



Canadian Foundation *for*
Advancement *of* Investor Rights

May 13, 2011

Financial Planning Standards Council
Code of Ethics Revalidation
902-375 University Avenue
Toronto, Ontario
M5G 2J5

Sent via e-mail to: industrycomment@FPSC.ca

Re: Proposed Changes to the CFP Code of Ethics

FAIR Canada is pleased to offer comments on the proposed changes to the CFP Code of Ethics (the “Code”) issued by the Financial Planning Standards Council and sent by letter to FAIR Canada dated April 12, 2011.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

This submission provides comments on the draft CFP Code of Ethics (the “Draft Code”), and in particular, the first Principle: “Client First”. The directive for this principle is: “A CFP professional shall always place the client’s interest first.” The description then states: “Placing the client’s interests first requires the CFP professional to act honestly and to place the client’s interests ahead of their own.” Your letter of April 12, 2011 states that the Code is now enforceable in all professional dealings of a CFP professional, not just when they are providing financial planning services.

1. FAIR Canada Comments and Recommendations – Executive Summary

- 1.1. Having the Code apply to all of a CFP’s dealings with a client, and not just in respect of its financial planning engagement, is beneficial to clients as many clients do not distinguish between the financial planning and other financial advice services of the advisor.
- 1.2. The explicit recognition of this Principle in the Code is also a positive step as those financial advisors who are CFPs will be bound by the Code. The acknowledgement of this

duty by CFP designated advisors will only be as effective as the associated compliance and enforcement.

- 1.3. The wording of the first Principle: Client First of the Draft Code and Rule 16 of the Rules of Professional Conduct should be improved so as to improve clarity to investors and bring them into line with current client expectations. Suggested wording is provided in section 2 below.
- 1.4. FAIR Canada believes that the Draft Code is a step in the right direction. A fundamental rethinking of securities regulation by securities commissions and SROs in respect of the advisor-client relationship is necessary for there to be any real benefit to investors. FAIR Canada strongly believes that a new regulatory framework is needed and recommends a Client First Model be implemented.

2. FAIR Canada Comments on the First Principle of the Draft Code and Recommended Improvements to the First Principle

- 2.1. Most investors are unable to distinguish between those “advisors” who provide financial planning services and call themselves “financial planners” and those advisors who call themselves “financial advisors” or “wealth management specialists” (among other titles). Most consumers would not be able to distinguish between the services provided by the CFP designated advisor that are “financial planning” and those which are “financial advisor” services. Accordingly, having the Code apply to all of a CFP’s dealings with a client, and not just in respect of its financial planning services, is more in line with client expectations.
- 2.2. Explicitly recognizing in the Draft Code as a first Principle that the client’s interests should be paramount is also a positive step, as financial advisors who hold the CFP designation will be bound by the Code. However, whether this will result in any benefit to investors remains to be seen because the acknowledgement of this duty by CFP designated advisors will only be as effective as the associated compliance and enforcement.
- 2.3. FAIR Canada believes that the draft language should be improved for the benefit of investors and to provide more clarity about the client-advisor relationship. In particular, we recommend that the description be changed so as to encompass the interests of the firm: “...to place the client’s interests ahead of their own *and the firm’s interests.*” The interests of the firm, in encouraging the sales of particular products for example, should not be placed ahead of the client’s interests.

- 2.4. In addition, FAIR Canada believes the wording should be changed (as follows) so that the advisor acts in the client's *best* interests: **"A CFP professional shall always act in the best interests of the client and place the client's interests first. Acting in the client's best interests requires the CFP professional, in all aspects of their dealings with their clients, to act honestly and to place the interests of clients foremost and ahead of their own interests and the firm's interests."** This is the current expectation for many investors, despite the fact that the current standard is only a "suitability" standard. Advisors enjoy a position of trust in their relationship with the client. A duty to act in the client's best interests is a standard of conduct which is more commensurate with the trust placed in the advisor and the expectations of investors.
- 2.5. FAIR Canada also recommends that draft Rule 16 of the Rules of Professional Conduct be changed to be consistent with the Principle of "Client First" by requiring the CFP professional to make and/or implement only those recommendations that are not simply "prudent and appropriate" for the client, but rather *"prudent and in the best interests of the client"*.

3. New Framework Needed – FAIR Canada Recommends a Client First Model

- 3.1. The Draft Code is a laudable effort on the part of the FPSC to improve matters for retail investors and the advisors who serve them. However, it is only when the securities commissions and SROs (IIROC and the MFDA) implement a Client First Model, which is legally enforceable, requiring *all* industry participants to put the best interests of their clients first, will there be real progress in protecting investors. FAIR Canada provided detailed recommendations for a Client First Model in our March 8, 2011 submission to IIROC and the Ontario Securities Commission at <http://faircanada.ca/current-issues/submissions/>. The support of the FPSC for a Client First principle should increase pressure on regulators and SROs to make it one of their top priorities to review the advisor-client relationship with a view to adopting a Client First model.
- 3.2. The FPSC states it is updating the Code "...to ensure it remains relevant to the changing needs of the public and the industry stakeholders who serve them. FPSC believes this will benefit the public and CFP professionals who use the Code to guide them in their professional activities." While a first step, FAIR Canada believes that the needs of investors are not adequately addressed under existing securities regulations and a fundamental rethinking of the whole framework is needed. **As the FPSC itself points out in its letter of April 12 2011, financial planning is for the most part not regulated in Canada and, as a result, there is inadequate protection for investors.**

- 3.3. FAIR Canada believes that a number of reforms need to be implemented in Canada including the adoption of a uniform, national legal obligation for all financial advisors (including those with a CFP designation) to place the client's interests ahead of their own interests and their firm's interests. This duty would provide a much-needed investor protection measure to the financial advisor-client relationship. This is only one example of the many flaws in the existing framework of securities regulation which need to be addressed in order to protect investors and meet their needs.
- 3.4. FAIR Canada believes that it is crucial that Canada not fall behind other jurisdictions in investor protection; the U.S., the U.K., Australia and other leading jurisdictions have moved ahead of Canada in their initiatives to strengthen investor protections within the client-financial advisor relationship. FAIR Canada has recommended to the Ontario Securities Commission ("OSC") in its submission regarding the OSC's draft Statement of Priorities, that it adopt, as a specific priority, the issuance of a consultation paper in 2011 on implementing a best interest of the client standard for all market intermediaries. Our submission can be seen at <http://faircanada.ca/wp-content/uploads/2011/01/110427-FAIR-Canada-submission-OSC-Statement-of-Priorities.pdf>.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you. Feel free to contact Ermanno Pascutto at 416-572-2282/ermanno.pascutto@faircanada.ca or Marian Passmore at 416-572-2728/marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights