NOTICE TO CFP® PROFESSIONALS AND FPSC LEVEL 1® CERTIFICANTS IN FINANCIAL PLANNING

About the Conduct Review Panel:

The Financial Planning Standards Council (FPSC®) is a national professional oversight body that develops, promotes and enforces professional standards in financial planning.

The Conduct Review Panel (the "Panel") is an independent Panel composed of CFP® professionals and public members, from across Canada. The Panel supports FPSC's professional-oversight mandate by reviewing staff reports and determining the appropriate disposition of complaints, in the public interest. The Panel currently has seven members including one public member. The membership reflects significant, diverse cross-sector industry experience and gender and geographic diversity.

Notice to Professionals:

The purpose of this notice is to remind FPSC certificants that, absent specific authority such as a valid power of attorney or trading authorization, you cannot take instructions from someone other than your client. This is true even when the instructions come from a relative (parent, child, etc.) or spouse. This is also true when there are challenging circumstances and you are finding it hard to reach your client because they are away or unresponsive.

As highlighted by a FPSC Hearing Panel in a recent decision, a "*client's account always belongs to the client, so only the client can give instructions regarding that account*".

The Panel has recently reviewed a number of cases involving complaints received against CFP professionals who took instructions from a client's spouse or family member and did not confirm those instructions with the client directly or have evidence that the client authorized the transactions. In some instances, this conduct represented an established pattern of conduct and in other cases the conduct was isolated to one or two instances.

Given these recent cases, the Panel felt it was important to provide additional guidance and remind FPSC certificants of their professional obligations to:

- Act in their client's best interests (Principle 1 of the *Code of Ethics*);
- Identify the client's goals, needs and priorities (Practice Standard 3); and
- Take due care in delivering financial advice and/or services to clients (Principle 7 of the *Code of Ethics*).

In February 2018, FPSC's Hearing Panel found that a CFP professional engaged in professional misconduct by redeeming funds in his client's (the wife's) account on instructions received from her husband. While the client had previously deferred financial planning decisions to her husband (also a client), the Hearing Panel found that a CFP professional can only "*accept instructions […] from their client or lawful substitute decision maker*".

Meeting your professional obligations as a CFP professional requires that you communicate directly with your client and take reasonable measures to ensure that the client understands the scope of your engagement and recommendations. It is impossible to understand your client's goals, objectives, priorities and needs absent direct and regular communication with your client. Direct engagement with your client is fundamental to the client/planner relationship and key to building trust. Furthermore, taking instructions from someone other than the client or a lawful substitute decision maker poses risk of financial harm to the client.

In a joint engagement (for example, where both the husband and wife are clients), CFP professionals should take care to avoid speaking to or addressing only one spouse regarding a recommended strategy or financial planning decision or taking instructions from only one of the clients. Even where accounts are held jointly, and each client has legal authority over the accounts, as a matter of good practice and to ensure you are placing your client's interests first, all instructions should be confirmed with both clients in the joint engagement.

In April 2018, FPSC's Hearing Panel found a CFP professional's failure to have discussions with his client (the wife) and, instead, to only communicating with the husband (also a client), was a breach of the CFP professional's client first obligation to the wife. The Hearing Panel noted that "*the misconduct occurred over a lengthy period and […] was not in the best interest of the client*".

The Panel would like to remind members of the profession to review their obligations under the *Standards of Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning*, for guidance on handling individual and joint client relationships. To meet their professional obligations, FPSC certificants should at a minimum:

- Take steps to verify the identity of their clients, especially when instructions are received through a written format such as e-mail[1].
- Decline instructions from anyone other than the client or a lawful substitute decision maker.
- If the client is a corporation, take appropriate measures to ensure that the individual giving instructions has the authority to do so and keep notes or written directive in the client file.
- Ensure consent of all clients is obtained for joint accounts and any recommendations or implemented financial planning strategies, are in all clients' best interests.

We hope that this notice will help guide you in advancing your professional financial planning practice.

Yours truly,

Marc André Castonguay, CFP, CIM
Chair, Conduct Review Panel

[1] In accordance with Rule 18, FPSC certificants are expected to comply with all applicable firm, employer and regulatory obligations.