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Changing Workplaces Review, ELCPB
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Dear Sirs/Mesdames:

Re: Changing Workplaces Review – Investment Industry of Canada Response

The Investment Industry Association of Canada (the “IIAC” or the “Association”) appreciates the opportunity to comment on the Changing Workplaces Review. The IIAC is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 148 investment dealer member firms regulated by the Investment Industry Regulatory Organization of Canada (“IIROC”). These 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.

Our submission relates specifically to Question 8 of the Guide to Consultations, (the “Guide”) which asks, “Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered? Are there new exemptions that should be considered?”

The IIAC submits that it would be appropriate to create an exemption for “Financial Services Professionals” in the Ontario Employment Standards Act, 2000 (the “Act”), in a manner similar to the exemptions that apply to other professionals in section 2(1) of Ontario Regulation 285/01 (the “Regulation”).

The Act sets out the minimum rights and responsibilities that apply to workers and employers in most Ontario Workplaces. As stated in the Guide, “These standards exist to protect workers from inadequate working conditions and wages, and to prevent unfair competition by creating a level playing field for employers based on such conditions and wages.”

The Regulation recognizes that the provisions of the Act regarding hours of work, minimum wage, public holidays and vacation pay should not be applied to certain skilled professional roles. Section 2(1) of the Regulation expressly exempts architects, lawyers, engineers, accountants, surveyors, veterinarians, most regulated health professionals, teachers, real estate brokers, and outside salespeople from Parts VII, VIII, IX, X and XI of the Act (the “Provisions”).

The rationale for the exemption is based on the recognition that professional roles require significant independence in fulfilling their responsibilities, and require much greater flexibility in their hours of practice. The duties and obligations of such professional positions do not lend themselves to the Provisions of the Act prescribing maximum fixed hours of work per week and per day. Further, these roles are generally well-paid, providing benefits well in excess of the minimum compensation and benefits contemplated by the Provisions. The professionals occupying these roles simply do not need the minimum protections created by the Provisions of the Act. They are generally well-paid and mobile.

However, the Regulation, as currently constituted, contains a significant omission. Unlike the equivalent regulations in other large provinces (in particular British Columbia, Alberta, and Saskatchewan), as well as the Canada Labour Code, the Regulation currently does not recognize the highly-skilled and well-paid professionals in the financial services industry as being professionals like lawyers, engineers, teachers, and real estate brokers. In particular, while many professionals working in the financial services industry may fall within the definition of managerial employees (who are already exempted from the hours of work and overtime provisions of the Act), the Regulation does not expressly recognize Financial Services Professionals as occupying professional positions that should be exempt from the Provisions of the Act regarding hours of work, minimum wage, public holidays and vacation pay.

Given the nature of the work, and the skills required to perform their job functions, it is clear that these professionals should be treated similarly to other exempted professionals. Like the other exempt employees, they are highly trained professionals, working in a highly regulated industry and require significant flexibility in hours of practice. Many of these employees also receive commission or bonus compensation that is directly linked to their individual performance. In addition, imposing maximum hourly restrictions may impede or,

in certain circumstances may be contrary to their professional obligations to third party clients.

As a matter of principle, it would be unfair to require financial services employers to pay overtime compensation in addition to the already high compensation and benefits they provide to such professional employees in exchange for their skilled labour. Nor is it of benefit to the many professional employees and clients in this sector, to limit their working hours to eight hours each day.

The financial industry is comprised on many types of professional employees in a wide variety of roles, and with a wide range of professional expertise. Specifically, the types of positions that we propose to be exempted by the Regulation include:

- Investment Advisors
- Investment / Portfolio Managers;
- Securities Traders (both retail and institutional);
- Research Analysts and Associates; and
- Analysts, Associates, Vice Presidents, Directors, Managing Directors, and Compliance Officers who are not managers, in Investment and Corporate Banking.

Given that there is not one existing title that encompasses the various professional functions undertaken by the highly educated and trained financial industry professionals employed by investment firms, we propose a definition that would encompass the various professional roles, as follows:

“Financial Services Professional” means any employee of an entity registered under the legislation of any province or territory of Canada to provide advisory, underwriting, financial planning, research, investment management, portfolio management or other services related to the purchase or sale of financial instruments, where such employee is registered under the legislation of any province or territory of Canada to provide such services or is performing such services based on specialized knowledge, proficiency or professional judgment.

The effect of this amendment would be to:

- expressly treat the highly skilled and well-paid professionals working for regulated financial services industry companies in the same fashion as the regulated professionals in other industries;
- bring greater certainty and consistency to this area of employment law in Ontario;
- ensure that the financial services industry, a key employer of skilled professionals in the Province, is treated fairly and consistently; and
- bring Ontario, the province with the largest financial industry in the country, in line with the employment standards legislation of other provinces and with the Canada Labour Code.

We would appreciate the opportunity to meet with the Minister and relevant staff to discuss this matter further, as it is of significant importance to this very important industry. Thank you for considering our comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland