



Advancing Standards™

September 21, 2015

Expert Committee to Consider Financial Advisory
and Financial Planning Policy Alternatives
c/o Frost Building North, Room 458
4th Floor, 95 Grosvenor Street
Toronto, Ontario
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Email: Fin.Adv.Pl@ontario.ca

Dear Sirs and Mesdames:

Re: Ontario Consultation on Financial Advisory and Financial Planning Policy Alternatives

The Portfolio Management Association of Canada ("PMAC")¹, through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to participate in the Ontario government consultation process (the "Consultation") regarding Financial Advisory and Financial Planning Policy Alternatives. We believe there should be a legal framework in place to regulate the activities of individuals who offer financial planning, advice and services to Canadian investors and are pleased to support the Expert Committee's work in providing key recommendations to the Ontario government for review in 2016. We are pleased the Ministry extended the comment period for this important consultation as the issues raised in the Consultation Document are complex and require careful consideration.

Overview

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC members manage investment portfolios for private individuals, foundations, universities and pension plans. Portfolio managers typically have discretionary authority over investments they manage for their clients and have a duty to act in the best interests of their clients: also referred to as a "fiduciary duty". Individuals registered as portfolio managers have the highest education and experience level in the investment industry: typically, a Chartered Financial Analyst (CFA) designation plus a set

¹ PMAC was established in 1952 and currently represents over [200 investment management firms](http://www.portfoliomanagement.org) that manage total assets in excess of \$1.4 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

period of relevant experience. Under provincial securities regulation, portfolio managers must be registered as advising representatives or associate advising representatives and meet specific proficiency requirements. They are also subject to stringent oversight by securities regulators as well as oversight by a professional standard setting body: the CFA Institute. Portfolio managers are highly trained professionals, working in a highly regulated industry. We note that some portfolio managers may also have their Certified Financial Planner (CFP) designation. In some portfolio management firms, financial planning services are offered and the firm will hire an individual with the CFP designation to provide this additional service to clients.

Financial planning and financial advisory services are provided in the marketplace through a variety of business models. We note that individuals with the CFP designation may be employed in a variety of settings, many of which are regulated by either provincial securities commissions or Self Regulatory Organizations (i.e. IIROC and the MFDA) or by insurance and banking regulators. Some of these bodies have existing rules or policies in place governing the activities of financial planners.

General Comments

We applaud the Ontario government for its leadership on this issue in examining the policy options that could address the current regulatory gap identified in the financial planning space. PMAC supports the harmonized regulation of all individuals and activities that involve providing financial and/or investment advisory services to Canadian investors. We recognize the importance of financial planning services to Canadian investors. As a key recommendation at the outset, we urge the Ontario government to work collaboratively with other provincial governments and securities regulators to ensure a national solution is considered and adopted.

We do not believe a new regulatory body to oversee the activities of financial planners is necessary. Given the various regulated settings in which financial planners may operate, we don't believe an additional regulatory body is required. It would be unnecessary and inefficient to impose an additional regulatory body to oversee financial planners who are already overseen by an existing regulator or SRO. Instead, we believe that a regulatory framework should be developed cooperatively amongst securities and insurance regulators, SROs and the Financial Planning Standards Council (FPSC)² and applied consistently across the country. Where there are financial planners operating within of the insurance and securities regulated channels, these individuals should be regulated by regulatory framework already in place for the oversight of advisors. In our view, these individuals should maintain their existing recognized status and financial planning designation and continue to be overseen by their existing regulator and the FPSC.

Finally, we believe that the work of the Expert Committee should not only take into account the impact of any new policy approach on the investment industry in aggregate but, ultimately, the end impact on all Canadian investors.

Set out below is a summary of our key recommendations which are discussed in more detail in the balance of this letter. Attached in Appendix A are responses to the questions included in the Consultation Document.

² *Financial Planning Standards Council* (FPSC®) is a not-for-profit organization which develops, promotes and enforces professional standards in financial planning through Certified Financial Planner® certification. FPSC's purpose is to instill confidence in the financial planning profession. FPSC ensures that CFP® professionals and FPSC Level 1™ Certificants in Financial Planning meet appropriate standards of competence and professionalism through rigorous requirements in education, examination, experience and ethics.

SUMMARY OF KEY RECOMMENDATIONS

- 1. Canadian investors deserve the protections of a harmonized national policy solution to address financial planning – not only in Ontario**
- 2. Reform should be a staged process with priorities identified:**
 - a. Regulate titles and designations - first stage of reforms**
 - b. Examine and conduct analysis of the activities in financial planning and the regulatory framework to address the current gaps – second stage of reforms**
 - c. Work collaboratively with the various provincial securities administrators, SROs and Financial Standards Planning Council to determine nature and scope of regulation and appropriate response – third stage of reforms**
- 3. Elevate education and public awareness of financial planning – what it is and who can do it**

1. Canadian investors deserve the protections of a harmonized national policy solution to address financial planning – not only in Ontario

We urge the Ontario government to consider moving forward not only an Ontario-only basis but rather to work together with its provincial partners to examine this issue at a national level. We believe this is a critical process that should extend beyond Ontario and occur on a harmonized, national basis with a collaborative solution that would apply Canada-wide.

We recognize that Quebec has its own regulatory framework in place and *The Institut Québécois de planification financière* (IQPF) is the only organization in Quebec authorized to grant financial planning diplomas and to establish rules concerning the ongoing professional development of professional financial planners. Only professionals recognized by the Institut Québécois de planification financière are authorized to use the title of Financial Planner (F.Pl.) in Quebec. The IQPF is also the only organization in the province entirely dedicated to and reserved for financial planners. We believe Ontario should work cooperatively with the IQPF to understand their regime and process in order to inform its next steps and approach.

We also recommend that any work undertaken and any recommendations made in 2016 must take into account the work of the Cooperative Capital Markets Regulatory System (CCMR) and the fact that securities regulation is undergoing significant change.³ Given the significance of these important and fundamental changes in the financial services sector, we believe a policy solution should not be rushed but rather be considered critically and carefully within the context of an evolving securities regulatory regime.

We also believe that in addition to enhancing regulatory cohesion and finding a national, harmonized solution, the valuable work already achieved to date by various industry bodies, such as the Financial Planning Standards Council and the various SROs should be carefully evaluated and considered to ensure there isn't regulatory fragmentation. We agree with the objective identified in the Consultation that any new legal framework should not be unduly

³ This initiative by the governments of British Columbia, New Brunswick, Ontario, Prince Edward Island, Saskatchewan, Yukon and Canada will better protect investors, enhance Canada's financial services sector, support efficient capital markets and strengthen the management of systemic risk. <http://ccmr-ocrmc.ca/>

complex and must avoid unnecessary or duplicative regulation. We do not believe a new regulatory body is necessary to achieve the goals identified in the Consultation, particularly, at a time in the industry where significant steps towards harmonizing a fragmented regulatory system have been made. Another regulator would complicate and impede the progress already achieved.

2. Reform should be a staged process with priorities identified

The Consultation is examining whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation. In our view, there are two key issues relating to financial planning services that must be addressed:

- (i) individuals holding themselves out to be financial planners without having the requisite proficiency and designation to do so; and
- (ii) the gap in regulatory oversight and legal framework governing the activities of financial planners and the services they provide.

Given the complexity of these issues, we recommend a staged approach is preferred in order to ensure there is adequate time spent in determining and considering the appropriate policy response.

a) First stage of reform: regulate the use of titles and designations

The first issue regarding the use of the title and designation of “financial planner” should be addressed immediately and considered a priority. There is so much confusion among Canadian investors as to the meaning of the various financial services titles and designations across all advisory channels. The industry and investors need more clarity and unambiguous rules governing the titles financial professionals may use to describe their services, skills and proficiency. This is an issue we believe also needs to be addressed beyond just the scope of financial planning. We need to ensure there is no overlap in titles that causes investor confusion and that are misleading. We recommend the development of common standards for use of the title of financial planner and we believe there is already a well established foundation to do so which can be leveraged. Where individuals provide financial planning services to investors but do not have the CFP designation, they should be prohibited from using the title financial planner.

We note the rigorous certification process currently in place by the FPSC to bestow the CFP designation. It is a lengthy process (3 years +) of education and exams and other proficiency requirements to obtain the CFP, including mandatory continuing education. CFP status is earned as a result of a commitment to the program and hard work to continue to demonstrate eligibility for the status of CFP. We believe, as with other professions, individuals should only be able to refer themselves as financial planners if they have the required qualifications and obtained the designation by the FPSC. Those individuals who have not been granted CFP status by the FPSC should not be allowed to call themselves or hold themselves out as financial planners. The government, working with existing regulators and the FPSC, should ensure that standards for competency and business conduct are harmonized across all regulating entities, and that financial planners are required to hold an accreditation approved by the FPSC.

The FPSC already has in place *Canadian Financial Planning Definitions, Standards & Competencies* in which they detail the Competency Framework applicable to financial planners. The Competency Framework for financial planners is the foundation for the Competency Profile for CFP professionals and individuals holding the F.PI. designation. It provides the structure and serves as the guiding construct for the detailed knowledge, skills and abilities expected of financial planners. It illustrates the interrelationships among the fundamental financial planning practices, financial planning areas, professional skills and technical knowledge that are

inherent in the profession of financial planning. The FPSC is in the best position to determine the competency levels on which a designated CFP status is based.

We believe this provides a strong foundation on which any new policy developments regarding the use of the title financial planner should be based. We don't believe a "start from scratch" approach is necessary or desirable. Financial planners who are already licensed and holding a CFP designation with standards that meet the highest requirements should not require re-licensing or re-designation.

b) Second stage of reform: examine and conduct analysis of the activities in financial planning and the regulatory framework to address the current gaps

The second issue, in our view, is much more complex requiring more wide-scale research and understanding of current practices of the role and activities of financial planners in the various types of business models (i.e. dealers, portfolio managers, insurance providers, etc.) and under the various regulators and umbrella SROs (i.e. FSCO, IIROC, MFDA, etc.) including the FPSC.

We encourage the Ministry to actively involve the regulators, particularly the SROs, who have deep working knowledge of industry practices in these areas. Further, we suggest the Ministry conduct targeted consultation initiatives with the various industry associations to understand the current variety of business models in which financial planners operate. This work will require a considerable time commitment and should be rigorous and inclusive so that all options can be appropriately considered.

c) Third stage of reform: work collaboratively with the various provincial securities administrators, SROs and FPSC to determine nature and scope of regulation and appropriate response

The Expert Committee's research and data gathering process should also include a robust review, consideration and analysis of when financial planning activities may trip the business trigger under securities legislation for advising and whether and in what circumstances financial planning activities could potentially be considered a registerable activity that requires registration with provincial securities commissions. This should be done in consultation with the provincial securities commissions and the CCMR. We recommend the Expert Committee make it a priority to work closely with the Ontario Securities Commission, the Canadian Securities Administrators and CCMR, to carefully consider and review the issues relative to its own mandate and whether the regulation of financial planning should be undertaken by the various commissions and regulated under securities laws.

We believe leveraging, where possible, existing SRO and regulatory frameworks is ideal. We also believe there should be a clear commitment to avoiding overlap and duplication of regulatory mandates which would only further confuse clients, raise costs for the system as a whole, and add no net new benefits for Canadian investors.

As for the regulation of compensation of financial planning activities, we do not believe there is a need for the regulation of compensation or pricing levels – this should be left to market forces. However, we do support fee transparency in all aspects of providing financial planning services. This is consistent to the investment industry's transition under Client Relationship Model: Stage 2 (CRM 2) Cost Disclosure and Performance Reporting. Adoption of similar principles of clear and standardized disclosure by financial planners operating outside of existing regulated entities should be a consideration in policy development in this area.

Finally, the development of any new regulation with respect to financial planning activities must carefully consider the costs on the industry and investors.

3. Elevate education and public awareness of financial planning – what it is and who can do it

PMAC commends the Ontario and Federal governments' commitment to financial literacy in Canada and we have made much progress to date in this area. Financial literacy is a critical life skill for all Canadians. There has been extensive support and a variety of initiatives by various levels of government to support increased financial literacy. We believe the government should stress the importance of objective, independent and tailored financial planning and investment advice tailored to individuals based on their own circumstances, particularly as financial decisions have become more complex and the choice of available financial products has grown dramatically. Investors need to understand what financial planners do and the services they provide as compared to other types of financial advisors.


Conclusion

We recommend that the Ontario government work collaboratively with its provincial partners and provincial securities regulators, SROs and the FPSC to adopt one set of harmonized government standards for financial planning in Canada and to address the gap in regulatory oversight of activities of financial planners who hold themselves out as financial planners without the qualifications or regulatory oversight to do so. We believe this will be a complex process requiring a staged approach with more analysis and consultation. Ultimately, Canadian investors should receive a uniform level of competence and service when they engage the services of a financial planner.

We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail. PMAC would be pleased to participate in any consultative committee set up for the purpose of developing a harmonized regulatory framework. If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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APPENDIX A

1. What activities are within the scope of financial planning? Is the provision of financial advice different from financial planning? If so, please explain the distinction.

We believe this is a complex area as various business models encompass the provision of financial advice where financial planning may be a supplementary component or a more integral component of the service. For this reason, we are in agreement with the views of other industry associations that there may be considerable overlap in the activities of what is referred to as financial planning and what is referred to as financial advice. Arguably, the provision of financial "advice" is different than "financial planning" per se in that the former activity is more likely to be subject to the "business trigger" for registration under securities laws.

Most financial plans encompass investment or asset recommendations. The scope of financial plans should be carefully assessed to ensure there is no regulatory overlap with securities law requirements. Another noteworthy observation is that a financial plan may also be provided that does not cover investment or asset recommendations specifically. It is possible for these types of non-securities related plans financial plan to generate no investment recommendations. Accordingly, these types of financial plans need to also be carefully considered.

2. Is the current regulatory scheme governing those who engage in financial planning and/or the giving of financial advice adequate?

There is an extensive regulatory framework in place for the regulation of providing financial advice and particularly for the oversight of advisors operating in the various business models. As mentioned in our submission, portfolio managers are extensively regulated by provincial securities regulators. In some cases, portfolio management firms include financial planning services as ancillary to the discretionary portfolio management service they provide to clients. These firms are already subject to stringent regulation and oversight of their activities.

There is a hybrid of scenarios where there are obvious regulatory gaps that need to be addressed. First and foremost, there are individuals offering financial planning services to clients who are not licensed or registered in any capacity or overseen by any regulator or professional body. In these cases, these individuals may not be accredited by a professional body. These individuals are of immediate concern as they operate outside of the current regulatory channels and should be subject to the same standards of conduct and competencies required for individuals who have obtained a CFP.

There are also financial planners working outside of the current regulatory channels that may be CFPs who are not registered in any capacity or overseen by any regulator (but at least certify to a level of professional standards with FPSC license renewal). There are yet other types of financial planners (i.e. Personal Financial Planners (PFPs), Registered Financial Planners (RFPs) and Chartered Strategic Wealth Professionals (CSWPs)) who are registered in some capacity and their activities regulated but to varying degrees.

To ensure that investors can expect uniform standards of service when they engage a financial planner, the government should ensure that standards for competency and business conduct are harmonized across all regulating entities, and that financial planners are required to hold an accreditation approved by their respective regulator and one standard setting body, namely the FPSC.

3. What legal standard(s) should govern conflicts of interest and potential conflicts of interest that may arise in financial planning and the giving of financial advice?

Portfolio managers operate under prescribed conflicts of interest standards developed under securities laws as well as adhere to a fiduciary duty standards. Securities regulation has well established conflicts of interest rules and standards of conduct that have been, in our view, effective in governing conflicts of interest and potential conflicts of interest. Financial planners should be subject to similar conflicts of interest rules that govern their activities. We believe that harmonized standards should be adopted for financial planners.

We strongly urge the government to take direction from the considerable work already completed by the Financial Planning Standards Council (FPSC) and the Institut Québécois de planification financière (IQPF) on standards of ethics, practice and competence for financial planners.

4. To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated? Please consider the following in your response:

- (a) Licensing and registration requirements;**
- (b) Education, training and ethical responsibilities;**
- (c) Titles and designations of individuals who engage in financial planning and/or the giving of financial advice;**
- (d) Specific activities that should be included or excluded in a regulatory scheme.**

All of the components identified above should be reflected in a regulatory framework governing the activities of financial planners. To a large extent, these are already well established by the FPSC and in some cases, covered under existing SRO rules. Investors should be able to expect that when they engage the services of a Financial Planner those services are subject to regulatory oversight. Currently, that is not the case for all financial planners and we believe harmonized regulation and more standardized service levels will address the current regulatory gap and respond to investor protections concerns. See recommendations in above submission for specific comments on these topics.

5. What harm(s) and/or benefit(s) do consumers experience in the current environment? Please provide specific evidence to support your views where available.

The current environment does not adequately protect investors given that there are individuals conducting financial planning activities and providing these services without any proficiency, recognized designation or competency to do so. The planning activities of these individuals are not overseen by any regulatory body or subject to oversight. This must be immediately addressed.

In addition, investors should be treated equally regardless of the province where they reside. Any regulatory regime for financial planning and advisory services should apply to all Canadian investors equally. The current environment not only creates an unlevelled playing field for the providers of financial planning services (those certified vs. those not, and some provinces have a regulatory regime or policy in place while others don't), it means that investors have varying degrees of protection and in most cases, no protection at all.

Further, a non-harmonized and Ontario only solution to regulate financial planning would be unduly onerous for firms operating nationally and would not be an optimal long-term solution or in the best interests of Canadian investors.

6. Should consumers have access to a central registry of information regarding individuals and entities that engage in financial planning and the giving of financial advice including their complaint or discipline history?

Yes, and we understand that they currently do have access to this type of information for certain individuals. For individuals regulated under provincial securities laws or a professional body such as the FPSC or IQPF, there are registries available (detailed below) such as: the National Registration Database (NRD), the "Find a Planner" Database administered by the FPSC and IQPF Directory administered by The Institut Québécois de planification financière, respectively. There are also registries available through life insurance regulators. For individuals providing financial planning activities who are not either registered with a provincial securities regulator or accredited by the FPSC or IQPF, there are no databases, registries or available information regarding such individuals nor a way to search the individual's complaint or discipline history. We believe this gap must be addressed as a priority.

Further, we believe the Expert Committee should provide a clear recommendation to guide investors on the body to which they would complain if dealing with an unregistered or unlicensed planner. Currently, a client of a CFP licensed planner can make a complaint to the FPSC. For clients of financial planners registered with an SRO or regulator, we understand that a complaint can be made to the respective SRO or OBSI. There is currently no body that deals with complaints for a financial planner who is not claiming to be a CFP and is also not-registered with a regulatory or professional oversight body This is another existing gap which must be addressed and prioritized.

National Registration Database – Canadian Securities Administrators

First, there is currently a registration databases for individuals and firms operating businesses that include trading, underwriting and advising with respect to securities: the National Registration Database (NRD) operated by the Canadian Securities Administrators where registered advisers, for example, can be searched.

Find a Planner or Certificant Database - FPSC

Second, the FPSC currently administers a "Find a Planner or Certificant" search database. This database allows investors to confirm whether they are working with a CFP[®] professional or an FPSC Level 1[®] Certificant in Financial Planning. The database can also be used to find a planner or certificant in specific area who works with different types of clients, or has specific areas of specialty.

The FPSC database also provides information on whether the individual has renewed his/her certification, completed the required hours of continuing education during the year, and has agreed to continue to abide by the Standards of Professional Responsibility. In addition, it includes information on whether an individual has been is currently under investigation by FPSC.⁴ An investor is also provide with information on whether the individual's certification has been suspended by FPSC either as a result of: disciplinary action by the FPSC Hearing Panel; or in connection with an ongoing investigation by FPSC.⁵

FPSC publishes reports on disciplinary action involving CFP professionals and FPSC Level 1 Certificants in Financial Planning who have been found to have breached the Standards of

⁴ Typically, in accordance with its confidentiality obligations, FPSC does not disclose active investigations; however, in accordance with FPSC's Policy on Disclosure of Investigations and Interim Suspensions, FPSC has been authorized to disclose its ongoing investigation of the individual's conduct.

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Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning. In addition, FPSC provides public notice of upcoming enforcement hearings in respect of CFP Professionals and FPSC Level 1 Certificants in Financial Planning.

IQPF Directory

The IQPF Directory is strictly reserved for the use of consumers looking for professionals. It includes a link to further information to ensure the financial planner being searched meets [legal requirements](#).