

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 IIROC Proposed Financial Planning Rule

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (“IIROC”)

PROPOSED FINANCIAL PLANNING RULE

I OVERVIEW

The proposed Rule is intended to define financial planning, and set out the proficiency and supervision requirements to be met by Dealer Members in providing financial planning services.

A Current Rules

There are currently no specific Rules in place that address financial planning services provided by Dealer Members. However, as described in IDA Member Regulation Notice 0239 (Principal/Agent Relationships and Financial Planning), IIROC Dealer Member Rule 39 (Principal and Agent) covers financial planning services. As a result, Dealer Members are responsible for the supervision of financial planning services provided by their employees or agents.

B The Issue(s)

Dealer Members have frequently asked for guidance in the area of financial planning, and there is currently little existing regulation in this area. The proposed Rule is intended to establish a basic regulatory framework for the provision and supervision of financial planning.

C Objective(s)

The objectives of the proposed Rule are as follows:

- To ensure that minimum education and proficiency standards are met by those providing financial planning services for a Dealer Member.
- To ensure that minimum standards are met in the supervision of employees or agents providing financial planning services for a Dealer Member.

D Effect of Proposed Rule

It is not anticipated that there will be a significant effect on Dealer Members or non-Dealer Members, market structure or competition. Industry costs may increase marginally due to the costs of compliance with the new Rule. It is believed that the benefits associated with the establishment of a regulatory framework for financial planning services are significantly greater than these additional costs. There should be no effect on other Rules, since the proposed Rule is intended to complement existing Rules, not replace them.

II DETAILED ANALYSIS

A Present Rules, Relevant History and Proposed Policy

Currently there are no Rules that apply specifically to the provision of financial planning services.

The impetus for the proposed Rule arose after IDA By-law 39 (Principal and Agent; now IIROC Dealer Member Rule 39) was implemented on May 20, 2003. IIROC Dealer Member Rule 39 requires that all “securities-related business” of an Agent be conducted through a Dealer Member. Shortly after the implementation of this rule, several Dealer Members made inquiries as to whether it applied to financial planning services. In IDA Member Regulation Notice 0239 (Principal/Agent Relationships and Financial Planning), released on September 3, 2003, it was made clear that “securities-related business” includes financial planning. The process of developing the proposed Rule was commenced in order to address financial planning proficiency and supervision matters.

In determining the proficiency considerations contained in the guidance note accompanying the proposed Rule, the Financial Planning Subcommittee took into consideration what educational qualifications could form a baseline of demonstrating proficiency in relation to financial planning. In particular, reference was made to IIROC Rule 2900 (Proficiency and Education), and the education and proficiency standards it sets out.

The proposed Rule is contained in the attached Board Resolution.

B Issues and Alternatives Considered

No other alternatives were considered.

C Comparison with Similar Provisions

Canada

Quebec

Quebec is the only Canadian jurisdiction that regulates financial planning specifically. The *Regulation Respecting the Pursuit of Activities as a Representative* (R.Q. c. D-9.2, r. 1.3) requires that financial planners enter into a written agreement with a client before services are provided. This agreement must set out the nature of the mandate to be carried out by the financial planner, an estimate of the cost to the client, and a description of the kinds of financial products the financial planner can offer. This regulation also requires that all financial planning reports be prepared in writing and forwarded to the client.

In addition to the *Regulation Respecting the Pursuit of Activities as a Representative*, the Institut québécois de planification financière (the "IQPF") oversees the training of financial planners in that province, and requires that financial planners spend a minimum of 60 hours on professional development every two years.

Mutual Fund Dealers Association

MFDA Rule 1.2.1(d) requires, among other things, that any financial planning services be provided outside of the MFDA dealer "through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association". This rule is currently undergoing modification to remove the requirement that financial planning be performed by "another person" and to remove the provision that considers individuals "subject to the rules and regulations of a widely-recognized professional association" to be performing regulated financial planning.

United States

There are no regulations that specifically cover financial planning in the United States. However, many activities that financial planners provide would overlap with the requirements of the *Investment Advisers Act of 1940*. As in Canada, the regulatory framework regarding financial planning in the United States is thin and extremely fragmented. There are organizations that have educational requirements in place to obtain a designation, but fundamentally, anyone can hold themselves out to be a financial planner and be subject to no particular regulation.

United Kingdom

Like the United States, financial planning in the United Kingdom is not subject to any separate regulation beyond what is required by the Financial Services Authority for Investment Advisors generally. There is no distinct regulation applying to financial planning.

D Systems Impact of Rule

It is not expected that there will be a major systems impact on Dealer Members as a result of the proposed Rule.

E Classification of Proposed Amendment

IIROC has determined that the proposed Rule is a Public Comment Rule.

Statements have been made elsewhere as to the nature and effects of the proposed Rule, as well as analysis. The purposes of the proposed Rule are to:

- promote the protection of investors;

- foster fair, equitable and ethical business standards and practices; and
- promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith.

The proposed Rule does not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives. It does not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.

F Anticipated Effective Date

IIROC anticipates that the proposed Rule will be made effective on a date determined by IIROC staff after receipt by IIROC of approval by the requisite provincial securities commissions that allows for an appropriate Rule implementation period.

III COMMENTARY

A Filing in Other Jurisdictions

The proposed Rule will be filed with each of IIROC's Recognizing Regulators, in accordance with s.3 of the Protocol.

B Effectiveness

The proposed Rule should be effective in ensuring Dealer Members meet minimum standards in relation to the provision of financial planning services, as there are currently no financial planning Rules in place.

C Process

The proposed Rule was developed by IIROC staff in consultation with the Compliance and Legal Section, the Education and Proficiency Committee, and the Financial Planning Subcommittee.

IV SOURCES

References:

- IIROC Dealer Member Rule 39 – Principal and Agent
<http://iiloc.knotia.ca/Knowledge/Fetch/FetchResults.cfm?Ktype=445&filter=Rule%2039>
- IIROC Dealer Member Rule 2900 – Proficiency and Education
<http://iiloc.knotia.ca/Knowledge/Fetch/FetchResults.cfm?Ktype=445&filter=Rule%202900>
- IDA Member Regulation Notice 0239 – Principal/Agent Relationships and Financial Planning
<http://iiloc.knotia.ca/Knowledge/Fetch/FetchResults.cfm?Ktype=445&filter=MR0239>
- *Regulation Respecting the Pursuit of Activities as a Representative* (R.Q. c. D-9.2, r. 1.3)
<http://www.canlii.org/qc/laws/regu/d-9.2r.1.3/20030530/whole.html>
- *Investment Advisers Act of 1940* (15 U.S.C. § 80b-1 through 15 U.S.C. § 80b-21)
<http://www4.law.cornell.edu/uscode/15/ch2D.html>
- Financial Services Authority's FSA Handbook
<http://fsahandbook.info/FSA/html/handbook/>

V REQUIREMENT TO PUBLISH FOR COMMENT

IIROC proposes to publish for comment the accompanying proposed amendments. The IIROC Board has determined that the proposed amendments are in the public interest. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered within 30 days of the publication of this notice, addressed to the attention of Brendan Hart, Policy Counsel, Member Regulation Policy, Investment Industry Regulatory Organization of Canada, Suite 1600, 121 King Street West, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of the Manager of Market Regulation, Ontario Securities Commission, 20 Queen Street West, 19th Floor, Box 55, Toronto, Ontario, M5H 3S8.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiloc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").

Questions may be referred to:

Brendan Hart
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 865-3047
bhart@iiroc.ca

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
PROPOSED FINANCIAL PLANNING RULE**

BOARD RESOLUTION

THE BOARD OF DIRECTORS of the Investment Industry Regulatory Organization of Canada hereby approves on this 16th day of July, 2008, the publication for public comment of the English and French versions of the following proposed amendments to the Rules and Forms of the Corporation:

1. A new rule and guidance note on financial planning is enacted as follows:

“RULE XXXX

Minimum Standards for the Provision of Financial Planning Services

- 1. Purpose and Application**

This rule establishes minimum industry standards for all Dealer Members and personnel (including agents) with respect to the offering or provision of financial planning services. Offering of financial planning services may include references made in marketing materials or promotional activities and the use of titles like “Financial Planner”. Financial planning services must be offered and provided only through the Dealer Member, not as an outside business activity.

- 2. Definition of Financial Planning**

Financial planning is the comprehensive process of determining how clients can meet their goals through the management of financial resources. It may encompass some or all of budgeting and planning; investments; tax; educational expenses; risk management; retirement; and estate planning. Financial planning may be an ongoing service provided to the client or a one time service.

Planning directed primarily at making investment recommendations, even where any of the other factors listed above are taken into consideration, is not financial planning.

If a client or potential client has previously engaged another person to provide financial planning services and approaches a Dealer Member to implement the investment portion of the financial plan, the Dealer Member is deemed not to be acting in a financial planning capacity and this rule does not apply. However, in making investment recommendations to such a client, the Dealer Member has the same suitability obligations as for all other clients and may not rely solely on the plan or the outside planner to meet those obligations.

- 3. Proficiency Requirements**

- (a) In the absence of any other regulations or requirements with respect to financial planning proficiency, Dealer Members must ensure that all personnel who provide clients with financial planning services are proficient. In determining proficiency, a Dealer Member should consider the qualifications, accreditations, and experience of personnel.

- (b) Only qualified personnel of a Dealer Member may provide financial planning services to clients.

- 4. Supervision Requirements**

Minimum industry standards established in the rules are applicable to financial planning.

- (a) A Dealer Member must develop written policies and procedures for the supervision of personnel, whether employees or agents, who hold themselves out as providing and / or who provide financial planning services to clients of the Dealer Member. The policies and procedures must be appropriate for the size, structure and business operations of the Member. Review or prior approval of all financial plans is not mandatory.

- (b) A Dealer Member must approve for use any software that will be used in providing financial planning services to clients.

GUIDANCE NOTE XXXX

Minimum Standards for the Provision of Financial Planning Services

A Dealer Member providing financial planning services should consider following best practices, where applicable:

1. Written Policies and Procedures

- (a) In developing policies and procedures, a Dealer Member may draw upon standards of financial planning organizations or bodies such as:
 - (i) The CFP Financial Planning Practice Standards, sponsored by the Financial Planners Standards Council of Canada, <http://www.cfp-ca.org>, (see CFP Professionals, CFP Standards Requirements & Policies)
 - (ii) Principles & Practices for the Sale of Products & Services in the Financial Sector, sponsored by the Joint Forum of Market Regulators, Financial Services Commission of Ontario, <http://www.jointforum.ca>, (see Publications)
 - (iii) Best Practices Manual for Financial Advisors, sponsored by Advocis, The Financial Advisors Association of Canada, <http://www.advocis.ca>, (see Programs & Services – Best Practices)
- (b) As part of any policies and procedures, a Dealer Member should develop forms and standards for documenting the following stages in the financial planning process:
 - (i) definition of the terms of the financial planning engagement;
 - (ii) gathering of client data and other relevant information;
 - (iii) identification of the client's goals and priorities;
 - (iv) completion of an appropriate financial plan based on the information provided and stated goals and priorities of the client;
 - (v) identification and evaluation of appropriate strategies to achieve the client's objectives based on stated goals and priorities; and
 - (vi) development and presentation of recommendations included in the resulting written financial plan.

2. Proficiency Considerations

Initial proficiency requirements:

- (a) While a Dealer Member is entitled to impose its own proficiency standards higher than those noted below, any of the following, as updated or replaced from time to time by the applicable educational and trade Associations or sponsoring organizations, may demonstrate proficiency:
 - (i) Completion of the *Canadian Securities Course* and the *Professional Financial Planning Course* sponsored by the Canadian Securities Institute,

or
 - (ii) Holding of a recognized financial planning designation, including:
 - **Certified Financial Planner™ (CFP™)**, sponsored by the Financial Planners Standards Council
 - **Personal Financial Planner (PFP™)**, sponsored by the Institute of Canadian Bankers
 - **Certificate in Financial Planning (Planificateur financier [Pl. fin.] designation)**, sponsored by the Institut Quebecois de Planification Financiere (IQPF)

- **Registered Financial Planner (R.F.P.)**, sponsored by the Institute of Advanced Financial Planners,
- (b) Any of the following designations, combined with other education or experience may demonstrate proficiency:
- **Chartered Financial Consultant (CHFC)**, sponsored by Advocis, the Financial Advisors Association of Canada
 - **Chartered Life Underwriter (CLU)**, sponsored by Advocis, the Financial Advisors Association of Canada
 - **Chartered Financial Analyst (CFA)**, sponsored by the CFA Institute
 - **Certified General Accountant (CGA)**, sponsored by the Certified General Accountants Association of Canada
 - **Certified Management Accountant (CMA)**, sponsored by the Society of Management Accountants of Canada
 - **Chartered Accountant (CA)**, sponsored by the Canadian Institute of Chartered Accountants.

Ongoing proficiency requirements:

- (c) Personnel of Dealer Members should take steps to maintain proficiency:
- (i) There may be continuing education or other requirements to maintain designations, licenses or trademarks.
 - (ii) Membership in recognized financial planning associations and/or other professional associations or bodies may be necessary.

3. Supervisory Considerations

- (a) Financial planning may be supervised by a variety of methods, including sample testing. A Dealer Member may determine the nature and frequency of the review of financial plans on a risk basis, taking into account such factors as:
- (i) The extent to which approved financial planning software is used such that the financial planner has limited ability to change the details of the output.
 - (ii) The experience of the individual financial planner.
 - (iii) The breadth of recommendations included in plans provided.
 - (iv) Potential conflicts of interest, such as differential product compensation to the financial planner dependent on recommended asset or income allocation.
- (b) A Dealer Member should include the following matters in policies and procedures as applicable:
- (i) The use of marketing materials, sales literature and other forms of client communications referencing the provision of financial planning services.
 - (ii) The use of approved financial planning business titles.
 - (iii) The use of recognized financial planning designations, licenses or trademarks (or other acceptable professional designations)."