

Michelle Alexander
Vice President
malexander@iiac.ca

VIA EMAIL

Fin.Adv.Pl@ontario.ca

Expert Committee to Consider Financial Advisory and
Financial Planning Alternatives
c/o Frost Building North, Room 458
4th Floor, 95 Grosvenor Street
Toronto ON M7A 1Z1

June 10, 2016

Dear Expert Committee:

Re: Preliminary Policy Recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (the “Preliminary Recommendations”)

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide input to the Expert Committee on its Preliminary Recommendations for reforms in the regulation of financial planning.

The IIAC is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 138 investment dealer member firms in the Canadian securities industry that are regulated by the Investment Industry Regulatory Organization of Canada (“IIROC”). These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations that is fundamental to economic growth.

As outlined in the stakeholder consultations and our previous submissions to both the Ontario government and the Expert Committee, the IIAC supports additional clarity and standardization for the provision and supervision of financial planning in the industry. We recognize that there are many individuals who may hold themselves out as financial planners but may not have the necessary proficiency requirements and appropriate oversight.

Clarity and protection for investors being served by a wide variety of people who call themselves financial planners is welcome. It is imperative to ensure that those involved in financial planning have the necessary proficiency and meet minimum acceptable standards, thereby increasing confidence in the Canadian capital markets. This would be beneficial for all industry participants and, most importantly, for Canadian investors.

Before outlining our responses to the Preliminary Recommendations, we wished to discuss some of the definitions outlined in Appendix A.

Definitions in Appendix A – “Financial Planning”

The IIAC believes that the definition of Financial Planning contained in Appendix A, upon which many of the Preliminary Recommendations are based, is far too broad. We believe that a definition that focuses on activity is problematic and would be challenging to regulate. In addition, that activity listed is wide-ranging and encompasses many items that others in the financial services industry also provide.

For instance, the suitability requirement contained in IROC Rule 1300 states that when recommending to a client the purchase, sale, exchange or holding of any security, the advisor must use due diligence to ensure that the recommendation is suitable for such client based on factors including the client’s “current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts’ current investment portfolio composition and risk level.”

It would therefore be hard to distinguish between the activity listed in the Financial Planning definition and the know-your-client requirements in Rule 1300. As a result, many of the aspects of the suitability rule would overlap with the definition of Financial Planning contained in Appendix A. Consequently, the IIAC believes the definition in our previous submission whereby proposed regulations would apply to an individual who holds themselves out as a financial planner and/or provides a comprehensive written financial plan to clients is a more appropriate test.

Definitions in Appendix A – “Financial Product Sales and Advice”

The IIAC would like to raise our concern that many of the recommendations, including the imposition of a best interest standard and prohibitions related to referral arrangements, apply not only to those who provide Financial Planning, but to those individuals or firms that provide “Financial Product Sales and Advice”.

The definition of this term as set out in the Preliminary Recommendations is so broad in scope as to cover *any* firm or individual within the entire realm of the financial services industry as the term is defined as a person or company “engaging in the business of providing advice” and provides an opinion, suggestion or recommendation to a consumer regarding “a decision or course of conduct relating to the consumer’s financial affairs” or provides “general financial management or investment advice”. Therefore, a reading of this definition would make it applicable to a wide range of financial services professionals, including registrants governed by IROC and the MFDA.

As we stated in our September 21, 2015 submission, there may be considerable overlap in the activities of what is referred to as financial planning and what is referred to as financial advice. However, there are distinctions. Financial advice provided by a registrant typically involves specific product recommendations with some elements of a financial needs analysis. On the other hand, a financial planner creates a document that outlines various strategies to achieve the client's financial goals.

The provision of financial advice is highly regulated in the existing regulated channels. This extensive regulatory framework for the regulation of financial advisory services is ancillary to product recommendations or the furtherance of the trade. This has been achieved for advisors in the securities and insurance industries with the development of rules and regulations of the SROs, the OSC and FSCO.

For example, IIROC, which regulates all investment dealer firms in Canada and the conduct of advisors, states that its role and mandate is:

IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces.

Having the Expert Committee provide recommendations that may contradict directly with regulations of IIROC and other regulatory bodies, including legislation of securities regulators, would be duplicative and inefficient. Furthermore, it would lead to confusion with potentially alternative standards in Ontario as compared to the rest of Canada, and lead to questions relating to the jurisdiction of various regulatory organizations. It is imperative the Expert Committee not impose differing or duplicative obligations on professionals who are already subject to extensive and exhaustive regulatory oversight. To that end, we recommend that the Expert Committee focus its recommendations on those individuals providing comprehensive financial plans to clients and/or use the title of Financial Planner.

Preliminary Recommendations

1. Regulation of Financial Planning in Ontario

Expert Committee's Recommendations:

- a) Regulation should be required of any individual who or firm that provides Financial Planning services either expressly or implicitly through Holding Out by way of titles, described services or otherwise;**
- b) Individuals who and firms that provide Financial Planning and whose Financial Product Sales and Advice activities are regulated by the existing regulatory framework for securities, insurance and mortgage brokering should have any associated Financial Planning activities regulated by their existing regulator or regulators for those who have more than one licence; and**

c) Individuals or firms performing Financial Planning activities outside the current regulatory framework should have their Financial Planning activities regulated by the proposed Financial Services Regulatory Authority (FSRA).

We fully support the Expert Committee's recommendation that regulations should be required for individuals engaged in Financial Planning. However, we re-emphasize our concerns with the definition of "Financial Planning". As set out in our previous submission, the IIAC recommends the establishment of common standards for those who "provide comprehensive financial plans to clients and/or use the title of Financial Planner." Such a definition would provide clarity as to who is captured and subject to regulatory oversight.

With respect to the Preliminary Recommendation in 1(b), the IIAC greatly appreciates that the Expert Committee recognizes the need to safeguard the core principle of regulatory efficiency and avoid unnecessary or duplicative regulation when creating any new standards in the financial services industry.

To that end, we support the proposal that IIROC advisors would continue to be regulated by IIROC (or the applicable regulator) with respect to their Financial Planning activities.

While we proposed the creation of a new regulatory body to oversee financial planners currently operating outside of regulated channels, the IIAC recognizes that perhaps a completely new body to undertake the regulation of Financial Planning by individuals or firms not otherwise regulated may be too small to warrant the costs. Consequently, the IIAC would support the use of the FSRA instead. The FSRA would be well-suited to "bring stand-alone providers of Financial Planning services into the regulatory fold and work with other Regulators to achieve the harmonization of standards".

Use of the FSRA would support the need for those individuals outside the current regulatory framework to be subject to the same level of oversight and meet similar standards and proficiency requirements as those individuals and firms that are under the jurisdiction of IIROC or other regulators. This would ensure a more robust and consistent regulatory regime without unnecessary or duplicative regulation. To further those objectives, it would be ideal to create a solution that would apply nationally and not simply an Ontario-only approach.

2. Harmonization of Standards

Expert Committee's Recommendation: We recommend 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.

The IIAC completely agrees with the Expert Committee's comments that it is essential that providers of Financial Planning services possess a minimum level of proficiency and expertise. Our previous submission recommended that regulatory organizations work cooperatively to ensure financial planners have consistent and clear standards, conduct requirements and common proficiency, training and licensing. This is the only way that consumers can expect to receive uniform standards

of service when they engage a financial planner, regardless of whether the planner offers its services through an IIROC registered dealer or outside other regulated channels. Regulators working together can ensure that standards for competency and business conduct are harmonized across all delivery channels.

However, as we stated before, working with regulators solely in the province of Ontario fails to address the national scope of many of our members and the need to harmonize regulation of financial planning across all Canadian jurisdictions to avoid fragmentation, client confusion and inefficiencies in the system.

3. Statutory Best Interest Duty and

4. Exemptions from Statutory Best Interest Duty

Expert Committee’s Recommendation: We recommend that a Statutory Best Interest Duty (SBID) be adopted and applied to all individuals who and firms that provide Financial Product Sales and Advice and/or Financial Planning in Ontario. This SBID should be based on a uniform and codified standard of care.

It is unfortunate that the Expert Committee’s report was released just a few weeks in advance of the CSA’s Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients* (the “CSA Consultation Paper”), which was issued on April 28, 2016.

As the Expert Committee is no doubt aware, the issue of the introduction of a best interest duty has been a matter of much debate for close to four years, when the CSA first issued its original consultation paper.

At the outset, the IIAC wishes to emphasize our position that we have articulated to the CSA on numerous occasions. That being that the IIAC and our members believe in providing advice that is best for clients and we are consistently working towards raising the quality and increasing the integrity of investment advice. The securities industry in Canada has been proactively advancing a regulatory regime to provide clients with significant investor protections. Without the opportunity to fully implement many of the recent changes to the securities regulatory regime and evaluate their impact (specifically in the areas of the Client Relationship Model and Point of Sale requirements), there should be no introduction of a best interest duty as there are potential negative consequences for both investors and the industry, including: reduced choice among business models, reduced access to financial products, decreased affordability of financial advice, uncertainty regarding the obligations within the client-advisor relationship, onerous compliance requirements and increased exposure to risk and liability for advisors.

We take issue with the comment that advisors may recommend products which do not put clients first and that the suitability standard is somewhat limited.

The suitability requirement is complementary to the fundamental obligation under securities legislation for all dealers and their representatives to deal fairly, honestly and in good faith with their

clients. Further, IIROC's Conduct and Practice handbook imposes a duty of care, trustworthiness, honesty, fairness and professional requirements on advisors. IIROC's conflict of interest rules also require conflicts to be resolved consistent with the best interests of the client. Additionally, IIROC Rule 29.1 requires that investment professionals observe high standard of ethics and conduct in the transactions of their business, not engage in any business conduct or practice which is unbecoming or detrimental to the public interest and be of such character and business repute as is consistent with the standards of the rule.

If an advisor were to suggest a product that offered a higher commission for the advisor, thereby resulting in higher fees to the client and impacting the value of the client's portfolio in the long term, this would be contrary to the advisor's duty to act fairly, honestly and in good faith.

Furthermore, we question the comment that a commission-oriented sales environment may give rise to conflicts in the recommendations provided to consumers. Unless the Expert Committee, is recommending the complete removal of commission-based compensation, this conflict will exist but clients are aware of this conflict and advisors are subject to regulatory oversight and firm policies and procedures to help address such conflicts.

In addition, the Expert Committee's definition of the SBID as "an explicit obligation designed to ensure that clients' interests are put first and Conflicts are avoided" is contrary to the best interest duty applied in many countries including the U.S., U.K. and Australia, which recognize that in the financial services industry, it is impossible to avoid all conflicts of interest and such jurisdictions have included exemptions for necessary conflicts of interest provided disclosure is given to clients.

Finally, as the Expert Committee is likely aware, even all the CSA jurisdictions do not uniformly support the implementation of a best interest duty. At the time of the release of the CSA Consultation Paper, only two provinces, Ontario and New Brunswick, were fully in favour of implementing a regulatory best interest standard.

Quebec, Alberta, Manitoba and Nova Scotia all shared "strong reservations on the actual benefits of the introduction of such a standard" and were concerned with the potential unintended outcomes of the codification of such a standard. British Columbia has indicated that a best interest standard is not warranted and that a "vague over-arching duty called a best interest standard while continuing to permit certain fundamental conflicts to exist is not in the public interest." The BCSC is of the view that to do so may exacerbate one of the issues the regulators identified: the expectations gaps between clients and registrants and may raise clients' expectations about investor protection that may not be realized under a best interest standard.

The IIAC also agrees with the BCSC view that proposed targeted reforms, followed through with coordinated and focused compliance and enforcement efforts, and full realization of the CRM2 and Point of Sale initiatives, will achieve the best outcomes for investors and advance the best interest of investors.

Without going into a detailed summary of the views of these five provinces and outlining in further detail the position of the IIAC, we would encourage the Expert Committee to allow the CSA to

complete its consultation process before embarking on its own path. To not do so could lead to the challenges the U.S. is now facing when the Department of Labor released its own fiduciary rule that applies only to retirement accounts, while the U.S. Securities and Exchange Commission is still in the process of developing its own rule. This had led to continuous debate and division in the U.S. with the possible result of serious duplication and inefficiencies with respect to possible regulatory requirements.

Given the broad impact that proposed changes may have which will affect all participants in the Canadian capital markets, it is imperative that the Expert Committee delay any final recommendations with respect to a SBID until the CSA has completed its work.

5. Referral Arrangements

Expert Committee's Recommendation: We recommend that no individual who or firm that provides Financial Product Sales and Advice or Financial Planning be permitted to pay a referral fee to a third party for the referral of a customer or prospective customer who is to be provided with Financial Planning or Financial Product Sales and Advice, unless the other person or firm receiving the referral fee is regulated as a provider of Financial Product Sales and Advice or Financial Planning and owes a best interest duty to consumers.

As the IIAC has stated above, we are concerned that the Expert Committee is considering recommendations for the regulation of financial planning that would extend into the jurisdiction of other regulators through the use of the definition of Financial Product Sales and Advice. Confusion, conflicts and duplication is likely to arise with differing regulations applicable to the same firms and individuals. This concern is highlighted in the Expert Committee's recommendations relating to referral arrangements.

Currently, IIROC individuals and firms are subject to the referral arrangement rules contained in National Instrument 31-103 *Registration Requirements*. Specifically, sections 13.8 to 13.10 govern referral arrangements, with additional guidance contained in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

National Instrument 31-103 specifically permits referral arrangements to or from registered individuals (or firms) where the terms of the referral arrangement as set out in a written agreement between the registered firm and the person or company, the registered firm records all referral fees and the registered individual ensures that prescribed information regarding the referral arrangement is provided to the client in advance.

Further, the legislation requires, under section 13.9, that the registered firm or individual must not refer a client to another person or company unless the firm first takes reasonable steps to satisfy itself that the person or company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

Companion Policy 31-103CP provides additional guidance to registrants regarding details surrounding provisions in the referral agreements, including the roles and responsibilities of both parties. The Companion Policy also sets out the disclosure to clients and requirements to ensure clients understand the terms, make an informed decision about the referral arrangements and assess any conflicts of interests.

The Expert Committee's recommendations would prohibit the referral arrangements currently permitted under securities legislation across Canada. These types of referral arrangements, where a registrant agrees to pay or receive a referral fee, are currently utilized across many of our 138 member firms and their individual registrants. Such referral arrangements are regularly reviewed by the SROs when they conduct their compliance reviews. Any potential issues with the arrangements are therefore identified and rectified if necessary. The regulators have not found serious issues that require a wholesale re-examination of these arrangements and thus we suggest that the Expert Committee limit its recommendation to those who engage in financial planning outside of the current regulatory framework, thereby allowing the continuation of these arrangement for other registrants to remain within the jurisdiction of the existing regulatory framework.

6. Titles and Holding Out

Expert Committee's Recommendation: We recommend that the use of titles by individuals and firms engaged in the provision of financial Product Sales and Advice and/or Financial Planning be prescribed in order to reduce consumer confusion.

The IIAC fully supports that the use of titles by individuals and firms engaged in the provision of Financial Product Sales and Advice and/or Financial Planning be prescribed in order to reduce investor confusion. In particular, we support the need for all regulators to work together to develop a list of approved titles.

One of the proposed targeted reforms being contemplated in the CSA Consultation Paper is proposed amendments that would more strictly regulated client-facing business titles for individuals. The IIAC agrees that only a limited number of business titles should be acceptable. However, an issue that still needs further discussion concerns the use of titles by representatives who are dually licensed (or equivalent).

The Expert Committee also recommends that individual designations, qualifications and credentials (other than professional, academic qualifications, and those approved by the Regulators) should not be permitted. Again, the CSA Consultation Paper currently contemplates possible amendments to legislation with respect to the use of designations, specifically credentials that are used to indicate that individuals have specialized knowledge or expertise in an area gained through education and/or experience. The CSA has also issued proposed guidance in this area, suggesting that firms have policies and procedures on financial designations that will promote greater transparency for potential and existing clients, particularly more vulnerable and less sophisticated investors. The CSA would expect firms to include guidance on what designations may be used and

perhaps require firm pre-approval of a designation. The IIAC will be reviewing these proposed amendments and guidance and providing detailed comments as part of our submission to the CSA.

Again, by including individuals and firms that provide Financial Product Sales and Advice in their recommendations, the Expert Committee is encroaching upon the jurisdiction of the CSA and IIROC. Furthermore, as the CSA is currently engaging in extensive consultation on the subject of designations, to avoid unnecessary duplicative efforts, the Expert Committee should first consider the next steps of the CSA upon completion of its consultation process. At the very least, the Expert Committee should simply recommend that regulators work cooperatively with respect to designations to ensure a consistent approach across the country and across financial service channels.

7. Central Registry

Expert Committee’s Recommendation: We recommend that a single, free, comprehensive central registry be created and maintained, with adequate resources to provide a one-stop shop of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals who and firms that provide Financial Product Sales and Advice and/or Financial Planning to Ontarians.

The IIAC supports a single, free, comprehensive central registry to provide a “one-stop” source of information for consumers. As stated in our previous submission, currently the National Registration Database (NRD) exists for all individuals or companies whose business is trading, underwriting or advising with respect to securities and required to register annually with one or more of the provincial securities regulators or IIROC. This also includes all advisors registered to sell mutual funds in Canada. The IIAC would support extending this registry to all financial planners not already included in the above. While this would require some changes to the NRD, it would likely be more desirable than setting up a new and separate registry, thereby providing investors with a true one-stop window.

As we also outlined in our previous submission, we suggest that Ontario take the lead with its counterparts in other provinces and territories to ensure that sanctions or the expulsion of a financial planner or advisor from the industry in any one jurisdiction would automatically result in the recognition and enforcement of a similar action in all other jurisdictions of Canada.

8. Financial Literacy and Investor Education

Expert Committee’s Recommendation: We recommend that financial literacy and investor education of Ontarians be supported and actively encouraged in Ontario by government, regulators, public and private schools (through their respective curriculum bodies and school boards), non-profit organizations and the financial services industry.

The IIAC has consistently supported the need for greater financial literacy and investor education in Ontario and across Canada. Financial literacy should begin at a young age and we support the inclusion of financial literacy and education within the elementary and high school curriculum.

Recently, the IIAC has been working cooperatively with the OSC's Investor Office in their efforts to expand and modernize the OSC's new focus on investor engagement, research, education and outreach. The IIAC hopes this revitalized focus by the OSC will further support the improvement of financial literacy and awareness.

The IIAC offers its full support in the delivery of investor education to ensure consumers are armed with sufficient knowledge to make informed financial decisions.

9. Issues for Further Consideration

Expert Committee's Recommendations: We recommend that the Government of Ontario give further consideration to the following issues which we highlight yet fall outside our mandate:

- a) **The need for simplified complaint and restitution mechanisms for consumers of Financial Planning and Financial Product Sales and Advice**
- b) **A simplified approach to the investigation, prosecution and adjudication of consumer complaints related to regulatory offences in the provision of Financial Planning and Financial Product Sales and Advice;**
- c) **A consumer-friendly process for recovery of financial losses by consumers.**

The IIAC recognizes that consumers should have access to an independent and reliable dispute resolute services and that a simplified mechanism is essential. The IIAC has been actively engaged with regulators over the last number of years to enhance the current Ombudsman for Banking Services and Investments (OBSI). We believe that individuals in Ontario who hold themselves out as Financial Planners outside of regulated channels should be required to participate as members of OBSI, as are their counterparts in the regulated channels.

As we outlined previously, IIROC has a comprehensive set of rules with respect to dispute resolute and discipline. This includes the complaint handling mechanism under Rule 2500B which requires that all clients receive a complaint handling brochure at account opening and at the time a complaint is made. Rule 2500B also includes detailed time frames that firms must adhere to when responding to an initial complaint and the firm's final decision with respect to a complaint.

IIROC rules also provide for recourse via mediation and arbitration in addition to OBSI. IIROC itself also has a clear process as to how it resolves complaints filed directly with the SROs.

Despite IIROC's rules in this area, it is clear that consumers face challenges in understanding which financial services channel applies to their particular complaint. We agree that this fragmentation is a hindrance to consumers seeking some sort of redress and the IIAC would be pleased to work with the relevant bodies to assist in developing a more streamlined and simplified system.

Finally, while the IIAC recognizes the limitations in the Expert Committee's mandate, we would urge the Committee to consult with regulators across Canada as harmonization across provincial lines is of

the utmost important to our members who operate throughout Canada. Creating a standard that only applies within Ontario would be unworkable for many firms and would not be in the best interest of all Canadians. It is recommended that Ontario consult widely with the other province and territories to enable the development and introduction of a Canada-wide regulatory framework.

Thank you for considering our submission. We would be more than pleased to meet with the Expert Committee to respond to any questions that you may have.

Yours sincerely,

A handwritten signature in cursive script that reads "M. Alexander".