

From: [Tim Potter](#)
To: [comments](#)
Subject: CSA Submission regarding referral arrangements
Date: October-18-18 11:58:42 AM
Attachments: [Referral fees-TPotter - Aug 2018.docx](#)
[Ontario Financial Advisory.pdf](#)

Dear Secretary,

Attached is a history of our referral fee arrangements and commentary regarding the impact the proposed changes will have.

In addition you will find a document from November 1, 2016 supporting referral fees as long as referral agents are adequately qualified and there is complete disclosure.

Interestingly, the reason I and my partners moved to a referral arrangement model was to provide the best investment advice we could and provide complete disclosure.

Ironically the proposed changes will prevent us from continuing to provide the best possible solution for our customer needs and undo years of work.

I hope you will review this information thoroughly and put yourself in our clients shoes as you will be disappointed with the outcome.

Sincerely,

Timothy B. Potter

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*for the past 30 years, we've been working with individuals, helping them start their investment plans and helping them build them over their lifetimes. In doing this over the years we have created a process whereby, once their portfolio's reach a certain size, we transition them from being investors in mutual funds or segregated funds, to dealing directly with a skilled Portfolio Manager. The reason for this transition often includes the following:

- lower management fees
- better reporting that is more specific to their situation
- the opportunity for a close working relationship with the portfolio managers
- portfolios that are more specifically designed around their specific situations
- tax effective management of their non-registered portfolios.

What doesn't change is that we remain as their financial advisor. We continue to manage their financial plans including their insurance and risk management. We work with the Portfolio Manager and the client to guarantee that their financial objectives are met. The Portfolio Manager only takes over the investment management component of the relationship. They become part of our overall team with the client.

It just makes sense that we eventually hand over that investment responsibility to a third party as that is what's in the best interest of the client. But, by putting these new regulations in place regarding referral fees, it really will be forcing advisors to say I'm giving up the client now financially. We are not in the "not for profit" business, we need to get paid for the work that we do with our clients on their financial plans. With the regulators cutting that income stream off, by cutting the percentage of the fee or by capping the amount that's to be paid by a certain number of years, will only force advisors to do the wrong thing. It will force them to put their clients in, or keep clients in, the mutual fund and segregated fund world and not move them to these third-party portfolio managers.

That's an incredible disservice to the clients, and has to be contrary to what the regulators are looking for. Our referral to those third parties is completely open to the client. They know exactly what we're getting paid as a referral fee, and that it's part of the fee of the portfolio manager regardless of whether the client dealt with them directly versus being referred by us. It's integral in us maintaining the client relationship and in being compensated for the continual planning that we'll do in combination with the portfolio manager.

We completely agree that those that don't hold mutual fund licenses or securities licenses should not be in a position to be paid a referral. For example, someone off the street referring their colleague to a portfolio manager should not be given a referral fee on an ongoing basis. But licensed advisors are different, and it's how they have built their businesses and have run their business's for years, and how they'll be able to always do what's best for their clients.

FINANCIAL ADVISORY AND FINANCIAL PLANNING REGULATORY POLICY ALTERNATIVES

FINAL REPORT OF THE EXPERT COMMITTEE TO CONSIDER FINANCIAL
ADVISORY AND FINANCIAL PLANNING POLICY ALTERNATIVES

November 1, 2016



CHAPTER 8 – REFERRAL ARRANGEMENTS

6. Referral Arrangements

We recommend that no individual or firm that engages in Financial Product Sales, or Holds Out as providing Financial Planning or Financial Advice, be permitted to enter into a referral arrangement with a third party for the referral of a customer or prospective customer who is to be provided with Financial Planning, Financial Advice or Financial Product Sales, unless the referral arrangement accords with conditions equivalent to those set out in Part 13 (Division 3) of National Instrument 31-103.

Rationale:

Consumers often need several different types of financial services including investment advice, mortgage brokering and insurance. A firm or individual that provides one of these services may not necessarily be licensed to provide the others. And even if the firm or individual can provide these other services, a different firm or individual might be better placed to serve the needs of a particular consumer. Indeed, under the proposed regulatory framework outlined in this report, the SBID would obligate a firm or individual to refer a client to a different provider(s) if said referral is in the best interest of the client. Accordingly, with the adoption of a SBID, referral arrangements could become more prevalent.

Referral arrangements from one individual or firm to another can help consumers access the financial services and products that meet their needs. From a regulatory standpoint, however, it is important that these referral arrangements be clearly disclosed to consumers. Moreover, consumers should be assured that such arrangements lead them to individuals and firms with the appropriate licensing and credentials to provide the services they require.

Referral fees should be transparent (the amount of the fees, the impact or consequences of their presence) and should be disclosed to the consumer in plain language before engaging the financial service provider. Any relationship that a financial planner has with others providing financial advice should be reasonable and should be disclosed prior to the engagement.

– FAIR Canada (June 2016)

I agree that there must be complete transparency of compensation and referral arrangements at all times. Too frequently consumers are not aware of the inherent conflicts with such arrangements and cannot comprehend the implications of such.

– Tom Trainor (June 2016)

In our Preliminary Policy Recommendations Document, we recommended prohibiting referral arrangements unless the person or firm receiving the referral fee is regulated as a provider of Financial Product Sales or Financial Planning or Financial Advice and owes a best interest duty to consumers. We received extensive in-person and written feedback on this proposal. Many commenters observed that within the securities regulatory system, the investor protection concerns raised by referral arrangements are mitigated by certain regulatory requirements. Specifically, commenters pointed to the conditions for permitted referral arrangements set forth in Part 13 (Division 3) of National Instrument (NI) 31-103.

Under section 13.8 of NI 31-103, a registered firm or individual must not participate in a referral arrangement with another firm or individual unless, among other things, the terms of the referral arrangement are set out in writing ahead of time. The registered firm is also required to record all referral fees, and the registrant must ensure that information about the referral arrangement is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

Furthermore, section 13.9 of NI 31-103 requires the registered firm or individual to verify the qualifications of the person or company receiving the referral, while section 13.10 sets out specific disclosure requirements. Our principal concern with referral arrangements focused on consumers being referred to individuals without appropriate credentials or licensing to provide the service. Taking into account stakeholder feedback, we therefore conclude that this concern is sufficiently addressed within the securities sector by NI 31-103.

We support the call for transparency about referral fees as a needed disclosure relating to potential conflicts of interest and costs. These disclosures should apply to Advisers, Financial Planners and all who act in some capacity to advise clients about investments, financial products and financial plans. We also agree with the desire to ensure that fee recipients are regulated firms for purposes of enforcing best-interest rules.

– CFA Institute (June 2016)

Division 3 of Part 13 of National Instrument 31-103 (which currently governs IIROC registrants) sets out specific conditions which must be met before a registered individual can participate in a referral arrangement, including written disclosure to the client.

- Investment Industry Regulatory Organization of Canada (June 2016)

We support restrictions and regulation of referral fees in line with what is found in National Instrument 31-103.

– Primerica (June 2016)

We support restrictions and regulation of referral fees in line with the requirements of National Instrument 31-103.

– Investment Funds Institute of Canada (June 2016)

In our view, this concern is not sufficiently addressed within the insurance and mortgage brokering sectors. To that end, we recommend that within the proposed regulatory framework that all individuals and firms that provide Financial Planning or Financial Advice and Financial Product Sales wishing to enter into a referral arrangement to adhere to conditions equivalent to those set out in Part 13 (Division 3) of National Instrument 31-103.