



Advancing Standards™

May 18, 2017

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: Final Report of the Expert Committee to Consider Financial Advisory and
Financial Planning Policy Alternatives**

The Portfolio Management Association of Canada¹ ("**PMAC**"), through its Industry, Regulation & Tax Committee, was pleased to have the opportunity to participate in the Ontario government consultation process regarding Financial Advisory and Financial Planning Policy Alternatives (the "**Consultation**") in 2016 in connection with which PMAC provided a [submission](#).

PMAC has read the Final Report of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (the "**Final Report**") and would like to applaud the work of the Expert Committee as well as the Ontario government for its leadership through this important Consultation. Capitalized terms used but not defined have the same meaning as in the Final Report.

We note with approval the Ontario Government's commitment to acting on the Final Report as part of the 2017 Ontario Budget. PMAC believes that the implementation of the recommendations in the Final Report can serve to elevate, harmonize and streamline standards for the good of Canadian investors and the health of the financial services industry. We support the Final Report's focus on a principles-based regulatory foundation for regulators to oversee. This letter sets out PMAC's comments on the Final Report.

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

¹ PMAC was established in 1952 and currently represents over [230 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.

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 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.

Final Report General Comments

PMAC notes that the Expert Committee included a number of comments received during the course of the Consultation in the Final Report. In particular, PMAC is supportive of the recommendations to:

- Streamline the regulation of Financial Planning and Financial Advice;
- Require a harmonized set of Financial Planning proficiency and credentials;
- Elevate the standard of care to a Statutory Best Interest Standard, subject to certain important carve-outs for those who are already subject to an elevated duty of care – such as portfolio managers;
- Regulate titles;
- Create a free central, comprehensive registry of firms and people providing Financial Planning, Financial Advice and Financial Product Sales;
- Require referral arrangements to conform to the requirements in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**);
- Encourage the public and private sectors and the financial services industry to support and promote financial literacy and investor education; and
- Create a framework to implement the recommendations in the Final Report.

Financial Planning, Financial Advice or Holding Out

The Final Report recommends the regulation of any individual and/or firm that represents to consumers in Ontario that it is engaged in Financial Planning or Financial Advice either expressly or implicitly, or through Holding Out by way of titles, described services or otherwise, and that no individual or firm should be permitted to provide or Hold Out as providing Financial Planning or Financial Advice without regulatory oversight. We recognize that these terms are being interpreted broadly in recognition of the often inextricable link between financial planning and providing financial advice.

PMAC is supportive of closing the regulatory gap through the regulation of individuals and firms who Hold Out as providing Financial Planning or Financial Advice, provided that they are not subject to an existing regulatory framework. We note with approval that the Expert Committee has already expressly acknowledged that there is a valid exception to be made for portfolio managers from the application of the Statutory Best Interest Standard. PMAC believes that, based on the registration and proficiency requirements set out in NI 31-103, a similar exception is warranted for portfolio managers from any credentialing and educational components connected to offering Financial Advice. Individuals who are already registered and regulated under NI 31-103 but who wish to provide Financial Planning services, would, however, become subject to this new regime. This will not compromise investor protection and will avoid duplicative and/or potentially differing requirements which would add regulatory and administrative burden and complexity without any corresponding benefit to investors.

Titles

PMAC is supportive of the recommendation to restrict the use of the title of “financial planner” to only those individuals who hold themselves out as financial planners and are properly credentialed. We believe that clear and intuitive regulations around titles will benefit investors through providing greater information and transparency about the qualifications of the person providing them with advice. PMAC sees regulatory change around the use of certain client-facing titles as a simple and direct way to address investor confusion and any expectations gap.

PMAC believes that all regulators and SROs should strive to implement principles-based title reform which requires titles to be clear, limited and distinct based upon an individual’s accreditation but which does not interfere with common business practices, such as using corporate positions in conjunction with these prescribed titles. As a result, we have some concerns around the following aspect of the Final Report’s recommendation on titles:

Those who provide or Hold Out as providing Financial Planning or Financial Advice should not be permitted to use corporate positions or titles in client-facing activities given the consumer confusion that results or can result from the use of such titles.

PMAC agrees that the use of overinflated titles or those which exaggerate responsibility or credentials should not be permitted. However, PMAC is of the view that an outright prohibition on the use of all corporate positions could negatively impact firms who use *bona fide* titles as a way to recognize service and leadership. We strongly support a more principles-based prohibition on the use of such titles to only preclude the use of misleading, inaccurate or inflated titles that could serve to confuse investors as to the credentials, experience and duty owed to them by a person providing Financial Planning or Financial Advice.

It is important for the public to understand the distinction between a “financial planner” and another financial services provider. Clear, accessible and wide-spread investor education can and should play a critical role in fostering this awareness and addressing the policy concerns raised by current titling practices and we strongly support and believe in the value of the Financial Literacy suggestions made by the Expert Committee in the Final Report.

Harmonization

PMAC reiterates its belief that the Ontario government should make all possible efforts to ensure that action taken to regulate Financial Planning and Financial Advice is harmonized across Canada. We believe that the Ontario government and the Expert Committee have undertaken a very thorough and thoughtful process that would benefit other Canadian jurisdictions and, while we commend Ontario for leading by example, we believe that it is also of the utmost importance to work towards national harmonization in the near-term, where at all possible.

The Ontario government must continue to work collaboratively with its provincial and territorial partners and with provincial and territorial securities regulators, SROs (including with respect to insurance) 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 solution to regulate Financial Planning and Financial Advice 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 or adviser. 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.

With respect to the Statutory Best Interest Standard, PMAC believes it is critical for efficiency and fairness that the Ontario government continue to have dialogue and work collaboratively with the CSA and other SROs to ensure that there is uniformity and consistency in the standard of care owed to investors and that these standards are applied, enforced and interpreted in a harmonized way for the benefit of all industry participants, especially investors.

Conclusion

PMAC applauds the work of the Expert Committee in consulting widely with stakeholders and in incorporating many of the comments received into the Final Report. We would be pleased to discuss any of our comments with you at your convenience.

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;

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