

17 June 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  
M7A 1Z1

Dear Expert Committee:

CFA Institute<sup>1</sup>, together with CFA Society Toronto, CFA Society Ottawa and The Canadian Advocacy Council for Canadian CFA Institute Societies (the “CAC”) (collectively, these organizations are referred to as “CFA Institute”), appreciates the opportunity to comment on the report (the “Report”) from the Expert Committee (the “Committee”) on its findings and recommendations regarding financial advisory and financial planning services. CFA Institute represents the views of those investment professionals who are its members before standard-setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues affecting the efficiency, integrity and accountability of global financial markets.

### **Executive Summary**

In a sense, the principal concern of the Committee is to ensure that advice from financial advisers and financial planners is not conflicted in a way that hurts their clients’ ability to have secure financial futures. As an organization with an estimated 44% of its Americas-based members serving the interests and concerns of private wealth management clients, CFA Institute has, in many ways, a significant interest in the outcome of these discussions.

Consequently, we concur with many of the Report’s findings and its recommendations to regulate those parts of Financial Planning that do not already have regulatory oversight; harmonized standards of practice; the need for Advisers and Financial Planners to adhere to a best interests standard of care; enhanced disclosures related to referrals; control over the use of titles and professional designations; a central registry for information about Advisers and Financial Planners; increased financial literacy and education; and improved

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<sup>1</sup> CFA Institute is a global, not-for-profit professional association of more than 133,000 investment analysts, advisers, portfolio managers, and other investment professionals in 151 countries, of more than 125,500 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 145 member societies in 70 countries and territories

investigation and dispute resolution structures. It is the means by which some of these recommendations are achieved, however, where our views diverge.

Firstly, we do not support the creation of a new, separately chartered, statutory regulatory body mandated to oversee those parts of Financial Planning not already covered by existing regulators. We believe this will add to regulatory confusion among consumers and regulatory duplication for financial services providers. This position is consistent with decisions made by regulators in other major capital markets around the world.

Nor do we support the naming of an existing standards-setting body as self-regulator for the unregulated parts of Financial Planning. Naming such a body as self-regulator would give that body a de facto standard-setting monopoly over a wide swath of financial services in Ontario, encompassing all parts of the industry from tax and estate planning to investment management, advice and product sales, as all of these activities are elements of Financial Planning. Such a monopoly would diminish the urgency of such a professional organization to regularly review and renew its standards to the detriment of their clients, and would diminish the interest of finance professionals in joining other professional organizations that may have higher standards.

A better alternative, we believe, would be for the Committee to recommend the establishment of an independent standards-setting body comprising of professional organizations. This body would, in turn, be overseen and its standards enforced by existing statutory regulators and SROs. This body should, in our view, have an express and explicit mandate to set industry standards and rules for the use of certain titles and credentials in the industry. This would be a more workable structure given the lack of experience that statutory regulators have in such matters and would help reduce the potential for regulatory overreach and duplication.

At the same time, we believe this independent body of professional organizations will help ensure the highest and most workable standards of professionalism and care for investors by drawing upon the decades of experience each has in developing its own standards for the benefit of members' clients. Further, such a structure would achieve the type of harmonization that competition among several regulators – existing or new, statutory or SRO -- have regularly failed to provide.

Finally, we also ask the Committee to refocus its Statutory Best Interests Duty proposal toward one that seeks coordination and consistency with any final rules resulting from the current consultation that is underway by Canadian Securities Administrators (the "CSA").

## Discussion

As a consequence of its investigation into the manner in which financial planning and financial product sales and advice are overseen in Ontario, the Committee made nine recommendations to correct the failings it perceived in the current regulatory system with regard to these services. In the sections below we review and comment on each of these recommendations, together with the findings that led to each.

Before addressing the recommendations, however, we wish to make a note about the terminology used throughout the Report. On a global basis, we typically view financial product sales and financial/investment advice as separate activities that require different standards of care. Advice usually carries a higher fiduciary standard of care on the part of the practitioner because of the implied personalization of recommendations. Product sales, on the other hand, are seen as requiring a lower suitability standard of care, as investors are expected to recognize the sales aspect of such transactions as inherently conflicted.

We understand that some Canadian provinces have statutory requirements for advisers and dealers with discretionary authority to act in their clients' best interests. In Québec, advisers and dealers must act in clients' best interests, regardless of whether they have discretionary authority or not. Outside of those instances, we understand that other jurisdictions do not specifically provide for a higher standard of care on advisers or dealers regardless of the activities undertaken by such registrants. CSA'S Consultation Paper 33-404 (the "CSA Consultation") concerning the obligations of advisers, dealers and representatives toward their clients considers the extent to which such a standard should exist, including consideration of registrants currently subject to a suitability standard.

Please note the CAC plans to respond to the CSA Consultation, which deals with some of the same issues raised in the Report, particularly those related to the best interest standard.

Our comments for the remainder of this letter consider the issue from that perspective. Consequently, we refer to activities relating to advice and product sales under the term, "Sales and Advice," and the people engaged in such activities under the term "Advisers."

The Committee's recommendations and the CSA Consultation provide an opportunity to develop a universal set of standards of care that can and should apply to regulated Advisers and Financial Planners, and to others providing financial advice. We favour consistency and urge the Committee take advantage of this opportunity to amend its final recommendations to follow the approach that emerges from the CSA Consultation. Finally, we believe any rules developed as a consequence of the Committee's recommendations also should apply to those in the banking, insurance and mortgage sectors who are engaged in certain Financial Planning activities. Application of the same standards and standards of care to these groups of practitioners will ensure both a level playing field for service providers and a consistent regulatory environment for investors and consumers.

Below, each of the Committee's recommendations are provided, together with the Findings that led to the recommendation. After each item in the list, CFA Institute provides its comments about that recommendation and, where relevant, suggestions for improvement.

### **Regulation of financial planning**

Unlike Advisers who are overseen by the Ontario Securities Commission ("OSC") and/or the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA") (together, IIROC and MFDA are referred to as the "SROs"), the Committee found that Financial Planners are regulated only for those parts of their businesses where they act as Advisers. It is important, the Committee concluded, that individuals and firms providing financial planning services, either expressly, or implicitly through the use of titles, described services, or other means, should be regulated.

To accomplish this goal, the Committee suggested that the existing structure covering Advice and Product Sales should continue to function as before, and be supplemented by the creation of a new Financial Services Regulatory Authority (the "Authority") to oversee other Financial Planning activities not currently overseen by existing regulators. The Committee sees the Authority as integral to its recommendations: "In our view, an Ontario-based integrated regulator of financial services, such as the proposed [Authority], is well-suited to bring stand-alone providers of Financial Planning services into the regulatory fold and work with other Regulators" to harmonize standards.

**CFA Institute View:** We support both the finding that prompted this recommendation, and the part of the recommendation regarding oversight of un-regulated activities.

Our members have expressed concern over the years about the lack of regulatory oversight for individuals and firms that function outside of Canada's and Ontario's existing regulatory structure. Through the CAC, and acting on behalf of all 12 Canadian CFA Societies, our members have expressed concern that many investment practitioners and firms have benefited from the perception that the higher standards applicable to regulated members of the industry also apply to unregistered Financial Planners. This, we believe creates risk of negative repercussions for the industry. Specifically, without risk of regulatory sanction, individuals and firms outside the regulatory sphere, beyond undermining the integrity of and trust in the entire sector, could ultimately cause significant harm to investors.

At the same time, we support the Committee's findings, we note our concern about the proposed solution for those findings. Specifically, creation of another regulator with another layer of regulation, possessing an additional regulatory agenda, is problematic for regulated Advisers and Financial Planners.

The Authority, as described by the Committee, would have a flexible "and comprehensive authority over market conduct regulation in certain sectors." This broad mandate, together

with the lack of mechanisms for cooperation with existing regulators, could create longer-term problems for all parties involved. Specifically, it could make the regulatory structure duplicative and costly for Advisers, Financial Planners and investors, alike. Moreover, it has the potential to create contradictory and confusing rules for Advisers and Financial Planners, thus sowing the seeds of confusion for investors.

Furthermore, it is conceivable that in the future the proposed Authority would interpret its mandate more expansively and seek to oversee other financial and investment services, products, firms and individuals, including potentially those currently regulated, contrary to the Committee's proposal. We believe a more practical approach would be for the OSC or its delegates – the SROs – to oversee the activities, products, individuals and firms that the Authority is proposed to address, as these functions are similar to activities that the OSC and its delegates currently regulate. We believe this approach will lead to more consistent regulation across the financial services industry while avoiding regulatory duplication.

In support of this approach, we point to our September 2015 letter<sup>2</sup>, which described how regulators in Australia, the United Kingdom and the United States have faced similar concerns about the regulation of Financial Planning. It also described how, in each case, policymakers in these markets decided against the creation of new stand-alone regulatory structures to oversee Financial Planning or those parts of the Financial Planning business not already regulated by other regulatory agencies.

### **Harmonized standards**

The Committee noted that financial planners have varying degrees of proficiency, and that accreditation in the sector is inconsistent. To remedy the gaps in training and licensing that it found, the Committee is calling for a “universal” set of regulatory standards for the education, training, credentialing and licensing of financial planners.

*“It is essential, therefore, that providers of Financial Planning services possess a minimum level of proficiency and expertise. Since Financial Planning encompasses various sectors, we recommend that Regulators work cooperatively to develop a harmonized set of regulatory standards (including, if necessary, approving appropriate credentials) that apply consistently to all providers of this activity.”<sup>3</sup>*

**CFA Institute View:** As noted in our 2015 letter to the Committee, we support minimum standards for Financial Planning and Advice. To create these technical competency and

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<sup>2</sup> See <https://www.cfainstitute.org/Comment%20Letters/20150918.pdf>, response of CFA Institute, CFA Society Toronto and CFA Society Ottawa.

<sup>3</sup> “Financial Advisory and Financial Planning Policy Alternatives: Preliminary Policy Recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives”; April 5, 2016:5-6.

ethical requirements (the “Professional Standards”), we suggested creating an independent body (the “Standards-Setting Body”) of professional organizations to establish practice standards for anyone seeking to call themselves Financial Planners or Advisers, including those currently regulated as insurance and mortgage brokers. As noted above, existing regulators would oversee, coordinate and enforce their standards.

We make this suggestion, in part, due to the lack of experience regulatory institutions have in creating such standards. Moreover, this independent body would be able to draw upon the codes of ethics and standards of professional conduct of organizations such as CPA Canada, CFA Institute, and the Canadian Bar Association, each of which are the product of decades of development and renewal.

We reiterate our support for this Standards-Setting Body, and the enforcement of these standards by existing statutory regulators and SROs. We believe this structure has a number of structural benefits over alternatives proposed by other stakeholders. For one, it will prevent the need for duplicative credentials, and duplicative and potentially contradictory or confusing regulation. It also would prevent one professional organization from potentially leveraging a narrow legislative mandate to oversee a small group of unregulated Financial Planners and Advisers into oversight of market participants already overseen by statutory or self-regulatory organizations. It also would assure the best and highest standards of professionalism and care for investors by drawing upon decades of experience in the consideration and development of standards that consider the benefit of clients as primary. Finally, such a structure would achieve the type of harmonization that competition among several regulators would likely fail to provide.

Further, we reiterate our objection to the Authority in favor of our suggested alternative for use of the existing regulatory system to achieve these goals.

### **Statutory Best Interests Duty**

The Committee stated that Financial Planners and those engaged in Sales and Advice are under no explicit obligations to act in their clients’ best interests. This, it concluded, was wrong and recommended that Financial Planners and Advisers in Ontario be subject to a statutory best interest duty (SBID) based on a uniform and codified standard of care.

The Committee pointed to multiple submissions to the Initial Consultation that “noted that advisors may recommend products which are not in fact in the best interest of clients and that product recommendations are influenced by commissions. Applying a SBID would make clear the legal duty of care and significantly reduce, if not eliminate conflicts.”

The Committee also noted that exemptions from this obligation should be strictly limited. In particular, only if the person or firm operate in the following circumstances should they be exempt from these obligations:

- Already subject to a SBID through licensing or registration, such as portfolio managers
- Already subject to professional standard of care or fiduciary duty and advice is incidental to standard work, as with accountants or lawyers
- Is an order taker and no advice is being given

The Committee said these exemptions would avoid duplicative regulation on professionals. It also hopes to restrict its rules to activities that can influence investors' decisions.

**CFA Institute View:** CFA Institute supports a best interest duty on the part of individuals and firms who provide personalized investment advice to investors. Standard III of the CFA Institute Standards of Professional Conduct (together with the Code of Ethics, the "Code and Standards") describes the duties members owe to their clients. First among these, in Standard III.A., is a duty of loyalty, prudence and care. All members annually must attest to upholding this and every other part of the Code and Standards. On the basis of this attestation, we urge the Committee to acknowledge that the Code and Standards already meet any requirements mandated to meet the statutory best interest duty requirements.

The question in this case, however, is whether the SBID is to apply in all cases of interaction between financial intermediaries, and if so, when, and in what circumstances are deemed to be covered by such a Standard. The limited exemptions in the third recommendation seek to answer these concerns. With this recommendation, the Committee seems to be saying even salespeople, acting in their sales capacities, should abide by the SBID.

As noted above, we are aware of the pending CSA Consultation on standards of care for registered advisers and dealers. While the outcome of that consultation is uncertain, we urge the Committee to focus its recommendation toward consistency and harmonization with the rules that ultimately emerge from that regulatory effort. Regarding those engaged in activities outside the existing regulatory regime, we believe they should not have more than one set of standards to oversee their activities. We also believe one set of best interest duty responsibilities will avoid investor confusion about the responsibilities of Advisers and Financial Planners to investors. Finally, we believe the applicable standards should arise from the Standard-Setting Body.

### **Referral arrangements**

The Committee suggests in this recommendation that regulators prohibit a Financial Planner or Adviser from paying a fee to a third-party Financial Planner or Adviser unless the third-party to receive the referral fee is already regulated, owes its customers a duty of best-interests, and is fully transparent about the referral and the fee.

**CFA Institute View:** 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.

### **Titles and Credentials**

The Committee determined in its findings that the number of titles used by practitioners is causing investor confusion. The Committee also found that there are no universal regulatory standards with regard to professional titles or “holding out” – i.e. the manner in which a person or firm “hold themselves out to be” a certain type of professional. Consequently, the Committee suggests that titles be prescribed along the following lines:

- Regulators create a list of approved titles as the only titles that can be used in Sales and Advice or Financial Planning
- The Financial Planner title should be restricted solely to those activities described in Recommendations 1 and 2
- All other designations, credentials, etc., unless approved by regulators, would not be permitted
- Those in Sales and Advice or Financial Planning would not be permitted to use their corporate titles or positions because of potential confusion for investors

**CFA Institute View:** CFA Institute absolutely supports regulatory limitations on the use of the titles Advisers or Financial Planners. Their use connotes a higher standard of care on the part of those using them, often beyond what they are bound by law to maintain. We have long advocated for similar clarity in tittleage. Likewise, the inflated use of credentials and professional designations can give investors in some circumstances unwarranted comfort about professional capabilities and training of their Advisers or Financial Planners.

In 2013, IIROC published a Request for Comments – Use of Business Titles and Financial Designations as set out in IIROC Notice #13-0005. The CAC at that time agreed with the conclusions drawn by IIROC about the confusion faced by retail investors due to the number of titles and designations used by Advisers. We believe it is important for investor protection to educate investors with respect to the qualifications and experience required for various designations, and to ensure that titles provide meaningful information to investors and the general public.

As we stated in our September 2015 letter and reiterated above, we would welcome a system whereby the independent Standards-Setting Body we propose above would set standards of practice for those acting as Advisers and/or Financial Planners.

We also believe that the process by which the Standards-Setting Body and the regulators determine a credential is worthy of authorization is both transparent and procedural. We believe these qualities are needed to clearly demonstrate whether a credential meets the regulatory standards, and to remove the potential for discretionary determinations.



## **Central Registry for Financial Planners**

The Committee found that investors have difficulty finding information about Advisers' and Financial Planners' registration status, licensing, and/or disciplinary histories. All or most of the relevant information, the Committee noted, was available, but not from a central repository that would make it easy to find out about these individuals and their firms.

To remedy this concern, the Committee suggested giving investors access to a single, free, comprehensive registry for all relevant information about Advisers and individuals engaged in Financial Planning. This is important, in part because of the shift toward direct contribution retirement plans and, consequently, because of the need for individuals to understand how investment markets work.

**CFA Institute View:** We support this as useful for investors. The Canadian Securities Administrators already facilitate a national registration search on its website, where the public can search firms and individual registrants. The database could be expanded to include the additional information referenced above. A one-stop resource of this type could minimize the potential for investor confusion and maximize the potential for investor use to determine the history of their planners and advisers.

## **Financial literacy and education**

The Committee concluded that there is significant asymmetry between what Financial Planners and Advisers know, and what their customers know and understand. It therefore calls for active encouragement by the Ontario government, regulators, schools and industry to promote financial literacy and education.

**CFA Institute View:** We support this recommendation, particularly for schools and other organizations to include such education in their curricula. Without this type of push, we doubt that this recommendation will have a successful outcome. If it were to work, it would serve as an example for other markets within and outside of Canada. While we strongly support investor education, we note that the burden must be on the Financial Planners and Advisers to act in investors' best interests by managing any conflicts of interest.

## **Further Action**

The Committee concluded its Report with calls for the Ontario government to consider the following additional investor protection measures. First, it suggested that the provincial government adopt a simplified complaint and restitution system to make it easier for investors to raise concerns about firms, Financial Planners and Advisers, and to reach satisfactory financial conclusions to any complaints.

Second, it suggested Ontario adopt and implement a simplified investigation, prosecution and adjudication process for complaints. Such a process would help hold service providers and firms accountable for poor behavior. Finally, the Committee proposed an investor-friendly recovery process for financial losses.

**CFA Institute View:** We have supported similar types of structures in other markets, and support this proposal, as well. However, we note the importance of balancing access to justice against the risk of frivolous lawsuits.

## Conclusion

We thank the Expert Committee for the chance to provide our views of its Findings and Recommendations to the Ontario provincial government about the best way to oversee financial planning and product sales and advisory services. We support the effort and, as noted above, support most of the recommendations.

Sincerely,



Kurt N. Schacht, CFA  
Managing Director, Standards &  
Advocacy  
CFA Institute  
[kurt.schacht@cfainstitute.org](mailto:kurt.schacht@cfainstitute.org)  
(212) 756-7728



James C. Allen, CFA  
Head, Capital Markets Policy - Americas  
CFA Institute  
[james.allen@cfainstitute.org](mailto:james.allen@cfainstitute.org)  
(434) 951-5558



Sue Lemon, CFA  
CEO  
CFA Society Toronto  
[slemon@cfatoronto.ca](mailto:slemon@cfatoronto.ca)  
(416) 366-5755 x222



Bernhard Eichenlaub, CFA  
President  
CFA Society Ottawa  
[BEichenlaub@edc.ca](mailto:BEichenlaub@edc.ca)  
(613) 597-8722



Michael Thom, CFA  
Chair  
Canadian Advocacy Council

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[Michael.Thom@lumenasset.com](mailto:Michael.Thom@lumenasset.com)  
(416) 361-9953