed in California.

Fingerprint Impressions: Fingerprint impressions are required for unlicensed applicants. If an examination is required, fingerprint impressions will be taken at the California examination sites.

Additional Documents: The Insurance Commissioner may require such other documents as will aid in determining whether the applicant meets the qualifications for a license.

Prelicensing Certificate Of Completion: Original certificate(s) of completion signed by both classroom instructor/provider director and applicant for life agent course and/or Ethics and Code course.

Examination: Applicants who do not hold an active Life (LX) California resident license and whose eligibility for that license without examination has expired must pass the written examination prepared and administered by the Department.

Fees - Individual Resident:

- **License filing:** \$124 (2-year term)
- **Action Notice fee:** \$21 per action notice *or* an **Organization Endorsement:** \$21 per notice
- **Examination:** \$35 per scheduled examination date
- **Fingerprint Processing:** \$74 **Effective October 2, 2000**, all applicants must appear at the designated exam site with a check in the amount of \$74 made payable to "SIFC". **VISA/MASTERCARD WILL ALSO BE ACCEPTED. CASH WILL NOT BE ACCEPTED.**
- **Renewal Fee:** \$124 (2-year term)

FILING REQUIREMENTS: ORGANIZATION - RESIDENTS**Organization Application:**

- Corporation, partnership, unincorporated association, limited liability company or nonprofit corporation applicants must submit the Application for Organization License, form [441-11](#).

NOTE: The organization must have at least one California resident LX endorsee to establish and maintain the license.

Natural Person Named On Organization:

- Organization Endorsement, form [411-8A](#), must be completed for each endorsee who holds an active California non-resident LX license.
- Application for insurance license, form [441-9](#), and Organization Endorsement, form [411-8A](#), (this form is also included in the Individual and Business Entity applications) must be completed by each natural person who does not hold an active California non-resident LX license (individual filing requirements must be met).

Action Notice: Action Notice of Appointment, form [447-54](#), must be completed in the organization name by the sponsoring insurance company admitted to California. This form is also included in the Individual and Business Entity applications.

Additional Documents: The Insurance Commissioner may require such other documents as will aid in determining whether the applicant meets the qualifications for a license.

Fees - Organization Resident:

- **License filing:** \$124 (2-year term)
- **Action Notice fee:** \$21 per action notice
- **Organization Endorsement:** \$21 per notice
- **Renewal Fee:** \$124 (2-year term) Must have 1 natural person currently named on organization

Note: Natural persons filing form [441-9](#), refer to individual filing fees.

FILING REQUIREMENTS: INDIVIDUAL - NON-RESIDENTS

Application: Application for Insurance License, form [441-9](#), must be completed by applicants who do not hold an active California LX license.

NOTE: Licensed non-resident agents whose state of residence does not have continuing education must meet the same requirements as a California resident in order to renew their license. Licensed non-resident agents who comply with the continuing education requirements of their state of residence are exempt from California continuing education requirements. If licensees transact long term care products, they must meet California specific long term care education requirements.

Action Notice: Action Notice of Appointment, form [447-54](#), completed by the sponsoring insurance company admitted to California. This form is also included in the Individual and Business Entity applications;

AND/OR

Organization Endorsement, form [411-8A](#), completed by the sponsoring organization licensed in California. This form is also included in the Individual and Business Entity applications.

Stipulation and Agreement: Non-resident Insurance Licensee Stipulation and Agreement, form [447-68](#).

Certification Of License Status From Resident State

Additional Documents: The Insurance Commissioner may require such other documents as will aid in determining whether the applicant meets the qualifications for a license.

Examination: Not required except if the applicant's state, commonwealth or Canadian province of residence has no reciprocal agreement for waiving of examination.

Fees - Individual Non-Resident:

- **License filing:** \$124 (2-year term) subject to retaliatory provisions
- **Action Notice fee:** \$21 per action notice
- **Organization Endorsement:** \$21 per notice
- **Renewal Fee:** \$124 (2-year term)

Note: Natural persons filing form [441-9](#), refer to individual filing fees.

FILING REQUIREMENTS: ORGANIZATION - NON-RESIDENTS**Organization Application:**

- Corporation, partnership, unincorporated association, or nonprofit corporation applicants must submit the Application for Business Entity License, form [441-11](#).

Note: A California resident cannot be endorsed on a non-resident organization.

Action Notice: Action Notice of Appointment, form [447-54](#), must be completed in the organization name by the sponsoring insurance company admitted to California. This form is also included in the Individual and Business Entity applications.

Natural Person Named On Organization:

- Organization Endorsement, form [411-8A](#), must be completed for each natural person who holds an active California non-resident LX license. This form is also included in the Individual and Business Entity applications.
- Application for insurance license, form [441-9](#), and Organization Endorsement, form [411-8A](#) (this form is also included in the Individual and Business Entity applications), must be completed by each natural person who does not hold an active California non-resident LX license (individual filing requirements must be met).

Stipulation and Agreement: Non-resident Insurance License Stipulation and Agreement as required by law, form [447-68](#), signed by an officer or partner of the organization.

Certification Of License Status From Resident State: Must be in the organization name.

Fees - Organization Non-resident:

- **License filing:** \$124 (2-year term) subject to retaliatory provisions
- **Action Notice fee:** \$21 per action notice
- **Organization Endorsement:** \$21 per notice
- **Renewal Fee:** \$124 (2-year term) Must have 1 natural person currently named on organization

Note: Natural persons filing form [441-9](#), refer to individual filing fees.

LICENSE TERM:

The term of the first license begins the date the license is issued and ends the last day of that same calendar month two years later. All additional licenses are issued for the balance of the established term.

RENEWAL OF LICENSE:

Renewal notification is mailed to the mailing address of record approximately 90 days prior to the expiration date of the license. Individuals will receive a renewal application showing total fees due for all license types held and the total number of continuing education hours completed at the time the renewal form is printed. If the continuing education requirement has not been met, the renewal will indicate how many hours are needed. If renewal application is not received, refer to the back of the permanent license for renewal instructions.

All licensees that renew their licenses late will be required to file new company appointments, organization endorsements, or solicitor appointments. "Late" is defined as any renewal for which the requirements to renew (this includes completing the continuing education hours) are not met until after the expiration date of the previous license term.

ADDITIONAL INFORMATION:

The Commissioner may grant authority to transact variable contracts to a person or an organization licensed as a Life Agent which is appointed by an admitted insurer which is required to register itself or to register a separate account or fund with the United States Securities and Exchange Commission or to register its variable policies or contracts with the Securities and Exchange Commission. The person must submit acceptable proof of registration with NASD or SECO before authority to transact variable contracts can be granted.

If currently licensed as a resident of another state, upon becoming a California resident, a clearance letter from the former state of residence is required.

Limited liability company applicants are required to submit the following information to demonstrate compliance with Section 1647.5 of the California Insurance Code:

1. A statement as to the number of licensees rendering professional services on behalf of the Limited Liability Company.
2. The aggregate dollar amount of E & O Liability Insurance, Cash, Bonds, Bank Certificates of Deposit, U.S. Treasury obligations, etc. held to provide security for claims against the Limited Liability Company. (The amount required over the minimum of \$500,000, is at least \$100,000 multiplied by the number of licensees rendering professional services on behalf of the company; however, the maximum amount is not required to exceed \$5,000,000).
3. For purposes of satisfying the security requirements of California Insurance Code Section 1647.5, we will require one or more of the following:
 - (A) A copy of the declaration page for each liability insurance policy used to satisfy the minimum security requirement.
 - (B) Verification by the bank or escrow holder listing the type and current dollar value of the assets used to satisfy the minimum security requirements.

Limited liability company licensees must file at least once each year, an "annual confirmation" with the commissioner in the above format, to demonstrate continuing compliance with the financial security requirements of Section 1647.5. of the California Insurance Code.

To obtain insurance licensing forms by mail, send request to: Department of Insurance, 320 Capitol Mall, Sacramento, CA 95814, or you may phone Sacramento at (800) 967-9331 or (916) 322-3555, press 4.

To obtain insurance licensing information, you may phone our Sacramento office at (800) 967-9331 or (916) 322-3555.

ALL FEES MAILED TO THE DEPARTMENT MUST BE ADDRESSED TO:

DEPARTMENT OF INSURANCE
P.O. BOX 1139
SACRAMENTO, CA 95812-1139

ALL FILING FEES SUBMITTED ARE NOT REFUNDABLE OR TRANSFERABLE, WHETHER OR NOT THE APPLICATION IS ACTED UPON OR THE EXAMINATION TAKEN.

Form 644A (Rev. 11/2000)

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Last Revised - January 16, 2002
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EXHIBIT II

LIFE AND DISABILITY INSURANCE ANALYST (LA)

License Information

APPLICABLE FORMS

Application for Insurance License (Form [441-9](#))
Application for Business Entity License (Form [441-11](#))
Organization Endorsement* (Form [441-8A](#))
Request For Live Scan Service (form [442-39A](#))

*This form is also included in the Individual and Business Entity applications.

AUTHORIZING ACT: California State Insurance Code Chapter 8, Part 2, Division 1

A Life and Disability Insurance Analyst is a person who, for a fee or compensation of any kind, paid by or derived from any person or source other than an insurer, advises, purports to advise, or offers to advise any person insured under, named as beneficiary of, or having any interest in, a life or disability insurance contract, in any manner concerning that contract or his or her rights in respect thereto.

QUALIFICATIONS:

Minimum Age: 18 years

Residency: California residency is required

Prelicensing Experience/Education: Must have worked as a life licensee as defined under Chapter 5, Part 2, Division 1 of the Insurance Code, for five years preceding the date of the examination or as an employee of such a licensee.

Continuing Education:

Not required

Entity Types: Individual, corporation, partnership, nonprofit corporation, unincorporated association, limited liability company.

FILING REQUIREMENTS - INDIVIDUAL:

Application: Application for Insurance License, form [441-9](#)

Fingerprint Impressions: Fingerprint impressions are required for unlicensed applicants. You must call **SYLVAN/IDENTIX at 1-(800) 315-4507** to schedule an appointment to have your fingerprint impressions taken **prior** to submitting your application. Fingerprint impressions will not be accepted from any other source. A copy of your Request For Live Scan Service (form [442-39A](#)) must be submitted with your application verifying your prints were taken by **SYLVAN/IDENTIX**.

Additional Documents: The Insurance Commissioner may require such other documents as will aid in determining whether the applicant meets the qualifications for a license.

FEES - Individual:

- **License Filing:** \$418 (2-year term)
- **Examination:** \$103 per scheduled examination date
- **Fingerprint Processing:** \$74 **Effective October 2, 2000**, this fee must be paid at the designated site when the fingerprint impressions are taken. You may pay by check made payable to "SIFC". **VISA/MASTERCARD WILL ALSO BE ACCEPTED. CASH WILL NOT BE ACCEPTED.**
- **Renewal:** \$418 (2-year term)

EXAMINATION:

The applicant must pass the written examination prepared and administered by the Department.

STUDY MATERIAL:

Although the Department does not recommend any particular text, method or course of study, listed below is a study guide to assist in the preparation for the examination.

1) The life and disability laws of this state are contained in the California Insurance Code. Those sections on which an applicant might be tested are:

General Provisions Sections 1 - 46
 Division 1, Part 1, Chapter 1 Sections 100 - 123
 Division 1, Part 1, Chapter 2, Article 1 Sections 150 - 151
 Division 1, Part 1, Chapter 2, Article 3 Sections 250 - 252
 Division 1, Part 1, Chapter 2, Article 4 Sections 280 - 287
 Division 1, Part 1, Chapter 2, Article 5 Sections 300 - 305
 Division 1, Part 1, Chapter 3, Article 1 Sections 330 - 339
 Division 1, Part 1, Chapter 3, Article 2 Sections 350 - 361
 Division 1, Part 1, Chapter 4, Article 1 Sections 380 - 393
 Division 1, Part 1, Chapter 4, Article 3 Section 430
 Division 1, Part 1, Chapter 4, Article 4 Sections 440 - 449
 Division 1, Part 1, Chapter 4, Article 5 Section 460
 Division 1, Part 1, Chapter 5 Sections 480 - 489
 Division 1, Part 1, Chapter 6, Article 3 Sections 550 - 557.5
 Division 1, Part 2, Chapter 1, Article 1 Section 680
 Division 1, Part 2, Chapter 1, Article 3 Sections 669 - 726
 Division 1, Part 2, Chapter 1, Article 5 Sections 750 - 767
 Division 1, Part 2, Chapter 1, Article 5.5 Sections 770 - 776
 Division 1, Part 2, Chapter 1, Article 5.7 Sections 777.1 - 777.3
 Division 1, Part 2, Chapter 1, Article 6 Sections 780 - 784
 Division 1, Part 2, Chapter 1, Article 6.5 Sections 790 - 790.10
 Division 1, Part 2, Chapter 1, Article 7.5 Sections 815 - 816
 Division 1, Part 2, Chapter 2, Article 5 Sections 1220 - 1221
 Division 1, Part 2, Chapter 4, Article 2 Sections 1580 - 1599
 Division 1, Part 2, Chapter 5 Sections 1621 - 1758.5
 Division 1, Part 2, Chapter 5A Sections 1759 - 1759.10
 Division 1, Part 2, Chapter 8 Sections 1831 - 1849
 Division 2, Part 2, Chapters 1-13 Sections 10110 - 11533
 Division 2, Part 6.1 Sections 12670 - 12691
 Division 3 Chapters 1 and 2 Sections 12900 - 12977

2) The provisions, terms and conditions of a life and disability insurance contract that might be tested are, but not limited to, the following:

Life Insurance

Insuring Agreement
 Reinstatement
 Incontestability
 Settlement Options
 Dividend Options
 Ownership Provisions
 Nonforfeiture Provisions
 Grace Periods
 Loan Provisions
 Suicide
 Assignments of Transfers
 Aviation Clause
 Beneficiaries Provisions

Disability Insurance

Insurance Clause
 Schedule
 Renewal Provisions
 Benefit Provisions
 Co-Insurance
 Waiting Periods
 Elimination Periods
 Deductibles
 Waivers
 Exclusions
 Restrictions
 Pre-existing Conditions
 Other Insurance

Additionally, the applicants are expected to be thoroughly familiar with the types of contracts being issued in this state, including, but not necessarily limited to:

Life

Individual Contracts
 Group Contracts
 Industrial Contracts
 Ordinary Life
 Limited Payment Life
 Modified and Graded Premium
 Endowment Insurance
 Immediate Annuities
 Deferred Annuities
 Variable Annuities
 Level Term Life
 Increasing Term Life
 Decreasing Term Life
 Re-entry Term Life
 Universal Life

Disability

Individual Contracts
 Group Contracts
 Blanket Contracts
 Basic Hospital Expense
 Basic Medical-Surgical Expense
 Basic Hospital and Medical-Surgical Expense
 Hospital Confinement Indemnity
 Major Medical Expense
 Comprehensive Major Medical Expense
 Disability Income Protection
 Accident Only
 Specified Disease
 Specified Accident
 Medicare Supplement

3) A thorough and complete knowledge of life and disability insurance may include:

- a. Application and consequences of various policies.
- b. Applications and consequences of federal and estate taxes.
- c. Interrelationship with other investment vehicles.
- d. Interrelationship with other regulatory agencies including, but not limited to SEC, RIA, etc.
- e. Interrelationship with contract, business, probate and investment laws in California.
- f. Insurance company's financial and organization analysis.
- g. Rate calculations and risk transfer.

FILING REQUIREMENTS - ORGANIZATION:**Organization Application:**

- Corporation, partnership, nonprofit corporation or unincorporated association applicants must submit the Application for Business Entity License, form [441-11](#).

Natural Person Named On Organization:

- Application for insurance license, form [441-9](#), and Organization Endorsement, form 411-8A, must be completed by each natural person who does **not** hold an active California LX license (individual filing requirements must be met).

- Organization Endorsement, form [441-8A](#), (this form is also included in the Business Entity application) must be completed for each natural person who holds an active California LX license.

FEES - ORGANIZATION:

Fees are not required for the organization license. Each natural person named on the organization must pay individual fees.

- **License filing:** \$418 (2-year term)
- **Renewal Fee:** \$418 (2-year term)

Note: Natural persons filing form [441-9](#), refer to individual filing fees.

LICENSE TERM:

The term of the first license begins the date the license is issued and ends the last day of that same calendar month two years later. All additional licenses are issued for the balance of the established term.

RENEWAL OF LICENSE:

Renewal notification is mailed approximately 60 days prior to the expiration date of the license and will show total fees due for all license types held. If this application is not received, refer to the back of the permanent license for renewal instructions.

ADDITIONAL INFORMATION:

The following persons are exempt from the requirements of this license:

- a. Active members of the State Bar of California.
- b. Any person who has passed all of the qualifying examinations necessary to become an Associate of the Society of Actuaries.
- c. An officer or employee of any bank or trust company who receives no compensation from sources other than the bank or trust company for activities connected with his employment which would otherwise subject him to licensing requirements.
- d. Any person employed by an employer who on behalf of his or her employer or any employee of his or her employer transacts life or disability insurance with, but not on behalf of, an insurer; or advises his or her employer or any employee of his or her employer in any manner concerning life or disability insurance; if:
 1. the employer receives no compensation by reason of such transactions or advice; and
 2. such person receives no compensation from any source other than his or her employer for such transactions or advice.
- e. An investment advisor, as defined in Section 25009 of the Corporations Code, when acting in that capacity.

NOTE: An employee or officer of any insurer is not eligible for a license as a Life and Disability Insurance Analyst.

To obtain insurance licensing forms by mail, send request to: Department of Insurance, 320 Capitol Mall, Sacramento, CA 95814, or you may phone Sacramento at (800) 967-9331 or (916) 322-3555, press 4.

To obtain insurance licensing information, you may phone our Sacramento office at (800) 967-9331 or (916) 322-3555.

ALL FEES MAILED TO THE DEPARTMENT MUST BE ADDRESSED TO:

DEPARTMENT OF INSURANCE
P.O. BOX 1139
SACRAMENTO, CA 95812-1139

ALL FILING FEES SUBMITTED ARE NOT REFUNDABLE OR TRANSFERABLE, WHETHER OR NOT THE APPLICATION IS ACTED UPON OR THE EXAMINATION TAKEN.

Form 765A (Rev. 11/2000)

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EXHIBIT III

Series 65 Exam

The Uniform Investment Adviser Law Examination and the available study outline were developed by the North American Securities Administrators Association, Inc. ("NASAA"). The examination, called the Series 65 exam, is designed to qualify candidates as investment adviser representatives. The exam covers topics that have been determined to be necessary to understand in order to provide investment advice to clients. The study outline is designed to provide an overview of the exam's general content and format.

The study outline is divided into corresponding sections to aid in preparing for the examination.

The Uniform Investment Adviser Law Examination consists of 130 questions plus 10 pretest questions covering the materials outlined in the following study outline. Applicants are allowed 180 minutes to complete the examination. At least 89 (68.5%) of the questions must be answered correctly for an individual to pass the Series 65 exam.

The examination is conducted as a closed book test. Upon completion of the examination, the score for each section and the overall test score will immediately be made available to the candidate.

The examination is administered by the National Association of Securities Dealers, Inc. ("NASD"). To schedule a candidate for the examination, an individual's firm should file a Form U-4 or the individual should file a Form U-10 and pay the \$110.00 examination fee to the NASD at the following address:

NASD Regulation, Inc.
Attention: Exams Dept.
9509 Key West Avenue
Rockville, MD 20850
301/590-6500

Once registered, NASD will open a 120-day window within which an individual may schedule the exam. A link to the NASD Forms can be found at <http://www.nasdr.com/3400.asp>. More information on exam sites can be found at <http://www.nasdr.com/2630.asp>.

The questions in the examination, the examination study outline, and the method by which the examination is administered have been designed by Chauncey Group International for NASAA and approved by NASAA and the Competency Exam Project Group. In addition, each examination question is statistically analyzed to insure reliability.

Any attempt to compromise the examination may serve to destroy its validity and usefulness. Therefore, NASAA intends to bring appropriate action against persons who attempt to compromise the examination in whole or in part. In addition, such conduct may subject a candidate to further action by state administrators.

Successful completion of the Uniform Investment Adviser Law Examination does not relieve a candidate of the personal responsibility to know and to abide by the specific requirements of the securities laws and regulations of the states in which the candidate transacts business. Furthermore, although successful completion of the examination may satisfy a portion of the requirements of a particular state, it does not convey the right to transact business prior to being granted a license or registration by that state.

NASAA believes that the Uniform Investment Adviser Law Examination will significantly benefit the industry and state regulators alike by such uniformity. The investing public will be afforded a greater degree of protection through enhanced uniform qualification standards.

NASAA Uniform Investment Adviser Law Exam (Series 65) Exam Specifications	
CONTENT AREA	# OF ITEMS
I. Economics and Analysis	20
A. B. Understand basic economic concepts <ol style="list-style-type: none"> 1. Inflation/deflation <ol style="list-style-type: none"> a. Definitions b. Causes of inflation/deflation 2. Interest rates and yield curves <ol style="list-style-type: none"> a. Graphs b. Definitions c. Interest rate = cost of money 3. Basic economic indicators <ol style="list-style-type: none"> a. GDP b. Employment indicators c. Trade deficit d. Balance of payments e. CPI 	
A.	

<p>determine investment merits</p> <ul style="list-style-type: none"> A. Income statement <ul style="list-style-type: none"> a. Revenues b. Cost of goods sold c. Pre-tax margins d. Cash flow B. Balance sheet <ul style="list-style-type: none"> a. Assets b. Liabilities c. Working capital d. Owner's equity e. Footnotes 	
<p>A.</p> <p>C. Demonstrate understanding of quantitative methods to evaluate investments</p> <ul style="list-style-type: none"> A. Time value of money B. Expected return C. Net present value D. Internal rate of return E. Inflation-adjusted return (real return) F. After-tax return/yield G. Risk-adjusted return H. Total return I. Holding period return J. Yield-to-maturity K. Yield-to-call L. Current yield M. Risk measurements (e.g., Beta, standard deviation, duration) N. Valuation ratios (e.g., P/E, price-to-book) O. Benchmark portfolios P. Annualized return 	
<p>D.</p> <p>E. Identify risks (i.e. definitions, impact on the market, companies, and personal investments)</p> <ul style="list-style-type: none"> D. Business E. Market F. Interest rate G. Inflation H. Regulatory (e.g., tax law changes) I. Liquidity 	

J. Opportunity cost	
II. Investment Vehicles	26
<p>A.</p> <p>B. Evaluate cash and cash equivalents</p> <p>A. Types and characteristics of cash and cash equivalents</p> <p>a. Certificates of deposit</p> <p>b. Money market funds</p> <p>c. Treasury bills</p> <p>B. Benefits/risks of owning cash and cash equivalents</p>	
<p>B.</p> <p>C. Evaluate fixed income securities</p> <p>B. Types and characteristics of fixed income securities</p> <p>a. U.S. government and agency securities</p> <p>b. Mortgage-backed securities</p> <p>c. Corporate bonds (i.e., investment grade and high yield)</p> <p>d. Convertible bonds</p> <p>e. Municipal bonds</p> <p>f. Zero-coupon bonds</p> <p>C. Benefits/risks of owning fixed income securities</p>	
<p>C.</p> <p>D. Evaluate equity securities</p> <p>C. Types and characteristics of equity securities</p> <p>a. Common stock (e.g., voting rights, etc.)</p> <p>b. Preferred stock</p> <p>c. Convertible preferred stock</p> <p>D. Methods used to determine the value of equity securities (e.g., technical and fundamental analyses, dividend discount)</p> <p>E. Benefits/risks of owning equity securities</p>	
<p>D.</p> <p>E. Evaluate investment company securities</p> <p>D. Types and characteristics of investment companies</p> <p>a. Open-end investment companies (mutual funds)</p>	

<ul style="list-style-type: none"> b. Closed-end investment companies c. Classes of shareholders, expense ratios, sales load, breakpoints, 12b-1 fees E. Benefits/risks of owning investment company securities 	
<p>E. Recognize derivative securities and their benefits/risks</p>	
<ul style="list-style-type: none"> F. G. Understand unique aspects of international investing <ul style="list-style-type: none"> F. Emerging vs. developed markets G. American Depository Receipts (ADRs) H. Currency influences (concept of risk) 	
<ul style="list-style-type: none"> G. H. Understand real estate partnerships and investment trusts (REITs) and variable annuities <ul style="list-style-type: none"> G. Definitions H. Benefits/risks 	
<p>III. Investment Recommendations and Strategies</p>	<p>39</p>
<ul style="list-style-type: none"> A. B. Determine and analyze the financial profile of the client to develop a suitable investment policy and strategy <ul style="list-style-type: none"> A. Type of client <ul style="list-style-type: none"> a. Individual b. Sole proprietorship c. General partnership d. Limited partnership (including family limited partnership) e. Limited liability company f. C corporation g. S corporation h. Trust i. Estate B. Financial goals C. Current financial status (e.g., cash flow, balance sheet) D. Capital needs (e.g., current, retirement, death, disability) 	

<ul style="list-style-type: none"> E. Current investments and strategies F. Time horizon G. Non-financial investment considerations (e.g., values, attitudes, experience, demographic characteristics) H. Risk tolerance I. Tax situation 	
<ul style="list-style-type: none"> B. C. Understand portfolio management strategies, styles, and techniques (fixed income and equities) <ul style="list-style-type: none"> B. Portfolio management styles and strategies <ul style="list-style-type: none"> a. Strategic and tactical asset allocation (e.g., style, asset class, rebalancing) b. Active vs. passive c. Growth vs. value d. Market capitalization (micro, small, mid, large) e. Buy/hold f. Indexing g. Diversification C. Funding techniques <ul style="list-style-type: none"> a. Dollar-cost averaging b. Income reinvestment (e.g., dividend, interest, cap gain) 	
<ul style="list-style-type: none"> C. D. Recognize fundamental taxation issues <ul style="list-style-type: none"> C. Individual income tax (e.g., capital gains, tax basis, retirement distribution, alternative minimum tax) D. Corporate, trust, and estate income tax E. Estate and gift tax 	
<ul style="list-style-type: none"> D. E. Recognize types of retirement plans and related issues <ul style="list-style-type: none"> D. Retirement plans <ul style="list-style-type: none"> a. Individual Retirement Arrangements (IRA) b. 403(b) plans c. Qualified retirement plans (e.g., pension and profit sharing, 401(k)) d. Nonqualified retirement plans E. Important ERISA issues <ul style="list-style-type: none"> a. Fiduciary responsibility (e.g., 404(c)) b. Investment policy statement 	

<p>c. Prohibited transactions</p>	
<p>E. F. Define the fundamental terms and concepts of trading securities E. Terminology (e.g., bids, offers, quotes) F. Role of broker-dealers, specialists, market-makers G. Types of orders (e.g., market, limit, stop, short sale) H. Types of accounts (e.g., cash, margin, option) I. Commissions, markups, spread</p>	
<p>F. G. Calculate performance F. Calculate performance a. Total return (i.e., yield plus growth) b. Inflation-adjusted return c. After-tax return/yield d. Current yield</p>	
<p>IV. Ethics and Legal Guidelines</p>	<p>45</p>
<p>A. B. Understand relevant aspects of securities acts and other rules and regulations in order to comply as an investment adviser representative A. Investment Company Act of 1940 B. Investment Advisers Act of 1940 C. Securities Act of 1933 and Securities Exchange Act of 1934 (as applicable to investment adviser issues) D. SEC Release No. IA-1092 (applicability of the Investment Advisers Act to financial planners and others) E. State securities laws (i.e., Blue Sky) F. NASAA rules prohibiting dishonest and unethical business practices G. Limitations on permissible practice (i.e., technical licensing requirements)</p>	
<p>B. C. Demonstrate ability to apply ethical practices</p>	

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| <ul style="list-style-type: none">B. Fiduciary responsibilityC. Conflict of interestD. Prudent Investor standardsE. Limitations on advice and activities (i.e., when to consult other professionals) | |
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EXHIBIT IV

CFP Board Curriculum Requirements for the “Insurance Planning And Risk Management”
Module of the CFP Certification Course of Education*

CFP Required subject matter for “Insurance Planning and Risk Management”

CFP® Candidates must complete comprehensive training in the following subject areas at a college or university whose program has been inspected and approved by the CFP Board. This course represents approximately 20% of the educational requirement for CFP Candidates. Other courses include “Financial Planning Fundamentals”, “Investment Planning”, “Tax Planning”, “Retirement Planning & Qualified Plans” and “Estate Planning”.

Principles of insurance

A. Definitions and application of principles

- 1) Risk
- 2) Peril
- 3) Hazard
- 4) Law of large numbers
- 5) Adverse selection

B. Response to risk

- 1) Retain
- 2) Transfer
- 3) Control
- 4) Reduce
- 5) Avoid

C. Mortality vs. morbidity

Analysis and evaluation of risk exposures

A. Personal Insurance lines

- 1) Death
- 2) Disability
- 3) Poor health
- 4) Unemployment
- 5) Outliving one’s capital

B. Property Insurance lines

- 1) Real
- 2) Personal
- 3) Auto

C. Liability Issues

- 1) Negligence
- 2) Libel
- 3) Slander
- 4) Malpractice

D. Business-related risks

E. Calculation of benefits

23. Legal aspects of insurance

A. Indemnity

* Source: CFP Board of Standards, Inc. Denver, CO.

CFP Board Curriculum Requirements for the “Insurance Planning And Risk Management”
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B. Insurable interest

C. Contract requirements

D. Contract characteristics

D. Product liability

Health insurance (individual)

A. Hospital-surgical

B. Major medical

C. Traditional indemnity

D. Preferred Provider Organization
(PPO)

E. Health Maintenance Organization
(HMO)

F. Medicare supplemental insurance

G. Other

**Property and casualty insurance
(individual and business)**

A. Real property

B. Automobile and recreational
vehicles

C. Business

D. Business activity

E. Personal property

F. Umbrella liability

**Disability income insurance
(individual)**

A. Occupational definitions and
application

1) Total

2) Partial

3) Residual

General business liability

A. Professional liability

B. Errors and omissions

C. Directors and officers

* Source: CFP Board of Standards, Inc. Denver, CO.

CFP Board Curriculum Requirements for the “Insurance Planning And Risk Management”
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B. Benefit period

C. Elimination period

D. Benefit amount

E. Riders

F. Taxation of benefits

Long-term care insurance (individual and joint)

A. Basic provisions

B. Eligibility

C. Benefit amount and period

D. Elimination period

E. Inflation protection

F. Nursing home and in-home care

G. Comparing and selecting policies

H. Tax implications and qualification

I. Appropriateness of coverage

Life insurance

A. Fundamentals

B. Types

C. Contractual provisions

D. Dividend options

E. Non-forfeiture and other options

F. Settlement options

G. Policy replacement

H. Tax issues and strategies

I. Policy ownership issues and strategies, including split-dollar

Viatical settlements

A. Legal principles

B. Requirements

C. Tax implications

D. Planning

E. Ethical concepts and planning

Insurance needs analysis and rationale

A. Life insurance amount required

1) Liquidity and survivor income needs

2) Human life value

3) Capital retention

B. Disability insurance

C. Long-term care insurance

D. Health insurance

* Source: CFP Board of Standards, Inc. Denver, CO.

CFP Board Curriculum Requirements for the “Insurance Planning And Risk Management”
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E. Property insurance

F. Liability insurance

Taxation of life, disability and long-term care insurance

A. Income

B. Gift

C. Estate

D. Generation-Skipping Transfer

Tax (GSTT)

E. Ownership issues

F. Beneficiary issues

G. Withdrawals

Insurance policy selection

A. Purpose of coverage

B. Length of time required

C. Risk tolerance

D. Cash flow constraints

Insurance company selection and due diligence

A. Financials

B. Ratios

C. Ratings

D. Mutual vs. stock

E. Reinsurance

F. Investments

G. Underwriting

H. Federal and state law