



## A PLANNER'S OBLIGATION

The KYC process now has an ally in the Financial Planners Standards Council's practice standards. By **Ellen J. Bessner**

**Bravo to** the Financial Planners Standards Council (FPSC) for being the first to set out, in a comprehensive manner, ethical and professional obligations for CFPs.

Regulations and policies established in the past have left advisors uninformed and confused about their obligations, especially as they relate to "knowing the client." The FPSC will have none of that. Know your client (KYC) is not a form, it is a *process*. I have begged advisors to think of KYC in five steps. The first three steps are effectively communicating with the client (active listening, questioning your client to understand her better and identifying problems). It is not until the fourth step that any forms (including the KYC) are completed. Step five includes updating the forms on an ongoing basis to ensure the *process* part of the KYC continues.

The draft of the Canadian Financial Planning Practice and Standards makes me feel like I have an ally. The KYC obligations are laid out clearly instead of in convoluted, vague language.

In several comprehensive paragraphs, the draft standards set out a planner's obligation to:

① **Discuss the client's goals, needs and priorities** (draft standard 200A). Goals should be "measurable, specific, realistic" and a time period established in which such

goals are to be achieved. Questioning the client and listening to the client's answers are exercises that are crucial to fulfilling KYC obligations.

② **Collect the client's data and information that may be relevant to the client's financial situation** (draft standard 200B). Such information must be "complete, current and accurate." Many advisors report that clients complain such information is private and they refuse to impart such personal information to advisors they have just met for the first time. The FPSC addressed this issue with a practical solution: "Communicate to the client how these limitations will impact the engagement and the recommendations." This is both clever and practical because advisors want to do the best for their clients but will be limited if the client holds back relevant information. Furthermore, if the advisor is later accused of failing to have fulfilled KYC obligations by the client or the regulator, the advisor can present his copious and thorough notes and explain the limitation in the "engagement letter" (see draft standard 100). The regulator and/or judge will more likely find in the advisor's favour. An advisor cannot learn aspects of a client's

background if the client refuses to share the information. Therefore, the advisor should not be faulted if he can prove he made the requisite inquiries. This requirement also reinforces the necessity for good communication and the ability to reduce it to written form, to prove that the advisor made the inquiries.

③ **Clarify the client's financial position, income and cash flow and identify problems and opportunities** (draft standard 300). This is another call for good communication with the client, analysis and note taking, particularly if the client refuses to impart important personal information. Evidence of comprehensive questioning by the advisor will support the advisor's evidence that he/she fulfilled professional obligations.

All financial advisors should take a page out of the FPSC's book. The draft standards reflect common sense.

**AE**

*Ellen J. Bessner is a lawyer at Gowling, Lafleur, Henderson. She practises in the area of brokers' liability and offers compliance training to brokerage firms. The above is intended for a general audience and should not be considered legal advice.*

More online  
@**ADVISOR.CA**  
www.advisor.ca/interact