



Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

The Honourable Charles Sousa
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RE: Consultation – Regulation of Financial Planners

FAIR Canada is pleased to offer comments on the Ministry of Finance's consultation paper on the regulation of financial planners (the "Consultation Paper").

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

1. Executive Summary

- 1.1. FAIR Canada is of the view that if you wish to reduce consumer confusion, misleading titles, and poor financial planning and/or investment advice, you must address more than credentials and holding out in respect of financial planning. You must institute a statutory best interest standard.
- 1.2. 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 objective, professional advice. We also call on the government to equip the regulatory system with all compliance and enforcement resources necessary to enforce that standard.
- 1.3. To proceed with meaningful title restrictions, it is essential that the title reflect the ability of the individual financial services representative (and his or her firm) to provide objective, professional financial advice rather than conflicted sales. Therefore, the use of the title "financial planner" (and "financial advisor") should be restricted to those who have attained the necessary level of proficiency (including the appropriate credential) and who are capable of providing advice that is unbiased and not in conflict with the client's best interests.

- 1.4. FAIR Canada therefore recommends that the use of business titles be restricted to the following categories:
- “Financial Planner” for those who have the necessary proficiency (including credential) and who provide services on a fee-for-service basis (such as hourly or a set fee for a financial plan) and who do not receive any compensation for product sales or referrals;
 - “Investment Advisor” or “Financial Advisor” or “Financial Planner” (if the latter has the appropriate financial planning credential) for those that are subject to a fiduciary duty and a statutory best interest standard (once implemented)¹;
 - “Portfolio Manager” for those licensed to exercise discretionary authority (including robo-advisors) while operating within business models that allow them to comply with the fiduciary duty already required of such registrants; and
 - “Salesperson” for the remaining financial services representatives who do not meet the above restricted categories.
- 1.5. All other business titles should be prohibited.
- 1.6. FAIR Canada urges you to determine the level of education and proficiencies required to be met before any regulator in Ontario will allow an individual to obtain a certificate or license or registration as a “financial planner”.
- 1.7. Canada is lagging behind other leading jurisdictions in the area of education and proficiency and oversight of such standards. **In Canada, not even a high school diploma is needed.** FAIR Canada believes that, at an absolute minimum, a high school diploma with completion of specific grade 12 math courses should be required and recommends that further, more substantial educational requirements be considered and determined.
- 1.8. We are pleased to see you are seeking information in this Consultation Paper from credentialing bodies and ask that you critically assess them. A critical assessment of existing designations and credentialing entities currently operating needs to be undertaken and an assessment needs to be arrived at regarding what level of qualifications are required to act with the care, skill and judgment of a professional who can act in the best interests of the client.
- 1.9. We agree with the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (hereinafter the “Expert Committee”) that financial service

¹ We recommend that you implement a statutory best interest duty and those that can meet it (given that they operate without conflicted compensation and have a sufficiently wide product shelf) would also be able to hold out as an “investment advisor”, “financial advisor” or “financial planner”.

providers already regulated by an existing regulator should also have their financial planning services overseen by that same regulator. Consumers are not well-served by the degree of fragmentation that already exists amongst bodies who are responsible for regulating their investments. Existing statutory regulators should regulate the provision of financial advice, including financial planning.

- 1.10. FAIR Canada recommends that those financial planners who are currently outside the regulatory framework (i.e. not regulated by any regulatory body) should be regulated by the Ontario Securities Commission.
- 1.11. FAIR Canada believes that an approach to credentialing whereby a designated body(ies) would qualify individuals to provide financial planning with these same bodies having the right to revoke their credentials, may be acceptable so long as it is limited to a failure to maintain their qualification requirements or a breach of their code of ethics. However, existing regulators must oversee and enforce standards of conduct for financial planning and financial advice. The existing regulator must be able to regulate (ensure compliance and discipline) the entire activity of the financial planner and firm.
- 1.12. A single, free, comprehensive central registry must be created and maintained with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals and firms. The current process of conducting a background check is simply too complicated. It requires searching multiple databases and, even if every step is meticulously followed, will not necessarily lead to comprehensive or understandable results.
- 1.13. Creating another database solely for financial planners in Ontario will only lead to more confusion. As noted by the Expert Committee, there are already up to six databases that a person would have to find and use. We don't need to create yet another one. Having a database only for financial planners will not let the consumer know who the individual is regulated by, if the person has been disciplined in the past by an existing regulator, or whether terms and conditions are currently imposed on his or her license or registration.

The use of fintech by regulators and governments to produce a single, user-friendly system should be a key priority.

2. A Statutory Best Interest Standard Is the Key Reform Needed to Make a Real Difference

- 2.1. FAIR Canada is of the view that if you wish to reduce consumer confusion, misleading titles, and poor financial planning and/or investment advice, you must address more than credentials and holding out in respect of financial planning.

- 2.2. A key reform needed to help protect financial consumers and lead to improved outcomes for financial consumers is the implementation of a meaningful statutory best interest standard. Until Ontarians receive objective, unbiased professional financial advice (including financial planning) they will continue to routinely suffer harms which will significantly impact their financial well-being. We have articulated this concern previously in our previous three submissions on financial planning.²
- 2.3. While many consumers suffer harm as a result of non-compliance with existing rules (such as suitability), they also suffer significant and profound harms when they are dealing with registrants and licensees who are complying with the existing rules. These harms are costing Canadian financial consumers millions of dollars and impacting their ability to save adequately for their retirement, help put their children through university or for their other financial (and life) goals.³ Harms from product sales that are focussed more on compensation to the advisor rather than the consumer's best interest are much more widespread than harms from deficient financial plans.
- 2.4. 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.
- 2.5. 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 objective, professional advice. We also call on the government to equip the regulatory system with all compliance and enforcement resources necessary to enforce that standard.
- 2.6. We certainly hope that a statutory best interest standard is one of the other aspects of the proposed framework that remains under development, as mentioned in the Background section of the Consultation Paper. There has been more than enough time devoted to the study and deliberation of a statutory best interest standard.

3. Restricting Use of the Title "Financial Planner"

- 3.1. FAIR Canada understands the desire to close the regulatory gap that exists wherein not everyone who holds themselves out as a financial planner is regulated or has the

² Our previous submissions can be found on FAIR Canada's website at https://faircanada.ca/fca_submissioncategory/financial-planning/.

³ \$17 billion is the amount of investor harm caused annually by broker conflicts when working with customers in retirement accounts, according to an Obama administration study. See <https://www.dol.gov/newsroom/releases/ebsa/ebsa20160406-0> and the report at https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_coi_report_final.pdf.

necessary credentials.

- 3.2. We agree that a person should not be able to call himself/herself a “financial planner” without being registered or licensed and subject to the oversight of an existing financial services regulator. Currently a person in Ontario can hold out as a financial planner without having to be registered or licensed if they do not sell any investment products. This situation permits someone who has no qualifications or expertise to be holding out to the public as a “financial planner” and perform these services. They may provide deficient services and advice. We agree that closing this regulatory gap is necessary. However, it is not sufficient because it still leaves consumers at significant risk of harm.
- 3.3. Many financial services representatives hold out as a “financial planner” with a valid financial planning credential such as a CFP but their activities involve selling products as a result of conflicted compensation structures in a firm which has a limited product shelf.⁴ Therefore, while a consumer may go to a “financial planner” what they end up with are sub-optimal product sales⁵ rather than assistance building a financial plan that will help them reach their long-term goals.
- 3.4. For example, a consumer is at significant risk of harm if they use the services of a “financial planner” but this individual works for a dealer that only sells mutual funds overwhelmingly on a DSC basis. Similarly, an individual registrant at a bank whose pay is derived from a compensation grid that incents the sale of proprietary products and other related banking products would not be able to hold out as a financial planner even if she has met the level of proficiency of a CFP or other accepted designation.
- 3.5. Currently financial services providers use a bewildering array of unregulated and frequently misleading titles that falsely convey high levels of seniority, experience or executive authority, and do not reflect the standard of advice being provided.
- 3.6. To proceed with meaningful title restrictions, it is essential that the title reflect the ability of the individual financial services representative (and his or her firm) to provide objective, professional financial advice rather than conflicted sales. Therefore, the use of the title “financial planner” (and “financial advisor”) should be restricted to those who have attained the necessary level of proficiency (including the appropriate credential) and who are capable of providing advice that is unbiased and not in conflict with the client’s best interests.
- 3.7. FAIR Canada therefore recommends that the use of business titles be restricted to the

⁴ FAIR Canada Consultation regarding Financial Advisory and Financial Planning Policy Alternatives (September 23, 2015), online: <https://faircanada.ca/wp-content/uploads/2015/10/150923-Final-FAIR-Canada-Sumission-to-Expert-Panel-re-Financial-Planning_signed.pdf> at paragraph 1.9 to 1.11.

⁵ As fully described in CSA Consultation 33-404 and 81-408, and as discussed in our submissions on Best Interest and Mutual Fund Fee Reform respectively.

following categories:

- “Financial Planner” for those who have the necessary proficiency (including credential) and who provide services on a fee-for-service basis (such as hourly or a set fee for a financial plan) and who do not receive any compensation for product sales or referrals;
- “Investment Advisor” or “Financial Advisor” or “Financial Planner” (if the latter has the appropriate financial planning credential) for those that are subject to a fiduciary duty and a statutory best interest standard (once implemented)⁶;
- “Portfolio Manager” for those licensed to exercise discretionary authority (including robo-advisors) while operating within business models that allow them to comply with the fiduciary duty already required of such registrants; and
- “Salesperson” for the remaining financial services representatives who do not meet the above restricted categories.

3.8. All other business titles should be prohibited.

4. Proficiency and Credentials

- 4.1. FAIR Canada continues to support the Expert Committee’s recommendation that the education, training, credentialing and licensing of individuals engaged in the provision of financial planning be harmonized and subject to one universal set of regulatory standards.
- 4.2. Most investors do not seek out an individual “advisor” for a simple sales recommendation that falls within the registrant’s specific regulatory license; they seek out unbiased advice for their particular financial needs. The appropriate minimum level of proficiency must also take into account investors needs and expectations.
- 4.3. FAIR Canada urges you to determine the level of education and proficiencies required to be met before any regulator in Ontario will allow an individual to obtain a certificate or license or registration as a “financial planner”. We are pleased to see you are seeking information in this Consultation Paper from credentialing bodies and we ask that you critically assess them. A critical assessment of existing designations and credentialing entities currently operating needs to be undertaken and an assessment needs to be arrived at as to what level of qualifications are required to act with the care, skill and

⁶ We recommend that you implement a statutory best interest duty and those that can meet it given that they operate without conflicted compensation and have a sufficiently wide product shelf) would also be able to hold out as an “investment advisor”, “financial advisor” or “financial planner”.

judgment of a professional who can act in the best interests of the client.

- 4.4. We also urge you to study the regime currently in place in Quebec and its educational and proficiency requirements. Quebec's requirements are such that anyone who provides financial planning services in the province must have: a bachelor's degree, meet standards set by the Institut québécois de planification financière ("IQPF"), 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.
- 4.5. There is a real need to increase the education and the initial proficiency requirements for all registrants. FAIR Canada has examined proficiency standards in other jurisdictions and provides a summary of the requirements in Canada, the United Kingdom, Australia (proposed), and the United States at Appendix A. Proficiency standards in Canada need to be raised.
- 4.6. FAIR Canada is disappointed that initial proficiency requirements for financial services representatives are not addressed in the Consultation Paper given the work that has been done by regulators on the issue.⁷
- 4.7. FAIR Canada has consistently called for greater proficiency requirements in Canada. The current proficiency framework was designed, many decades ago, around the sales process, for salespeople. The existing standards are structured around the particular products representatives are permitted to sell, not the overall quality of advice provided to retail investors. The existing proficiency requirements should be raised for financial planners and for those who provide financial product sales or financial advice, regardless of whether the conduct standard is raised to one of best interests, or those set out in the Proposed Targeted Reforms of the CSA, or even if the status quo is maintained.
- 4.8. Canada is lagging behind other leading jurisdictions in the area of education and proficiency and oversight of such standards. The summary we provide at Appendix A supports this belief. For example, under its Retail Distribution Review the U.K. not only banned embedded third-party commissions but also increased proficiency standards.⁸
- 4.9. In the United Kingdom, advisors must obtain a QCF Level 4 qualification, which is equivalent to the first year of a university degree. Australia is moving towards requiring

⁷ For example, the OSC in its Report on Statement of Priorities for fiscal 2013-2014 stated under "Best Interest Duty" that "Research was completed on proficiency standards in Canada, the US, the UK and Australia to inform our thinking on potential changes to our standards", OSC Report on Statement of Priorities For fiscal 2013-2014 at page 5, online: <http://osc.gov.on.ca/documents/en/Publications/rpt-on-sop_fiscal-2013-2014.pdf>. This research was never made public.

⁸ See online: <<http://www.fca.org.uk/you-fca/documents/policy-statements/fsa-ps11-01>>.

a bachelor's degree along with the passing of an exam that is developed by an industry standards body. **In Canada, not even a high school diploma is needed.** FAIR Canada believes that, at an absolute minimum, a high school diploma with completion of specific grade 12 maths courses should be required and recommends that further, more substantial educational requirements be considered and determined.

- 4.10. The level of training (or job experience) required in order to meet the appropriate standard also needs to be reviewed. In the EU, 6 months of training is required. In Australia, it is a minimum of one year's work experience. Canada currently requires 3 months of on-the-job training.
- 4.11. We support a requirement for continuing education. Government and regulators should consider the independence and rigour that will accompany proficiency standards and continuing education requirements and should consider the appropriate role of regulators, firms and third parties in developing and overseeing competencies, courses, and examinations.

5. Who Should Regulate

- 5.1. We agree with the Expert Committee that financial service providers already regulated by an existing regulator should also have their financial planning services overseen by that same regulator. Consumers are not well-served by the degree of fragmentation that already exists amongst bodies who are responsible for regulating their investments which, in Ontario, includes the Ontario Securities Commission, the Mutual Fund Dealers Association of Canada, the Investment Industry Regulatory Organization of Canada, the Financial Services Commission of Ontario, and the new Financial Services Regulatory Authority. Consumers do not need yet another body that oversees part of the activities of financial services representatives.
- 5.2. In addition, financial planning services and advice are so closely related to the "financial product advice" or "financial product sales" activity that it would be problematic to try to have a different regulator separately oversee each of these activities when there is a necessary interconnectedness and it is performed by the same person.
- 5.3. FAIR Canada recommends that those financial planners who are currently outside the regulatory framework (i.e., not regulated by any regulatory body) should be regulated by the Ontario Securities Commission. The FSRA is not yet operational. The existing regulator, FSCO, already has a number of different areas it regulates and a major restructuring is being contemplated for FSCO which will take some time. Therefore, the regulation of these individuals should be given to an existing regulator who will also oversee many registrants in this activity. In addition, when the Capital Markets Regulatory Authority comes into being, it could extend the regulation of financial planners to other provinces and territories that currently do not regulate this activity, thereby closing

regulatory gaps in other provinces and territories in an efficient manner.

- 5.4. FAIR Canada strongly believes that if financial planners (or financial advisors more generally) wish to professionalize, then robust 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 merely 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.
- 5.5. 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 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 interest, is the applicable standard.
- 5.6. 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 inadequate levels of proficiency and conflict-riddled transaction-based sales recommendations that lead to poor consumer outcomes.
- 5.7. FAIR Canada believes that an approach to credentialing whereby a designated body(ies) would qualify individuals to hold out and provide financial planning and these same bodies have the right to revoke their credentials may be acceptable so long as it is limited to a failure to maintain their qualification requirements or a breach of their code of ethics. However, existing regulators must oversee and enforce standards of conduct for financial planning and financial advice. The existing regulator must be able to regulate (ensure compliance and discipline) the entire activity of the financial planner and firm.

6. One Central Comprehensive Database Needed

- 6.1. A single, free, comprehensive central registry must be created and maintained with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals and firms. The current process of conducting a background check is simply too complicated. It requires searching multiple databases and, even if every step is meticulously followed, will not necessarily lead to comprehensive or understandable results.
- 6.2. Creating another database solely for financial planners in Ontario will only lead to more

confusion. As noted by the Expert Committee, there are already up to six databases that a person would have to find and use. We don't need to create yet another one.

- 6.3. The Consultation Paper indicates that the database will allow the consumer to know if the financial planner holds a recognized credential. But this is not sufficient as it does not let the consumer know who the individual is regulated by, if the person has been disciplined in the past by an existing regulator, or whether terms and conditions are currently imposed on his or her license or registration.
- 6.4. We recommend that you work with other governments and regulators to provide consumers with a check registrations system that is not a patchwork of old technologies but that functions in a robust manner and allows consumers to use it very easily, even on their mobile devices. The use of fintech by regulators and governments to produce a single, user-friendly system should be a key priority.

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 at your convenience. Please feel free to contact Frank Allen [647-256-6693](tel:647-256-6693)/frank.allen@faircanada.ca or Marian Passmore at [647-256-6691](tel:647-256-6691)/marian.passmore@faircanada.ca if you wish to discuss the foregoing.

Sincerely,



Canadian Foundation for the Advancement of Investor Rights