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

Submitted by email: Fin.Adv.Pln@ontario.ca

To: Members of the Expert Committee

Independent Financial Brokers of Canada (IFB) is pleased to comment on the Expert Committee's preliminary policy recommendations, as outlined in its paper entitled *Financial Advisory and Financial Planning Policy Alternatives*, published April 5, 2016.

IFB was established over 30 years ago as a federally incorporated, not-for-profit association. Today, we represent approximately 4,000 licensed financial advisors across Canada, who join voluntarily.

IFB is the only association committed to exclusively representing the interests of independent advisors. IFB members are not career insurance agents or employees of a financial services institution. They have chosen the independent business model so that they can offer clients advice and products from a broad range of providers. Most IFB members are self-employed, operate small or medium-sized businesses in their local communities, and provide financial services to individuals and families. A significant number also offer advice and access to group insurance and group benefits plans.

The majority of IFB members are licensed in Ontario, most frequently for life/health insurance and mutual funds. Many also are licensed, or credentialed, to provide other financial services to consumers such as securities, GICs, scholarship plans, financial planning, and exempt market products, in order to address the financial needs of their clients. It is not uncommon for financial advisors and firms to be licensed in other Canadian jurisdictions, as well as Ontario. Therefore, finding harmonized solutions to regulatory issues are important to IFB members, and their clients.

IFB provided a written submission to the *Initial Consultation Document* and made representation at the public meeting held by the Committee in late May. We appreciate the Committee's dedication and commitment to soliciting input from a wide variety of stakeholders, investors and the public in formulating these preliminary policy recommendations.

General comments

It is unfortunate that we did not have benefit of the findings of the Expert Panel tasked with reviewing the mandates of FSCO, DICO and the FST, at the time of this submission. These concurrent reviews are interdependent and, together, have the potential to reshape the delivery and oversight of financial services in Ontario. Therefore, to comment on one set of recommendations without the other is a serious handicap for us, and limits our ability to respond in a comprehensive manner.

In addition, the Canadian Securities Administrators (CSA) issued a consultation paper[1] on April 28, shortly after this Committee's recommendations were published. In it, the CSA identified a set of proposals intended to enhance the obligations of securities registrants to their clients. Some of these proposals, such as a statutory best interest standard and title restrictions, are also included in the Expert Committee's recommendations, but are not approached in the same way. These 'competing' proposals make it difficult for stakeholders, like ourselves, to respond in an effective manner. As a general observation, resolving these matters at a national level is preferable. An Ontario-only solution will increase fragmentation and complexity for advisors and firms that also conduct business in other jurisdictions.

Below are our comments on the individual policy recommendations:

1. Regulation of Financial Planning in Ontario

The definition of financial planning as proposed by the Committee is concerning to us in that it goes beyond financial planning to encompass virtually all activities undertaken by financial advisors in carrying out their regulatory obligations with clients. Such a broad interpretation could conceivably capture processes that an advisor, who is not holding out as a financial planner, engages in to adequately understand his client and that client's needs. Without a bright line, the advisor could be at risk of enforcement action.

We believe, and as outlined in our previous submission to the Committee, a better alternative is to use the definition of financial planning developed by the Financial Planning Standards Council (FPSC), in conjunction with the Institut québécois de planification financière (IQPF)[2]. This definition is more specific and reflects the holistic, comprehensive review of a client's circumstances that is expected of professional financial planners.

i) Financial Planners who do not sell products.

As indicated in its previous submission, IFB supports regulation of those who hold out as a financial planner, do not sell financial products, and thus are not otherwise licensed by a financial services regulator. The Committee has recommended that this group be regulated by the proposed Financial Services Regulatory Authority (FSRA). We agree with the intent to leverage the existing regulatory framework rather than create new regulatory bodies. However, as previously mentioned, without knowing the details of the FSRA framework, it is difficult comment on whether oversight under FSRA is

[1] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/33-404__CSA_Consultation_Paper___April_28__2016/

[2] http://www.fpsc.ca/canadian-financial-planning-definitions

the most appropriate solution. We would be pleased to comment on this in the future when the report of the Expert Panel becomes available.

ii) Financial planners who sell products

With regard to those financial planners who are already licensed and regulated according to the products they sell, we support the proposal that they continue to be regulated by their existing regulator(s). That said, if the Committee envisions that the role of each regulator would extend to defining financial planning and regulating financial planning activities for its sector, this could become unduly complicated, and risks moving away from a common set of standards. Instead, regulators could work alongside the accreditation body (e.g. FPSC) to ensure the financial planning designation is valid, address client complaints or when instances requiring disciplinary action arise. In this scenario, the regulator would have the ability to discipline, suspend or revoke the financial license, and FPSC would discipline, suspend or revoke the designation.

Formalizing this relationship would ensure protocols are followed in a predictable way.

2. Harmonization of Standards

We agree that a harmonized set of standards should be in place for those wishing to hold out as a financial planner. What is less clear is the intent of the Committee's recommendation that regulators should "work cooperatively to develop a harmonized set of regulatory standards (including, if necessary, approving appropriate credentials) that apply to all providers of this activity". If this suggests, as it seems to, that regulators should develop the standards for financial planning, this would be cumbersome and at odds with the Committee's mandate to seek regulatory efficiencies and avoid unnecessary or duplicative regulation.

A simpler approach would be to recognize the established standards already in place (such as set out in the publication, *Canadian Financial Planning Definitions, Standards & Competencies*) and for regulators to review the existing financial planning designations (e.g. CFP, PFP) to determine which ones meet that standard.

3. Statutory Best Interest Duty (SBID)

We understand the concern of the Committee that consumers may be confused about their advisor's regulatory duty of care, and its desire to address this in a meaningful way. However, we share the concern of the BCSC and other "Jurisdictions with Concerns about a BIS", as outlined in the CSA's Consultation Paper 33-404, that the imposition of a statutory best interest standard on all registrants will exacerbate the confusion for clients.

Further, because the 'best interest duty' is loosely defined and not well understood, it is often equated with a fiduciary duty. Although we understand this is not the intent of the Committee, and that legal experts may be comfortable with the distinctions between these terms, consumers – and many others - are likely to view them as interchangeable. How this will translate into every day practices, complaint resolution and legal challenges is unknown. It may give consumers a false sense of reliance on the standard of care owed to them, and advisors and firms may become more vulnerable to frivolous claims.

There are other complications around introducing a SBID and some of these more fundamental issues should first be addressed. For example, how would a SBID apply to sellers of proprietary products, those with licenses which restrict the products/services they can advise on, and the structural conflicts

inherent in the industry (e.g. related financial institutions which cross-sell between their retail brokerages and investment/lending banking, and their compensation arrangements).

Arguably, a regulatory best interest standard of conduct exists today, as evidenced in insurance and securities legislation, harmonization of practice standards by regulators and SROs, and its history of application in common law.

To consider these issues, and others raised by the CSA, IFB suggests deferral of the statutory best interest duty recommendation at this time.

4. Exemptions to the Statutory Best Interest Duty

Per our comments above, we suggest the SBID exemptions be set aside at this time.

5. Referral Arrangements

The recommendation on referral arrangements, as proposed by the Committee, is troubling in that it would:

i) apply broadly to all financial providers of sales and advice (not just financial planners), and
ii) limit referral arrangements to those regulated by both a financial services regulator and subject to a best interest standard.

The Committee notes that its aim is to "facilitate such arrangements, while at the same time ensuring that the integrity of our recommendations regarding proper regulation of all providers together with the duty of best interest remains intact". However, in practice, the circumstances would be so narrow as to greatly limit the ability of advisors or firms to engage in referrals to other professionals. A similar type of restriction does not exist for other professionals; for example, the law society does not restrict lawyers to referring only to other lawyers.

Referral arrangements are valuable in assisting clients to source services or products outside the scope of an advisor or firm. These services or products may be unrelated to the financial services industry, such as in the case of a referral to a lawyer, accountant, or tax preparer. This proposal would disallow such referrals. Alternatively, the referral may be to another financial service provider, such as a deposit broker or bank. Again, this would not be permitted as neither are subject to a statutory best interest standard.

Referral arrangements have generally been recognized by insurance and securities regulators and, indeed, the law society, as an allowable business activity provided the client is informed and agrees to the referral before the referral takes place. The CSA places the onus on the registrant to be satisfied that the party receiving the referral is appropriately qualified and, if applicable, appropriately registered. Similar rules exist for those operating under the MFDA and IIROC. FSCO requires agents to provide clients with written disclosure of any potential conflicts of interest, which includes referral arrangements.

We note that the Committee did not define what constitutes a referral fee. This seems to suggest that if no fee is paid a referral could take place, even if it is outside of the Committee's defined parameters. Further clarification on this is needed.

Finally, implementation of this recommendation would introduce restrictions in Ontario that are not consistent with rules in other provinces, or with existing SRO Rules.

6. Titles and Holding Out

We agree that the number of titles used in the financial services industry can create confusion for consumers. We further agree that any title used by a firm or advisor should accurately reflect the firm's or advisor's registration status, proficiency and services.

Individuals holding out as financial planners should have the appropriate proficiency and accreditation in order to use the title Financial Planner, as per the recommendation in section 6 (b). The individual's status should be current and verifiable by firms, regulators and the public.

With regard to 6(d), we agree that corporate positions or titles should only be used in circumstances where the position reflects the individual's actual ability to influence the management and direction of the firm. For example, an advisor registered as an Approved Person of a mutual fund dealer and/or is licensed as an insurance agent operating an insurance agency, may also be President of his/her company. In this instance, use of the corporate title would be suitable, as it would meet the management test, as set out above.

While we support a general holding out provision for Financial Planners, and titles that are appropriate, we are concerned by the Committee's assertion that "there are currently no uniform or universal regulatory standards regarding the use of titles and Holding Out". Securities legislation prohibits registrants from holding out to the public in a manner that could be, or intentionally is, deceptive or misleading with regard to their proficiency, qualifications or designations. The SRO's have similar restrictions: for example, MFDA Rule 1.2.5, "Misleading Business Titles Prohibited". Insurance regulations related to the suitability of a life insurance agent also include a prohibition against misrepresentation.

Rather than asking regulators to attempt to develop a static list of prescribed titles, which would have to apply to a diverse number of situations, the principles-based guidance used by securities and insurance regulators is preferable and provides more flexibility to deal with future changes in the marketplace. This would not preclude the development of more specific guidance to assist firms when approving a title.

7. Central Registry

We support the development of a central online registry that consumers can access to verify information on a financial planner, advisor or firm, and that this should be a regulatory goal. Today, the information needed to create a central registry exists, albeit on several platforms that are not connected.

We note that the CSA announced on June 1, that it will replace SEDAR, SEDI, Cease Trade Orders, the National Registration Directory and the National Registration System and disciplined list, with a single

integrated database.[3] It is expected to be implemented in stages in 2018/19. This may present an opportunity to leverage this project, to work toward a more integrated database which would include information from insurance and other financial regulators.

The Alberta Insurance Council developed the Canadian Insurance Participants Registry (CIPR), which tracks insurance licensees' registration and compliance. Expanding this to other provinces would provide a comprehensive national database of insurance licensees and provide easier access for consumers seeking to check an advisor's or firm's license.

In the interim, however, a more immediate and cost-effective solution is for investor groups, industry, regulators and government to continue their efforts to reach out to the public, and educate consumers on where and how to access the existing licensing and disciplinary information.

8. Financial Literacy and Investor Education

IFB supports financial literacy and education. It is key to empowering consumers to better understand financial products and risks, and financial education should be part of the school curriculum so that children develop solid grounding early on.

In general, there has been significant improvement in the amount of financial information available to consumers and in building awareness of these resources. Plain language brochures, webcasts and other tools can make financial information more interesting but does not replace the need for individualized advice, tailored to an individual's personal circumstances. IFB members work every day with clients to help them understand the importance of planning for their financial future and finding strategies to meet these goals.

9. Issues for Further Consideration

The Committee has recommended that the Ontario government consider a simplified system for consumers who seek to lodge a complaint and seek redress.

Today, insurance companies, securities dealers, FSCO, IIROC and the MFDA all have dispute resolution procedures. In addition, the Financial Services OmbudsNetwork (OBSI and OLHI) is a free resource which exists to assist consumers with the complaint process, and to address restitution where appropriate.

For many financial advisors, professional liability coverage is a mandatory licensing requirement. E&O provides consumers with recourse early on in the complaint process, to restitution without the time and expense of initiating litigation. Often, complaints are resolved successfully, and fairly, such that further action is not required.

However, while E&O is mandatory for IIROC registrants and life/health insurance agents, it is not for MFDA registrants, or unlicensed financial planners. It is IFB's position that E&O should be mandatory for anyone providing retail advice, because of its utility in settling complaints at no cost to the consumer. We believe this is a gap in the consumer complaint process that the Committee could address quite easily.

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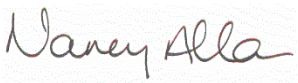
[3] http://www.bcsc.bc.ca/News/News_Releases/2016/38_Canadian_Securities_Regulators_announce_contractual_agreement_to_renew_CSA_National_Systems/

In closing, we wish to reiterate our comment that for issues such as implementing a statutory best interest duty, a national approach is preferable. IFB appreciates the opportunity to present our comments and looks forward to assisting in any further way as the Committee works toward its final recommendations. This is an important initiative with potential to affect many IFB members.

Please contact the undersigned, or Susan Allemang, Director Policy & Regulatory Affairs (email: sallemang@ifbc.ca), should you have any questions.

Yours truly,



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