

Via email

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Paige Ward, General Counsel, Corporate Secretary and Vice President, Policy,  
Mutual Fund Dealers Association of Canada,  
121 King St. West, Suite 1000,  
Toronto, Ontario, M5H 3T9  
[pward@mfd.ca](mailto:pward@mfd.ca)

Anne Hamilton, Senior Legal Counsel,  
British Columbia Securities Commission,  
701 West Georgia Street, P.O. Box 10142, Pacific Centre,  
Vancouver, British Columbia, V7Y 1L2.  
[ahamilton@bcsc.bc.ca](mailto:ahamilton@bcsc.bc.ca)

### **Proposed Amendments to MFDA Rule 1.2.5 (Misleading Business Titles Prohibited)**

<http://www.mfda.ca/regulation/bulletins16/Bulletin0702-P.pdf>

Kenmar Associates is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at [www.canadianfundwatch.com](http://www.canadianfundwatch.com) . Kenmar also publishes ***the Fund OBSERVER*** on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Kenmar appreciate the opportunity to respond to this consultation request. The main points we want to make is that the title *Financial Planner* must be backed up by a robust professional support infrastructure (ISO 17024 **Conformity assessment -- General requirements for bodies operating certification of persons**), the required proficiency and that the advice standard is a fiduciary one.

### **Introduction**

It is quite disappointing that the MFDA put this proposed rule out given that others are trying to find a uniform solution across the country and across platforms. Further, the rule is rather arbitrary in our opinion - a selection of a number of designations deemed to have passed some rough criteria. Rest assured, others will be coming to the table saying "me too".

Kenmar, the FPSC and others have set out a set of criteria for the Ontario government to consider in applying an Accredited Professional Body model which we are recommending they do, under the soon-to-be-created FSRA. It includes a much more robust test, not the least of which being that the Professional Body must have a public interest mandate.

In our view this proposal has the potential to undermine the efforts to mitigate financial

consumer confusion through the establishment a single, comprehensive, unambiguous, Canada-wide titling regime in financial planning and advice. This rule perpetuates a race to the bottom for the wealth management industry.

There are distinctions between financial planning and financial advice provided by a registrant in the context of providing financial services including product recommendations. Financial planning refers to the creation and delivery of a comprehensive financial plan involving investments, insurance, taxation and estate planning, while financial advice provided by a MFDA/IIROC registrant typically involves specific product recommendations with some elements of a financial needs analysis. Another difference is that the provision of investment advice is regulated (under a suitability regime) while a Financial Plan may be delivered outside of regulated channels entirely.

If the extent of industry-related education that a person has completed is that they have only passed a licensing course, (in order to sell an investment or insurance product), then their title should be reflective of this level of education and experience. Using a title such as Financial Advisor or Financial Planner is inappropriate, deceptive and misleading. Titles such as Salesperson, Dealer Representative or Insurance Agent are more appropriate in this type of circumstance. Kenmar have raised this issue with regulators for well over a decade. As regards Financial Planner, this designation should be unique and protected.

### **Our concerns with this Consultation**

1. It is inappropriate for the MFDA to be acting on this unilaterally in the middle of consultations from the CSA which include title restriction considerations.
2. The MFDA acting unilaterally has the potential to set a dangerous precedent for less than ideal titling rules, which could end up being adopted by other SROs and regulators.
3. This rule could unduly influence the Ontario government and/or the Expert Committee in making a poor policy decision.
4. The proposed rule is simplistic and there is no robust assessment of the professional bodies that confer the credentials.
5. Determination of acceptable titles should be based on a rigorous assessment under law, not an arbitrary decision by an SRO.
6. The MFDA is not expert in financial planning and therefore should not be making the assessment of what titles are acceptable and what are not for this activity.
7. CSI has two designations on the list, one of which (CIWM) is not, by definition, a comprehensive or holistic financial planning designation.
8. CSI may have a code of ethics, but it does not, in our view, have a robust disciplinary review, and is not a public interest body, so even including the PFP is problematic.
9. The CLU does not have an assessment of comprehensive holistic financial planning competence, and is an extension of CFP, so a CLU alone without CFP certification first is not a financial planning credential.
10. By using these designations, the MFDA is inadvertently watering down what it means

to be a financial planner, to the detriment of Canadian consumers.

That being said, we respect the MFDA for trying to accelerate resolution of the long-standing titling/regulation issue .

## The REAL Issue

The Consultation paper states: "The objective s of the proposed amendments are to: (i ) reduce investor confusion/the risk of investors being misled as to the qualifications of an MFDA Approved Person using the title "Financial Planner"; (ii) respond to this specific regulatory concern in a targeted , timely , and practical manner; and (iii) establish greater transparency, clarity, and consistency around the use of the title "Financial Planner" by adopting minimum proficiency requirements in this area, and core assessment criteria against which designations/certifications will be assessed".

We do not disagree with the end objective but are concerned about timing. In fact, the issue of title deception is much greater than the use of the designation "Financial Planner". The mystery shopping report commissioned by the OSC, IIROC and MFDA highlighted a number of advisor issues but the one that seemed to confuse 'shoppers' the most were the number of titles given advisors. The mystery shopping report from the OSC, MFDA and IIROC revealed that "advisors" used a total of 48 titles to describe their positions to prospective clients. Indeed, the deception issue goes far beyond titles and designations. See the Small Investor Protection Association (SIPA) report on **DECEPTION** – Reference 1. See also SIPA's latest report f **Advisor Title Trickery** This is a real eye opener. The CSA itself uses the title carelessly and implies these folks act in a client's Best interests .Hopefully, the MFDA and CSA will act on this disturbing report on misrepresentation as it is harming Canadians.

<http://www.sipa.ca/library/SIPASubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf>

A complete reform of the financial advice industry regulation is required. Scant attention has been paid to the rapid growth of the asset management industry from a transaction intermediary to a "Wealth manager". The shift from sales to advice has occurred without corresponding changes in regulatory approach. So, too, with the shifting of market risk from intermediaries to end investors as corporations move away from Defined Benefit pension plans. Products from the insurance industry like Segregated funds compete with mutual funds but are regulated differently and with a lighter touch. And the rapid rise of the elderly and retirees necessitates a thoughtful strategic regulatory response. The deception issue cannot be resolved solely by clarifying the Financial Planner title/designation. Likewise, better and more disclosure alone will not address the serious, systemic issues that have been identified –inadequate "advisor" proficiency, conflicted advice, deficient complaint handling and regulatory arbitrage. See CARP submission **re financial planning calls for the fiduciary standard**

<http://www.carp.ca/wp-content/uploads/2014/11/CARP-Submission-Ont-Gov-Expert-Committee-Financial-Advisory-Financial-Planning-Policy->

[Alternatives%E2%80%93Sept2015.pdf](#)

Basing regulations upon the assumption that investors have the ability to look out for themselves inherently means regulations are crafted for the smartest, most confident and experienced investors. This is wrong - regulation should look out for those most at risk of being taken advantage of. For this reason, a Best interests Standard should be the norm, not the exception for the so-called wealth management industry. That is the core issue.

## **Our Recommendation**

In summary, our recommendations are as follows: In order to provide financial planning one must have the credentials and education necessary for such a comprehensive review of an investor's finances. This includes a prescribed course of study, exams, a Code of Conduct and a meaningful continuing education program. Training to satisfy KYP would be the responsibility of the dealer. The licensing entity must have a robust, transparent complaint handling system with the authority to remove use of the designation from an individual.

We do not believe that the current registration and education requirements for an MFDA salesperson are adequate to effect such a review. This does not mean that some registrants have not achieved a higher level of qualifications on their own. When such qualified individuals do provide financial planning, we would consider this an Outside Business activity (OBA) that must be approved by the dealer member. Such approval shall be made publicly available via the registration database. It is our expectation that the MFDA will verify that the person has the necessary qualifications which, in our opinion, could include the CFP and IQPF designations subject to meeting complaint handling criteria. We expect the MFDA would require that the registrant accept the obligation of acting as a fiduciary and be separately paid for the task of financial planning in order to be able to use the title "Financial Planner". The suitability standard is too low a standard for developing financial plans that impact the overall financial well-being of Canadians households.

We expect that the MFDA would regulate this activity and that MFDA member dealers would supervise this OBA financial planning activity and its efficacy. It should be understood that any document labeled as a "financial plan" or purporting to be a financial plan must be prepared by a professional Financial Planner in good standing with the applicable licensing body. We expect that the MFDA would notify the applicable professional licensing body if a Financial Planner is disciplined by the MFDA and the licensing body will make available to the MFDA a real time listing of all licensees in good standing.

Given the ongoing Ontario consultation on financial advice and financial planning we

recommend the MFDA take no action until that consultation has resulted in a decision. It is our understanding that the General Legal Framework for Financial Planners will be developed by the Ministry of Finance in consultation with the Financial Services Commission of Ontario ("FSCO") and the Ontario Securities Commission ("OSC"). It is expected that the Framework will consist of clear definitions and harmonized standards for Financial Planners and comprehensive financial plans, and will include criteria for approving licensing bodies. Note also that on November 8<sup>th</sup>, Ontario announced a plan to introduce legislation to establish the Financial Services Regulatory Authority which will encompass the Financial Services Commission of Ontario, the Financial Service Tribunal, and the Deposit Insurance Corporation of Ontario. Since a very large number of insurance agents are dual-registered as mutual fund salespersons, this could impact on the financial planning issue.

### **The Titles Issue and Seniors**

Kenmar is actually more concerned about the proliferation of professional designations, particularly those that suggest an expertise in retirement planning or financial services for seniors, such as "certified senior adviser," "senior specialist," "retirement specialist" or "certified financial gerontologist." The criteria used by organizations that grant professional designations for investment professionals vary greatly. Some designations require formal certification, with procedures that include completion of a detailed and rigorous curriculum focused on financial issues, culminating with one or more examinations, as well as mandatory continuing professional education. On the other end of the spectrum, some designations can be obtained simply by paying membership dues. Nonetheless, seniors may be led to believe that these individuals are particularly qualified to assist them based on such designations. A recent Kenmar -sponsored survey found that a quarter of senior investors surveyed were told by an investment "advisor" that the he/she was specially accredited to advise them on senior financial issues, and a half of those investors were more likely to listen to the person's advice because of it.

MFDA Rule 1.2.1(d) prescribes requirements in respect of the use of business titles, including those designations/certifications used by Approved Persons holding themselves out as financial planners. While Rule 1.2.1(d) provides as follows:

The IQPF Professional Training Course is a 54 hour course of study that is taken over nine weeks. No Approved Person shall hold him or herself out to the public in any manner including, without limitation, by the use of any business name or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to the proficiency or qualifications of the Approved Person under the Rules or any applicable legislation -- we continue to see flagrant violations. Kenmar is not aware of a single dealer or salesperson that has faced a regulatory sanction for the use of misleading titles or designations. Without enforcement and meaningful sanctions, rules and guidance are meaningless.

We understand this rule includes referencing non-existent or self-conferred degrees or designations or referencing legitimate degrees or designations in a misleading manner.

Dealers therefore must have adequate supervisory procedures in place to ensure that their registered representatives do not violate this requirement. As with all supervisory procedures, these procedures should be documented, clearly communicated to employees, and effectively enforced. And, they should cover how approved designations may be used. These controls, supported by timely and robust compliance/ regulatory enforcement, would help alleviate the prevailing deception issue.

### **Grandfathering**

We support the proposal that a reasonable transition period would not be inappropriate. We would not support grandfathering as that would perpetuate the use of misleading titles.

### **Use of Other Designations/Certifications**

The proposed Rule would permit MFDA staff to approve the use of other designations/certifications, provided that the individual is able to demonstrate that such designation/certification meets the core criteria deemed appropriate for use of the title "Financial Planner" ( again, as reflected in the general assessment criteria noted below). This approach would provide MFDA staff with the ability to consider designations/certifications that have not yet been established (i.e. those that might be established in the future).Is this not building in a backdoor where even more designations could use the term "financial planner"? We fail to see how this is in the public interest.

### **Regulatory arbitrage**

Regulatory arbitrage is a big issue. We have seen how dual licensed "advisors" have been able to sell segregated funds and bypass all the applicable CSA/ MFDA rules. We have also seen it subvert the complaint handling process, OBSI effectiveness and CRM2 fee disclosure and performance reporting rules. Accordingly, we urge the MFDA to include a prohibition in its rules that a salesperson operating under MFDA rules and regulations shall not present themselves as a Financial Planner to any mutual fund client no matter what other licenses or registrations they may hold unless they meet MFDA criteria.

### **Conclusion**

Only those financial service providers who offer financial planning on a fee-for-service basis or a fee-based basis (if appropriate), who meet the required proficiency (e.g. who are members in good standing of a recognized ISO 17024 accredited professional association (or a Govt. entity) and who commit to the fiduciary standard should be permitted to hold themselves out as providing financial planning under the title "Financial Planner".

We hope this feedback information is useful to you.

Do not hesitate to contact us if there are any questions regarding our submission.

Permission is granted for public posting of this document.

Sincerely,

Ken Kivenko P.Eng.  
President, Kenmar Associates  
[kenkiv@gmail.com](mailto:kenkiv@gmail.com)

## REFERENCES

### **1. SIPA Report *Deception in the Canadian investment industry and mystery shopping***

[http://sipa.ca/library/SIPASubmissions/720\\_SIPA\\_Report\\_Deception\\_20150505.pdf](http://sipa.ca/library/SIPASubmissions/720_SIPA_Report_Deception_20150505.pdf) The referenced report is very clear. Investors are being deceived as to the true nature of the client-advisor relationship. SIPA believe that one major action initiative arising out of the mystery shopping experiment should be a clampdown on dealer marketing materials, ads, use of RR titles and complaint handling. Until a fiduciary standard of advice giving is established, regulators need to clarify for investors exactly what "dealing fairly, honestly and in good faith" really means. As it stands, these comforting words as applied in practice are misleading investors. Related to this is the crying need to add advisory fees and product cost to the list of suitability criteria. More investor education and enhanced disclosure are necessary but insufficient responses to the systemic issues in Canada's Wealth management industry shortcomings.

### **2. CFA comment letter on financial advice and planning**

<https://www.cfainstitute.org/Comment%20Letters/20150918.pdf>

### **3. Choosing the Best Financial Advisor: Sage Advice—Chapter 13: Morningstar**

<http://www.morningstar.ca/td/industry/news.asp?changeprtl=y&articleid=894>

### **4. What every older Canadian should know about Financial planning – Seniors**

<http://www.seniors.gc.ca/eng/working/fptf/financial.shtml>

### **5. Different Types Of Canadian Financial Advisors – Which Is Right For You?**

<http://www.moneysmartsblog.com/different-types-canadian-financial-advisors/>

### **6. The Difference Between A Stockbroker, Financial Advisor And Planner Explained - Forbes**

<http://www.forbes.com/sites/feeonlyplanner/2012/03/15/the-difference-between-a-stockbroker-financial-advisor-and-planner-explained/>

### **7. The future of advice: Part 1 | Tessa Wilmott | Your Advisor and You | Morningstar**

<http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=636452>

**8. Regulatory Arbitrage**

<http://www1.law.umn.edu/uploads/3d/sF/3dsFF3ucy5Dc04r-tWv-Xw/Fleischer-RegulatoryArbitrage-03-08-10.pdf>

**9. OSC IAP Comment letter on financial advice and Planning**

[http://www.osc.gov.on.ca/documents/en/Investors/iap\\_20150817\\_comments-financial-advisory-planning.pdf](http://www.osc.gov.on.ca/documents/en/Investors/iap_20150817_comments-financial-advisory-planning.pdf)

**10. International Standards Organization ISO 22222: Personal financial planning -- Requirements for personal financial planners**

ISO 22222:2005 defines the personal financial planning process and specifies ethical behaviour, competences and experience requirements for personal financial planners.

**11. Almost Half of Canadians Believe There Are Regulatory Standards in Place for Financial Planners: Study**

While most respondents (92%) had heard of the profession of financial planner, less than half (49%) know there is a difference between a financial planner and a financial advisor. Most significantly, 44% of respondents believe there are regulatory standards in place for financial planners. <http://www.fpsc.ca/about-fpsc/news/2014/03/13/almost-half-of-canadians-believe-there-are-regulatory-standards-in-place-for-financial-planners-study>

**12. Holding the Purse strings: Regulating Financial Planners**

[http://www.piac.ca/wp-content/uploads/2014/11/fp\\_report\\_final\\_website.pdf](http://www.piac.ca/wp-content/uploads/2014/11/fp_report_final_website.pdf)

**13. Joint IFIC IIAC Comment letter on financial advice and planning**

<https://www.ific.ca/wp-content/uploads/2015/09/Joint-IFIC-and-IIAC-Submission-Ministry-of-Finance-Consultation-on-Financial-Advisory-and-Financial-Planning-Policy-Alternatives-September-21-2015.pdf/11641/>

**14. What's Up With Financial Planning? | Call Journey Blog**

<http://www.calljourney.com/what-ever-happened-to-financial-planning/>

**15. Kenmar submission re financial advice and planning**

<http://www.fin.gov.on.ca/en/consultations/rfp-submissions/kenmar-associates.pdf>

**16. ISO 22222 Personal financial planning -- Requirements for personal financial planners**

**17. Financial Planning is still about selling**

<http://www.financialpost.com/personal-finance/wealthy->