

13.1.13 Summary of Public Comments Respecting Proposed Amendments to MFDA Rule 1.2.1(d)

SUMMARY OF PUBLIC COMMENTS RESPECTING PROPOSED AMENDMENTS TO MFDA RULE 1.2.1(D)

On June 27, 2008, the British Columbia Securities Commission published proposed amendments to MFDA Rule 1.2.1(d) (the “Proposed Amendments”) for a 30-day public comment period.

The public comment period expired on July 28, 2008.

Two submissions were received during the public comment period:

1. Financial Planners Standards Council (“FPSC”)
2. Ryan, Lamontagne and Associates (“Ryan Lamontagne”)

Copies of comment submissions may be viewed on the MFDA’s website at: www.mfda.ca.

The following is a summary of the comments received, together with the MFDA’s responses.

1. Proposed Amendments Should Recognize Certified Financial Planners (“CFP”s)

Both commenters suggested that amendments to paragraph (A) of Rule 1.2.1(d)(vii) should be revised to specifically recognize CFPs who are subject to FPSC oversight.

The FPSC commented that the proposed amendments impose unnecessary restrictions on financial planners who are held to a high standard by an independent third party organization such as the FPSC and thus are not in keeping with the MFDA’s intention of ensuring that the public is protected from unqualified financial planners. The FPSC commented that a CFP professional is bound by an enforceable code of ethics, is required to undertake continuing professional development related to financial planning, must complete substantial training and experience in the theory and provision of financial planning and must successfully complete one of the most challenging professional examinations in the industry (the CFP Examination).

The FPSC also expressed concern that the proposed amendments appear to suggest that the MFDA considers members of associated or unrelated professions and salespeople as offering greater consumer protection from inappropriate or unscrupulous financial planning advice than a CFP professional or similarly qualified individual. The FPSC stated that this seems contrary to the MFDA’s ultimate goal of consumer protection.

The FPSC urged the MFDA to remove the reference to “governmental authority or statutory agency” stating that the authorities and agencies cited as examples do not set standards for financial planners nor do they certify or oversee financial planning activities. As an alternative, the FPSC suggested adding the following reference to the Rule: “*individuals held to generally accepted standards of competence and ethical behaviour in the provision of financial planning services as evidenced by holding a professional financial planning credential that meets the standards set out in the Standards Council of Canada’s CAN-P-9 (ISO17024)) standard for personnel certification bodies*”. The FPSC commented that such an approach would not only ensure that individuals are held accountable for meeting appropriate ongoing professional standards but would also demonstrate their initial and ongoing competence in financial planning by being licensed or certified through generally accepted Canadian and international standards for certification.

As an alternative, Ryan Lamontagne suggested that paragraph (A) of Rule 1.2.1(d)(vii) should be eliminated. The commenter noted that under the proposed amendments, in order to conduct financial planning services outside of its dealer, a CFP would be required to obtain an insurance license. Ryan Lamontagne outlined several advantages and benefits to clients associated with the provision of financial planning services outside of the Approved Person’s dealer and submitted that the effect of the amendments would be to eliminate these benefits by requiring Approved Persons that are not insurance licensed to conduct financial planning services through their Member. Ryan Lamontagne commented that the requirement for an insurance license places an unnecessary burden on the financial planner because of the time and money involved. The commenter also questioned why a financial planning designation such as the CFP and many years experience preparing financial plans would not be sufficient to conduct financial planning as a dual occupation under Rule 1.2.1(d).

MFDA Response

Financial planning conducted by Approved Persons as an outside business activity must be conducted through another governmental authority or statutory agency to ensure a level of regulatory oversight similar to that offered by the MFDA and to provide clients with a similar level of protection. At the core of the regulatory oversight exercised by the MFDA is the ability, where necessary and appropriate, to terminate the Membership/Approved Person status of an organization or individual subject

to the MFDA's jurisdiction, thereby precluding them from operating as a mutual fund dealer or mutual fund salesperson in Canada. For the purposes of Rule 1.2.1(d)(vii), it is the power to terminate the governed individual's ability to engage in their business by revoking their license to practice (e.g. as can law societies, institutes of chartered accountants and provincial insurance councils) that is used to determine whether a governing body provides a similar level of regulatory oversight and investor protection as the MFDA. While the FPSC has the ability to revoke the CFP designation, its revocation may not preclude the individual from engaging in financial planning or from providing other financial services to clients who may be unaware that the individual's CFP designation has been revoked. This potential situation essentially compromises investor protection. The FPSC is also distinct from the MFDA (and comparable organizations such as insurance councils, law societies or accounting institutes) in that a person cannot carry on business as a mutual fund dealer in Canada without being a Member of the MFDA, or in a business regulated by these other governing bodies without being a member of that body. In addition, as other organizations offer financial planning designations, the FPSC operates as one amongst a number of service providers.

Governmental authorities or statutory agencies including provincial insurance councils, law societies or institutes of chartered accountants exercise a similar level of regulatory oversight to the MFDA and provide clients with a similar level of protection by having MFDA-type standards in respect of licensing and registration requirements, active oversight of regulated activities, audits, the review of complaints, information sharing between the other regulator and the MFDA where necessary and the ability to compel the individual subject to regulatory oversight to provide information.