



Financial Planning Standards Council

Submission to the Investor Advisory Panel

January, 2011

Introduction

Financial Planning Standards Council (FPSC) is pleased to contribute to the Ontario Securities Commission Investor Advisory Panel (Panel) through this submission. We look forward to reviewing the results compiled by the Panel and the ensuing recommendations to be made to the Ontario Securities Commission.

As a leader in the standard-setting for financial planning in Canada, FPSC continues to address the growing needs and concerns of consumers. FPSC was incorporated on November 10, 1995 as a not-for-profit organization on the initiative of organizations whose members deal with the personal finances of individuals. It continues to be supported by The Financial Advisors Association of Canada (Advocis), Canadian Institute of Chartered Accountants, Canadian Institute of Financial Planning, Certified General Accountants Association of Canada, Certified Management Accountants of Canada and Credit Union Institute of Canada and in 2010 welcomed the Institut québécois de planification financière as the newest member organization.

FPSC is dedicated to ensuring Canadians' financial planning needs are well served. We accomplish this by certifying financial planners, developing, promoting, and enforcing professional standards for financial planning, and by raising awareness of the importance of financial planning to Canadians. FPSC has received ISO 17024 accreditation for the Standards Council of Canada (SCC) for its role as the certifying body for the Certified Financial Planner® certification program in Canada. There are currently more than 18,000 CFP professionals in Canada - 52% of which practise in Ontario - and there are more than 126,000 individuals who currently hold CFP certification in 23 countries around the world, through affiliated organizations.

Our submission focuses specifically on two areas:

- The question of whether financial service representatives should be held to a fiduciary standard of care
- The need for title protection for the term financial planner and related titles to further protect Canadian consumers from potential fraud and misleading information.

As an organization whose primary concern is to ensure that Canadians receive the highest level of professional financial planning advice, we feel we are in a unique position to address these questions.

Fiduciary Duty

There is a growing disconnect between consumers and financial service representatives. The complexities of compensation methods for financial products and the blurring grey areas between sales and advice make it increasingly difficult for consumers to know whether or not their financial service representatives are truly acting in their best interests. Media coverage of financial scandals and misconduct by financial service representatives in Canada and the neighbouring United States has created mistrust between the public and the financial service industry.

As a result, there have been increased calls in Canada and internationally to hold financial service representatives to a higher standard: a fiduciary standard of care.

There are five generally accepted principles behind a fiduciary relationship. These are:

1. Put the client's best interest first;
2. Act with the skill, care, diligence and good judgement of a professional;
3. Provide full and fair disclosure of all important facts;
4. Avoid conflicts of interest; and
5. Fully disclose and fairly manage—always in the client's favour—unavoidable conflicts.

There is a legal argument that suggests that a fiduciary relationship cannot be imposed by statute: it either exists or it doesn't, based on the terms of the relationship. In a true fiduciary relationship, a client is able to vest the utmost trust in their fiduciary. The client would be completely relieved of the need to engage with the fiduciary. Such a relationship does not however reflect the nature of the relationships between most clients and their financial service representatives.

Today, consumers are taking a more active role in their own financial situation. Many clients research products and direct investments, suggesting that the very nature of the relationship may not truly be a fiduciary one. In fact, a financially literate consumer should take an interest in, and participate in, financial decisions that may affect their financial futures. Yet, it is undeniable that financial service representatives need to put the interests of the client above their own.

The common principles of a fiduciary relationship are important for financial service professionals to recognize and strive for, but imposing and using a fiduciary standard of care on all financial service professionals is not a realistic solution due to the practical implications of enforcing it, and the legal arguments which would suggest that in fact the nature of the relationship is not that of a "true" fiduciary.

Admittedly, there needs to be a better solution than the existing model. Currently a "Know Your Client" form is the standard for determining suitability of investments and

is the main source of consumer protection against improper advice from a financial service representative. Consumers assume that their financial service professionals are acting in their best interests—as financial service professional should—but have limited certainties that they putting the clients’ interests above the representative.

As an organization that serves the public interest, we support the principles of a fiduciary standard for financial planners that ensure that a client’s interest always comes ahead of the interests of the planner. We believe that a financial service representative who advertises herself as providing financial advice should always act with the skill, care, diligence and good judgement of a professional; avoid conflicts of interest; provide conspicuous, full and fair disclosure of the facts and fully disclose, and fairly manage (in the client’s favour) unavoidable conflicts. We believe that these principles should be enshrined in law to protect Canadian consumers receiving financial advice, while recognizing the distinction between financial advice and product sales. We do not however support enshrining a fiduciary relationship in law.

Our specific recommendations

- A fiduciary relationship does not exist in the vast majority of financial service representative-client relationships; therefore, a fiduciary standard should not be imposed comprehensively on all financial services representatives.
- Financial service representatives providing financial advice should be required to execute their duties always putting their client’s interests ahead of their own.
- Advisors holding themselves out as something other than product salespeople should be held to the following duties of care to their clients – always act with the skill, care, diligence and good judgement of a professional; avoid conflicts of interest; provide conspicuous, full and fair disclosure of the facts and full disclose, and fairly manage (in the client’s favour) unavoidable conflicts.

Title Protection and the Distinction Between Sales and Advice

Consumers often do not know how to distinguish among the multitude of titles - financial planner, financial advisor, financial consultant, personal financial planner, money manager or investment advisor.

In order to provide better consumers protection, the financial services industry and regulators should proactively distinguish between professional advisors who should be obligated to put their clients’ interests ahead of their own, and product salespeople who may not. Regulation should prohibit ambiguous terms that only serve to confuse the public.

Generally, the nature of the relationship between a CFP professional and a client in a financial planning capacity is considered to be primarily a professional advisory role; a CFP professional will create a tailored financial plan for the client and based on their needs, may recommend specific products, investment or other strategies based on not only the financial goals of the client, but also on the suitability of the products for that particular individual.

As the nature of a relationship between a CFP professional and their client is primarily that of an advisory role, it is reasonable that CFP professionals be held to a higher standard of client care than those whose primary job function is that of selling products.

We believe that stronger regulations and control over the use of titles to describe a person's primary job function would benefit consumers by providing appropriate standards and by distinguishing between individuals who provide financial planning or give professional financial advice as their main job function, as opposed to individuals whose primary function (e.g. an insurance broker) is in selling financial products. The plethora of terms currently in use, that describe both salespeople and professional advisors, increasingly confuse the public as to whether their financial services representative is in fact a salesperson looking after his/her own interest or a true professional looking after the client's interest.

To protect consumer, stricter regulation is needed in Ontario on who can use terms to describe herself as a financial advisor. Currently, no regulation exists in Ontario concerning who can call herself a financial planner or advisor. A model exists in Quebec under the "Act Respecting the Distribution of Financial Products and Services" where financial services representatives are required to meet standards set by the Autorité des marchés financiers (AMF) and which prohibits titles deemed confusingly similar to "financial planner" unless they are specifically licensed under the Act.

Strictly enforced regulations of the use of titles can only serve to reduce confusion amongst consumers.

Our specific recommendations

- Establish regulations that provide a clear definition of who can use terms such as financial planner/ advisor.
- Create a distinction in regulation, by title and by standard of care, between individuals whose primary job function is to sell products and those whose primary job function is to provide professional advice.

In Conclusion

We are appreciative of the direction of the Investment Panel, and appreciate its time in reviewing our submission. We look forward to the Panel's recommendations and upcoming solutions for increased consumer protection mechanisms in the current financial service regulatory environment.

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