



Canadian Foundation *for*
Advancement *of* Investor Rights

September 23, 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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Sent by email to: Fin.Adv.Pl@ontario.ca

Dear Expert Committee Members:

RE: Consultation regarding Financial Advisory and Financial Planning Policy Alternatives

I. Executive Summary

1. FAIR Canada commends the Ontario government for making it a priority to address the need for sound professional financial advice and planning services that best serve Ontarians.
2. As more Ontarians (and Canadians) are compelled to be self-reliant in saving for retirement and are forced into the markets due to declining availability of employer-sponsored pension plans, the inadequacy of the current regulatory regime has rightly become a serious concern for government policy-makers and society as a whole.
3. Previous initiatives trying to tackle the problem of poor financial advice or the lack of regulation for financial planning have floundered due to the fragmented nature of financial services regulation in Ontario (and Canada generally), an inability or unwillingness to coordinate the policy-making process, and significant opposition from industry stakeholders. **FAIR Canada strongly believes that what is urgently needed is a comprehensive and coordinated solution and one that keeps its focus squarely on consumers' needs and their capabilities.**
4. There is overwhelming evidence that consumers are not adequately protected in the existing regulatory framework and reform is urgently needed. FAIR Canada believes that the following is required:
 - (i) A regulatory regime that oversees whether the products being sold to consumers meet their needs and are in their best interests;

- (ii) Consistent treatment of consumers across the regulatory spectrum;
 - (iii) An adequately funded and informed consumer voice that is part of the policymaking process; and
 - (iv) A statutory best interest standard applicable whenever financial advice is provided to consumers.
5. Reforms must ensure that:
- (i) Consumers receive a similar level of protection in respect of their investments and advice related to those investments regardless of which sector of the financial industry the product or sale originates from.
 - (ii) Like products should be regulated in like manner.
 - (iii) The regulation of the financial services firm is not separated from the regulation of its employees and agents (i.e., financial service providers). It is much more efficient and effective to have one regulator oversee both the entity and their employees and agents given the business models, compensation structures, and supervisory obligations, etc.;
 - (iv) All financial service providers are subject to an interprovincial licensing system and automatic reciprocal enforcement of disciplinary orders by all financial services regulators. Disciplinary action against an individual and/or a firm by any financial services regulator should automatically result in equivalent disciplinary action by all other financial services regulators against that individual and/or firm.
 - (v) A comprehensive, user-friendly national database should be established to assist Canadian consumers in checking the registration and disciplinary history of any person or firm offering financial advice (including financial planning), whether that advice comes from someone in the insurance regulated sector, securities regulated sector or the banking sector.
 - (vi) Regulators and ombudservices should work together to provide a single point of entry for a financial consumer's complaint so that they do not have to navigate on their own through a regulatory labyrinth in order to have their concern addressed. The individual's complaint should be guided to the appropriate place for resolution by intake staff trained specifically for this purpose, rather than allowing the consumer to be directed to another place where their complaint may or may not be addressed.
6. Harmonization of regulatory protections is needed and that harmonization should occur while increasing the level of proficiency and increasing the legal standard that governs

financial services providers. Reforms should proceed so that a statutory best interest standard is met and the level of education and proficiency is increased.

7. **A person (or his or her firm) should not be permitted to hold themselves out as a professional who provides financial advice (including financial planning) unless they have attained an objective, uniform level of proficiency and they provide advice that is unbiased and not in conflict with the client's best interests.**
8. **FAIR Canada recommends that the government introduce legislative or regulatory requirements that must be met before someone can hold themselves out as a financial planner.** These requirements should include the achieving of specific uniform proficiencies and the obtaining of a certificate or license from a designated financial services regulator in order to practice as a "financial planner". An objective standard of proficiency and oversight by a financial services regulator should be required regardless of whether the person makes individual sales recommendations for investment products.
9. **FAIR Canada calls on the Ontario government to institute a statutory best interest standard so consumers can *rightly and safely* expect that their financial advisors and financial planners will provide them with high-caliber professional advice. We also call on the government to equip the regulatory system with all compliance and enforcement resources necessary to enforce that standard.**
10. Financial planning and financial advice organizations argue there is no need for a statutory best interests duty because all investment advisors already are bound by a common law fiduciary duty "where the facts warrant it." They are correct that courts impose a fiduciary duty only in some circumstances. **But investment professionals should have to act in their clients' best interests all the time, not just sometimes. And investors need to know up front that all the advice they receive will be based on what's best for them in every instance, not just when someone else decides afterward that "the facts warrant it."**
11. **In order for consumers to obtain sound, professional financial advice, conflicted remuneration structures, including third party embedded commissions, must be banned. Only then will financial advisors (including financial planners) be able to provide advice in a manner that aligns the interests of the consumer with those of their advisor.** Even in the absence of a statutory best interest standard, which FAIR Canada strongly recommends, the removal of these influential conflicts from the relationship between advisor and consumer must be achieved in order for consumers to be adequately protected.

II. Background to Current Consultation

In the 2013 Economic Outlook and Fiscal Review, the Government of Ontario made a commitment to investigate the merits of proceeding with more tailored regulation of financial

planners and recognized that “[p]eople who seek the assistance of financial planners expect access to sound, professional advice to ensure that their investment decisions best serve their financial goals.” Two consultations were then held with stakeholders in 2014. FAIR Canada attended those consultations and submitted a comment letter.¹ Subsequently, in the 2014 Ontario Economic Outlook and Fiscal Review, the government announced that it would appoint an expert committee to develop a mandate in consultation with key stakeholders and set out that:

“Individuals are increasingly responsible for their own income security and require sound and professional financial advice and planning services. To help consumers make informed choices and investments, the government is moving forward with the appointment of an expert committee to thoroughly consider more tailored regulation of financial advisers, including financial planners.”²

In April of this year membership on the Expert Committee was announced³. The announcement indicated that the goals of the review would include helping investors and consumers make informed investment and financial choices, as well as enhancing oversight of financial advisors and planners in order to address regulatory gaps that could leave consumers and investors vulnerable. A final report with recommendations is to be submitted to the government in early 2016.

The Expert Committee has now formulated its mandate which is set out in the Initial Consultation Document published June 24, 2015 (the “Consultation”):

“The Expert Committee will provide advice and recommendations to the Ontario government regarding 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. Specifically, the Expert Committee’s analysis will include consideration of the following:

- (a) Education, training, proficiency, ethics and enforcement requirements that should apply to those engaged in financial planning and the giving of financial advice;
- (b) Licensing and registration requirements that should apply to those engaged in financial planning and the giving of financial advice;
- (c) The legal means, if any, to address conflicts of interest and potential conflicts of interest;

¹ Letter from FAIR Canada to Frank Allen, ADM, Ministry of Finance dated February 7, 2014, available online at: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Financial-Planning-Regulation.pdf>.

² 2014 Ontario Economic Outlook and Fiscal Review, at page 52, available online at http://www.fin.gov.on.ca/en/budget/fallstatement/2014/paper_all.pdf.

³ Ontario Ministry of Finance News, April 25, 2015, “Expert Committee to Review Regulation of Financial Advisors and Planners”.

- (d) The use of titles and designations and whether they should be regulated; and
- (e) The need for a central registry of information regarding providers of financial planning and financial advice, which could include the ability for consumers to register complaints and have access to the registry.”

As the Ontario 2015 Budget explained, given that 65 per cent of Ontario workers do not participate in a workplace pension plan, self-directed retirement savings and investment returns are often the only way to achieve retirement security. “Enhancing regulation of the financial advice sector” is therefore of vital importance to helping consumers “build a more secure retirement future in relation to their savings, investments and other financial choices.”⁴

FAIR Canada commends the Ontario government for making it a priority to address the need for sound professional financial advice and planning services that best serve Ontarians. FAIR Canada is pleased to provide its comments to the Committee on this important issue.

FAIR Canada is a national, charitable 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.

III. General Comments

Existing regulatory requirements and financial services industry practices do not provide adequate protection for financial consumers in Ontario (or elsewhere in Canada). FAIR Canada, on behalf of consumers, has sought policy reforms to bring about adequate protections and better financial outcomes for consumers, an increased level of professionalism in the financial services industry, and effective competition.

Regulators have made little progress to date on these objectives. There has been fierce opposition by many industry stakeholders who deny any problems exist, respond with stock arguments (such as “unintended consequences” and “choice for the consumer”), and try to delay initiatives for as long as possible. Real leadership is needed to ensure a healthy financial services marketplace for the public.

Those who would lead must come to grips with certain critical and interconnected realities:

- The overwhelming majority of consumers have a low level of financial literacy and rely heavily on the advice of their financial service providers.
- A large degree of information asymmetry exists between consumers and their financial services providers.
- Consumers believe and expect that financial service providers, including financial planners, are required to provide advice that is in their clients’ best interests.

⁴ 2015 Ontario Budget, at page 151.

- Financial service providers routinely portray themselves to the public as professionals who act in their clients' best interests; however, this is often far from the truth. Consumers regularly receive advice that is not in their best interest, from what are actually salespeople whose interests are not aligned with those of their clients.
- Compensation arrangements, which often generate serious conflicts of interest, have a significant impact on the quality of advice consumers receive.

There is an overwhelming body of academic literature⁵ and empirical evidence, including the recently released Mystery Shopping Report,⁶ demonstrating that Canadians are poorly served in the current system and are suffering harm as a result. Many Canadians receive poor quality advice that does not comply with existing rules. Consumers often aren't told how much investment products cost, nor are they informed about the risk-return relationship or how their advisor gets paid. Advisors use a bewildering array of unregulated and frequently misleading titles that falsely convey high levels of seniority, experience or executive authority and that don't reflect the standard of advice being provided. And consumers (often unknowingly) pay too high a cost – fees charged for mutual funds, the most common investment held by Canadians, are higher in Canada than anywhere else in the world.

As a result of these defects in the advice they receive, Canadians have been found to take on more risk than they otherwise would be inclined to take, or than they need to take in light of the availability of alternate investment products, and Canadians have experienced substandard performance in their investment portfolios.⁷

All of this occurs in a context where consumers are unable to really assess the quality of advice they're receiving but nonetheless often believe it's good.⁸ This is not surprising given the low

⁵ Mutual Fund Fee Research, by Dr. Edwin Weinstein, Phd, The Brondesbury Group, Spring 2015, available online at https://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20150611_81-407_mutual-fund-fee-research.pdf, which did an extensive review of the academic literature. In particular, see Susan Christoffersen, Susan EK, Richard Evans, and David K. Musto. "What do consumers' fund flows maximize? Evidence from their brokers' incentives." *The Journal of Finance* 68, no. 1 (2013), at page 201-235, online at: <http://www.afajof.org/details/journalArticle/4240211/What-DoConsumers-Fund-Flows-Maximize-Evidence-from-Their-BrokersIncentives.html>; and Foerster, Stephen, Juhani T. Linnainmaa, Brian T. Melzer, and Alessandro Previtro. "Retail Financial Advice: Does One Size Fit All?" *National Bureau of Economic Research*, No. w 20712 2014, online at: <http://dx.doi.org/10.2139/ssrn.2522934>.

⁶ OSC Staff Notice 31-715, *Mystery Shopping for Investment Advice*, available online at: <http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf>.

⁷ The Mystery Shopping Report concluded that, overall, 37 percent of investment advisors did not follow the process required of them and thereby failed to meet regulatory expectations.

⁸ "Ontario financial advisers pass muster with undercover 'mystery shoppers', *Globe and Mail*, September 17, 2015, by Janet McFarland quoting Leslie Byberg of the Ontario Securities Commission who stated:...even though 88 per cent of clients were happy with the recommendations they received, regulators concluded one-third of the cases did not meet compliance expectations, including 29 per cent that did not comply with know-your-client or suitability requirements. She said it demonstrates that clients cannot always tell if they have received good advice. "It's really quite stark that in 37% of the cases, the adviser didn't follow the process, but the client thought it was great," she said."

level of general financial literacy, the complexity of today's investment products and capital markets, and consumer's expectations (reinforced by financial services providers' marketing) that their financial advisors are required to act, and are in fact acting, in their best interests. All of this adds to consumers' vulnerability.

The public rightly expects more than what it is getting and there is a pressing need for reforms. Better financial outcomes for consumers will best be achieved by making key changes to existing regulatory requirements in order to bring about a more efficient (i.e., competitive and healthy) financial services marketplace and, with it, more proficient and professional advice for financial consumers.

Previous initiatives trying to tackle the problem of poor financial advice or the lack of regulation for financial planning have floundered due to the fragmented nature of financial services regulation in Ontario (and Canada generally), an inability or unwillingness to coordinate the policy-making process, and significant opposition from industry stakeholders. **FAIR Canada strongly believes that what is urgently needed is a comprehensive and coordinated solution and one that keeps its focus squarely on consumers' needs and their capabilities.**

In addressing the inadequacy of current regulation in the financial advisory and financial planning sphere, a comprehensive and coordinated solution will need to address two issues. The first issue is fairly narrow and applies to the regulation of financial planning and the ability to hold out as a "financial planner". The second issue is broad and covers the regulatory framework for all individuals who call themselves "financial advisors" or "financial planners" when dealing with the public.

Here, in essence, are the steps that must be taken:

1. The government needs to address the problem that anyone in Ontario can, at present, call themselves a "financial planner" without having to meet any specific proficiency requirements and without being subject to the oversight of a financial services regulator (so long as they do not sell investment products). **FAIR Canada recommends that the government introduce legislative or regulatory requirements that must be met before someone can hold themselves out as a financial planner.** These requirements should include the achieving of specific uniform proficiencies and the obtaining of a certificate or license from a designated financial services regulator in order to practice as a "financial planner". This would be similar to the regime currently in place in Quebec. An objective standard of proficiency and oversight by a financial services regulator should be required regardless of whether the person makes individual sales recommendations for investment products.
2. The government also needs to address the problem that the regulatory framework does not reflect consumers' expectations or needs and, all too often, consumers receive poor financial advice and have poor financial outcomes. The current regulatory framework does not allow for effective competition between financial service firms and has not encouraged the emergence of a true profession amongst financial services providers.

FAIR Canada strongly recommends that the Ministry of Finance lend its support to the imposition of a statutory best interest standard that would apply to all financial service providers, both financial advisors and financial planners. Adoption of this standard necessarily would require increased levels of proficiency and professionalism – meaning financial advisors and financial planners would need to maintain sufficient independence to remain objective when providing advice. They also would need to avoid conflicts of interest wherever possible and they would need to manage unavoidable conflicts in a manner that benefits their clients and not themselves. This would require them to abstain from receiving conflicted forms of remuneration, such as trailing commissions paid by third parties. A best interests standard also would require that financial service providers, financial advisors and financial planners provide consumers with an accessible, affordable, robust and effective mechanism for redress in the event of wrongdoing.

FAIR Canada calls on the Ontario government to institute a statutory best interest standard so consumers can *rightly and safely* expect that their financial firm and its financial advisors and financial planners will provide them with high-caliber professional advice.⁹ We also call on the government to equip the regulatory system with all compliance and enforcement resources necessary to enforce that standard.

Please find below FAIR Canada’s responses to the specific questions posed in the consultation document.

IV. FAIR Canada’s Response to Specific Questions

1. Financial Planning versus Financial Advice

The Expert Panel asks “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.

- 1.1. Generally, financial planning bodies define financial planning as advice from an independent financial expert on all the following six major financial determinants in life:
 1. Cash and debt planning
 2. Income tax planning
 3. Investment planning
 4. Retirement and financial independence planning
 5. Insurance and risk planning

⁹ See FAIR Canada’s submission responding to the CSA’s request for comments as to the desirability and feasibility of implementing a statutory best interest standard, available online at <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-Submission-re-CP33-403-Statutory-Best-Interest-Duty.pdf>.

6. Estate planning.

The financial planner is expected to review all of these areas with their client and provide a written financial plan, which is then reviewed periodically for accuracy given changes in the financial circumstances and life stages of the client over time.¹⁰

- 1.2. Financial planning is described as a process that should result in a written financial plan determining how an individual can best meet their life goals (i.e., send their children to university, buy a house, pay off debts, retire comfortably, etc.) through managing their financial affairs.¹¹
- 1.3. The definition of the provision of “financial advice” does not have the same rigour. It may involve some or all (but not likely all) of the six financial determinants. In the regulatory context, it has often been limited to the provision of an investment “recommendation” from a licensed or registered individual based upon a consumer’s personal circumstances and objectives including gathering necessary “know your client” information to ensure the advice is “suitable”.
- 1.4. The nature and scope of financial planning is poorly understood by consumers and poorly articulated by many of those who claim to be financial planners. Consumers are aware of the term “financial planning” but there is no evidence that they really know what it entails.¹²
- 1.5. Adding to this confusion, consumers also find existing credentials for financial planners incomprehensible – they are unable to distinguish between, for example, a “certified financial planner” and a “personal financial planner”.¹³
- 1.6. Designations and titles do have an impact on consumers. A 2007 FINRA survey in the United States found that, among those who had heard a salesperson claim to hold a designation, 46% said they would be more likely to listen to that person’s advice.¹⁴ Similarly, IIROC recently noted:

“...it should be recognized that certain business titles can be confusing to average investors and/or imply the individual performs a particular function at a firm or has particular expertise. Similarly, business titles can give rise to certain client expectations or help to create an unfounded feeling of trust, comfort or prestige. Dealer Members should keep these considerations in

¹⁰ Jonathan Bishop and John Lawford, “Purse Strings Attached: Towards a Financial Planning Regulatory Framework” (December 2012), at pages 27 to 29. See also Tim Kiladze, “Canada’s trouble with investment advisers” (November 23, 2013) *The Globe and Mail*, available online at: at page 6.

¹¹ See, for example, FPSC Website at <http://www.fpsc.ca/financial-planning>.

¹² Holding the Purse Strings, at page 4, 13.

¹³ Holding the Purse Strings, at page 4, 13, 61.

¹⁴ AARP Public Policy Institute: Preventing the Misleading Use of Senior Designations – What States Should Do”; available online at: <http://www.aarp.org/money/investing/info-04-2010/i40-senior.html>.

mind before authorizing their Approved Persons to use specific business titles. Particular scrutiny should be given to the use of business titles that convey an expertise in seniors' issues or retirement planning to ensure any individual using such a business title is appropriately qualified and competent in that area."¹⁵

- 1.7. Guidance by regulators does not appear to be effective. The recent Mystery Shopping Report found that advisors in the 88 encounters analyzed used a total of 48 different titles and designations, but the titles "financial planner" and "financial advisor" were common.¹⁶ The titles did not help determine what the advisor's specific qualifications, expertise or accreditations were and suggested that shoppers were provided certain services or expertise when they were not. The titles did not help determine the level of proficiency of the advisor.¹⁷
- 1.8. Yet, quite apart from problems posed by indiscriminate use of the titles "financial planner" and "financial advisor" or the proliferation of designations suggesting proficiency in these fields, the broader problem is that consumers are not being provided with real financial planning advice. All too often, financial planning services are offered just as a guise to sell investment products. Empirical research has shown that building a financial plan is one of the services that consumers expect when they seek out advice from their "financial advisor",¹⁸ and consumers expect this advice to be provided in the their best interests regardless of any conflicts that exist.¹⁹ The industry itself stresses the need for professional advice and financial planning, no doubt in response to consumers' needs and expectations. **Unfortunately, it appears that many consumers do not receive independent, objective, financial planning advice or written financial plans, but instead end up dealing with salespersons who make their livelihood through the sale of investment products.** Financial plans are often used as a teaser or loss leader to sell investment products to consumers. "[F]inancial planning... became simply a tool to sell investments."²⁰

¹⁵ IIROC Guidance Note 14-0073. It should be noted, however, that a recent IIROC survey found investors were divided on how important business titles and designations are to the formation and maintenance of a relationship with an advisor: IIROC Notice 13-0005, "Use of Business Titles and Financial Designations", (January 8, 2013) at page 6. Also, according to a report by the Public Interest Advocacy Centre, financial planner groups and their designations are largely ignored in the decision to use a financial planner: *Holding the Purse Strings*, page 5.

¹⁶ *Mystery Shopping Report* at page 8 and 26.

¹⁷ Barbara Shecter, "'Mystery shop' by regulators reveals inconsistent advice by financial advisors", *The National Post* (September 17, 2015), available online at: <http://business.financialpost.com/personal-finance/mystery-shop-by-regulators-reveals-inconsistent-advice-from-investment-advisers>.

¹⁸ Investor Education Fund, "Investor behavior and beliefs: Advisor relationships and investor decision-making study", written by The Brondesbury Group, 2012 at page 11.

¹⁹ *Investor behavior and beliefs*, at page 28.

²⁰ *Holding the Purse Strings*, at page 13.

1.9. Even when qualified financial planners are utilized, the service usually comes with a sales component. FAIR Canada has been provided with data from the FPSC indicating that among their 17,000 members across Canada, 86% hold a license to sell one or more types of investment products as follows:

- 17 % insurance only
- 33% mutual funds only
- 11% securities only (this would include mutual funds)
- 19 % insurance and mutual funds
- 6% insurance and securities (this would include mutual funds)
- 14% not product licensed.

1.10. As can be seen, most CFP holders who are licensed to sell investment products are limited in what they can sell. Only 11% can make recommendations from among a wide range of securities-regulated investment products and only 6% can offer both securities and insurance products. Conversely, just 14% of CFP holders are not product licensed at all; but it is not known to what extent this latter group advises retail clients.²¹

1.11. While regulations require that the financial service provider advise the consumer as to which type of products he or she is licensed to sell, they do not require that the financial service provider advise the consumer about products they are not licensed to sell. Consumers may not be aware, therefore, that there is limited choice from which the financial service provider may choose when making a recommendation.

2. The Adequacy of the Current Regulatory Scheme Governing Financial Planners and Financial Advisors

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

2.1. No, it is not. As described above consumers are not adequately protected in the existing regulatory framework and reform is urgently needed. As set out in our recent submission to the Expert Advisory Panel reviewing the mandate of FSCO²², FAIR Canada believes that the following is urgently needed:

²¹ “Fee-only” financial advisors, who charge hourly rates – and who may or may not hold CFP designations – are generally thought to comprise only about 5 or 6 percent of active advisor ranks.

²² FAIR Canada’s Letter to Expert Advisory Panel – Review of the Mandates of FSCO, FST, DICO dated August 21, 2015, at page 11, available online at: http://faircanada.ca/wp-content/uploads/2011/01/150821-Letter-to-Expert-Advisory-Panel-re-FSCO-Mandate-Review_Final.pdf

- (v) A regulatory regime that oversees whether the products being sold to consumers meet their needs and are in their best interests;
 - (vi) Consistent treatment of consumers across the regulatory spectrum;
 - (vii) An adequately funded and informed consumer voice that is part of the policymaking process; and
 - (viii) A statutory best interest standard applicable whenever financial advice is provided to consumers.
- 2.2. Consumers of different types of investment products currently do not receive a similar level of protection in respect of their investments and “advice” related to those investments. While FAIR Canada has serious concerns with the adequacy of investor protection in the securities regulatory framework, we have even greater concerns with the level of protection afforded to those who purchase investments from a “financial advisor” regulated by other financial sectors.
- 2.3. Reforms must ensure that:
- (vii) Consumers receive a similar level of protection in respect of their investments and advice related to those investments regardless of which sector of the financial industry the product or sale originates from.
 - (viii) Like products should be regulated in like manner.
 - (ix) The regulation of the financial services firm is not separated from the regulation of its employees and agents (i.e., financial service providers). It is much more efficient and effective to have one regulator oversee both the entity and their employees and agents given the business models, compensation structures, and supervisory obligations, etc.;
 - (x) All advisors are subject to an interprovincial licensing system and automatic reciprocal enforcement of disciplinary orders by all financial services regulators. Disciplinary action against an individual and/or a firm by any financial services regulator should automatically result in equivalent disciplinary action by all other financial services regulators against that individual and/or firm.
 - (xi) A comprehensive, user-friendly national database should be established to assist Canadian consumers in checking the registration and disciplinary history of any person or firm offering financial advice, whether that advice comes from someone in the insurance regulated sector, securities regulated sector or the banking sector.

- (xii) Regulators and ombudservices should work together to provide a single point of entry for a financial consumer's complaint so that they do not have to navigate on their own through a regulatory labyrinth in order to have their concern addressed. The individual's complaint should be guided to the appropriate place for resolution by intake staff trained specifically for this purpose, rather than allowing the consumer to be directed to another place where their complaint may or may not be addressed.
- 2.4. Harmonization of regulatory protections is needed and that harmonization should occur while increasing the level of proficiency and increasing the legal standard that governs financial services providers. Reforms should proceed so that a statutory best interest standard is met and the level of education and proficiency is increased. The United Kingdom's Retail Distribution Review should be examined as an instructive model. There, conflicted remuneration in the form of embedded third party commissions (i.e., trailing commissions) were banned at the same time as proficiency requirements were significantly increased. By contrast, Canadian financial services providers are permitted to give advice while in significant conflicts of interest, and basic proficiency requirements are very low here. Canadian consumers deserve better.

3. The Legal Standard that Should Govern Financial Planning and Financial Advice

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?

- 3.1. **A person (or his or her firm) should not be permitted to hold themselves out as a professional who provides financial advice (including financial planning) unless they have attained an objective, uniform level of proficiency and they provide advice that is unbiased and not in conflict with the client's best interests.**
- 3.2. FAIR Canada has been active in calling for a fiduciary duty or statutory best interest standard since the organization came into existence. In order to be a financial professional, the person should be subject to a fiduciary duty – just like lawyers, doctors, accountants, engineers and other professional groups.
- 3.3. Financial planning and financial advice organizations argue there is no need for a statutory best interests duty because all investment advisors already are bound by a common law fiduciary duty "where the facts warrant it." They are correct that courts impose a fiduciary duty only in some circumstances. **But investment professionals should have to act in their clients' best interests all the time, not just sometimes. And investors need to know up front that all the advice they receive will be based on what's best for them in every instance, not just when someone else decides afterward that "the facts warrant it."** On this critical point, the common law fiduciary duty is outmoded and inadequate. That's why it needs to be replaced with a statutory best interests duty.

- 3.4. Current compensation structures utilized in the investment business generally centre on transactional compensation. This incentivizes the sale of products. Furthermore, in the area of investment funds especially, product manufacturers compete for business by securing advisor loyalty through the payment of retention-based trailing commissions. The current system therefore can, and often does, misalign the interests of investors and their advisors, and does not encourage the emergence of a true financial planning profession.
- 3.5. When financial planners assist with “implementing” a financial plan through the purchase of investment products or life insurance, the potential for serious conflicts of interest arises. Remuneration arrangements resulting from these activities may call into question the objectivity or appropriateness of the financial plan itself. As noted above, many financial planners currently are not licensed to sell securities or are licensed only to sell mutual funds. This prevents them from recommending exchange traded funds instead of high cost mutual funds, resulting in many consumers paying more in fees than they otherwise should. While the MFDA is currently reforming to allow Approved Persons (“AP”) to sell ETFs, it is not clear that APs will be incented to do so, under existing compensation arrangements.
- 3.6. Professional financial services must be provided to consumers unencumbered by conflicted remuneration structures, including embedded third party commissions. Based on existing empirical research, we believe the impact of compensation structures on the quality of financial plans (and adherence to them) and on the quality of financial advice is as great a problem as the level of proficiency and knowledge of those providing the advice. The two issues must both be addressed.
- 3.7. FAIR Canada strongly believes that if financial planners (or financial advisors more generally) wish to professionalize commitments to ethical standards and to serving the public interest are key. Several associations profess such commitment through Codes of Ethics, but the commitments ring hollow where those associations actively oppose introduction of the required standard as a statutory obligation, or oppose reforms to reduce conflicts of interest that undermine the provision of objective advice. Likewise, consumer protection is not enhanced by instituting a regulatory regime requiring financial service providers to be members of a designated association, though it is very much in the association’s interests for such a requirement to be set.²³
- 3.8. Voluntary codes of professional ethics do not provide adequate consumer protection, and thus they really just contribute to the consumer being misled. This is certainly the case where members’ compensation arrangements give rise to conflicts of interest

²³ See, for example, Advocis’ proposed professions model, available online at <http://www.advocis.ca/raisethebar/>. Advocis vigorously opposes adoption of a statutory best interest standard, but they do not indicate how their proposed standard would be effective. We are not aware that they have specified what proficiency standards would be required under their proposal, or how those standards would differ from the status quo.

and thereby contradict voluntary codes requiring members to “put the interests of the consumer first.” In any dispute with the consumer, these same financial services providers often argue that only the suitability standard, and not one of best interests, is the applicable standard.

- 3.9. In light of the foregoing, FAIR Canada does not support a regulatory model in which financial service providers’ member associations (such as Advocis and the FPSC) could be deemed self-regulatory organizations and given the authority to regulate financial planning or financial advice more broadly. Existing statutory regulators should regulate the provision of financial advice, including financial planning. To allow trade associations to regulate this activity would simply perpetuate the status quo of low levels of proficiency and conflict-riddled transaction-based sales recommendations that lead to poor consumer outcomes.
- 3.10. **In order for consumers to obtain sound, professional financial advice, conflicted remuneration structures, including third party embedded commissions, must be banned. Only then will financial advisors (including financial planners) be able to provide advice in a manner that aligns the interests of the consumer with those of their advisor.** Even in the absence of a statutory best interest standard, which FAIR Canada strongly recommends, the removal of these influential conflicts from the relationship between the dealer/advisor and consumer must be achieved in order for consumers to be adequately protected.²⁴

4. The Need For Further Regulation of Financial Planning and Financial Advice

To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated?

(a) Financial Planning

- 4.1. The government needs to address the problem that, currently, anyone in Ontario can call himself or herself a “financial planner” without having to meet any specific proficiency requirements. In addition, anyone can call themselves a “financial planner” without being subject to the oversight of a financial services regulator (so long as they do not sell investment products).

²⁴ FAIR Canada has provided comments on the CSA’s Discussion Paper and Request for Comment 81-407 urging the reform of the mutual fund fee structure in Canada so that serious conflicts of interest are reduced. These conflicts are systemic and structural in nature and lead to higher costs, poor product recommendations and a lack of effective price competition that results in a reduced ability of consumers to adequately save for their financial goals. Embedded third party commissions (i.e., trailing commissions) are not the only type of conflicted remuneration needing to be eliminated, but they are the most significant ones and should be addressed first, available online at: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Mutual-Fund-Fees.pdf>.

- 4.2. **FAIR Canada recommends that the government introduce legislative or regulatory requirements that must be met before someone can hold themselves out as a financial planner.** These requirements should include the achieving of specific uniform proficiencies and the obtaining of a certificate or license from a designated financial services regulator in order to practice as a “financial planner”. This would be similar to the regime currently in place in Quebec.²⁵
- 4.3. An objective standard of proficiency (which existing provincial financial planning bodies could play a role in determining) and oversight by a financial services regulator should be required regardless of whether the person makes individual sales recommendations for investment products. Such a reform will put an end to the current situation where any person can simply call themselves a “financial planner”. This will also make it clear to consumers that anyone who calls himself or herself a “financial planner” has an appropriate degree of proficiency and will be overseen by a statutory regulator. Consumers will no longer need to wade through an “alphabet soup” of designations, trying to figure out if their advisor is qualified to produce a financial plan. And if a rigorous standard is set for holding oneself out as a “financial planner”, consumers will not have to wonder whether their planner is up to the task.
- 4.4. This should decrease the incidence of substandard financial plans being produced by those who are not proficient but are nonetheless holding themselves out to the public as financial planners. Closing this regulatory gap would help protect consumers.
- (b) Professional Financial Services (the Provision of “Financial Advice”)**
- 4.5. FAIR Canada believes that if a dealer and its advisors want to hold themselves out as offering professional financial services to consumers (which may encompass financial planning, investment advice and the implementation or execution of investment recommendations), an objective standard of proficiency and professionalism must be met. Professionalism means the advisor would need to maintain sufficient independence to ensure their advice is unbiased, accords with the client’s best interests, and is free of conflicts of interest. It also means that professional services could be provided only in the absence of conflicted remuneration structures, including embedded third party commissions, and in the absence of misleading business titles and designations. Consumers should not be required to assess the various confusing credentials and inflated titles that currently exist in order to ensure they will receive professional advice.

²⁵ Quebec’s requirements are such that anyone who provides financial planning services in the province must have a bachelor’s degree, must meet standards set by the Institut québécois de planification financière (“IQPF”), must have passed the IQPF examination and must be licensed by the Autorité des Marchés Financiers (“AMF”). Through legislation that is overseen by the AMF, they are subject to fines and discipline for malpractice and fraud, and they must meet continuing education requirements and comply with self-dealing prohibitions.

(c) Tiered Approach to Best Interests

- 4.6. Should regulators be unwilling to impose a best interest standard on all business models as we recommend, an alternative would be to take a tiered approach so that those who elect not to adhere to a best interest standard would be permitted to provide only “restricted advice” along the lines of the model adopted in the U.K.
- 4.7. Under this model, advisors who provide “restricted advice” must use the title “salesperson”, are subject to suitability requirements, and are precluded from holding out that they offer independent advice, or act in the best interest of the client, or are a professional (whether it be a professional financial planner, financial advisor or otherwise). They must disclose in writing and orally that they are providing restricted advice, and that the advice they give is not required to be in the best interest of the consumer.
- 4.8. To keep consumers from being misled, stringent requirements with respect to marketing and use of business titles and credentials would need to be imposed. As noted by the CSA, “...some advisers and dealers market their services on the explicit or implicit basis that the advice they are providing is in the client’s best interests.”²⁶ Such misleading advertising and marketing would no longer be permitted and would be strictly prohibited in respect of dealers and advisors who offer restricted advice.
- 4.9. While this model is not FAIR Canada’s preferred approach (particularly given the confusion observed in the U.S. where many consumers do not appear to be aware of the different obligations of registered investment advisors and broker-dealers), we believe that a tiered approach would at least offer Canadian consumers a means of differentiating between sales pitches and professional financial advice.

5. Harm or Benefits in the Current Environment

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

- 5.1. In the General Comments section above, we outline the many harms that financial consumers suffer as a result of the current regulatory regime. Those harms include:
 - (i) unsuitable recommendations regarding investments;
 - (ii) recommendations that, whilst they may be suitable, are high cost;
 - (iii) recommendations that may not be found to be unsuitable but may have been provided with only a cursory review of the individual’s circumstances and financial goals and without having adequately considered such important issues as their

²⁶ CSA Consultation Paper, (2012) 35 OSCB 9558 at page 9585.

capacity to suffer any financial losses, the trade-off between risk and return (both upside and downside presentation of risks) or what product fees or compensation charges will have to be incurred and therefore what the ultimate value (if any) will be for the consumer;

(iv) inadequate financial plans that have unrealistic or negligent assumptions underlying the plan's conclusions; and

(v) unsuitable recommendations to borrow to invest and other problems which arise, not from the plan itself, but as a result of conflicts of interest and misaligned incentives that currently exist.

5.2. FAIR Canada believes there is an urgent need to prevent this harm. Specifically, as the availability of employer-sponsored pension plans declines, more Ontarians (and Canadians) are required to become self-reliant when saving for retirement and are forced into the markets as a result. Due to the increasing number of individuals entering the market, the current regulatory regime has rightly become a serious concern for government policy-makers and society as a whole.

5.3. Foreseeable future economic and market trends also make it imperative for the Ontario government to act now to improve our existing regulatory framework. Developed economies have persisted with low economic growth and low interest rates, and we are seeing increasingly complex financial products. This, coupled with an aging demographic that is more likely to be forced into retirement through circumstances beyond their control than decide exactly when they wish to retire, means that it is imperative that individuals have the ability to save. The Ontario government must improve the regulatory framework in order to improve the way that people in the province can save their money.²⁷

6. Single Registration/Licensing Check Desperately Needed

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.

6.1. Yes. FAIR Canada recommends that the Ontario government develop a comprehensive, user-friendly, one-stop licensing and registration check system so that consumers can easily determine whether the person from whom they seek financial advice is properly qualified to provide that advice and is duly registered/licensed. Also, if utilized under a tiered system as described above, the registry should indicate

²⁷ Seres Lu, "Nearly half of Canadians forced to retire earlier than planned, polls showed" (July 1, 2015) online at: <http://www.theglobeandmail.com/globe-investor/personal-finance/retirement-rrsps/nearly-half-of-canadiansforced-to-retire-earlier-than-planned-poll-shows/article25219041/>.

whether an advisor is a financial planner who provides advice in the client's best interest ("independent advice") or is merely a salesperson. Finally, the registry should fully disclose the disciplinary history of all persons and firms offering financial advice, whether that advice comes from someone in the insurance regulated sector, securities regulated sector or the banking sector.

We hope that our comments are helpful to the Panel's work and would be happy to answer any further questions the Panel may have. Please contact Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil Gross". The signature is fluid and cursive, with the first name "Neil" and last name "Gross" clearly distinguishable.

Canadian Foundation for Advancement of Investor Rights