



Advancing Standards™

June 17, 2016

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 Canada¹ ("**PMAC**"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to once again participate in the Ontario government consultation process regarding Financial Advisory and Financial Planning Policy Alternatives (the "**Consultation**").

We applaud the Ontario government for its leadership through this important Consultation and thank the Expert Committee for the extensive research, collaboration and thought required to produce the *Preliminary Policy Recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives* (the "**Policy Recommendations**").

Additionally, we were pleased to have the opportunity to listen to industry peers and to share PMAC's comments on the Policy Recommendations at the Public Consultation Session held on June 2, 2016 in Toronto. This letter sets out PMAC's comments on the Policy Recommendations in further detail.

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

¹ PMAC was established in 1952 and currently represents over [200 investment management firms](#) 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.

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 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 may hire individuals with a CFP designation, or with an accounting or legal designation, to provide this additional service to clients.

General Comments

PMAC believes there should be one, harmonized legal framework in place to regulate individuals and firms that hold themselves out as financial planners.

We encourage the Expert Committee to evaluate the impact of the Policy Recommendations on the investment industry in aggregate with a focus on their end impact on all Canadian investors. Therefore, as a key recommendation at the outset, we urge the Ontario government to work collaboratively with other provincial and territorial governments, securities regulators and Self-Regulatory Organizations (“**SROs**”) to ensure that a national plan is adopted. To this end, we also recommend that the implementation of the Policy Recommendations take into account the work of the Cooperative Capital Markets Regulatory System (“**CCMR**”) and significant proposed amendments to securities regulation. Given the ongoing and fundamental changes in the financial services sector and the need for a Canada-wide solution, we believe the Policy Recommendations should be considered critically within the context of an evolving, national securities regulatory regime. Additionally, as discussed in further detail below, recently proposed enhancements to the obligations owed by advisors, dealers and representatives to their clients by the Canadian Securities Administrators (the “**CSA**”) warrant careful consideration in order to implement a harmonized duty of care for the benefit of Canadian investors.

We believe that a staged approach to implementing some of the Policy Recommendations is the most efficient and effective method of achieving the Expert Committee’s goal of addressing the regulatory gap. Namely, we recommend that the Expert Committee consider starting with regulating the use of titles and designations of individuals holding themselves out as financial planners, after which should come the coordinated adoption of a common duty of care and standards for financial planners. Given the complexity of these issues and the work that will be required to codify the duty of care and common standards, we believe that a staged approach is preferred in order to allow time for detailed drafting, stakeholder consultation and then implementation.

Set out below is a summary of our key recommendations which are discussed in more detail in the balance of this letter.

SUMMARY OF KEY RECOMMENDATIONS

1. A national, harmonized solution for the regulation of financial planners is required for the good of Canadian investors and the health of the financial services industry.
2. Regulation should be focused on individuals and firms holding themselves out as financial planners as opposed to regulation focused more broadly on financial planning activity.

3. The regulatory gap should be closed through the regulation of individuals and firms holding themselves out as financial planners and that are not subject to an existing regulatory framework. However, an existing body with oversight for securities, insurance or mortgage brokering should be used instead of adding a new body to the already fragmented regulatory environment.
4. Referral arrangement restrictions should be less restrictive and should instead mirror those in [National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations](#).
5. Reform should be a staged process:
 - First regulate titles and designations for those holding themselves out as financial planners;
 - Secondly, coordinate and codify the harmonized duty of care and standards.
6. Existing regulators and SROs should work together to agree on standards and competency levels to be adopted and harmonized on a national level.
7. We support an increase in the duty of care owed to investors; however, we urge the Ontario government to work with the CSA and other SROs in this regard before moving forward.
8. A central registry should be created and will be a valuable tool for investors.
9. Financial literacy and education are crucial, especially to ensure public awareness of the implementation of the Policy Recommendations as well as to understand how financial planners are qualified and the services they provide.

1. Regulation of financial planning in Ontario and the need for a national solution

PMAC supports the Policy Recommendation to regulate financial planning in Ontario by providing regulatory oversight for individuals and firms holding themselves out as financial planners and that are not currently subject to an existing regulatory framework.

PMAC believes that the proposed regulation of financial planning activity is too broad and that the scope of what constitutes financial planning activity is too nebulous and far-reaching a concept to be workable or necessary in order to significantly improve standards and investor protection. To regulate financial planning activities may have negative and unintended consequences given the complexity, scope and variety of these activities, and of the firms and individuals engaged in them as well as the various regulatory regimes governing such services. Additionally, at a time where all levels of governments across Canada are encouraging broader access to financial education and advice in support of financial literacy, the introduction of sweeping, activity-based regulation may discourage service providers and could result in reduced access to financial planning services.

As such, PMAC suggests the focus of regulation be on individuals and firms that hold themselves out to the public as financial planners.

While we support closing the regulatory gap, we do not believe that the proposed Financial Services Regulatory Authority (“**FSRA**”) should have a role in the regulation of financial planners. The Consultation acknowledges that there is already a fragmented regulatory framework in Ontario. We feel that a new regulatory body is unnecessary to achieve the goals

identified in the Consultation, particularly, since significant steps have recently been made towards harmonizing the fragmented regulatory system. An additional body would add further regulatory fragmentation rather than accomplishing the Expert Committee's core principles of regulatory efficiency, cohesion and consistency.

We instead recommend that individuals or firms holding themselves out as financial planners outside the current regulatory framework should be subject to the oversight of one of the existing regulators or SROs with oversight for securities, insurance or mortgage brokering. We believe that existing regulators and SROs are a more efficient and, ultimately, cost-effective, industry and investor-friendly way of closing the regulatory gap since these existing bodies have already developed the nuanced expertise and infrastructure required to effectively oversee their members.

We believe that targeted consultations with fee-only planners² in order to determine the most appropriate regulator for this group may be useful.

2. Harmonization of Standards

We support the Policy Recommendation regarding education, training, credentialing and licensing of financial planners being harmonized and subject to a universal set of regulatory standards.

Investors can expect uniform standards of service when they engage a financial planner if there are harmonized standards for competency and business conduct across all regulating entities and if financial planners are required to hold an accreditation approved by their respective regulator or SRO.

Further, we believe that this regulatory standard should be adopted across each Canadian jurisdiction to ensure a level playfield for Ontario's financial planners as well as to provide a uniform, minimum level of proficiency and expertise for Canadian investors engaging the services of financial planners, regardless of where they live in the country.

We believe that, rather than starting from scratch, the Ontario government should evaluate and leverage the valuable work generated by various industry bodies, such as the Financial Planning Standards Council ("**FPSC**"). We recommend that the already established [Canadian Financial Planning Definitions, Standards, & Competencies](#) be adopted as one of the universal standards that individuals may obtain in order to evidence their accreditation as a financial planner. Any other accreditation standards adopted should be subject to a comprehensive review to ensure that the caliber of education, testing and on-going professional development is sufficient to entitle an individual to use the title "financial planner."

PMAC believes that these changes in accreditation and standards will only be truly meaningful for the investing public if they are coupled with a comprehensive and accessible public education campaign as to the qualifications and services offered by a financial planner, as further set out below.

3. Statutory Best Interest Duty

PMAC is supportive of raising the bar in terms of the duty of care owed by financial planners to clients. Portfolio Managers have a duty to act in the best interests of their clients, also referred to as a "fiduciary duty". We agree with the research that concludes that consumers already expect a best interest duty from financial planners and investment advisors. We therefore support closing this gap in consumer expectations and working toward a harmonized duty of care across the industry. Before the Expert Committee moves forward with any final

² We believe this group may be one of the largest currently unregulated by an existing regulator or SRO.

considerations and with the details of how such a best interest duty will be codified in the regulations, we believe that it is imperative to ensure collaboration with the CSA who recently released [CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients](#).

Because many financial planners are also regulated by the CSA, MFDA or IIROC, it is essential for the protection of Canadian investors that there is uniformity in the duty of care owed to clients and that the government, applicable regulators and SROs all move forward with a harmonized plan that ensures consistent and high standards.

4. Exemptions

As set out above, we believe that regulation should be restricted to those individuals and firms holding themselves out as financial planners and not focused more broadly on financial planning activity. The following exemptions would not be necessary if only those holding themselves out as financial planners are to be regulated, however, we agree that professionals such as lawyers and accountants who sometimes provide financial planning advice as an ancillary aspect of their profession should not be caught by the regulation of financial planners. We agree that mere "order-takers" should also be exempt. Additionally, it is important that the Expert Committee ensures that the much-needed financial planning services that are offered by certain not-for-profit organizations and that do not charge a fee for such services, like credit counsellors, should not be subject to the proposed regulation of financial planners, regardless of how the Policy Recommendations are implemented.

5. Referral Arrangements

We find that the Policy Recommendation in respect of referral arrangements is rather restrictive and suggest that any limits on referral arrangements should instead mirror those set out in section 13 of [National Instrument 31-103 –Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) where the overarching principal is one of disclosure of the nature of the referral arrangement and the fees paid in connection with such an arrangement.

6. Titles and Holding Out

We believe that the use of the title of "financial planner" should be addressed immediately and considered a priority. There is 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.

We support the recommendation set out in Policy Recommendation 6(b) that would restrict the use of the title of "financial planner" to only those individuals who are regulated by a harmonized set of standards. We believe that the use of the designation of "financial planner" should be evidence of having met the harmonized set of education and accreditation standards, of the duty of care owed by financial planners and of the regulatory oversight of the profession.

In order for these titling changes to be effective, the nomenclature and standards must be consistent across regulators and SROs and be applied evenly in each Canadian jurisdiction. It is important for the public to understand the distinction between a "financial planner" and an other financial services provider. Investor education can and should play a critical role in fostering this awareness.

We recognize that the implementation of this Policy Recommendation may be disruptive to certain persons holding themselves out as financial planners but who will not immediately meet the required standards. In the interest of a smooth transition and to permit those who

wish to earn the required accreditation to continue to use the designation of “financial planner” in the interim, a reasonable transition period should be implemented.

7. Central Registry

PMAC supports the creation of a single, free and comprehensive central registry containing all relevant information regarding licensing and registration status, credentials and disciplinary history of regulated firms and individuals. This would be a great benefit to consumers. We encourage the Expert Committee to consider piggy-backing on the existing infrastructure of the [National Registration Database](#) (“NRD”) and/or the [“Find a planner or certificant”](#) registry maintained by the FPSC. We believe that this registry should be created and maintained at a national level so that consumers across Canada have the benefit of this important registry, no matter the jurisdiction in which they engage a financial planner.

The establishment of a central registry dovetails with and is an essential part of the financial literacy and investor education Policy Recommendation and we believe that this central registry can act as an effective tool through which key investor education can be disseminated, specifically with respect to the qualifications of financial planners and the services they provide.

8. Financial Literacy and Investor Education

PMAC commends the Ontario and Federal governments’ commitment to financial literacy in Canada and believes we have made much progress to date in this area. Financial literacy is a critical life skill for all Canadians. We believe that support and active encouragement in Ontario by government, regulators, educators, not-for-profit organizations and the financial services industry is of utmost importance. We believe this push for increased financial literacy and investor education should stress the importance of objective, independent and tailored financial planning based on individual 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.

9. Issues for Further Consideration

PMAC agrees that the issues set out for further consideration by the Expert Committee are central to the successful implementation of the Policy Recommendations in a way that benefits the investing public. Investors require an effective avenue of redress for legitimate complaints arising from dealings with a financial planner. PMAC agrees that an opaque and fragmented consumer redress framework is contrary to the public interest and should be addressed as soon as possible.

Conclusion

We recommend that the Ontario government work collaboratively with its provincial and territorial partners and with provincial and territorial securities regulators, SROs and, as applicable, the Capital Markets Regulatory Authority, to adopt one set of harmonized standards for financial planners in Canada as well as to address the gap in regulatory oversight of certain financial planners. We feel that a non-harmonized and Ontario-only solution to regulate financial planners 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. Ultimately, all Canadian investors should receive a uniform level of competence and service when they engage the services of a financial planner. We understand that this process will be a logistically and, perhaps, politically challenging one but we believe that the value of a national solution cannot be underestimated.

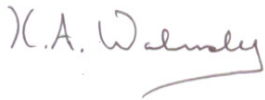
We also believe that a dynamic, accessible and comprehensive financial literacy and investor education campaign will be essential to the ultimate success of the implementation of the Policy Recommendations.

We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail. If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Thank you once again for the opportunity to participate in this important Consultation.

Yours truly;

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