FINANCIAL PLANNING STANDARDS COUNCIL®

# Financial Planning Standards Council

## Response to CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients

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# INTRODUCTION

Financial Planning Standards Council (FPSC) is pleased to respond to the Canadian Securities Administrators (CSA) Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* ("the Consultation Paper"). As a professional standards-setting and certification body working in the public interest, FPSC's purpose is to drive value and instill confidence in financial planning. FPSC ensures those it certifies – CERTIFIED FINANCIAL PLANNER® professionals and FPSC Level 1® Certificants in Financial Planning – meet appropriate standards of competence and professionalism through rigorous requirements of education, examination, experience and ethics. With FPSC's formal partnership with the Institut québécois de planification financière (IQPF), which is the only organization authorized to certify Financial Planners in Québec, there are more than 23,500 financial planners in Canada who have met, and continue to meet, FPSC's standards.

FPSC commends the CSA for undertaking this consultation process. We support the general direction and intent of the reforms proposed in the Consultation Paper, both in terms of the targeted reforms, and the regulatory Best Interest Standard (BIS). We agree with the key investor protection concerns the CSA has identified, including the "information asymmetry" between registrants and clients, as well as the "expectations gap", which as the CSA notes, is perpetuated and exacerbated by the use of titles that do not accurately reflect or convey registrant proficiency or service offerings. In the current regulatory environment, consumers are confused and at risk because they do not understand the differences in proficiencies and qualifications among registrants, and are not readily able to identify an appropriate individual to provide them with the type of financial help that they need.

While many of the proposals in the Consultation Paper do, in fact, have the potential to improve the current situation and to facilitate the CSA's intended outcomes – namely "to better align the interests of registrants with the interests of their clients, to improve outcomes for clients, and to clarify the nature of the client-registrant relationship for clients" – we have identified areas where modifications to the proposals could be made to improve the likelihood of achieving these desired outcomes. We have provided our comments and recommendations below.

# PROFICIENCY REQUIREMENTS

We agree that in order to achieve better client outcomes, the CSA must enhance proficiency requirements for registrants. We note that a number of the recommended targeted reforms for registrants would suggest a level of knowledge, skills and abilities that goes well beyond the existing education and proficiency requirements for registration and licensure. In fact, a number of the proposed targeted reforms suggest that registrants should be engaging in aspects of financial planning, but the proposed reforms do not address the necessary education or demonstrated proficiency in order for these individuals to do so.

Financial planning is defined, in part[1], as the disciplined, multi-step process of assessing an individual's current financial and personal circumstances against his or her future desired state, and developing strategies that help meet their personal goals, needs and priorities in a way that aims to optimize the

[1] As fully defined by the *Canadian Financial Planning Definitions, Standards and Competencies*, "Financial Planning" is the disciplined, multi-step process of assessing an individual's current financial and personal circumstances against his future desired state, and developing strategies that help meet his personal goals, needs and priorities in a way that aims to optimize the allocation of his resources. Financial planning takes into account the interrelationships among relevant financial planning areas in formulating appropriate strategies, including financial management, insurance and risk management, investment planning, retirement planning, tax planning, estate planning and legal aspects. Financial planning is an ongoing process involving regular monitoring of an individual's progress toward meeting his personal goals, needs and priorities, a re-evaluation of financial strategies in place and recommended revisions, where necessary.

allocation of resources. This definition, when held up against several of the proposed targeted reforms, indicates that the CSA believes all registrants, regardless of specific licensure, should undertake certain aspects of "financial planning" as part of their regular client engagements.

For example, the proposed "Know Your Client" (KYC) reforms would require registrants to collect, interpret, and ultimately apply interpretations related to a client's tax positon, employment status and/or prospects, accumulated assets and debts as well as spousal and/or dependent needs. The level of knowledge, skills and abilities required for this level of analysis and interpretation goes well beyond the current proficiency requirements of a registrant by necessitating the ability to understand the interrelationships among relevant financial planning areas in order to make such interpretations or formulate appropriate strategies.

The same issue of insufficient proficiency requirements exists when it comes to the proposed "Suitability" reforms, wherein registrants would be asked to analyze and determine whether other "basic financial strategies" or financial products ("such as insurance or banking products") would better achieve the client's needs and objectives than that of a securities transaction. This would effectively ask for compliance in areas where registrants do not by necessity possess the requisite knowledge, skills or abilities to do so.

Requiring registrants to take these kinds of financial planning-related factors and their interrelationships into account when serving clients can only produce the CSA's desired effect on investor outcomes if all registrants, regardless of intended platform, are required to achieve at least a foundational level of proficiency in financial planning as an additional, minimum requirement for licensure. This foundational level of proficiency prescribed for licensure would need to be uniform across all registrants to enhance consumer protection, to alleviate consumer confusion, and to ensure a consistent client experience.

In our view, to ensure such a level of consistency across the entire industry, the educational requirements and assessment of competence for financial planning proficiency should be separated from the educational requirements and assessment of competence for investment (or insurance, for that matter) licensure, and should be administered and overseen by a body that is expert in such areas of knowledge and proficiency.

To this end, FPSC would be pleased to lend its expertise, spanning over two decades, to the CSA in the creation, implementation and oversight of a foundational financial planning qualification that would help ensure registrants are equipped with the appropriate knowledge, skills and abilities needed for the proposed reforms to be effective.

In fact, the existing FPSC Level 1 Certification in Financial Planning – which is specifically designed to ensure individuals have the knowledge, skills and abilities needed to provide basic financial planning strategies and solutions to clients who have less complex needs – could be used as a benchmark to determine the foundational education and proficiency needed to comply with the proposed reforms.

# TITLES

FPSC supports the CSA's efforts to prescribe the use of titles. The financial services industry should use plain-language titles that clearly communicate to consumers what specific products a registrant is actually authorized to offer, and more importantly, what sort of advice they are qualified to provide. In combining these two concepts, we recommend titles be prescribed in one of two ways.

## Approach #1 – All Registrants Have Foundational Financial Planning Certification

| Products the Registrant Intends to Offer | Minimum Proficiency Requirements | Prescribed Title Upon Licensure | Additional Voluntary Financial Planning Qualifications Earned Following Licensure | Subsequent Title | Registration and Oversight |
|---|---|---|---|---|---|
| **Mutual Funds Only** | Completion of proficiency requirements for registration as a "dealing representative" (Mutual Fund Dealer) **AND** Completion of new baseline financial planning proficiency requirements | Mutual Funds Advisor | **None** | **Mutual Funds Advisor** | **Accredited Professional Body for Financial Planning[2] AND MFDA** |
| | | | **Completion of advanced certification in Financial Planning (CFP Certification)** | **Financial Planner – Mutual Funds Advisor** | **Accredited Professional Body for Financial Planning AND MFDA** |
| **Securities and Mutual Funds** | Completion of proficiency requirements for registration as a "dealing representative" (Investment Dealer) **AND** Completion of new baseline financial planning proficiency requirements | Securities Advisor | **None** | **Securities Advisor** | **Accredited Professional Body for Financial Planning AND IIROC** |
| | | | **Completion of advanced certification in Financial Planning (CFP Certification)** | **Financial Planner – Securities Advisor** | **Accredited Professional Body for Financial Planning AND IIROC** |

*Although outside the purview of the CSA, the same premise could logically be applied to those individuals who advise on insurance. FPSC would encourage the CSA to bring such a rule to the Joint Forum for adoption.

Under this Approach, as a minimum requirement for product licensure, all registrants would be required to demonstrate a foundational level of proficiency in financial planning, in addition to meeting the other prescribed proficiency requirements for their intended registration category. This foundational level of proficiency in financial planning, assessed by an appropriate professional body, would help ensure registrants possess the proficiency needed to comply with the CSA's proposed reforms, ensuring a level of knowledge, skills and abilities that would enable them to provide financial planning strategies and solutions to consumers who have relatively simple and straightforward financial planning needs.

[2] FPSC proposed a model of accrediting a professional body for financial planning in response to the preliminary policy recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives. This submission is available to read at http://www.fpsc.ca/docs/default-source/FPSC/submissions-and-remarks/fpsc-submission-to-expert-committee-june-17-2016.pdf.

Although these mutual fund and securities advisors would have the foundational level of knowledge, skills and abilities in financial planning to serve consumers who have basic financial planning needs, many Canadians have more complex, challenging and holistic financial planning needs, and require help from a fully certified professional financial planner. Therefore, consumers must be able to readily identify those financial professionals who have achieved an advanced degree of proficiency and are capable of providing them with financial planning assistance at the highest level of complexity. Under Approach #1, only registrants who complete an advanced certification in financial planning, and receive the appropriate professional designation (i.e. CFP certification), administered and overseen by a duly appropriate professional body, would be permitted to use the title or hold out to consumers as “Financial Planners”, making them easily identifiable to those who are looking for holistic, complex financial help beyond investment advice.

Because completion of a foundational financial planning certification would help ensure all registrants have the level of proficiency required to comply with the CSA’s proposed reforms and would more generally improve the quality of professional advice that registrants are able to provide consumers, in our opinion this Approach is the best solution to titling from a consumer perspective.

We do understand, however, that implementing a foundational financial planning proficiency requirement for all registrants may pose significant challenges to the industry, leading to fears of reduced availability of financial services to consumers, and could pose significant challenges to the industry in the short- to medium- term.

For this reason, we have identified a second possible approach (“Approach #2”) for prescribing titles.

## Approach #2 – Not All Registrants Have Foundational Financial Planning Certification

| Products the Registrant Intends to Offer | Minimum Proficiency Requirements for Licensure | Prescribed Title Upon Licensure | Additional Voluntary Financial Planning Qualifications Earned Following Licensure | Subsequent Registrant Title | Registration and Oversight |
|---|---|---|---|---|---|
| **Mutual Funds Only** | Completion of proficiency requirements for registration as a “dealing representative” (Mutual Fund Dealer) | Mutual Funds Representative | **None** | **Mutual Funds Representative** | **MFDA** |
| | | | **Completion of baseline financial planning proficiency requirements** | **Mutual Funds Advisor** | **Accredited Professional Body for Financial Planning AND MFDA** |
| | | | **Completion of advanced certification in Financial Planning (CFP Certification)** | **Financial Planner – Mutual Funds Advisor** | **Accredited Professional Body for Financial Planning AND MFDA** |

| Products the Registrant Intends to Offer | Minimum Proficiency Requirements for Licensure | Prescribed Title Upon Licensure | Additional Voluntary Financial Planning Qualifications Earned Following Licensure | Subsequent Registrant Title | Registration and Oversight |
|---|---|---|---|---|---|
| **Securities and Mutual Funds** | Completion of proficiency requirements for registration as a "dealing representative" (Investment Dealer) | Securities Representative | **None** | **Securities Representative** | **IIROC** |
| | | | **Completion of new baseline financial planning proficiency requirements** | **Securities Advisor** | **Accredited Professional Body for Financial Planning AND IIROC** |
| | | | **Completion of advanced certification in Financial Planning (CFP Certification)** | **Financial Planner – Securities Advisor** | **Accredited Professional Body for Financial Planning AND IIROC** |

*As with Approach #1, this Approach could similarly be applied to those individuals who sell and advise on insurance products.

Rather than requiring all registrants to have a foundational financial planning certification – which would need to be the case in order for the CSA's proposed reforms to be implemented as currently proposed – Approach #2 would allow a category of registration for those individuals who only intend to offer specific products or to provide investment advice related specifically and solely to the products they are licensed to offer. These mutual funds and securities representatives would not necessarily be proficient or certified to provide financial planning, and therefore would not be permitted to hold out to consumers as such. That said, there is still room to enhance the proficiency levels and regulatory obligations of these individuals through added requirements for licensure, but not to the extent proposed in the Consultation Paper. FPSC would be pleased to lend its expertise in addressing increased proficiency and a lesser degree of foundational financial planning understanding in this scenario as well.

While less transformative, insofar as minimum registrant proficiency requirements would be similar to those that exist today, Approach #2 would nonetheless be effective in mitigating the potential challenges identified with Approach #1, while simultaneously ensuring consumers are readily able to identify those registrants who are able to provide them with the type of financial advice that they need – be it straightforward investment advice, or broader, more holistic financial planning assistance.

Ultimately, what is most important from the consumer's perspective is not that all registrants are proficient in financial planning, but rather that they can understand what a registrant is qualified and authorized to do by looking at their title, and as a result are able to readily identify someone who can provide them with the help they need. This can most easily and effectively be accomplished through strict titling rules, with any gaps covered through disclosure requirements and a BIS.

So long as registrants who are not qualified to provide financial planning services do not inappropriately attempt to do so or to hold out as such, either of these two Approaches to titling would be effective.

# Best Interest Standard

FPSC supports the proposal for a BIS, and believes it would be useful over and above the proposed targeted reforms. However, after looking at the constituting principles, and in light of our comments above, we suggest some modifications that would enhance the utility of this Standard for both registrants and consumers.

As it is written, the proposed BIS does not clearly communicate the fact that a registrant's ability to act in their clients' "best interests" is inextricably linked to their proficiency and qualifications, and thus what a BIS actually means for a registrant and how they should act in accordance with it would differ depending on what they are qualified to do and how they hold themselves out. Part of the problem is due to the wording of Principle 1, which simply reads "Act in the best interests of the client". As per the accompanying guidance (which itself perpetuates confusion, given that it effectively repeats the Principle itself verbatim), this means "to always act in a manner that is focused on achieving what is best for their clients, including (where applicable) how to best achieve the clients' investment needs and objectives at the time the dealings with the client occur", and further requires registrants to "monitor their clients' outcomes to confirm that their dealings with their clients are in fact achieving what is best for the client".

In assessing whether one has lived up to this Principle, registrants who have vastly different proficiencies and qualifications, and who hold out in different manners, could not realistically be held to the same standard. When it comes to looking at whether a decision made was the best decision for the client at the time, the expectations for a fully qualified financial planner who uses the "Financial Planner" title in their dealings with clients (as per Approach #2 above) would necessarily be higher than those for a "Representative" who has satisfied only the minimum requirements for licensure and does not claim or attempt to provide advice beyond the scope of the products they are licensed to offer.

The same basic issue exists with Principle 5, which reads "Act with care", and as per the accompanying guidance, requires firms and representatives to "exercise the degree of care, diligence and skill that a reasonably prudent and unbiased firm or representative (as applicable) would exercise". How a "Representative" who is qualified and authorized only to advise on the specific products they are licensed to offer "acts with care" and "exercises skill" would be very different than how a fully qualified "Financial Planner" does the same. Although the CSA's guidance does seem to allude to this point, we suggest revising the wording of the Principle itself to make this expressly clear to all, especially consumers. Instead of "Act with care", the principle could more accurately read "Act with care expected in accordance with one's knowledge, skills, abilities and professional qualifications."

# Conclusion

FPSC supports the intended outcomes of the proposed reforms, including better alignment between the interests of registrants and clients, improved client outcomes, and clarification of the nature of the client-registrant relationship. We believe that with modifications to the proposed reforms, these outcomes can be achieved.

Several of the proposed targeted reforms, including the new KYC and Suitability requirements, suggest that registrants should be engaging in areas directly related to the financial planning process. If these reforms are to work as intended, registrants must first have the requisite education and demonstrated proficiency to do so, which must be demonstrated through a foundational financial planning certification assessed by an appropriate professional body for financial planning. If the CSA believes that requiring all registrants to have a foundational level financial planning certification would be too onerous, then the proficiency levels and regulatory obligations of these individuals should not be enhanced to the extent proposed in the Consultation Paper. In any case, FPSC looks forward to lending its expertise to the CSA in determining the appropriate proficiency requirements related to financial planning for all registrants.

Regardless of what level of proficiency the CSA believes is necessary for all registrants to have, it is essential that consumers are able to understand what registrants are authorized and qualified to do when looking at their titles. To this end, both of our proposed Approaches would allow consumers to readily identify those registrants who are able to provide them with the type of advice they need – be it straightforward investment advice, or broader, more holistic financial planning assistance.

Only once registrant proficiency has been enhanced and titles have been prescribed so as to communicate the competencies of registrants can a BIS be implemented effectively. In implementing this Standard, it must be made clear to both registrants and consumers that a registrant's ability to act in a client's "best interests", and what that means in the context of the individual's registration and title, depends on their required proficiency and qualifications.