

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

September 9, 2019

Financial and Consumer Affairs Authority of Saskatchewan
601, 1919 Saskatchewan Drive
Regina, SK
S4P 4H2
Attention: Dean Murrison, Director, Securities Division
email: finplannerconsult@gov.sk.ca

Dear Sir,

RE: Financial Consumer Affairs Authority of Saskatchewan Financial Planners Consultation

FAIR Canada acknowledges receipt of your email dated August 9, 2019 inviting FAIR Canada to provide its views on the regulation of financial planners and financial advisors in Saskatchewan, including the use of financial planner and financial advisor titles, and in particular the Financial Professionals Title Protection Act, 2019 (the ON Act). FAIR Canada is pleased to have this opportunity to share our views with respect to this matter with the Financial and Consumer Affairs Authority of Saskatchewan (FCAA).

The ON Act is, in our view, a long overdue effort by the provincial government of Ontario to regulate the use of titles of “Financial Planner” and “Financial Advisor” used by persons engaged in businesses offering services to the public. We strongly recommend that other jurisdictions throughout Canada impose similar statutory requirements. We commend the government of Saskatchewan and the FCAA for undertaking a review of the regulation of the use of these business titles and strongly urge you to follow a similar approach as the ON Act. The lack of regulation of the use of these titles has resulted in consumers being misled when seeking financial advice and has been an area of significant concern to FAIR Canada for many years. We refer you to our previous submissions to the Assistant Deputy Minister Finance Ontario (February 7, 2014)¹, to the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives, Minister of Finance Ontario (September 23, 2015)², to the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives,

¹ FAIR Canada letter to ADM Finance Ontario February 7, 2014 online: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Financial-Planning-Regulation.pdf>

² FAIR Canada letter to Expert Committee Financial Advisory and Financial Planning Policy (Finance Ontario), September 23, 2015 online: https://faircanada.ca/wp-content/uploads/2015/10/150923-Final-FAIR-Canada-Submission-to-Expert-Panel-re-Financial-Planning_signed.pdf

Minister of Finance Ontario (June 17, 2016)³, and to the Minister of Finance Ontario (April 17, 2018)⁴.

The use of misleading titles by people who hold themselves out to the public as trusted, professional financial advisors or financial planners who are not licensed by any certified professional body, nor regulated by any statutory regime exposes consumers to abuse and has resulted in tragic results for investors in many instances. We commend the FCAA for examining this issue and strongly urge that Saskatchewan implement a statutory regime similar to the ON Act that imposes meaningful title restrictions.

Titles used in the business of providing financial advice or financial planning services to the investing public must reflect the ability of the individual financial services firm and its representatives to provide objective, professional financial advice rather than merely selling investment products where the compensation system paid to the financial services firm and/or representative creates a bias that conflicts with the consumers expectation that the products recommended to the investor serve the best interests of the investor.

We highlight for you here some of our observations in the past and in relation to the ON Act that we recommend you take into consideration in drafting and implementing a statutory regime to restrict the use of business titles of “financial adviser” and “financial planner”:

Restricting the Use of the Titles “Financial Planner” and “Financial Advisor”

1.1 Meaningful title restrictions should ensure the title reflects the ability of the financial services firm and any individual financial services business representative to provide objective, professional and competent financial advice that is free from any conflicts of interest between what is the best available investment product to achieve the needs and goals of the client. The advice should be completely free from any possible consideration of compensation incentives paid to the financial adviser or financial planner or his/her firm for selling a financial product or service.

1.2 “Financial Planner” should be a business title permitted to be used only by those individuals and firms that have the minimum, necessary proficiency credentials established by the statutory regime, and who provide services on a fee-for-service basis only, such as an hourly rate or set fee for producing a financial plan. There should be no compensation for product sales or referrals.

³ FAIR Canada letter to Expert Committee Financial Advisory and Financial Planning Policy (Finance Ontario), June 17, 2016 online: <http://faircanada.ca/wp-content/uploads/2016/06/160617-FAIR-Canada-Financial-Planning-Submission-to-Expert-Committee-re-Prelim-Recommendations.pdf>

⁴ FAIR Canada letter to Minister of Finance (Ontario), April 17, 2018 online: <http://faircanada.ca/wp-content/uploads/2018/04/FAIR-Canada-Comments-on-Regulation-of-Financial-Planners-Final-April-16-2018.pdf>

1.3 “Financial Advisor”, “Financial Adviser”, “Investment Advisor”, “Investment Adviser” or “Financial Planner” titles should only be permitted to be used by individuals and firms that are subject to a fiduciary duty of care and a best interest standard of conduct toward their clients.

1.4 “Portfolio Manager” titles should be restricted to individuals and firms that are registered pursuant to applicable securities legislation to exercise discretionary trading authority with respect to clients accounts or assets, while operating within business models that require them to comply with the fiduciary duty of care required of such registrants.

1.5 All other financial services business representatives should be restricted from using any business title other than “Salesperson”.

1.6 In your review of the law and regulations in Saskatchewan regarding the use of the titles “Financial Planner” and “Financial Advisor”, we recommend that you also look for guidance to the system of regulation in the province of Quebec, where financial planners are regulated by the Institut Québécois de Planification Financière (IQPF). The IQPF is the certification body for financial planners in Quebec. It sets high education standards and requires certified financial planners to follow continuing professional education courses. It imposes disciplinary penalties for misconduct. The Quebec regulatory system prohibits the use of the titles “financial advisor” and “wealth advisor”.

Proficiency Requirements

2.1 The ON Act creates a statutory requirement that the use of the business titles “Financial Planner” and “Financial Advisor”, or any abbreviation, equivalent or other title that could be reasonably confused with those titles, is restricted to individuals who have obtained those credentials from and are in good standing with a credentialing body approved by the Ontario government regulatory body responsible for the administration of the ON Act. It remains to be seen in the implementing regulations that have yet to be announced what the approved credentialing body(ies) will be and therefore what the minimum standards for education and professional proficiencies will be for individuals permitted to use these titles in Ontario. Not all credentialing bodies operate at a high standard. Will the credentialing bodies be required to conduct oversight in areas of standards of professional conduct and ethical business behaviour? We hope that will be case in Ontario but it remains to be seen.

2.2 FAIR Canada urges that the statutory regime determine the minimum level of education and professional proficiencies required to be met to allow a business or business representative to use the title “Financial Planner”. Canada as whole has lagged behind other jurisdictions in the area of statutory or regulatory requirements for education and professional proficiencies necessary to be licensed or registered to provide financial advice or financial planning services to consumers. In most jurisdictions an undergraduate university diploma is now required. At a bare minimum, we strongly urge Saskatchewan to require a recognized High School Diploma as a minimum educational requirement for the use of these titles in a business.

2.3 The level of training and job experience required to meet the appropriate credentialing standards to use either the “Financial Planner” or “Financial Advisor” title should be reviewed. In the UK, Financial Advisors must have a QCF Level 4 (equivalent to first year university in Canada) qualification. In the EU, 6 months of training is required and in Australia, 12 months of qualifying work experience is required.

2.4 FAIR Canada has consistently called for greater proficiency requirements. The current proficiency framework was designed many decades ago to deal primarily with the registration requirements for salespersons in the investment industry. The existing standards are structured around the particular product the salesperson is permitted to sell. Financial planners and financial advisors should be required to meet higher minimum proficiency requirements.

2.5 We urge you to study the regime in place in Quebec and its educational and proficiency requirements. Quebec’s requirements are such that anyone who provides financial planning services must have a university level bachelor’s degree, meet the standards of the IQPF, pass the IQPF examination, and must be licensed by the Autorité des marchés financiers (“AMF”). Financial planners are subject to fines and discipline for misconduct, must meet continuing education requirements and comply with self-dealing prohibitions.

Who Should Regulate

3.1 In Ontario, the regulatory jurisdiction for financial services businesses is split between several governmental agencies. As a result the responsibility for the regulation of the use of other misleading business titles in businesses selling or advising in securities remains an issue that needs to be addressed. We would strongly advise the government of Saskatchewan to address the need to regulate the use of all of the potentially misleading business titles in the financial services industry. In the Ontario regime, the regulation of the use of business titles throughout the overall financial services marketplace will require coordination and communication between the Ontario Securities Commission and the Financial Services Regulatory Authority of Ontario, which may result in duplication of effort, inefficiencies, gaps and asymmetry of regulation, and consumer confusion and harm. For example, will consumers be able to access one database service to confirm the license/credentials and regulatory registration status of any individual holding themselves out as being the business of providing financial services in Ontario?

3.2 We highly recommend that Saskatchewan make available to consumers a common database service along with Ontario and other provinces for this purpose so that consumers can have access a single service regardless of which province they or their dependants and various family members may be located. Consumers should be able to conduct background checks regarding licensing and registration status, credentials and disciplinary/regulatory enforcement history for financial planners or financial advisors in a single, user-friendly central registry database that provides comprehensive and understandable results.

3.3 In the ON Act summary provided by the Government of Ontario⁵, it's stated that the Commodity Futures Act, Securities Act and Insurance Act of Ontario are amended to permit rule making authority prescribing the conditions of registration under the Commodity Futures Act and Securities Act or licence authorizing to act as an insurance agent under the Insurance Act prescribing the conditions for any such persons to use specified business titles. The details of these rules have not yet been publicly released and as such it remains to be seen just how these overlapping regulations promulgated and enforced by multiple regulators will serve the interests of consumers. Certainly, a regulatory regime with a single provincial regulator would be more effective and understandable from the perspective of the individual consumer.

Statutory Best Interest Standard Is the Key Reform Needed

4.1 As we have stated in each of our submissions over the years to various regulatory bodies and governments in Canada on the issue of missing investor protections due to misleading business titles in the financial services industry, in order to truly reduce consumer confusion and poor standards of financial planning and financial advice, the applicable legal reforms should do more that address credentials.

4.2 While we are fully aware that the efforts to move to a statutory best interest standard through Canadian Securities Administrators (CSA) has been abandoned by the provinces and instead the CSA efforts have been narrowed to discussion of certain "targeted reforms" as put forth in the CSA Notice of consultation Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms) June 21, 2018⁶ "to address conflicts of interest in the best interest of the client, put the client's interest first when making a suitability determination, and do more to clarify for clients what they should expect from their registrants", FAIR Canada remains of the view that an overarching statutory best interests standard is the most efficient and effective regulatory reform to achieve the needed investor protections. That said, we support the CSA Client Focused Reforms which infuse the best interest principle into the client-advisor relationship through a series of positive regulatory changes. The consumer interests in this area are such that the time for further consultation has long since past and it is time now for action by the regulators to implement these reforms.

4.3 As FAIR Canada stated in its comments provided to the members of the CSA including Financial and Consumer Affairs Authority of Saskatchewan on the CSA Notice of Consultation re Client Focused Reforms and the associated proposed amendments to National Instrument 31-103 and Companions Policy 31-103CP, FAIR Canada's view is that the proposed amendments

⁵ Bill 100, Protecting What Matters Most Act (Budget Measures) 2019 Ontario online: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-100>

⁶ CSA Notice of consultation Client Focused Reforms June 21, 2018 online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20180621_31-103_client-focused-reforms.pdf

merely nudge financial advisers, dealers and their representatives in their conduct but will not achieve the profound shift in business behaviour necessary to ensure Canadians receive the objective, professional financial advice that they need and that they rightfully expect because the proposed amendments do not prohibit compensation structures that misalign the interests of registrants with their clients (instead relying on problematic conflict of interest provisions).⁷

4.4 A statutory best interest standard is needed both as a prescriptive obligation of financial planners and advisers towards clients but as a guiding principle in their conduct. Improving the ability of Canadians to accumulate savings for their retirement, home ownership, funding their children's post secondary school education or other financial goals should be a priority of all provincial and territorial governments in Canada. While the "Client Focused Reforms" require registrants to conduct know your product, know your client, conflicts of interest and suitability processes, they do not require financial advice and investment recommendations/strategies that best meet the clients needs and circumstances as opposed to those that are merely suitable.

4.5 We note that on June 5, 2019 the U.S. Securities and Exchange Commission adopted Regulation Best Interest: The Broker-Dealer Stand of Conduct. This new rule establishes a code of conduct for U.S. broker-dealer and investment adviser registrants when they make recommendations to retail customers regarding a securities transaction or investment strategy. Regulation Best Interest goes beyond the suitability standard and now requires that broker-dealers and investment advisers act in the "best interest" of the retail customer, without putting its financial interest ahead of its clients.

We thank you for the opportunity to provide our comments and views in this letter. We welcome its public posting and would be pleased to discuss the contents with you at your convenience. Feel free to contact Ermanno Pascutto, Executive Director, FAIR Canada at 647-256-6693 / ermanno.pascutto@faircanada.ca or Douglas Walker, Senior Policy Counsel, FAIR Canada at 647-256-6690 / douglas.walker@faircanada.ca

Sincerely,



Douglas Walker, Senior Policy Counsel
FAIR Canada

⁷ FAIR Canada comment Letter dated October 19 2018 to CSA re Notice of Consultation Client Focused Reforms and proposed amendments to NI 31-10 and Companion Policy 31-103CP online:<http://faircanada.ca/wp-content/uploads/2018/10/Final-181019-FAIR-Canada-Submission-re-Client-Focused-Reforms-2.pdf>