SUNRISE ANALYSIS OF A PROPOSAL TO REGULATE FINANCIAL PLANNERS

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by

Legislative Auditor of the State of Hawaii
Honolulu, Hawaii

Report No. 88-19
November 1988

TABLE OF CONTENTS

Page

SUNRISE ANALYSIS OF A PROPOSAL TO REGULATE FINANCIAL PLANNERS

Introduction

In 1984, the Legislature amended the Hawaii Regulatory Reform Act, or the "Sunset Law," by incorporating a "sunrise" provision requiring the Legislative Auditor to analyze proposed legislation that seeks to impose licensing or other regulatory controls on unregulated occupations.

The Legislative Auditor is required to assess the probable effects of the proposed measure and to determine whether its enactment would be consistent with state regulatory policies in the Sunset Law. These policies include the following:

- Regulation is warranted only where reasonably necessary to protect the health, safety, and welfare of consumers.
- Evidence of abuse shall be awarded great weight in determining whether regulation is desirable.
- Regulation shall not be imposed except to protect relative large numbers of consumers who may be at a disadvantage in choosing the provider of the services.
- Regulation should not unreasonably restrict entry into the occupation by qualified persons.
- The purpose of regulation is to protect the consumer and not the regulated occupation.

During the 1988 legislative session, Senate Bill No. 2144 and Senate Bill No. 2145 relating to financial planners were introduced. The bills would require financial planners to be licensed by the Department of Commerce and Consumer Affairs (DCCA).

This analysis contains some background information on the financial planning industry, examines the need to regulate financial planners, and assesses the proposed legislation.

Background on Financial Planning

Financial planning is a new and rapidly growing industry. It covers a wide spectrum of services. Generally, it consists of a process of evaluating financial resources, defining financial goals, and evaluating and selecting suitable means for achieving the goals of an individual or organization. The content of plans varies from one planner to another. Most plans would include general recommendations on the allocation of resources among savings, life and other insurance, annuities, and various kinds of investments such as stocks and bonds, mutual funds, certificates of deposit, real estate, limited partnerships, or oil and gas or other tax shelters. Specific products or securities may be identified or recommended.[1]

Financial planning is a significant and rapidly growing service offered by all segments of the financial services industry--banking, securities brokerage, insurance, and accounting. Financial planners range from small, independent planners working within a single state to major national corporations operating in many states.

Today, there are an estimated 400,000 financial planners in the United States managing client assets of between $50 billion and $100 billion.[2]

Types of financial planners. There are three types of financial planners: (1) those who simply sell financial plans and planning services for a fee and refer their clients to sellers of insurance, stocks, and other financial products; (2) those who sell plans and also sell on commission some or all of the products they recommend; and (3) those who don't charge for plans but earn commissions on the financial products they recommend and sell.[3]

Many financial planners are also insurance salespersons, stock brokers, accountants, lawyers, or bankers. A majority sell securities or insurance, and a few sell real estate.[4] Most work independently or in small firms of ten or less employees. Some are affiliated with insurance companies, brokerage houses, banks, and accounting or law firms. These affiliated planners tend to focus on plans emphasizing their respective products.[5]

Most planners advise individuals, and some also serve pension/profit sharing plans, corporations or business entities, trusts, estates, charities, banks, thrifts, and investment companies.[6]

Planners come from various backgrounds. A number of surveys have found that the majority of financial planners are college educated, but their education may or may not be directly related to financial planning.[7] Many have professional backgrounds in other fields such as insurance, securities, accounting, law, banking, corporate finance, tax preparation, or real estate.[8]

Financial planners may acquire financial planning skills and knowledge on their own, through employers or special educational programs for financial planners. About 30 universities across the country now offer financial planning courses.[9]

There are also several professional associations that qualify or certify financial planners.

The International Board of Standards and Practices for Certified Financial Planners, Inc. (IBCPF) is a nonprofit professional organization which was created to maintain and enforce high standards through its certification process. It awards a Certified Financial Planner or CFP designation to those who meet its educational, examination, and experience requirements.

The IBCFP is affiliated with the Institute of Certified Financial Planners (ICFP), a non-profit professional organization representing CFPs and those seeking the CFP designation. The ICFP has approximately 16,000 members.[10]

The Institute of Chartered Financial Analysts awards a chartered financial analyst (CFA) designation to those who have three years of professional experience, pass the examination it administers, and comply with the Institute's code of ethics and standards of professional conduct.

The American Society of Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC), a national trade organization of insurance and financial service professionals, has two types of certification.

The Society awards the CLU to those who have prepared to advise their clients on individual and business financial planning concerns, such as choosing life and health insurance, estate planning, and retirement planning. To obtain the CLU, candidates must complete a curriculum of ten college-level courses and have a minimum of three years of experiences in the industry.[11]

The Society awards the ChFC to those who have prepared to counsel clients on financial planning. To obtain the ChFC designation, which normally takes four or five years, the candidate must complete a curriculum of ten college-level courses and have at least three years of experience in the financial industry.[12]

The International Association for Financial Planning, the oldest and largest financial planners trade association, administers a nationwide Registry of Financial Planning Practitioners. Candidates for the registry must have practiced financial planning for three years, possess the CFP, ChFC, or be a certified public accountant or an attorney, pass an examination, and meet other requirements.[13]

The National Association of Personal Financial Advisers, the newest association, consists of fee-only planners who do not sell financial products on commission. It makes referrals to its members who have met specified educational and work experience criteria.[14]

Current Regulation of Financial Planners

There is controversy over the extent to which *financial advising* is currently regulated under the federal Investment Advisers Act of 1940 and state investment advisers laws. Hawaii has an investment advisers registration law which was enacted in 1984. The *sale of financial products*, and related advice, by stock brokers, insurance brokers and salesmen, and others who also do financial planning are subject to federal and state securities and other laws.

Background on securities laws. The first securities law in this country was a 1911 Kansas "blue sky law," which targeted those who "would sell building lots in the blue sky in fee simple." Today, all states and the District of Columbia have these general securities or "blue sky laws."[15]

After the stock market crash of 1929, the federal government enacted a series of securities acts.

Two principal acts were the Securities Act of 1933 and the Securities Exchange Act of 1934. The Securities Act of 1933, intended to protect the public from unscrupulous issuers and dealers of securities, requires the issuer of securities to disclose certain prescribed information about what they are selling (in a prospectus) to potential investors and to register this information with the government.[16]

The Securities Exchange Act of 1934 regulates the securities exchanges (like the New York Stock Exchange) and the securities market to protect investors and maintain the integrity of the markets. This act also authorizes the National Association of Securities Dealers (NASD) to regulate its members and establish rules for fair trading in securities.

Anyone intending to buy, sell, or otherwise effect transactions in securities for others must apply for and obtain the necessary securities registration under federal law, and also obtain a state securities license.

The Federal Advisers Act. The Investment Advisers Act of 1940 (hereafter the Federal Advisers Act) was established to protect the public from "the frauds and misrepresentations of unscrupulous tipsters and touts," and to safeguard the bona fide investment counsel against the "stigma" of the unscrupulous.[17] It requires investment advisers to register with the Securities Exchange Commission (SEC) and to disclose work experience, business affiliations, conflicts of interests, and other information.

The thrust of the Federal Advisers Act is to have advisers reveal to their clients possible conflicts of interest that may cause the advisers to make recommendations more in their own interest than in their clients' interests.

Those licensed to sell securities must also register as investment advisers under federal and state laws if they provide investment advice. Selling and investment advising activities are subject to different regulations.

Definition of investment adviser. The act does not regulate financial planners per se, only those who fall within its definition of investment adviser. This is defined as:

> "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 a regular business, issues or promulgates analyses or reports concerning securities."[18]

The act specifically excludes the following from the definition of investment adviser: banks; lawyers, accountants, engineers, and teachers whose advisory services are incidental to their profession; brokers or dealers whose advisory services are incidental to their business and who receive no special compensation for this service; publishers of bona fide newspapers, magazines, or business or financial publications of general and regular circulation; persons whose advice relates only to U.S. government securities; and other persons specified by rule.

Financial planners are investment advisers under certain conditions. The SEC is responsible for administering the act. It has issued two policy statements: Interpretative Release No. 770 in 1981 and Interpretative Release No. 1092 in October 1987 which have broadened its definition of investment advisers to include financial planners, pension consultants, sports and entertainment representatives, and others who provide investment advisory services as a normal part of their business if they meet conditions set forth in the act.

The most recent SEC policy statement (IA-1092) says that a person providing financial planning or other financial advisory services is an investment adviser if that person meets three tests: (1) provides advice or issues reports or analyses "as to the value of securities or as to the advisability of investing in, purchasing, or selling securities"; (2) is in the business of providing such services; and (3) provides such services for compensation.

To meet the *advice* test, the advice need not be about specific securities. The SEC states that the definition of investment adviser includes persons who advise clients concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments. It would also include those who recommend to clients that they allocate certain percentages of their assets to life insurance, bonds, or mutual funds or other investments.

To meet the *business* test, the advice need not be the principal business activity or a particular portion of the business activity. It would include those who (1) hold themselves out as investment advisers or offer investment advice, (2) receive any separate or additional charge for advice about securities or receive compensation from transactions if the client implements the investment advice, or (3) provide specific investment advice. However, specific investment advice does not include advice limited to a general recommendation to allocate assets in securities, life insurance, and tangible assets.[19]

To meet the *compensation* test, the compensation may be an advisory fee, some other fee for total services, commissions, or some combination of fee and commissions. The compensation could be from the client or from some other source. It could be a single fee or commission upon the sale of insurance or other investments.

Anti-fraud provisions. The anti-fraud provisions of the Federal Advisers Act apply to all investment advisers, including those exempt from the registration requirement. They include the following provisions.

Investment advisers have a fiduciary duty to their clients--"an affirmative duty of 'utmost good faith, and full and fair' disclosure of all material facts." They are prohibited from engaging in "any device, scheme, or artifice to defraud any client or prospective client," and any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

Failure to disclose "all material facts relating to a potential conflict of interest, including the various capacities of the adviser may be fraud or deceit within the meaning of the law.

For example, investment advisers are required to disclose any interest and compensation that they may receive relating to an investment recommendation. Advisers must inform clients that they may implement their plans through other brokers or dealers. Advisers who recommend only those products that they sell must inform the clients. Advisers whose personal securities transactions are inconsistent with advice given to clients must disclose this situation.

Other responsibilities of advisers. The SEC has extensive record keeping and reporting requirements for advisers, some prohibitions against certain kinds of investment contracts, and a "brochure rule" requiring that investment advisers, before entering into an advisory contract, provide each prospective client with a written disclosure statement about the advisers' background, education, experience in the investment advisory business, types of services offered, investment techniques employed, and other relevant information. This brochure is a part of the registration form.

Hawaii's investment advisers law. In Hawaii, investment advisers were placed within the scope of the State's Uniform Securities Act.[20] The Securities Commissioner in DCCA administers the act, which is now Chapter 485, Hawaii Revised Statutes. Generally, the Uniform Securities Act requires the registration of securities and dealers, investment advisers, salespersons, and investment adviser representatives; prescribes and proscribes certain practices; and provides for civil and criminal penalties.

Hawaii is one of 40 states with investment advisers laws. These state laws are substantially similar to the federal law. They are not preempted by the federal law. At the same time, nothing in a state law can relieve an adviser of the obligations under the federal law. The SEC and the North American Securities Administrators Association (state securities administrators) intend that there should be uniform interpretation of the state and federal investment adviser laws.

The early law did not require the registration of investment advisers but regulated certain practices. It prohibited advisers from entering into advisory contracts unless the contracts provided in writing that the adviser would not be compensated on the basis of a share of capital gains; the contract would not be assigned without the consent of the client; and the adviser, if a partnership, would inform the client of changes in the members of the partnership.

In 1984, following the exposure of a $20 million investment fraud operation in Hawaii,[21] Chapter 485, was amended to add registration and anti-fraud provisions for investment advisers and investment adviser representatives.[22]

The following is a summary of the current state legal provisions covering investment advisers.

Definition of investment adviser. The state definition of "investment adviser" is like the federal definition with similar exclusions. The state law also excludes from the definition certain investment advisers who are registered with the SEC and meet several additional criteria.

Unlike the federal law, however, the State's *rules* exclude advisers compensated through commissions. The term "advisers" is limited to those compensated by salary, flat fee, or by periodic retainer fees. This is a significant departure from the federal law and will be discussed in a later section.[23]

In practice, the State uses the term "investment adviser" for *firms* engaging in investment advisory services and the term "investment adviser representative" for *individuals* providing investment advisory services. Both must register with the State.

Registration requirements for firms. The registration requirements for investment advisory firms include the filing of specified information about the organization, a written consent to service of process, evidence of a minimum net worth, a bond, and evidence of errors and omissions insurance.

The required information includes disclosures about the education and business affiliations of principals in the firm; any injunctions, administrative orders, securities misdemeanors and felony convictions; financial information; the nature and scope of authority over clients' funds; and the method of compensation.

The filing of "an irrevocable written consent to the service of process upon the commissioner" means that suits filed against the adviser may be served upon the commissioner and would not be delayed or dropped should the adviser be inaccessible.

Firms with custody of or discretionary authority over clients' funds must maintain a minimum net worth of not less than $5,000.

Firms with custody or discretionary authority over clients' funds must post a $50,000 bond running to the State "conditioned upon faithful compliance" to the Securities Act. Firms without such custody or authority must file a $5,000 bond. Cash or securities may be posted in lieu of the bond.

Firms that have been in business for less than two years must have errors and omissions (professional liability) insurance of at least $100,000 per occurrence and at least $200,000 in aggregate coverage. Firms that have been in business for more than two years must have liability insurance of at least $100,000 per occurrence and $500,000 in aggregate coverage.

Examination requirement for representatives. Individual investment adviser representatives must pass a state examination that is a modified version of the investment advisers examination prepared by the North American Securities Administrators Association.

Persons exempt from the examination include those who have been continuously registered with the SEC since January 1, 1983, those who have passed the SEC examination for investment advisers within the past two years, or those who have passed investment adviser examinations of the North American Securities Dealers Association or the Chartered Financial Consultant or Chartered Financial Analyst examinations.

Anti-fraud provisions. Advisers are prohibited from certain fraudulent practices, such as:

- using any scheme, device, or artifice to defraud a client;
- engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person;
- contracting for advisory services unless they say in writing that their compensation will not be based upon capital gains or capital appreciation of clients' funds; and
- entering into a contract with the client without giving the client a disclosure statement and obtaining the client's written consent.

Other requirements. Investment advisers must maintain certain financial records, submit financial statements biennially, and disclose to their clients certain conflicts of interest. For example, advisers must disclose to clients the capacity in which they are acting, their compensation when selling securities in which they have financial interests, and when they are brokers representing someone other than the clients.

Grounds for denial, suspension, and revocation. Grounds for the denial, suspension, or revocation of registration include: representing oneself as a financial planner, consultant, or adviser without accurately describing services, qualifications, and method of compensation; recommending any security when the investment adviser knows or should know that the issuer would not conduct business or fulfill its representations; providing a report or recommendation to a client prepared by someone other than the adviser without disclosing that fact; and failing to disclose a dual agency capacity.

Enforcement powers. The State Securities Commissioner is authorized to issue cease and desist orders, or file suit for injunction, when someone has violated or is about to violate the securities act. The commissioner may also file a suit for civil penalties to $100,000.

Criminal penalties may also apply to violations of the securities act. Violations involving less than $5,000 are class C felonies. Violations involving more than $5,000 but less than $100,000 are class B felonies. Violations involving $100,000 or more are class A felonies.

The State also has the authority to take additional actions, like seizure of a convicted offender's property.

State-registered investment advisers. As of June 1988, the State had 33 registered investment adviser firms, and 121 registered investment adviser representatives. Of the 121 registered representatives, only 7 qualified by passing the state examination. The others were exempt from the examination because they had taken other qualifying examinations or were registered with the SEC for the required period.

Since enactment of the registration requirement, a total of 21 individuals have taken the state examination. Fourteen have failed.[24]

The National Issue of Planning Regulation

Governmental regulation of financial planners has been a national issue for years. The principal parties in this issue are the federal government; the state governments; the professional associations for planners; securities dealers; banks, insurance, and other parts of the financial services industry; and consumer organizations.

The federal government. The federal government has broadened its definition of investment advisers to include certain financial planners under the Federal Advisers Act and does not appear to see a need for additional laws at the federal level. The U.S. Congress held public hearings on the issue, but as of April 1988, it had not passed any new laws regulating financial planners.

The SEC has begun to assume more responsibility for regulating financial planners under the Federal Advisers Act. It has issued policy statements that financial planners and other financial advisers are subject to regulation as investment advisers, if they meet certain conditions in the law.

The states. Many states are considering how to define and regulate financial planning. Currently, most states regulate financial planners within the scope of their investment adviser laws, if the planners meet the standards of the law.

Although many states have not officially adopted the SEC policy on the explicit inclusion of financial planners under the investment adviser definition, it is seen as a helpful guide for determining whether planners fall within the scope of their investment adviser laws.[25]

Several states (e.g. Maryland, New York, and Tennessee) have recently considered regulating financial planners as a separate occupational class, but none are currently doing so.[26] The California Assembly after debating the issue for years, passed a bill to specifically regulate financial planners, but the Governor vetoed the measure.[27]

State securities administrators, through the North American Securities Administrators Association, have expressed their preference for uniformity among state regulations, and for strengthening and more strictly enforcing the federal and state investment advisers acts.[28]

The North American Securities Administrators Association has developed model amendments to state investment advisers acts to license individuals and regulate firms, spell out civil remedies for aggrieved clients and investors, and set criminal penalties for certain violations.[29]

The financial services industry. The professional associations of the financial services industry generally favor uniformity in regulations across the country, rather than state by state variations, but differ in their regulatory preferences.

The National Association of Securities Dealers, a private trade organization which is authorized by federal law to regulate securities dealers, would like the authority to also regulate investment advisers, including financial planners, because many investment advisers are also securities dealers. It has recently completed a pilot program to regulate and inspect investment advisers, and it is willing to assume responsibility for regulating advisers nationally.[30]

The International Association of Financial Planners would like to be the self-regulatory organization (SRO) specifically for financial planners under the SEC and the Federal Advisers Act. Under this proposal, all financial planners would register with the SRO and the SEC as investment advisers and be required to meet the SRO's "standards of excellence."[31]

The Institute for Certified Financial Planners does not support the idea of a self-regulatory organization. Its position is that no additional laws are necessary, and that regulation of financial planners should be improved within the context of federal and state adviser laws. This organization is for mandatory registration, full disclosure, strong penalties for non-compliance, rigorous enforcement of uniform statutes and regulations, and voluntary professional certification.[32]

Table 1 presents an overview prepared by the ICFP, which summarizes regulations affecting the activities of financial planners.

TABLE 1

OVERVIEW:
EXISTING REGULATION OF FINANCIAL PLANNERS AND FINANCIAL PLANNING ACTIVITIES

I. **Registered Investment Adviser Laws**

Federal Investment Advisers Act of 1940:
(Administered by the Securities and Exchange Commission)

. Fiduciary Standard of Care
. Registration Using Uniform Forms
. Disclosure (Conflicts of Interest, Methods of Compensation, Education, Experience, Financial and Disciplinary Information)
. Inspections
. Strong Penalties
. Cooperation with State Agencies

***State Investment Adviser Laws:**
(Administered by state securities agencies)

. Reflects Many Features of the Federal Law
†. Computerized Registration and Tracting (NASAA/NASD Central Registration Depository
†. Registration of Investment Adviser Representatives
†. Uniform Adviser Examinations
†. Uniform Rules
. Cooperation with SEC

*Thirty-nine states currently have investment adviser laws. Some of those states are enhancing these laws and others are adopting broad-based interpretations of their applicability to financial planners. Many states that do not have investment adviser laws are actively considering their adoption.

†Contained in the NASAA Amendments to the Uniform Securities Act of 1956.

II. **Existing Regulation Governing Transactions/Advice**

. Securities Transactions (SROs, Federal, State)
. Insurance Transactions (State)
. Insurance Advice (State)
. Real Estate Transactions (State)
. Debt Adjusting (State)

III. **Voluntary Professional Certification** (for example):

Certified Financial Planner™

. Education (Approved body of knowledge)
. Comprehensive Testing
. Experience Requirement
. Continuing Education Requirement
. Enforcement of Ethical Standards (Persons holding CFP® are subject to sanctions imposed by the International Board of Standards and Practices for Certified Financial Planners, Inc., including prohibiting the use of the CFP mark)

IV. **Other Public Protection:**

. Anti-fraud Statutes (Federal and State)
. Lawsuits
. Consumer Protection Agencies (State)
. Non-profit Consumer and Financial Planning Associations (for example, Better Business Bureaus, the Institute of Certified Financial Planners, etc.)

Institute of Certified Financial Planners 9/87

CFP and Certified Financial Planner are certification marks of the International Board of Standards and Practices for Certified Financial Planners, Inc. (BCFP).

The National Association of Personal Financial Advisers favors a "separation of the advisory and sales aspects of financial planning." It supports registration of planners and full disclosure of all fees and commissions. [33]

Consumer organization. The Consumers Federation of America recently issued a study that found considerable potential for harm to consumers in the financial planning industry, inadequate enforcement of investment adviser provisions by the federal government, and a need for stricter enforcement and regulation of financial planners under existing laws.[34]

Current Legislative Proposals

Senate Bills 2144 and 2145 were developed by a study group of financial planners and representatives of the insurance, securities, and accounting fields. The project was conducted under the auspices of the Department of Commerce and Consumer Affairs (DCCA).

In its report to the director of DCCA, the study group stated that it favored the licensing of financial planning but that it also recognized that it would be difficult to have a licensing bill enacted immediately. Therefore, it recommended a two-stage, two-bill approach with one bill providing for "registration" of financial planners and the second bill providing for "licensing." The study group hoped that the "registration" bill would pass and be implemented in 1988 to be followed by the passage and implementation of the "licensing" bill in 1989. The panel also noted that "the insurance industry is opposed to any changes to the existing regulations."[35]

Senate Bill 2145 would amend the uniform securities act (Chapter 485) to establish state registration of financial planners as a separate category under the law. Senate Bill 2144 would create a new statute establishing full state licensure of financial planners as a separate occupational class under a board of financial planners. Under either bill, planners would still be subject to the Federal Advisers Act.

The bills are identical in certain respects. They prohibit use of the title "financial planner" as well as the practice of financial planning by anyone not registered or licensed as a financial planner. They require applicants to file statements disclosing information about their business and their practices.

They differ in some of their licensing requirements. Senate Bill 2144 requires those applying for licensing as a financial planning representative to be of good repute, be designated as a representative by a registered financial planner, and pass an examination prescribed by the board. After July 1, 1990, the applicant must be of the age of majority, have completed a course on financial planning approved by the board, and pass an examination. Those applying for licensure as financial planners must have practiced for two years full-time as a licensed financial planning representative before they may take the financial planning examination. They must also have had practical experience in the financial planning field. Senate Bill 2145 requires applicants to be of good repute and pass a financial planning examination.

The bills also differ in assigning authority and responsibility for regulation. Senate Bill 2144 would establish a board of financial planners to regulate financial planners and financial planner representatives. This board is placed within the DCCA for administrative purposes only.

Under Senate Bill 2145, the State Securities Commissioner would administer the regulatory program with an "advisory board" of financial planners. This board is authorized to adopt rules and regulations for the program, review applications for licensure, and advise the commissioner.

Both bills exempt financial planners from the investment adviser provisions of the state securities law. But they extend licensure to many who are currently exempt from the investment adviser registration requirement, including those accountants, lawyers, and bankers whose financial advisory services are incidental to their primary occupations.

Although many of the consumer protection provisions in Senate Bills 2144 and 2145 are identical or similar to provisions in the State's securities law, there are some significant differences between the proposed measures and the existing requirements. These are discussed in a later section.

Summary of Findings

Our assessment of the need for regulation of financial planners as proposed in Senate Bills 2144 and 2145 of the Fourteenth State Legislature is that:

1. Financial planners may harm their clients through incompetence or negligence, selfdealing acts and conflicts of interest, fraud, and misrepresentation.

2. Despite the potential for harm, the Legislature should not enact either bill because current federal and state laws can provide an adequate legal framework to safeguard consumers' interests.

3. Both bills could restrict entry of qualified persons into the occupation, and weaken state regulation of financial planners.

4. Instead of enacting new regulations for financial planners, the State should modify and more strictly enforce current regulations of financial planners and other investment advisers under the state securities law.

Potential Harm

There are consumer risks associated with the financial planning industry that stem from situations of incompetence or negligence, self-interest dealings, and fraud and misrepresentation.

Incompetence or negligence. By their incompetence or negligence, planners may cause financial losses to their clients. Planners may fail to use appropriate financial planning tools and procedures, to keep abreast of current information and practices, to obtain or make referrals to needed experts, to recommend investments that are suitable to a client's financial situation, to disclose all material facts about investments, to implement a client's plan in a timely and correct manner, or to properly supervise subordinates' work.

Self-interest dealings. Planners selling products often have a basic conflict of interest. They may not give clients all pertinent information about proposed investments or their personal financial interests in proposed investments. They may not give the objective advice that is best for the client.

Some may also have hidden agendas--to sell mutual funds, life insurance, tax services, stocks or bonds, or other products and services because they earn a good commission or bonus on that product, and not necessarily because it is best for the clients.

Fraud and misrepresentation. Financial planners may give clients false or misleading information about plans and investments. They may take discretionary authority over clients' funds or take custody of clients' funds and lose the money through speculative investments or embezzle the funds.

Actual harm. A recent report from the Consumer Federation of America (CFA) on financial planning abuses, found a relatively low level of consumer complaints across the country, but it stated that this is not an indication of the extent of consumers' problems with financial planners.

The extent of actual harm to consumers is difficult to determine for the following reasons: federal and state agencies do not keep separate records and statistics on financial planners for securities cases; consumers may not know when they've received bad advice; consumers' losses may not be discovered until years after the investment; and consumers who have suffered financial losses relating to planners may not have reported this to anyone.

Many consumers are unaware that planners are subject to government regulation and that they have a right to complain, seek a state investigation and redress under existing laws, or to file suits against planners.

After reviewing several studies and conducting its own survey of planner abuses, the CFA concluded that "alleged fraud and abuse was at least a $540 million problem in 1986." The CFA believed that even greater losses are attributable to misinvestments through "bad advice."

According to the CFA, "abuse by financial planners should be measured not in the millions, but in the billions of dollars."[36]

In Hawaii, as elsewhere in the nation, there is a lack of formal consumer complaints to state agencies and documentation of financial planner abuses. The DCCA reports that it has not received complaints about financial planners, *per se,* but it has received complaints involving a wide range of violations of the state securities act (e.g., selling non-existent securities) including violations of the adviser regulations. The Office of Consumer Protection reports that some years ago, it received several consumer complaints about unqualified planners calling themselves planners and giving poor advice and pushing financial products.

It appears that there is substantial potential for harm to consumers arising from the activities of financial planners although the extent of the actual harm in Hawaii is unknown. There is no reason to believe that the financial planning services here are any better, or worse, than those in the rest of the nation. Problems that exist elsewhere probably exist here, although they may not be detected, reported, or substantiated.

New Legislation Not Now Needed

There is potential for financial harm to consumers of financial planning services, but it is neither necessary nor desirable at this time for the State to enact Senate Bills 2144 or 2145. Financial planning services are being provided by numerous sectors of the financial services industry. It is an emerging profession that has yet to develop a discipline of its own or to follow a standard methodology.

The profession is undergoing considerable change. The issue of planner regulation is being debated nationally. It is drawing attention from the SEC, consumer groups, and numerous trade and professional organizations. There is as yet no agreement on how best to regulate the industry.

Some significant changes have occurred recently that will have an impact on planner regulation. In September 1988, the International Association of Financial Planners and the Institute of Certified Financial Planners, two major professional organizations in the field, agreed to merge into one professional association and one open forum association. The restructuring is intended to strengthen the organization and the financial planning industry. The new organization intends to speak with one voice on industry regulation.[37]

In Hawaii, DCCA intends to be much more active in enforcing the state securities act, particularly with the passage of Act 373 in 1987 which authorized to the director to appoint a Commissioner of Securities. As part of this effort, the department established a new ad hoc committee to protect the public from fraud in the local investment industry.[38] According to the new Commissioner of Securities, the committee will be asked to evaluate the strengths and weaknesses of the current regulatory approach to give the department a stronger consumer focus.

In view of these changes, a licensing bill specifically directed at financial planners would not add to the current regulatory framework.

Current laws are adequate. The existing investment adviser regulations and other laws and programs could adequately address the principal sources of potential harm without unduly constraining the practice of financial planning.

The Federal Advisers Act, which is summarized in a previous section, applies to certain financial planners in Hawaii.

The state securities law already requires persons in the business of advising others in investments, including many of those calling themselves financial planners, to meet certain standards, register with the State, and abide by numerous regulations. Those who fall within the scope of the law and fail to register or follow the regulations are operating illegally.

This law, along with private certification programs, and professional liability laws, could provide consumers with adequate safeguards and remedies for consumer redress for injuries stemming from planners' incompetence, self-dealing acts, fraud, and misrepresentation. It emphasizes the performance and financial accountability of advisers.

In the following section, we highlight some of the provisions, and in a later section assessing the two Senate bills, we discuss other aspects of the law.

Licensing requirements. Current laws recognize that there are varied paths to the practice of financial planning. They do not require standards that may unduly restrict entry to a business or give the public a false indicator of competence.

The financial planning field, is practiced by individuals from a variety of professional backgrounds. There are many valid alternative routes to the occupation and different ways of practicing. It is difficult to justify a single education and training route as the means to competent practice.

The Federal Advisers Act screens for criminal records but does not impose any educational, training, or testing standards for entry into the field. It requires, instead, disclosure of work experience and business affiliations.

Examination requirement. The state securities law already requires examination for minimal competency. It screens applicants for minimal basic knowledge about the investment advisory business without unduly restricting access to the occupation.

It requires that most investment adviser representatives pass the State investment adviser examination *or* one of several qualifying examinations testing knowledge of the investment advisory business. The qualifying examinations include the investment adviser tests of the National Association of Securities Dealers and the tests for the Chartered Financial Analysts (CFA) designation, a widely recognized designation in the investment community as an indicator of high standards of knowledge and ethics.

The state law permits those who have been registered with the SEC as an adviser as of January 1, 1983 to register without examination.

Bonding and insurance requirements. The surety bond and errors and omissions (professional malpractice) insurance requirements for registration also offer consumers protection from incompetence or negligence, as well as self-dealing acts, fraud, and misrepresentation.

They provide consumers with a potential source of financial compensation should planners fail to comply with the law or fail to abide by current financial planning standards of practice.

Additionally, the insurers provide a screening service by examining the applicants' background and financial situation before providing insurance coverage.

Prohibited acts. Certain provisions of the law also encourage advisory firms to offer responsible and competent advisory services by requiring disclosures of training and prohibiting certain acts. Failure to comply may result in suspension or revocation of registration and civil or criminal charges.

The law requires that advisers disclose to clients, in a separate disclosure statement, the capacity in which the advisers are acting and the compensation in certain situations.

Current regulation also prohibits advisers from engaging in the following kinds of acts:

> "Representing oneself as a financial planner, consultant, or adviser without accurately describing services, qualifications, and method of compensation;
>
> "Failing to properly supervise the activities of employees to ensure compliance with the law and rules; failing to properly investigate the character, business repute, experience, and qualifications of employees;
>
> "Inducing a customer to invest beyond the customer's known immediate financial resources, or without regard to the nature and character of the account;

> "Misrepresenting any advisory client, or prospective advisory client, the qualification of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading."[39]

Curbing conflicts of interests. State rules contain many provisions regulating the conduct of investment advisers to reduce the likelihood that they will act more in their own interests than in the interests of the client.

These provisions include the following:

> "Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations;
>
> "Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employee."[40]

Discouraging fraud and misrepresentation. In providing advice on the value, purchase, or sale of securities for which a person receives "any consideration" from another person, it is unlawful: (1) "to employ any device, scheme, or artifice to defraud the other person;" or (2) "to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person."

Planners' fiduciary responsibility. Financial planners also have a fiduciary responsibility to their clients. This duty was made explicit in a U.S. Supreme Court decision (SEC v. Capital Gains Research Bureau) and in the SEC's first policy statement on financial planners, Interpretive Release IA-770.

The SEC has stated that "An investment adviser is a fiduciary who owes clients 'an affirmative duty of utmost good faith' and full and fair disclosure of all material facts." Accordingly, the adviser has an obligation to disclose to each client all material facts regarding any potential conflicts of interest so that the client can make an informed decision as to whether to enter into or to continue a formal relationship with the planner, or whether to take some action to protect himself or herself against the specific conflict of interest involved.[41]

Other forms of protection. In addition to the state securities law, consumers are protected by programs offered by professional associations and general contract and tort liability laws.

Private certification programs. Private, voluntary certification programs can help consumers differentiate between trained and untrained planners, without unduly prohibiting anyone from practicing financial planning.

Certification programs for financial planners include the CFP, ChFC, the IAFP Registry, and others that were discussed in the previous section. They all are conditioned upon meeting certain education, training, work experience, and testing requirements.

These are not widely known designations as yet, but the associations are working at increasing public recognition of them.

Professional liability suits. The right of consumers to sue planners is a significant influence for planners to provide competent and responsible services. Clients may sue financial planners under contract laws or tort liability laws as well as under the federal and state securities laws.

Contract liability laws are imposed for the protection of individuals to assure them that the expressed or implied promises of another will be performed. Tort law protects consumers by establishing "the liability of sellers to compensate consumers for harm." Under tort law, individuals are held to professional standards of care. A person who fails to act "in a reasonable and prudent manner" and causes harm to another is legally "negligent" and may be held liable for damages.

Some examples of potential planner liabilities are:

(1) Breach of fiduciary duty--failing to act with the "utmost good faith, and full and fair disclosure of all material facts," and failing to place the interests of the clients over the planner's own interests;

(2) Negligent planning diagnoses--failing to employ commonly accepted financial planning tools and techniques;

(3) Failing to disclose all relevant and material facts;

(4) Misrepresenting--giving false, improper, or imperfect representations;

(5) Recommending unsuitable investments;

(6) Failing to seek expert consultation when called for;

(7) Implementing investment plans negligently (untimely or incorrect);

(8) Failing to keep abreast of current practices and knowledge in the field;

(9) Abandoning the client through a unilateral severance of the relationship when the planner's services are needed, and the withdrawal harms the client; and

(10) Failing to properly supervise subordinates.

This body of law and programs for planners and other investment advisers is supplemented by laws pertaining to securities, insurance, real estate, and general consumer protection statutes. They provide sufficient regulation for financial planners.

Analysis of the Bills

The proposed measures are unnecessary and contain some inappropriate provisions. They are unnecessary for consumer protection because financial planners could be adequately regulated under the state securities act. Moreover, the bills may restrict entry of qualified persons into the occupation and weaken state regulation of financial planners.

The measures propose: using a board composed of financial planners--instead of the State Securities Commissioner--to regulate financial planners; limiting the use of the title and the practice of financial planners to those meeting the proposed licensing requirements; extending regulation to banks, savings institutions, certain accountants, lawyers, and others who are currently excluded from the State and federal advisers laws; imposing questionable educational and work experience requirements for financial planners; exempting financial planners from the malpractice insurance requirement and the records and reporting requirement; lessening the penalties for violations; and eliminating other significant regulatory powers.

Self-regulatory boards. Both bills propose to regulate planners with boards of financial planners. The use of a board of planners to oversee themselves is inadvisable because of the possibility of conflict of interests.

Senate Bill 2144 establishes a board of five financial planners and two lay persons with full powers to regulate financial planners. It authorizes the board to grant, suspend or revoke licenses, promulgate rules, and enforce the regulations.

Senate Bill 2145 establishes an advisory board of five financial planners to "advise" the commissioner. The powers granted the board, however, are more than advisory. The board is empowered to adopt rules for the act and the commissioner *shall* refer all applications for registration to the board for its input. These are two of the most significant powers of regulatory boards.

By its rulemaking authority, this "advisory board" would be setting state policies and procedures, and the commissioner would, in effect, be carrying out its directives.

The "advisory board" is also authorized to advise the commissioner, make recommendations to the commissioner on ethics, statutes, rules, or violations, and perform other duties as requested by the commissioner.

Because there are definite consumer risks associated with financial planning, it is important that the regulator clearly and strictly represents consumers' interests. It is also important that the regulator be knowledgeable about the regulation of securities as well as financial planning because the activities of planners are so closely tied to other securities sales and advisory activities.

Instead of a board, the Securities Commissioner is the more appropriate regulator. If the commissioner needs technical information about financial planning or other fields, the commissioner is authorized by the state securities act to seek consultation and may do so without specific legislation creating a board. There are no advisory boards for investment advisers, securities dealers, or others currently regulated by the State Securities Act.

Title and practice restrictions. The two bills may unduly restrict qualified persons and institutions from engaging in their legitimate occupational activities. They could infringe on the rights of others to pursue their occupations which would have serious anticompetitive effects.

Both bills reserve the title "financial planner" and the practice of financial planning to those who are registered or licensed as financial planners or financial planners representatives. They make it illegal for anyone to use the title or provide the service for compensation without being licensed (Senate Bill 2144) or registered (Senate Bill 2145) by the State.

The bills define financial planner to encompass all those calling themselves financial planners, or describing their business as financial planning; receiving compensation for this service; *or* providing comprehensive financial planning services that include collecting and assessing relevant financial data, identifying financial objectives and financial problems, providing written financial plans, implementing or coordinating implementation of the recommendations, and periodically reviewing and revising the plan.

The broad scope of activities and occupations covered by these bills would mean that banks, savings institutions, and trust companies which are already regulated under financial institution laws; lawyers, accountants, and others for whom financial advisory activities are incidental; and certain securities dealers and others who are excluded from the advisers law would either have to cease their legitimate financial advisory and planning activities or submit to the requirements of the proposed measures.

It is neither necessary nor reasonable to subject the entire financial services industry to the proposed measures. It would reduce the number of providers of planning services and possibly raise the cost of such services to consumers.

Restrictive and unclear licensing requirements. Senate Bill 2144 imposes licensing requirements that are unduly restrictive.

Effective July 2, 1990, applicants must complete a course for financial planners or an alternative course approved by the board, be previously licensed as a Hawaii financial planner representative for two years, and have two years of full time experience as a licensed Hawaii financial planner representative.

Invalid residency requirement. The requirement for experience as a *Hawaii* licensed planner representative is restrictive and very likely unconstitutional. It means that financial planning representatives must have two years of experience in Hawaii before they may apply to be financial planners. Residency requirements have been found to bear no relationship to occupations and unduly restrict mobility between the states and discriminates against those desiring to move to Hawaii.

Invalid training requirement. The requirement under Senate Bill 2144 for completion of a financial planners course and two years of work does not recognize that planners enter the field from many diverse routes (insurance, brokerage, banking, law, accounting, business, etc.) and that knowledge and expertise can be and are acquired by many on the job or through a variety of personalized educational programs.

Completing a course in financial planning and working for an arbitrary two-year period are not validated measures of competence.

The requirement that applicants work for licensed planners for two years could reduce competition by discouraging some who might otherwise enter the field, delay the entry to others, and create a pool of individuals needing a job with planners.

Senate Bill 2145 does not have these licensing requirements. It requires a new examination on financial planning, but unlike the securities law, it does not permit waivers for other examinations.

Elimination of insurance requirement. Under current law, investment advisers with less than two years of experience must carry $200,000 errors and omissions insurance. Those with more than two years of experience must carry $500,000 insurance. Both bills propose to eliminate the existing malpractice insurance requirement although this insurance protects consumers and planners and should not be discontinued. Nationally, one in 20 financial planners in a year is sued for negligence, and many planners are voluntarily obtaining the insurance.[42]

Locally, some planners claim that financial planning malpractice insurance is not available. A review of the situation indicated that all but four of the 33 state registered investment adviser firms were insured in June 1988. Some may have been uninsured because they were unwilling to pay the cost of the insurance which runs about $3,000 to $5,000 per year. Others--planners who are strictly planners and not sellers of any products--may have had genuine difficulties obtaining coverage. However, as of July 1988, coverage was available to eligible persons through at least one of the trade associations.

Elimination of record keeping and reporting. The State Securities Act also requires advisers to keep full records of their business for three years which must be open for inspection by the Commissioner. Neither bill requires this of financial planners.

Lesser Penalties. Senate Bill 2144 has considerably lower penalties for violations than the current law.

Under the umbrella of the state securities act, the law provides for both civil and criminal penalties for violations of the securities act. Violations of the law are subject to civil penalties of up to $100,000 and felony prosecution with imprisonment of up to 20 years. Upon conviction, a person also forfeits to the State, property or assets acquired in violation of the law. The State may dispose of these assets and provide for the injured parties.

Senate Bill 2145 maintains both types of penalties, but Senate Bill 2144 does not. It has a civil penalty of not more than $1,000 for each violation and no criminal penalties.

Other missing powers. Unlike the powers of the commissioner under the state securities act, the board has the power to investigate possible violations of the law but lacks the authority to halt activities.

Currently, the Securities Commissioner has ample authority to stop activities that are in violation of the law. The commissioner may investigate suspected violations, file suit to enjoin an individual from engaging in acts that are violations of the law, and (since 1985) may also issue "cease and desist orders" when it appears that a person is engaged in or about to engage in acts in violation of the state securities law. The commissioner's authority to issue "cease and desist orders," pending a hearing, allows the State to move quickly to curb fraudulent activities and is necessary for the protection of investors.

Improving the Current Program

The current securities law provides an adequate and appropriate framework for regulating financial planners. It is preferable to the regulations proposed by the Senate bills. However, there are several issues pertaining to the law that the Legislature might wish to address. One relates to the exclusion of commission-only advisers from the regulations and the second relates to the enforcement of the law. Changes in these state policies and practices would enhance consumer protection.

Exclusion of commission-only advisers. By rule, a significant segment of the financial planning industry is excluded--those who advise on commissions only from the sale of securities, insurance, real estate, or other financial products and investments.

This exclusion of commission-only advisers from regulation is a significant departure from the federal policies.

Rationale for the exclusion. According to a state securities official, this rule was adopted because most commission-only advisers are securities, insurance, or real estate agents who are already subject to regulation under their respective licensing laws, and these laws would cover their provision of investment advisory services. It was thought that to include them within the scope of the advisers law would impose unnecessary and burdensome regulation on these businesses.

Other considerations. Other considerations suggest that this issue should be re-examined.

First, this exclusion of commission-only advisers by rule may be invalid. It seems to be inconsistent with the statutory definition of "investment adviser" and contrary to the apparent legislative intent to include all investment advisers falling within the scope of the law, regardless of the method of compensation.

The state advisers statute, like the federal advisers law, defines an adviser as one in the business of advising others on investments for *compensation.* The term "compensation" as defined in Black's Law Dictionary is "remuneration for services rendered, whether in salary, fees, or *commissions.*" The SEC policy regarding compensation expressly includes all methods of payment.[43] (Non-fee advisers may be compensated directly by the sponsor of a securities program, through finder's fees for referrals, or other means.)

As a direct result of this rule, many former fee and commission planners stopped charging the planning fee to avoid the law while continuing to do plans and push products for which they earned a commission.

Second, this rule effectively excludes a large part of the financial planning industry that poses substantial risks to consumers from self-dealing practices.

Nationally, commission-only advisers serve about a third of financial planning consumers. These advisers have a great potential for harm to consumers because of their inherent conflict of interest. They are the primary concern of consumer groups, and Hawaii's law contains provisions designed to discourage these advisers from acting in their own self-interest. Excluding them by rule from state regulation appears to undermine the intent of the state advisers law.

More active enforcement. To provide consumers with the protection intended by the advisers law, the DCCA should make a concerted effort to ensure that all those planners falling within the scope of the law are properly registered and conforming to the regulations.

Enforce registration requirements. A comparison of the Yellow Page listings of financial planners, financial analysts, and investment advisory firms, shows that there are many more advertising these services than are registered with the State. While some may be legitimately excluded from the registration requirement, others may not. The State could begin to enforce the registration requirement by checking on these listings.

Also, the business registration branch routinely screens organizations' description of their services and refers those with financial or investment advisory activities to the securities branch, but thus far, the securities office has not established a mechanism for promptly and routinely informing these organizations of their responsibility to register as investment advisers, if they fall within the scope of the law.

Educate and enlist the public. The State could enlist the public in encouraging compliance to the regulations. Currently, the primary way the State checks on compliance is to follow up on consumers' complaints.

To increase the effectiveness of this method and to afford consumers the protection intended under the law, the State could expand its planned consumer education program on investment frauds and abuses. It could publicize the state registration requirements and inform consumers of their rights and the legal responsibilities of advisers and where and how to file their complaints.

Enforce malpractice insurance requirement. The State is allowing financial planners who have no malpractice insurance an indefinite grace period. Given the current availability of coverage, it should enforce the requirement for the protection of consumers and in fairness to other advisory firms who are insured and assuming this cost of doing business.

Recommendations

We recommend that:

1. *The State Legislature not enact either Senate Bill 2144 or 2145.*
2. *The Department of Commerce and Consumer Affairs:*

- *amend its rules for the Uniform Securities Act to include, rather than exclude, investment advisers who receive remuneration in the form of commissions only.*
- *more actively enforce the securities law by contacting those financial planners who should be registered as investment advisers; expanding its consumer education program; and enforcing the malpractice insurance requirement.*

NOTES

1. U.S. Securities and Exchange Commission, *Financial Planners,* Report of the Staff of the U.S. Securities and Exchange Commission to the House Committee on Energy and Commerce's Subcommittee on Telecommunications and Finance, Washington, D.C., February 1988, pp. 8-9.

2. Barbara Roper, *Financial Planning Abuses: A Growing Problem, A Report of the Consumer Federation of America,* Washington, D.C., July 1987, pp. 2, 10.

3. "Financial planners: What are they really selling?" *Consumer Reports,* January 1986, p. 37.

4. Hubert L. Harris, Jr., "Personal Financial Planning: The Competition," *Journal of Accountancy,* July 1985, p. 65.

5. *Consumer Reports,* pp. 37-38.

6. U.S. Securities and Exchange Commission, *Financial Planners,* p. 18.

7. *Ibid.,* pp. 47-48.

8. *Ibid.,* p. 51, and International Association for Financial Planning, "*IAFP: Profile*," [p.2].

9. Telephone interview with Brent Neiser, Director of Education and Professional Development, The Institute of Certified Financial Planners, Denver, Colorado, May 4, 1988.

10. U.S. Securities and Exchange Commission, *Financial Planners*, p. 89.

11. "CLU Chartered Life Underwriter," American Society of CLU and ChFC.

12. *Ibid.*

13. U.S. Securities Exchange Commission, *Financial Planners,* p. 91.

14. Roper, p. 63-64.

15. Louis Loss, *Fundamentals of Securities Regulation,* Boston, Little, Brown and Company, p. 8.

16. Eli P. Bernzweig, *The Financial Planner's Legal Guide,* Englewood Cliffs, N.J., Prentice Hall, 1986, p. 13.

17. Loss, p. 671.

18. U.S. Securities and Exchange Commission, *Rel. No. IA 1092, Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,*" October 8, 1987, p. 5.

19. *Ibid.*, p. 9.

20. 1957 Haw. Sess. Laws, Act 314.

21. "Bill Regulating Investment Advisers to Be Offered," *Honolulu Star-Bulletin,* January 16, 1984, and Senate Standing Committee Report No. 238-84 on Senate Bill 1694-84, Twelfth Legislature, 1984, State of Hawaii.

22. 1984 Haw. Sess. Laws, Act 281.

23. Haw. Admin. Rules, Section 16-38-1, July 18, 1985.

24. Department of Commerce and Consumer Affairs, Business Registration Division, June 1988.

25. Letter to Office of the Auditor, State of Hawaii, from Jeffrey F. Smith, Counsel, Pennsylvania Securities Commission, for the North American Securities Administrators Association, June 3, 1988.

26. Letter to the Office of the Auditor, State of Hawaii, from Margaret M. Jacobs, IDS Financial Services, Inc., June 29, 1988.

27. "California Planner Bill Fails," *Financial Planning,* November 1986, p. 35, and telephone interview with William Kenefick, California Department of Corporations, May 3, 1988.

28. Statement of F. Daniel Bell, III, North Carolina Securities Administrator, Hearing before the House Subcommittee on Telecommunications, Consumer Protection and Finance on *Investment Advisers, Financial Planners and Consumer Protection,* Washington, D.C., June 11, 1986.

29. Anne Gilmore Clarke, "The Growing Pains of Regulation," *Best's Review,* September 1987, p. 53.

30. Eliot Lancaster, "Not Enough Abuses?" *Financial Planning,* February 1986, p. 58.

31. Alexandra Armstrong, "The Case For Federal Consumer Protection In The Financial Planning Industry," in *A Self-Regulatory Organization (SRO) For The Regulation of Financial Planners Proposed by International Association For Financial Planning,* undated.

32. *Recommendations on Financial Planner Regulation,* The Institute of Certified Financial Planners, Colorado, June 22, 1987.

33. Anthony C. Smith, "Regulation of Financial Planning: Pro and Con," *Probate and Property,* January/February 1987, p. 13.

34. Roper.

35. Study Group on Financial Planning Regulations, Department of Commerce and Consumer Affairs, Report on Financial Planning Regulations, Honolulu, Hawaii, December 11, 1987.

36. Roper, p. 34-39.

37. Letter from Eileen M. Sharkey, President, Institute of Certified Financial Planners to institute members, September 7, 1988.

38. "Investment execs will review industry," *Pacific Business News,* September 12, 1988.

39. Haw. Admin. Rules, Section 16-38-7, October 1, 1985.

40. *Ibid.*

41. U.S. Securities Exchange Commission, Release No. 770, p. 562.

42. Sanford L. Jacobs, "Wary Advisers: Financial Planners Take More Precautions Against Client Lawsuits," *Wall Street Journal,* July 28, 1987.

43. U.S. Securities and Exchange Commission, *Rel. No. IA 1092*, pp. 9-10.