KENMAR ASSOCIATES

Via email August 12, 2019

Financial and Consumer Affairs Authority of Saskatchewan
601, 1919 Saskatchewan Drive
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Attention: Dean Murrison, Director, Securities Division
email: finplannerconsult@gov.sk.ca

We understand the FCAA are reviewing the regulation of financial planners and financial advisors in Saskatchewan, including the use of financial planner and financial advisor titles, and would like to hear our views on the Ontario Act and whether Saskatchewan should follow the same or a similar approach. [On May 29, 2019, the Government of Ontario passed the *Financial Professionals Title Protection Act, 2019* ("ON Act"). The ON Act along with a summary of its provisions is at https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-100 The Ontario government is now working on regulations for implementing the law. The *Act*, to date, is sparse and only provides a bare bones framework, which is going to need to be fleshed out by regulations and policies.]

Kenmar Associates appreciates the opportunity to provide input. Kenmar is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes *the Fund OBSERVER* on a monthly 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.

Introduction

Investors assume there is some oversight of the use of "advisor "titles by either the firm or regulators. That flawed assumption can be harmful and costly.

A Sept. 2015 OSC/MFDS/IIROC Mystery Shop report concluded that *"From the perspective of an investor, the number and variety of business titles encountered when shopping for advice can make the process of choosing an advisor a complex one* ".In all, the shoppers encountered no fewer than 48 different business titles during the shops. Kenmar is dismayed by the lack of consistency of business titles and the question marks around whether those titles are actually tied to specific skills and qualifications. As we have pointed out many times before, imagine if regulators in the health care field allowed individuals with the training and experience of massage therapists to call themselves physiotherapists or heart surgeons. And yet this is what the average investor faces when seeking investment advice.
http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf

In Oct. 2016, SIPA issued a Report ***Title Trickery*** which dug deep into the use of titles to deceive clients. http://www.sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-

%20Advisor%20Title%20Trickery%20October%202016.pdf . In March, 2017, CARP, which represents 300,000 members, urged regulators to deal with the titles issue. CARP's VP of Advocacy, Wanda Morris noted: ***"When people realize they are dealing with a salesperson, they naturally bring a degree of skepticism to their decision making; they instinctively protect themselves from poor advice that doesn't serve them well. Misleading titles result in misplaced confidence and trust, and in the worst of cases, substantial financial losses."***

A Dec. 2016 CSA Bulletin wrote "Firms may assign professional titles (e.g., vice president, senior representative, specialist) to representatives based on their ability to reach certain sales and revenue targets. This practice may encourage representatives to focus on the easiest route to reach a target (i.e., to focus on what's easiest to sell, what generates most revenue, what they can sell most of), rather than on what is suitable for a client, particularly as representatives get close to the target. Also, when the benefit confers a title to the representative (e.g., President's Club member), it could be misconstrued by the client as a measure of skill level, experience or quality, rather than a measure of sales activity, which may inappropriately increase client trust in the representative."
http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20161215_33-318_incentives.pdf The use of misleading titles can cause investors to place undue trust in a Dealing representative who by registration is actually registered as a salesperson.

Often, the people using the title financial planner, or some other similar title, are actually investment salespeople, as is explained in a report by the Public Interest Advocacy Centre (PIAC).

> "For most Canadians, their experience with the financial planning industry does not involve actual financial planning at all. What it does include is a meeting with an individual who has a title that leads consumers to believe they are receiving financial planning advice. However, in reality consumers are dealing with financial salesperson who is employed by organizations to solicit a specific product or series of products."

Source: http://www.piac.ca/wp-content/uploads/2014/11/pursestrings_attached_final_for_oca.pdf

In 2012, the IIROC took a crack at business titles. An example of investor response to the proposal can be found at https://www.iiroc.ca/documents/2013/8ecbf348-bc60-4a30-995a-fa8d80e13f6d_en.pdf In March 2014 ,IIROC issued a Guidance note (not a Rule) on titles and Designations https://www.iiroc.ca/Documents/2014/3254a1ea-88c7-4ebb-b00c-4167f2708b67_en . In 2016, the MFDA attempted to provide clarity on titles and financial planning but backed off from the project after a lukewarm reception from industry participants. See https://www.investmentexecutive.com/inside-track_/keith-costello/does-the-mfda-s-new-rule-on-titles-provide-more-clarity-or-confusion/ The CSA and OSC have been working the title/designation and proficiency issue for years with no hard deliverables. We are not aware of any CSA plans but Ontario has dropped the issue on the embryonic FSRA for action. It remains to be seen how the ON Act will be implemented in practice. We expect it will be a bumpy road.

The ON Act will protect both the "financial planner" and "financial advisor" titles by restricting their use to individuals who have obtained a credential from an approved credentialing body that is in good standing; credentialing bodies must be approved by the FSRA; the FSRA will approve financial planning and financial advising credentials submitted by approved credentialing bodies; there will be a public list of both approved credentialing bodies and approved credentials; the FSRA will have ongoing enforcement powers to review both approved credentials and credentialing bodies, and revoke approval if the rules are not followed; and there will be rules governing those who misrepresent themselves either as an approved credentialing body or as having an approved credential. Much detail work needs to be done to operationalize the Act.

Please see our comments that were made to the Committee running the consultation leading up to the Act. https://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/kenmar-associates.pdf

General Input

We welcome the FCAA initiative to consider unbundling the advice nomenclature mess we find ourselves in. It is our firm conviction that people working to a suitability standard should be called "salesperson" so that consumers clearly understand who they dealing with.

It is important to distinguish between titles and professional designations. Titles are used to mislead investors in that they convey a deception regarding organizational stature and capability. Made up titles like "Seniors Expert" based on minimal education can deceive elderly financial consumers. Designations are intended to convey some measure of proficiency and conduct standard. For instance a CFA would be recognized as expert in portfolio construction working to a fiduciary standard. They work according to defined structured processes and utilize professional tools like an IPS.

Today, the actual registration status of most client facing people is actually a "salesperson" operating under the lowly suitability standard under conflict-of-interest work conditions. In July, the Ontario Securities Commission's Investor Advisory Panel (IAP) released *A Measure of Advice: How much of it do investors with small and medium-sized portfolios receive?* This survey of 3,000 Canadians sheds light on the nature, scope and extent of investment advice that small and mass-market investors currently receive from their investment advisors. While most of those investors who consult an advisor do get some information about important investment topics, the survey results indicate that, in many cases, basic financial planning concepts are not addressed in the advice provided. Nearly a third of those surveyed were unable to say their advisor ever talked to them about concepts such as planning for retirement, for education, or for buying a home. More than half reported only infrequent and brief communication or no communication at all from their advisor over the past year.

The survey results raise significant questions about whether most small and mass-market investors actually have access to advice that is comprehensive, trustworthy and timely enough to effectively meet their needs. Millions of Canadians pay for this advice, such as it is, through embedded compensation schemes, such as trailing commissions, that empirical research has shown to create harmful conflicts-of- interest. It is difficult for us to assess how these various forces will interact with the ON Act at this point in time.

The consumer confusion is not only due to title/designation misrepresentation but also marketing materials which suggests a best interests standard is in place when it most assuredly is not.

It should be further noted that even people licensed by approved credentialing bodies work to the suitability standard and are compensated via sales –based compensation when employed by investment dealers. Under the current structure, professional obligations often give way to advice-skewing industry business practices and compensation structures/ quotas. Numerous empirical independent research reports confirm this.

In June 2018 the CSA (which includes the FCAA and OSC) decided that an overarching Best interests standard is not required and are now proposing that the advisory regime in Canada be based on managing conflicts-of-interest. It was also decided that embedded commission structures are to be retained. It is therefore difficult for us to see how properly credentialed professionals can work effectively under such a weak regulatory regime.

In its response to the CSA consultation on banning DSC funds Advocis , an association of financial advisors and planners with more than 13,000 members across Canadas, said this" ...*We believe that the DSC option should be preserved. We believe in the importance of consumer choice and an expansive role for professional advice. But this must all be within a framework of consumer protection. In our view, the holistic way to ensure that DSC is only used responsibly, and to address a wider array of consumer protection concerns, is to define what exactly financial advice is (and what it is not), establish financial advice as a profession, enhance proficiency standards and hold advisors accountable as professionals.*." The FPSC (now FP Canada) also did not support an immediate ban on DSC sold funds.

Conversely. consumer groups, investor advocates and individuals responding to the consultation overwhelmingly supported an immediate ban of the DSC mutual fund. The CSA argued that the inherent conflict-of-interest could not be reliably managed and should be banned. As well, independent empirical research has shown that the DSC causes investor harm. It should therefore not be concluded that the interests of advisor associations or even credentialing bodies are always aligned with the interests of Main Street.

Commentary on ON Act

The ON Act is a welcome initiative that should help safeguard investors from being harmed by people who are unqualified and have no business using the advisor title. As things stand, anyone anywhere in Canada (except Quebec) can set up shop as a financial advisor or financial planner – even if they have no training or qualifications whatsoever. How is that possible in a nation with 13 securities commissions and 2 SRO's just for the securities? The CSA, MFDA and IIROC only regulate advice that's provided in conjunction with the selling of securities. People who just offer standalone financial advice and financial planning aren't subject to oversight. They have no registration requirements, proficiency standards, conduct rules or compliance audits. And they can call themselves anything they want so long as it's not a term prescribed by statute – which "financial advisor" and "financial planner" are not. Anyone can call themselves a financial planner or advisor and take on clients in every

province, except Quebec. There's no need for any special education, training or qualifications to give potentially life-altering financial advice.

The ON Act is aimed at ensuring only people with appropriate credentials from an approved credentialing body will be allowed to hold themselves out as financial advisors or financial planners. The Ontario law will be enforced by the newly created Financial Services Regulatory Authority (FSRA-basically an insurance regulator), but the actual awarding of financial planner and financial advisor credentials will be done by professional organizations approved by the FSRA. Ontario has yet to say which credentials will be recognized or what organizations will be involved in granting them. Our experience with these organizations does not give us high confidence in their enforcement robustness. We remain concerned that non-statutory entities will confer designations and titles monitored by a new embryonic regulator.

In the U.S., the CFP Board is dropping Self-Disclosure and has formed an Enforcement Task Force in response to a Wall Street Journal report that found thousands of CFP designation holders had customer disputes or criminal charges on their regulatory records not listed on a website maintained by the Certified Financial Planner Board of Standards Inc. to help investors find a CFP. This was no surprise to us. Same situation could exist in Canada – lax enforcement. Source:
https://www.wealthmanagement.com/industry/cfp-board-drops-self-disclosure-forms-enforcement-taskforce

As we understand it, the Ontario initiative isn't designed to get rid of fake titles altogether. So, it won't do anything about all those "vice-presidents" – a.k.a. top sales producers –at investment dealers. Nor will the ON Act clear up the fog created by empty titles such as "wealth manager," "investment counsellor," or the dozens of other labels that dealers and banks invent to portray their advisors as "experts." And it won't inject actual proficiency requirements into any of those titles/designations, either.

Kenmar lean more to the system in Quebec, where financial planners are regulated by the independent Institut québecois de planification financière (IQPF). To be certified as a financial planner, individuals must meet high education standards set by the IQPF and follow continuing professional development courses. They are subject to disciplinary penalties for misconduct, must declare conflicts of interest and are prohibited from most self-dealing. The Quebec system also prohibits the use of a long list of titles, including financial advisor and wealth advisor.

Ontario's initiative also won't require that regulators themselves use terminology Main Street can understand. For example, who, other than regulators, has any idea what an approved person is? Do normal people say: "Let me run that past my dealing representative"? No, they don't. These terms just cause mass confusion anytime the public hears them. However, we believe the new law will prevent non-credentialed people from calling themselves financial planners, but it may not stop them from performing work that looks a lot like financial planning or asserting that they provide financial plans.

Consider what goes on at most banks, mutual fund dealers and other investment firms. They equip their "advisors" with report-generating software designed to produce personal financial analyses for clients, complete with retirement projections based on detailed income, cash flow

and asset-allocation models. These are high-impact documents, designed to convince clients feel they've received a professionally prepared, personalized financial plan. Creative marketing programs encourage these clients to view the plan exactly that way. Yet, few of the "advisors" who prepare these reports hold the certified financial planner (CFP) designation. They're investment product salespeople masquerading as trained financial planners; but their registration permits them to advise clients about investing and all its component aspects, including the assessment of financial needs, net worth, investment objectives, risk profile, time horizon and appropriate asset allocation.

Moreover, these: advisors" can validly argue that they're legally obliged to cover off such matters when they formulate investment recommendations. So, they can say there's a real and substantial component of financial planning in what they're required to do for their clients.

This argument is quite compelling – except for the fact that CFPs bind themselves to act in their client's best interest. Their practice standards require them to act professionally, place client's interests ahead of their own, disclose any conflict-of- interest and resolve it in the client's favour. In other words, investors can, in principle, presume that a financial plan prepared by an accredited financial planner will be competently formulated based on what's best for the client – uncompromised by conflicts-of-interest (except as we have noted when employed by a firm primarily using conflict generating compensation and reward structures).

That's most certainly not the case with "advisors" who don't hold a credible designation. They work under a different standard requiring only that their recommendations be "suitable" for their clients. This low standard allows "advisors" to recommend high-fee investment products and not disclose available better or cheaper alternatives as long as the high-fee ones fit within their clients' KYC and risk profile parameters. If it's not unsuitable, it's suitable.

While some organizations that represent investment firms and advisors publish voluntary Codes of conduct exhorting their members to act in clients' best interests, the sad fact is these entities are determined opponents of a legislated or regulatory best interest standard. They believe the suitability standard preserves "choice" for investors. As a result, these industry groups insist– and publicly proclaim – that it's not in clients' interests for their advisors to be required to act in their best interests.

We don't expect this stance to change when the FSRA restricts use of the financial planner designation. "Advisors" aren't suddenly going to reverse course on standards to gain accreditation as financial planners, but they'll still want to give clients those high-impact analyses and they'll still want clients to regard them as legitimate financial plans.

These "advisors" will likely claim that, functionally, they're already *financial planners*. And they'll argue they should be accredited as such – if need be, by a credentialing organization of their own or by requesting grandfathering. Credentialing body candidates like FP Canada will likely fight hard to preserve the distinction of their brand.

Some open questions

The FSRA have to make some decisions. These include but are not limited to:

1. Will financial planning and financial advice be delineated effectively for the financial consumer? Kenmar have consistently argued that the distinction is rather basic. Financial planning is the roadmap, whereas financial advising is the implementation of the advice i.e. sales transactions.

2. What will the duties of the credentialing bodies actually be beyond issuing their approved credentials? Will these bodies be required to do full oversight in the areas of professional development, ethics and conduct, and standards of practice? The approved credentialing bodies will likely not just be educational institutions handing out diplomas or certificates and then walking away. We fully expect that they will have continued oversight

3. How will credentials and credentialing bodies be approved? To ensure the public interest is protected, it will be essential to ensure that before any credentialing body is approved, it must have a governance structure that avoids conflicts regarding the public interest, and has sufficient expertise, resources and infrastructure to transparently fulfil its mandate.
It will be important to avoid a race to the bottom to a minimum standard in order to gain consensus from a large field of self-interested stakeholders. This will require expertise and resolve by the FSRA.

4. How will this system be coordinated with existing regulators and SRO's to ensure consistency for financial consumers? Information sharing between regulators will be a key success factor. Note -the FCAC is a federally legislated regulator with a weak mandate, lax enforcement and industry voluntary codes for the protection of banking clients. Even tellers are being put forward as advisors. The Ontario government asserts that the new title protection framework will take a measured approach to enhance consumer protection without introducing unnecessary regulatory burden, and will be mindful of the current regulatory oversight of licensees and registrants.

As always, robust monitoring and regulatory enforcement will be a key success factor.

Bottom line

Kenmar have long argued that the title or professional designation is only as good as the credentialing body that issues and oversees it. Not all credentialing bodies operate at a high standard. Approving the credentialing body is certainly a constructive move to ensure more consistent credentialing standards. Transparency of licensing and enforcement, if implemented, will build consumer trust.

A consumer-friendly, easily accessible database is a critical success factor. Allowing the public to check whether their financial planner or financial advisor holds an approved credential from an FSRA approved credentialing body would ensure better financial consumer protection, and more effective policing of the unqualified.

It's certainly positive that Ontario has moved to regulate the use of financial planning and financial advisor titles. But it remains to be seen how effective the new law will be in protecting financial consumers. Ontario needs to ensure the highest standards are maintained

throughout the system-from granting credentials, to ongoing professional development to enforcement.

We remain constructively critical whether the government is really ready to take on the investment dealers, banks and insurance companies over the titles they employ for their army of salespersons. Time will tell.

The FCAA should hold back on enacting its own legislation until the many issues we have identified play out.

Ideally, there would be just one national regime, and it would be based on the Quebec model or some equivalent.

We hope this information is useful to you. Do not hesitate to contact us if any questions.

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Kenmar Associates

Acknowledgements: We would like to acknowledge the thought leaders that drove our thinking in the preparation of this comment letter. These include but are not limited to: Stan Buell, Andrew Teasdale, Neil Gross, Marianne Passmore, John DeGoey, Jim MacDonald, Larry Elford, John Lawford and Harold Geller.