# The Financial Planning Association of Canada

# Official Commentary Submitted to

# The Ontario Securities Commission

# Regarding

# Proposed Amendments to NI 33-109

# May 2021

# About this Submission

This commentary is submitted to the Ontario Securities Commission in response to their request for commentary on proposed amendments to NI 33-109 in regards to Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines.

We at the Financial Planning Association of Canada welcome the opportunity to participate in this process and lend our perspective on this important change within the Canadian financial industry regulatory landscape.

# About the Financial Planning Association of Canada

The Financial Planning Association of Canada (FPAC) is a new industry association founded in 2019, dedicated to the professionalization of the Financial Planning industry. Our goal is to make financial planning a profession with the highest standards of fiduciary responsibility, competency, and practice standards possible. It is our core belief that Financial Planners are uniquely positioned to help improve the lives of Canadians through comprehensive financial planning.

FPAC is expressly prohibited, in its founding charter, from issuing any credentials and as such we are participating in this commentary, not for the direct monetary benefit that would come from revenue generated by issuing approved credentials, but solely from the perspective of consumer protection and industry professionalization. It is our belief that only by being held to the highest standards, which would in turn lead to greater consumer confidence and trust, will FPAC be able to fully achieve its mission of professionalization of the financial planning industry.

# FPAC's Concerns

FPACs primary concern as it pertains to 33-109 is that the current regime results in unintended consequences that negatively impact the commitments of its registrants. The issue at hand is that several members have reported to our association that they have seen submissions to their dealers for volunteer activities rejected under their overly broad claim of undue influence.

Some examples that we have collected include the following:

- Registrants have been denied approval to provide pro bono financial advisory services to a not-for-profit organization that counsels at-risk women leaving the sex trade and looking to rebuild their lives.

- A registrant was denied permission to serve as a Big Brother to a young boy who was growing up without a father.

- A registrant looking to volunteer to walk dogs for seniors in a long-term care facility who couldn't leave the facility during the COVID pandemic was given conditions of approval that were so onerous that taking on the volunteer role became impractical.

- Certain members of the FPAC board encountered difficulties and had to go through a lengthy process to get approval to serve on our board.

In all cases, the reasoning of "undue influence" was cited. In the first three instances noted above, the concern was about the potential for undue influence over the people the registrants would be working with. In the first two cases, those people had very little in the way of financial means; and in the case of the dog walking volunteer activity, there was to be no interaction with the seniors themselves due to the pandemic.

The final case was subject to several concerns, but one of them was "undue influence" over the not-for-profit financials, despite the fact that the FPAC's finances are subject to audit.

While we at FPAC appreciate and even hold sacred the concept of consumer protection, we also believe that cases like those noted above were never intended to be regulated by NI 33-109 – and the way that NI 33-109 is being interpreted and applied today means that registrants are being constrained from contributing to their communities through volunteer activity. Registrants should absolutely be held to a high standard, but we also believe that they should not be limited by way of their registration from working to better their community, utilize their skills to help those in need, or work to better the industry itself.

## The Current Situation

The FPAC Regulatory Committee has engaged in dialogue with various regulatory bodies, SROs, and dealers regarding this subject matter. In these conversations it has become apparent to us that the treatment of the cases we cited, and similar cases, varies greatly depending on which SRO the registrant reports to.

We have not been made aware of any similar examples of any issues regarding direct registrants with the provincial securities commissions. MFDA registrants have reported some concerns and difficulty. However most cases, including the cases cited above, all originated with IIROC registrants.

That said, we do not believe this to be the "fault" of IIROC or the MFDA. We simply believe this to be the sum of unintended consequences that can be explained by understanding the process for approval of outside activities. For instance, the current process with most IIROC firms is as follows:

- Registrants submit a request for approval of an Outside Business Activity to their dealer's compliance department.

- The dealer's compliance department either approves or denies the request, or asks for more information. In many cases, the compliance representative seeks guidance from IIROC.
- IIROC reviews the facts of the case. While they do not directly approve or deny requests, they provide a list of considerations.
- The dealer's compliance department then reviews the considerations provided by IIROC and either approves or denies the submission.

We believe a breakdown is occurring in the communication between IIROC and the dealer. The issue is that while IIROC intends the reply as a list of considerations which might impact approval, dealers we have spoken with interpret them as a list of mandatory conditions for approval. The dealers then consider their risk appetite in light of the perceived conditions, which could result in them denying approval of the OBA.

Again, we at FPAC do not point the finger of blame at any organization. Frankly we see everyone in this chain of events as acting rationally. However the end result still remains that registrants are being prohibited from engaging in benevolent, community supporting activities.

## The Proposed Changes

We believe that the proposed revisions to NI 33-109, specifically the establishment of new guidelines regarding the six categories of reportable activities, will go a long way to alleviate the issue at hand. In particular, we note the provision stating:

> *"Uncompensated activities, such as volunteer or community work, that do not involve securities or financial services or are not a position of influence would no longer be reportable to us."*

While this new provision would likely see the elimination of most of our concerns, one concern still remains: The ability for registrants to apply their expertises to pro bono activities. This is the specific exclusion called out in this statement. We agree that these should be reported as outside activities, however we are concerned that pro-bono activities would then fall under the category of a "position of influence."

As such we would like to formally request that the National Instrument should be amended to include a seventh category of reportable activity: **The pro bono application of the registrants' abilities pertaining to securities or financial services knowledge**.

While we believe these types of activities should remain disclosed, we also believe they should be treated differently than other positions of influence. While care should be taken to prevent the unlawful or unethical treatment of the public, the overly burdensome interpretation of undue influence has led to the negative unintended consequences cited above.

We hesitate to say that this new category should have a lower standard; we are unsure of how else to achieve this. There are countless Canadians in need that would benefit from access to qualified financial advice, but simply cannot afford it at any price. As an industry we should not be looking to stand in the way of those who would seek to help others. Leveraging the financial knowledge of registrants while avoiding issues of undue influence would benefit individuals who might be in need of pro bono advice. Unfortunately, at this time, we have no suggestions for final wording of the revision that would help to resolve this issue, however we welcome the opportunity to discuss the matter further in order to find a resolution.

# Professional Title Disclosure

We at FPAC were encouraged to see that these revisions included proposed regulation regarding the reporting of registrant titles. We feel that the reporting, tracking, and study of the use of different titles will aid to confirm compliance with new regulations under Client Focused Reforms and pending Financial Advisor and Financial Planner titling frameworks underway in different jurisdictions. The standardization of titles under both efforts will go a long way to prevent titles from being used as a form of deceptive marketing and further protect consumers.

By requiring disclosure of titles used by registrants, the CSA will be able to aggregate and study the titles used to inform future policy decisions, monitor trends, and in general better understand how consumers are being marketed to.

We strongly recommend that this change go through as proposed.

# Closing Summary

In closing, we at the Financial Planning Association of Canada thank you for the opportunity to provide commentary regarding this important issue. We hope that you have found our submission to be in keeping with the intended spirit of consumer protection and in keeping with our goal of the professionalization of the financial planning industry. It is our further hope that you will see fit to implement our recommendations as outlined. We will also continue to make ourselves available for further input and support this initiative and look forward to reviewing the final framework for implementation.