



FPSC FINANCIAL
PLANNING
STANDARDS
COUNCIL®

Financial Planning Standards Council

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

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INTRODUCTION

Financial Planning Standards Council (FPSC) is pleased to provide comment to the Mutual Fund Dealers Association of Canada (MFDA) and the Recognizing Regulators on the proposed amendments to MFDA Rule 1.2.5 “Misleading Business Titles Prohibited”.

FPSC is a national, not-for-profit standards-setting and certification body that develops, promotes and enforces professional standards for financial planning through CERTIFIED FINANCIAL PLANNER® certification. FPSC certifies and oversees approximately 17,000 CFP professionals and 2,000 FPSC Level 1® Certificants in Financial Planning across Canada. With FPSC’s formal partnership with the Institut québécois de planification financière (IQPF), which is the only organization authorized to certify “Financial Planners” in Quebec, there are more than 23,500 “Financial Planners” in Canada who have met, and continue to meet, FPSC’s unified financial planning standards.

CONCERNS WITH THE PROPOSED AMENDMENTS

FPSC has long advocated for legal restriction of the “Financial Planner” title in order to protect consumers. As such, we agree in principle with the MFDA’s intent in considering the proposed amendments to MFDA Rule 1.2.5, which seek to establish minimum proficiency requirements for use of the “Financial Planner” title by MFDA Approved Persons.

That said, we have a number of concerns that we urge the MFDA and the Recognizing Regulators to consider and respond to before moving forward with implementation of the proposed amended Rule (the Rule).

Our fundamental concerns with the proposed amendments are as follows:

1. Without a coordinated and unified national, cross-sectoral solution to this issue, independent rules by any single regulator or self-regulatory organization (SRO) will perpetuate further confusion with consumers and throughout the industry; and
2. The formulation of the Rule itself is problematic, and does not best serve the public interest.

Coordinated and Unified Solution Required

FPSC understands the MFDA’s objective of addressing this serious consumer protection issue. However, the fragmented nature of Canada’s financial services regulatory landscape means this is not a problem that can effectively be mitigated by any single regulator or SRO, as “Financial Planners” operate under different, and sometimes multiple regulators. Given the need for regulatory coordination, we do not believe it is prudent to move ahead with this Rule while other options to address this issue are simultaneously being considered by other regulatory authorities, namely the CSA through Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives toward their Clients*, and the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives in Ontario (the Expert Committee).

The CSA, through Consultation Paper 33-404, is currently considering a wide range of regulatory changes to enhance the client-registrant relationship, one of which is prescribing the use of client-facing business titles for registrants. The CSA has identified the problem of misplaced investor trust and reliance that “is exacerbated when registrants use titles ... that exaggerate their proficiency or the services they

actually provide”.¹ It is clear that the problem the MFDA is attempting to resolve—the potential for investor confusion caused by the lack of minimum proficiency standards for use of the title “Financial Planner”—is part of the larger problem the CSA is working to address.

While there is currently no consensus on how to best resolve this problem, most stakeholders participating in the consultation process have nonetheless expressed support for the idea of establishing more stringent titling rules for registrants in client-facing roles. Given that whatever titling rules the CSA ends up prescribing would ultimately apply to all registrants—including MFDA Approved Persons—we believe it would be more consumer- and industry-friendly to use this consultation as an opportunity to prescribe use of the “Financial Planner” title as part of an overarching registrant titling regime.

We would note that in response to the CSA’s consultation paper, FPSC developed and proposed titling rules that not only provide for recognition and prescription of the “Financial Planner” title, but further provide for the creation of a larger, comprehensive plain-language titling regime applicable to all registrants who provide advisory services to consumers, including MFDA Approved Persons.² We strongly encourage the MFDA to focus on supporting a solution to the problems created by inappropriate use of the “Financial Planner” title within the context of the CSA’s ongoing consultation, rather than through implementation of a limited and potentially duplicative rule.

Additionally, the Expert Committee, appointed by the Government of Ontario to consult and advise on the need to regulate those who offer financial planning and advisory services, has completed an extensive, multi-year stakeholder consultation, and has drafted its final report, which we understand is now in the government’s hands. Since appointing the Expert Committee in early 2015, the government has repeatedly reaffirmed its commitment to taking action to address this consumer protection issue, based on the final recommendations of the Expert Committee.

By pre-empting the work of the Expert Committee and the government, the MFDA risks setting a precedent that could unduly influence the government’s decision-making process and lead to sub-optimal policy decisions across other jurisdictions, regardless of the fact that the MFDA’s objectives may be “aligned and complementary” with those of the Expert Committee. Furthermore, by implementing the proposed amendments and altering the regulatory landscape in advance of the government’s response, the MFDA is undermining the likelihood of achieving a comprehensive, cross-sectoral solution that would alleviate ongoing consumer confusion by applying uniformly to all “Financial Planners”, regardless of regulatory platform or product licensure.

Ultimately, without a coordinated and unified approach to resolving this issue, independent rules by any single regulator or SRO will only serve to perpetuate consumer and industry confusion and reduce the possibility of achieving regulatory consistency for the benefit of Canadians. Given that both of the above-mentioned consultations are effectively attempting to address the same consumer protection concern as the MFDA, and both provide the opportunity for more coordinated and consistent restriction of the “Financial Planner” title, along with the broader regulation of other industry titles for the benefit of consumers and industry, such comprehensive and consistent approaches should be prioritized over rules by individual regulators or SROs.

¹ CSA Consultation Paper 33-404, p.3956 http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf

² FPSC Response to CSA Consultation Paper 33-404 <http://www.fpsc.ca/docs/default-source/FPSC/fpsc-response-to-csa-33-304.pdf>

Issues with the Rule Itself

Notwithstanding our general concerns with the Rule, the specific formulation of the Rule itself sends a message to consumers that all of the approved designations/certifications and the organizations behind them are essentially the same. This is not the case, and is not in keeping with the MFDA's objectives of reducing investor confusion and establishing greater consistency around use of the "Financial Planner" title.

Specifically, there are at least two fundamental issues with the proposed amendments that undermine the Rule's ability to serve the public interest.

1. No assessment of the professional bodies behind the designations/certifications

There has seemingly been no assessment of the organizations *behind* the approved designations/certifications incorporated into this Rule. As we emphasized in our original submission³, any organization that certifies individuals as meeting requisite standards of competence and ethics should itself be held up against stringent, transparent criteria that ensure its ability to do so—especially given the public interest objective behind this Rule.

We reiterate that such an assessment should begin by looking at the mandate and governance of the organization conferring the credential. Only those organizations that have a public interest mandate reflected in their governance structure and a demonstrated expertise and infrastructure for developing and maintaining professional financial planning standards, assessing competence, and enforcing against those standards should be entrusted to certify "Financial Planners" in the public interest.

2. Lack of sufficient rigour in assessing the designations/certifications

In reviewing the criteria and assessment process used to approve the financial planning designations/certifications for this Rule, we are concerned that the MFDA has used an assessment that lacks sufficient rigour to serve the public interest and alleviate consumer confusion. Specifically, the Rule does not consider deeper differences in terms of how each of the designations/certifications actually satisfy each of the core criteria they are evaluated for. While all may "check off" the given criteria boxes, in many cases significant and important variances between them still exist, and these variances can have important implications for consumer protection.

By assessing financial planning designations/certifications in this manner, the MFDA is unwittingly incenting a race to the lowest common denominator among standards, and undermining the significant amount of work that has been done by FPSC, the Financial Planning Coalition⁴, and other industry stakeholders over the last twenty years to raise and unify financial planning standards, and to build up the financial planning profession for the benefit of Canadians.

Below we have looked at the Rule's underlying core assessment criteria and identified areas where the MFDA may have overlooked consequential differences between the approved designations/certifications in its assessment.

³ FPSC Response to MFDA Bulletin #0656-P <http://www.fpsc.ca/docs/default-source/FPSC/submissions-and-remarks/mfda-consultation-paper-on-standards-for-the-use-of-the-title-financial-planner---branded.pdf>

⁴ The Financial Planning Coalition, whose members include the Canadian Institute of Financial Planners, Financial Planning Standards Council, the Institute of Advanced Financial Planners, and the Institut québécois de planification financière, was formed in 2009 to establish a framework for a profession for those holding themselves out as Financial Planners in Canada. The Coalition advocates for the official recognition of Financial Planning as a distinct profession that will best serve the interest of Canadians. For more information, see www.financialplanningcoalition.ca.

Education/Course Requirement

While all of the designations/certifications may have an education/course requirement, there are foundational questions related to this requirement that have not been answered. For example, do all of the designations/ certifications require completion of courses that teach students how to think and act across all financial planning areas in an integrated manner—a process fundamentally critical to what makes a competent “Financial Planner”—and how to develop actual, complete financial plans for clients? How are the courses and the educators that deliver them assessed and approved for quality by the issuing organizations? Do each of the designations/certifications have a work experience requirement in addition to their course requirements?

All of these questions have implications for the proficiency of the individuals who hold the designations/certifications, and cannot be overlooked.

Examination Requirement

When looking at the designations/certifications that have been approved, we note that not all have examinations that test individuals for holistic financial planning competence. If the goal is to assure consumers an MFDA Approved Person is proficient as a full-fledged “Financial Planner”—rather than just in providing component pieces of financial planning—it is not clear how individual course exams that do not assess comprehensive financial planning competence can be equated with those that do.

The assessment also neglects other relevant considerations for an examination requirement that are of paramount importance to protecting consumers. For example, how are the examinations developed and assessed for quality? How difficult are the examinations for each designation/certification relative to each other? What are the protocols in place to ensure the integrity of the examination process for each designation/certification?

CE Requirement

While all of the approved designations/certifications may have a financial planning-related CE requirement, some require less than half as many CE hours as others. Given the important role CE plays in ensuring “Financial Planners” continue to have the up-to-date knowledge and skills they need to effectively serve Canadians, such disparities cannot simply be dismissed.

Moreover, it does not appear that the MFDA’s assessment involved consideration of other important aspects of a CE requirement, such as whether and how CE credits are approved, whether CE activities are subject to audit, and how many individuals are audited for their CE requirements each year to ensure overall compliance with the standards of the designation/certification.

Code of Ethics/Standards of Professional Conduct

A Code of Ethics/Standards of Professional Conduct requirement only serves the public insofar as it is actually enforced by the overseeing organization. As discussed further below, it is not clear that this assessment has adequately considered how effective the organizations behind the designations/certifications are at enforcing their ethical requirements.

It is also unclear whether there were specific ethical rules and requirements measured for as part of this Rule. For example, do all of the designations/certifications prescribe similar requirements and guidance for dealing with conflicts of interest? Do all have comparable disclosure requirements, and if so, what are they? Do all require the “Financial Planner” to put the client’s interests ahead of their own and all others in all cases, and provide guidance on how to do this?

Process for Revoking Designation

Although each of the designations/certifications may be subject to revocation, the Rule does not contemplate the differences in the complaint, investigation, and disciplinary processes behind them, and what these differences can mean for consumers and the strength of the designation/certification.

For example, when filing a complaint against an individual with one of the approved designations/certifications, how easy is it for the consumer to file a complaint? What kind of assistance does the issuing organization provide consumers throughout the complaint process?

When it comes to investigating complaints, how do the resources invested by the issuing organizations compare? Do all have dedicated, appropriately qualified staff for the purposes of thoroughly investigating consumer complaints? Moreover, how timely are the investigation processes across these designations/certifications?

And finally, when “Financial Planners” are found to have breached their ethical obligations, how is the appropriate discipline determined? Do individuals who have different designations/certifications receive similar punishments for similar ethical breaches? Are the names of individuals who have been the subject of discipline proceedings publicly available, easy to find, and kept up-to-date?

RECOMMENDATIONS

In light of the concerns with the proposed amendments that we have identified, FPSC strongly recommends that implementation of this Rule should be deferred until the CSA and the Expert Committee/Government of Ontario have been given time to complete their respective consultations and to indicate their corresponding policy directions.

These two consultations both provide the opportunity for more coordinated solutions to the lack of standards and consistency around use of the “Financial Planner” title, and further for the prescription of other, related advisory titles that can confuse or mislead consumers. For the benefit of consumers and industry, the MFDA should focus on supporting these ongoing consultations and working with these regulatory authorities to achieve a coordinated solution while the opportunity still exists, rather than moving ahead with an overlapping rule that will perpetuate consumer confusion and regulatory fragmentation.

Should the MFDA instead decide to move forward with implementing this Rule, we would offer the following recommendations:

1. Incorporate a rigorous assessment of the professional bodies behind the designations/certifications into any Rule

An assessment of the organizations that confer the financial planning designations/certifications should be incorporated into the MFDA’s review process in order to protect consumers.

We would suggest that any designation/certification that is intended to offer a level of protection to consumers must be backed by a professional body that, at a minimum, meets the following criteria:

- a. Is a not-for profit corporation;
- b. Has a public interest mandate;
- c. Has the necessary resources and infrastructure to carry out its work;
- d. Has a governance structure that includes public representation on Board, Standards Panels and Tribunals;
- e. Has demonstrated expertise within its sphere of responsibility;
- f. Demonstrates that it holds members of the profession accountable through a rigorous complaint and disciplinary review process; and
- g. Requires continuous professional development of its members.

We would urge the MFDA to only consider approving designations/certifications that are conferred by bodies that have been assessed against (and continue to meet) these criteria.

2. Employ a more rigorous assessment for approving financial planning designations/certifications

FPSC urges the MFDA to employ a more rigorous assessment of the potential financial planning designations/ certifications before approving them.

FPSC has more than two decades of experience in developing financial planning standards, assessing individuals for financial planning proficiency, and ensuring ongoing compliance. We would be pleased to work with the MFDA to establish robust assessment criteria to measure potential financial planning designations/certifications against.

3. Recognize FPSC Level 1 Certification in Financial Planning as appropriate for use of the “Financial Planner” title by MFDA Approved Persons

If the MFDA intends to move ahead with the proposed amendments without making the changes recommended above, then FPSC Level 1 Certification in Financial Planning should be added to the MFDA’s list of designations/certifications that meet minimum MFDA proficiency standards for use of the “Financial Planner” title.

Certified and overseen by FPSC, FPSC Level 1 Certificants in Financial Planning have the demonstrated knowledge, skills and abilities to provide integrated financial planning strategies and solutions to consumers who have less-complex financial planning needs. FPSC Level 1 Certification in Financial Planning further provides consumers with the protection of a certification that is held to the same ethical and practice standards as CFP certification.

While FPSC does not itself consider FPSC Level 1 Certificants in Financial Planning to be full-fledged “Financial Planners” as CFP professionals are, based on the MFDA’s current core assessment criteria and the approval of several other less comprehensive and less rigorous financial planning designations/certifications, FPSC Level 1 Certification in Financial Planning warrants inclusion on the MFDA’s list.

Please refer to the **Appendix** for a detailed overview of FPSC Level 1 Certification in Financial Planning and how it satisfies each of the MFDA’s core assessment criteria.

CONCLUSION

FPSC would like to thank the MFDA and Recognizing Regulators for the opportunity to provide comment on the proposed amendments to Rule 1.2.5. We would be pleased to answer questions or provide additional information relating to anything in this submission. We look forward to continuing to work with the MFDA, the CSA, and other stakeholders to protect consumers and instill confidence in the financial planning profession.

APPENDIX – OVERVIEW OF FPSC LEVEL 1 CERTIFICATION IN FINANCIAL PLANNING

Below is a description of FPSC Level 1 Certification in Financial Planning and the ways in which this certification satisfies each of the MFDA's core assessment criteria for use of the "Financial Planner" title. FPSC would be pleased to provide additional information if necessary.

a) Focus on Comprehensive Financial Planning

FPSC Level 1 Certificants in Financial Planning are certified by FPSC to provide financial planning strategies and solutions to clients who have less complex financial planning needs.

In order to become an FPSC Level 1 certificant, candidates must demonstrate their ability to gather information about clients' goals, needs, priorities and personal circumstances, assess their current situations, identify and evaluate appropriate strategies and develop recommendations to help optimize their situations. This requires the application of knowledge across six financial planning areas (financial management, retirement planning, investment planning, insurance and risk management, tax planning and estate planning) and an understanding of the interrelationships and interdependencies among them. FPSC Level 1 certificants are also required to apply important professional skills, including interpersonal and communication skills and the highest ethical standards of responsibility.

b) Education/Course Requirements

Education is a fundamental requirement for achieving FPSC Level 1 certification. To achieve certification in the profession, candidates with a post-secondary or equivalent education must complete an FPSC-approved Core Curriculum education program, offered primarily through college and university degree, diploma and post-graduate certificate programs or national online programs, typically over a minimum two-year, and more often four-year, period.

FPSC-approved Core Curriculum courses must address all elements of competency, professional skills and technical knowledge outlined in the *CFP Professional Competency Profile*⁵. While courses may cover theory, they must assess students' ability to apply theory to financial planning scenarios by collecting, analyzing and making appropriate recommendations to help meet client needs and goals.

In reviewing Core Curriculum program applications, FPSC considers the following:

- The degree to which the courses address the competencies and technical knowledge topics outlined in the *Competency Profile*; and
- The degree to which the courses enable students to demonstrate the achievement of the competencies outlined in the *Competency Profile* including the ability to understand the interrelationships among financial planning areas in order to best meet client needs and goals.

⁵ CFP Professional Competency Profile http://www.fpsc.ca/docs/default-source/FPSC/cfp_professional_competency_profile.pdf

c) Examination Requirement

The FPSC Level 1 Examination in Financial Planning is a four-hour exam consisting of approximately 95 multiple-choice questions. Individuals who have completed a Core Curriculum education program are qualified to write the FPSC Level 1 Examination. Successful completion of the FPSC Level 1 Examination is a requirement for FPSC Level 1 certification.

Every question on the exam focuses primarily on a specific element of competency from the *Competency Profile* and may require integration across several financial planning competencies. Candidates are also expected to have proficiency in the professional skills included within the *Competency Profile*.

The ability to apply the technical knowledge through the competencies defined in the *Competency Profile* is critical. The exam requires candidates to have the requisite knowledge of all technical knowledge domains outlined in the *Competency Profile* and be able to apply that knowledge in client situation, as demonstrated by the competency elements included within each financial planning area and financial planning functions as it relates to collecting and analysing information, and making recommendations.

The FPSC Level 1 examination is overseen by an Exam Panel composed of CFP professionals with expertise in all areas of financial planning. The Exam Panel ensures:

- The certification examination sufficiently and appropriately assesses the competence of candidates to certification by demonstrating the necessary knowledge, skills and abilities; and
- Individuals who are qualified receive a passing result and individuals who are not qualified receive a failing result.

d) Code of Ethics/Standards of Professional Conduct

FPSC Level 1 certificants are required to abide by the *Standards of Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning*⁶. The *Standards of Professional Responsibility* encompass four sets of standards:

1. **FPSC Code of Ethics:** Outlines the eight main principles guiding the conduct of FPSC Level 1 certificants in all professional activities.
2. **FPSC Rules of Conduct:** Outlines the rules that accompany the Code and reflect the specific standards of conduct expected of FPSC Level 1 certificants.
3. **FPSC Fitness Standards:** Outlines the expectations that FPSC has for the character of FPSC Level 1 certificants.
4. **FPSC Financial Planning Practice Standards:** Outlines the standardized steps to be followed in any financial planning engagement.

FPSC Level 1 certificants who fail to comply with the *Standards of Professional Responsibility* are subject to disciplinary action by FPSC.

e) Continuing Education

FPSC Level 1 certificants are required to complete a minimum of 12 hours of qualifying continuing education annually. Qualifying continuing education must relate to one or more aspects of the *Competency Profile*. It also requires the application of FPSC's Code of Ethics and Rules of Conduct as

⁶ *Standards of Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning*
http://www.fpsc.ca/docs/default-source/FPSC/standards-and-enforcement/standards_of_professional_responsibility.pdf

outlined in the *Standards of Professional Responsibility* with the purpose guiding certificants in addressing the kind of ethical decisions they may face in practice.

f) **Process for Revoking Designation/Certification**

FPSC vigilantly guards the trust Canadian consumers place in FPSC Level 1 certificants. Under the direction of Standards and Enforcement, FPSC promptly addresses all concerns involving FPSC Level 1 certificants brought to its attention and thoroughly investigates all allegations of misconduct.

FPSC Level 1 certificants who are found to have breached their ethical and professional responsibilities are subject to disciplinary action, which can include revocation of the right to use the FPSC Level 1 certification marks.

FPSC's Enforcement Process involves the following stages:

1. **Intake and Initial Review:** The purpose of this stage is to determine whether the issues raised fall within FPSC's jurisdiction⁷ and whether the allegations raise a reasonable suspicion that the FPSC Level 1 certificant may have engaged in conduct that, if found, would breach the *Standards of Professional Responsibility*.
2. **Early Resolution**⁸ (where appropriate): Early Resolution may help repair the relationship between the FPSC Level 1 certificant and the Complainant.
3. **Investigations:** FPSC will investigate complaints about FPSC Level 1 certificants involving:
 - Any act or omission that may violate the provisions of the Code of Ethics, Rules of Conduct, Fitness Standards and/or Financial Planning Practice Standards;
 - Any other acts or omissions amounting to misconduct or which may bring the reputation of the certification into question.
4. **Review by the Conduct Review Panel (CRP):** The CRP is an independent Panel composed of CFP professionals and members of the public that reviews staff investigation and prosecution opinion reports and determines the appropriate disposition of complaints, in the public interest.
5. **Disciplinary Hearings** (as directed by the CRP): Disciplinary hearings are conducted by FPSC Hearing Panels. FPSC Hearing Panels consist of three members and include, at a minimum, two CFP professionals, drawn from volunteers with relevant experience who serve on FPSC's Hearing Panel Roster. The Hearing Panels are supported by Independent Legal Counsel (ILC) with expertise in professional governance and administrative law. Members of the Hearing Panel Roster play a critical role in protecting the public interest and the integrity of the profession by enforcing FPSC's high professional and ethical standards. Where a certificant is found by a Disciplinary Hearing Panel to have breached the *Standards of Professional Responsibility*, they are subject to disciplinary action ranging from a letter of admonishment from the Hearing Panel to permanent revocation of the right to use the certification.

⁷ The allegations must relate to an individual who was an FPSC certificant at the relevant time.

⁸ A matter may be suitable for Early Resolution if it involves client administrative services related concerns or allegations of a minor or administrative error where that error did not result in irreversible or significant harm.

Overview of FPSC's Enforcement Process

