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Member Survey Results - New Regulation on Financial Advice & Planning

Currently in Ontario, no general legal framework exists to regulate the activities of individuals who offer financial planning, advice and services. The absence of a legal framework has raised questions about proficiency, quality standards and potential conflicts of interest. The Ontario government has begun investigating regulation of these activities including the creation of an Expert Committee to advise them on policy alternatives.

CFA Society Toronto estimates approximately 30% to 35% of our members are involved in private wealth management. Potential regulation of these activities could have a direct impact on the ability of our members to serve clients in the private wealth area.

To help assess the impact of this potential regulation we conducted a short survey of our members on September 8, 2015. Just under 500 members responded to the survey. Of those that responded, 35% offered financial planning to clients. Of those members who do offer financial planning, over half felt that additional regulation was necessary in financial planning.

The most common types of financial planning offered to clients by CFA charterholders include:

- Investment planning (37%)
- Financial risk management (24%)
- Cash flow management (22%)
- Estate planning (22%)
- Tax planning (19%)
- Insurance planning (16%)
- None of the above (54.2%)

Financial planning continues to be a vague term. In the survey results, 65% of the respondents considered themselves not to be offering financial planning. We then listed the components of financial planning in a secondary question and only 55% considered themselves as not offering the financial planning services. This 10% discrepancy illustrates the complexity of what components are included in financial planning.

The concern of CFA Society Toronto and CFA Institute are that potential regulations may have the unintended consequence of prohibiting CFA charterholders from providing complete wealth management advice to clients. CFA Society Toronto and CFA Society Ottawa, CFA Institute and the Canadian Advocacy Council have made submissions to the Expert Committee addressing these concerns and responding to a number of specific questions that the Committee had.

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18 September 2015

Expert Committee to Consider Financial Advisory
and Financial Planning Policy Alternatives
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Re: Initial Consultation Document

Dear Expert Committee Members:

CFA Institute appreciates the opportunity to comment on the Initial Consultation Document (the "Consultation") of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (the "Expert Committee") on behalf of the Ministry of Finance of the Province of Ontario (the "Ministry"). The Expert Committee seeks to increase understanding of the issues relating to the regulation of activities and individuals who offer financial planning, advice and services.

CFA Institute is a global, not-for-profit association of more than 136,000 investment analysts, portfolio managers and other investment professionals, more than 129,000 of whom hold the Chartered Financial Analyst® designation. These members come from 151 countries, and associate with 145 member societies in 70 of these countries and territories. In Canada alone, there are more than 15,000 CFA Institute members associated with 12 societies located in seven provinces. CFA Society Toronto is among the largest CFA society in the world, with nearly 8,800 members and 8,400 CFA charterholders. Our other Ontario-based society, CFA Society Ottawa, has 369 members, including 345 CFA charterholders.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

CFA Institute supports the work of the Expert Committee and its goal of providing additional protections for investors and others receiving financial planning and financial advisory services. For more than 50 years, CFA Institute has worked to raise the proficiency and ethical standards of individuals engaged in the investment industry. Our Code of Ethics and Standards of Professional Conduct are an integral part of the CFA examination and require our members to

put the interests of their clients ahead of their own and before the interests of the firms for whom they work.

With regard to the Consultation, we believe that any regulatory system established to achieve the goals of the Expert Committee must be transparent in its governance, regulation and operations, and have independent board and regulatory/arbitration panel members to enhance market and investor trust. The best way to achieve these goals, in our view, would be to create an independent standards-setting body for those engaged in financial planning and providing financial advice. This body would create standards for anyone seeking to call themselves financial planners or investment advisers, and could draw on the ethical and professional codes of conduct from various professional organizations, including the CFA Institute Code and Standards. Moreover, CFA Institute believes its members already have proven they have the skills and knowledge needed to be included as an allowed-participant, and granted all privileges or requirements, under any regulatory structure the Expert Committee chooses to recommend. And we support the protection and regulation of certain titles such as adviser and financial planner to ensure that those who use such terms adhere to a standard of loyalty, prudence and care when providing advice to their clients.

We believe gaps exist in the regulatory system, largely due to an emphasis on products to the exclusion of service-oriented regulation. We also support greater protections for elderly clients, and join our colleagues on the Canadian Advocacy Council for Canadian CFA Institute Societies (the "CAC") in suggesting that any additional rules should be incorporated into existing rulebooks.

The issue before the Expert Committee is one that policymakers throughout the world are seeking to address, as well. Regulators in Australia, the United Kingdom and the United States, among others, have had to consider regulation of financial planning services. While their responses all differed in many technical aspects, each concluded that a new and stand-alone financial planning-based regulatory structure was not needed. Australia, for example, amended its existing regulatory system to increase the standard of care for those engaged in financial planning or financial advice. Regulators in the U.K. eliminated conflicted remuneration schemes and set standards for advisers. In the U.S., a review of the regulatory structure determined that many of the products sold by financial planners already were subject to regulation.

Finally, we do not foresee the need for additional licensing or registration as useful because existing requirements are sufficient to adequately protect investors and oversee products and services used in financial planning and advice. Nor do we support a single required training regimen, credential or curriculum for those engaged in these services, in large part due to the existence of a number of accepted professional designations for individuals engaged in these activities. We do support, however, the idea that financial planners and financial advisers should participate in a central registry such as the National Registration Database.

Discussion

The Expert Committee has been tasked with providing advice and recommendations to the

Ontario government about the advisability, feasibility and the extent to which regulation of financial planning and the giving of financial advice is needed in Ontario. The Expert Committee is considering, among other things:

- The education, training, proficiency, ethics and enforcement requirements that should apply to those engaged in financial planning and the giving of financial advice;
- Licensing and registration requirements that should apply to those engaged in financial planning and the provision of financial advice;
- The legal means, if any, to address conflicts of interest and potential conflicts of interest;
- The use of titles and designations and whether they should be regulated; and
- 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.

The Expert Committee also is seeking to consider such factors as investor protections, industry concerns, regulatory efficiency, sensitivity to existing policy initiatives, and enhancing regulatory cohesion and consistency.

Standards of Care for Financial Planning Clients. A key element of any solution to the concerns that have led to the Expert Committee's creation is the financial literacy of individuals whose savings are at risk. We support such efforts and have an extensive catalogue of materials for individual investors available on our website at at www.cfainstitute.org.

It is improbable, nevertheless, that a majority of current retirees, in particular, and other investors, in general, will learn the fundamentals of investing and finance quickly enough to prevent individual cases of significant loss of savings and investment capital. It is, therefore, imperative, we believe, to develop regulatory structures that increase the standards of care imposed on industry participations. For these reasons, CFA Institute supports the Expert Committee's review.

For more than 50 years, we have administered the Chartered Financial Analyst program, which has included at its core the CFA Institute Code of Ethics and Standards of Professional Conduct (collectively referred to as the "Code and Standards"). CFA Institute members must annually attest to having adhered to the Code and Standards, which includes a duty of loyalty, prudence and care from members, and requires that they place the interests of clients ahead of their own interests and those of their firms. Our long track record of ethical education is an important reason why we take seriously matters such as those under consideration by the Expert Committee.

Potential Means of Improving Client Outcomes. We believe it is imperative that this effort include a robust regulatory element to address issues in the near term, for the reasons stated above. This is made somewhat easier by the fact that many of the products and services sold by financial planners in Canada are regulated by existing provincial and industry-based regulatory entities already. At the same time, there remain gaps in regulatory coverage that individuals and firms have taken advantage of for the purpose of exploiting certain of their clients. It is these activities that the Expert Committee's efforts should target.

We are aware that the Expert Committee is considering a set of responses to deal with these

kinds of activities. One such option is the creation of a new self-regulatory organization ("SRO") to address the kinds of activities that fall outside existing regulatory structures. In general, we support SROs as they can be more nimble in responding to new developments in the market. At the same time, if not properly structured, such entities can be used to benefit certain members of the industry, particularly those who establish the SRO. To combat the potential for conflicted interests, CFA Institute has developed a set of recommendations for the governance and oversight of SROs[1]. Among other things, these recommendations call for the independence of SRO boards and regulatory/arbitration panels as a means of enhancing market and investor trust in such regulatory systems. To further that trust, SROs must be transparent about their financial, governance and regulatory matters, and must be accountable to both statutory regulatory agencies and the public.

One means for achieving this goal we believe would be to create an independent standards-setting body that would create a set of standards necessary for anyone seeking to call themselves financial planners or investment advisers. The Fawcett Report in Australia proposed a similar template in its report to improve the ethical, professional and educational standards of persons providing financial advice. In Canada, we believe, such a body could draw on the ethical and professional codes of conduct from various professional organizations, including the CFA Institute Code and Standards.

As an organization, we stand ready to assist, contribute and participate in whatever structure the Expert Committee proposes. We believe the expertise of our members in the application of our global ethical standards should be useful in addressing the issues currently under consideration.

The Consultation

As part of this effort, the Expert Committee has issued this Consultation. In the pages that follow, CFA Institute provides its responses to the Consultation.

1. 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.

An estimated 30% to 35% of all CFA Institute members are engaged in private wealth activities, and, as a consequence, our organization has a well-established continuing-education program for members related to activities generally included in the definition of financial planning. The Private Wealth Body of Knowledge[2] at CFA Institute covers many of these topics, including the following:

- Planning for cash flow and retirement needs
- Portfolio construction and revisions
- Risk management and insurance planning
- Tax efficiency strategies for estates, gifting, wealth transfers, charitable contributions

[1] See Self-Regulation in the Securities Markets: Transitions and New Possibilities, CFA Institute, 2013.
[2] See page 65, title X, Portfolio Management and Wealth Planning.

and education
- Behavioral finance
- Management of individual and/or family investment and financial portfolios
- Asset allocation

Underlying these topics is a comprehensive understanding of the products and services investors can use in the development of a well-considered investment and financial plan. Defining client objectives and risk tolerances within the context of their existing assets and liabilities, cash flows, risks, ongoing obligations, aspirations and future goals, and their willingness and ability to accept the risk of variable outcomes is an important place to start in this process. A best practice is to render a written financial plan that memorializes these dimensions for reference by the client and those s/he may retain to help implement the plan.

Investors, especially individual investors, almost certainly do not recognize a distinction between financial planning and financial advice. There are no regulatory definitions of planning or advice, and it is left to the marketplace to offer services and products that appeal to investors' perceptions of their needs. Many of those services and products are already subject to regulatory oversight.

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

With regard to the current regulatory scheme in Canada, we defer to the insights supplied by the CAC in their submission to the Expert Council. In summary, their views are that:

- While there are gaps in regulatory coverage, the system has shown improvement in recent years due to the work of provincial regulators and the Canadian Securities Administrators. The Client Relationship Model, in particular, is an important step forward in the protection of retail investors.
- Current regulation tends to be product-focused rather than service-oriented. This is an important gap since "determining the strategic allocation of an investor's assets often has a more profound effect on the overall success of a financial plan" than are decisions about specific investment funds or products.
- There is a recognition about the need for greater protection for senior citizens.
- The CAC suggests that any additional regulatory proposals and improvements be incorporated into existing regulation rather than within a new and potentially redundant, layer of regulation.

We note that in other jurisdictions, the focus has been on addressing appropriate regulation of financial products and conflicts of interest inherent in the interaction between principals (investors) and agents (financial advisors, brokers, etc.).

Australia. In 2013, the Future of Financial Advice Act reforms were enacted to address a

number conflicts of interests. Among the reforms was a ban on conflicted remuneration schemes, including specifically commissions and volume-based payments related to retail investment products. A duty of acting in the best interests of clients was imposed upon financial advisers when providing personal advice to retail clients. Advice providers also were required to renew clients' agreements to ongoing fees every two years. Annual fee disclosure statements were required, and the Australian Securities and Investments Commission was given enhanced powers to address related issues.

In December 2014, a joint parliamentary committee released a report on its inquiry into proposals to raise the professional, ethical and educational standards for financial advisers, including financial planners. The so-called "Fawcett Report" provided a series of recommendations on how to achieve these improvements, summarized below:

- Clarify who can provide financial advice by protecting the title and function
- Improve the qualifications and competence of financial advisers
- Enhance professional standards and ethics

Both of these efforts had similarities with the review currently underway in Ontario. The first sought to address significant conflicts of interests with financial advisers and financial planners. The Fawcett Report proposed the creation of structures to ensure enhanced ethical, professional and educational standards for those providing personalized investment and financial planning advice to retail clients.

The Fawcett Report would permit different professional associations to seek accreditation and approval from the independent Professional Standards Council. This is a structure that we believe could serve as a template for the Expert Committee as it seeks alternatives to existing oversight of financial advisers and financial planners in Ontario.

Singapore. Singapore requires that anyone holding themselves out as a "financial adviser" be either a licensed financial adviser or exempt financial adviser per the Financial Advisers Act (Chapter 110) enacted in 2001. The scope of regulation of financial advisers is limited to providing advice about investment products, research about investments, sales of collective investment schemes, and life insurance products. The Monetary Authority of Singapore acknowledges that there are other dimensions to financial planning (tax planning, estate planning, etc.) but does not claim regulatory jurisdiction over those services. Licensure involves demonstration of adequate capital, competence, and proving fit for purpose. The MAS maintains a public register of licensed financial advisers and their representatives.[3]

United Kingdom. In the United Kingdom, the implementation of the Retail Distribution

[3] See: http://www.mas.gov.sg/~/media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Financial%20Advisers/FAQ/FAQsFAA2May2013.pdf

Review took effect in 2013. The main focus has been to eliminate conflicted remuneration schemes, standardize classifications of those who provide financial advice as either independent or restricted. It also set standards of knowledge for advice practitioners that can be satisfied through accreditation by professional bodies and/or independent learning, along with mandatory continuing education.

United States. As a consequence of Sec. 919C in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the US Government Accountability Office conducted a study of the oversight of financial planners. The report, issued in 2011, considered current laws and regulations applicable to financial planners; the frequency of consumer complaints and regulatory enforcement actions against financial planners; and potential changes to financial planner oversight. Below is a summary of the GAO's findings about current regulation:

- Investment Advisers. Financial planners providing investment advice about securities, including recommendations and advice about non-securities, owe a fiduciary duty to their clients. These relationships are covered by the Investment Advisers Act of 1940, as interpreted by the courts, and applicable state securities laws.
- Broker-Dealers. Financial planners making recommendations for the purchase or sale of securities as broker-dealers owe a standard of care to their customers that ensures that advice and products are suitable for those customers. These activities are covered by the Securities and Exchange Act of 1934, the rules and regulations of the SEC and of the Financial Industry Regulatory Authority (FINRA), and state securities laws.
- Insurance Agents. Financial planners making recommendation for the sale of insurance products are bound by a suitability standard of care similar to that owed by broker-dealers. These are covered by state insurance laws.
- Variable Insurance Products. The sale of variable insurance products, including variable annuities and variable life insurance, are covered both under rules affecting broker-dealers and insurance agents.

The GAO also considered the frequency of consumer complaints and enforcement actions taken against financial planners. It looked to a number of government agencies and regulators and independent entities for data, including the Federal Trade Commission (FTC), the Better Business Bureau, the SEC, and the North American Securities Administrators Association (NASAA). A summary of these findings is summarized below:

- The FTC's Consumer Sentinel Network database found 141 complaints using the term "financial planner" during the five years from 2005 and 2010, though "only a handful" were deemed connected to the financial planning profession.
- The Better Business Bureau received "relatively few" complaints about financial planners.
- The SEC received 51 complaints related to financial planners in the year ended October 2010, often related to allegations of unsuitable investments or fraud. The SEC's Tips, Complaints, and Referrals database indicated 124 allegations related to financial planners in the seven months ended October 2010. Finally, the SEC identified 10 enforcement cases related to financial planning in the year ended August 2010.

- NASAA, which is an association of state securities administrators, said it lacked a comprehensive database on enforcement actions related to financial planners, but found 36 actions brought by 30 states between 1986 and 2010.

In the end, the GAO did not recommend a new regulatory structure for financial planners and financial planning activities, in large part because a majority of the federal and state agencies, consumer groups, trade associations, academics and financial services firms interviewed said they did not favor an additional layer of regulation for financial planners. The GAO did recommend a concerted effort by insurance and securities regulators to collect information about the extent of problems involving financial planners and financial planning products, and for insurance regulators to study consumer understanding of standards of care with regard to variable insurance products.

3. 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?

The rendering of financial advice, and to a somewhat lesser extent the rendering of financial plans, is susceptible to conflicts of interest. We strongly believe that those who provide financial planning and financial advice owe duties of loyalty, prudence, and care to their customers, and that a best interests duty of care be required of those who provide financial planning and financial advice. The benefit of such a system are that: a) those providing financial planning and financial advice work to eliminate conflicts of interest; b) where that work proves impractical, that such conflicts are clearly disclosed; c) conflicts are resolved in favor of customer's interests when they cannot be avoided; and d) clear accountability is established for advisers and financial planners so that violations receive appropriate sanction.

4. To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated? Please consider the following in your response:

(a) Licensing and registration requirements;

(b) Education, training and ethical responsibilities;

(c) Titles and designations of individuals who engage in financial planning and/or the giving of financial advice;

(d) Specific activities that should be included or excluded in a regulatory scheme;

(e) Costs and other burdens of regulation;

(f) Regulation of compensation; and

(g) Complaints and discipline mechanisms.

Financial planning is very rarely offered as a discrete service, and more typically is part of the strategic planning that underpins investment, tax, and estate planning strategies. The financial services rendered pursuant to a financial plan are almost always regulated, and the practitioner who develops and executes a plan is also very likely to be subject to regulation by virtue of the existing regulatory structure that applies to the products and services they offer to their clients. We urge that consideration of any additional regulation take into account the existing robust regulatory structure, and suggest that any marginal benefit to additional regulation of services that fall outside of the current structure is very likely to be outweighed by the costs of harmonization with existing regulations and marginal compliance costs.

We do not view additional licensing or registration requirements as being useful for customers or practitioners. Existing requirements are sufficient to afford customer protection and effective regulatory oversight for the products and services most typically employed in providing financial advice.

We caution strongly against proposing a single training regimen, credential, or curriculum as mandatory for those professionals engaging in financial planning and offering financial advice. Customer needs are diverse and may require expertise in investment analysis, portfolio management, tax planning, estate planning, and risk management (insurance) in varying proportions depending on the customer's unique circumstances. Customers with more intensive needs in one dimension may prefer a practitioner with training and experience that would be less useful to another client with distinctive needs in other dimensions.

We recognize the value of commitments to professional codes of ethics, including those undertaken by our members to the CFA Institute Code of Ethics and Standards of Professional Conduct. Given the proliferation of professional designations and the difficulty customers may have in discerning differences in the quality of training, disciplinary program effectiveness, and robustness of commitment, we suggest that regulators make attainment of certain professional designations and maintenance of membership in good standing an alternative to other licensing and registration requirements, rather than imposing a requirement for certain credentials or relying on the marketplace to discern between practitioners holding different credentials.

Consistent with our belief in the need for a mandatory best-interests standard of care for those who offer financial planning and advice to individuals, we support regulation of the term "adviser." We believe that only those who accept a duty of loyalty, prudence and care for their advice to clients should be able to market themselves to customers as advisers. Practitioners whose business models are based on lower standards of care should be forbidden from referring to themselves as "advisers" in the marketplace.

We do not propose a new regulatory regime for products and services rendered as part of financial planning and advice. This reflects our perspective that most financial services are

already well regulated, and that a new layer of regulation would impose compliance costs most likely to be borne by customers and offer very little, if any, marginal protection or benefit. We concede that creating a financial plan is not currently regulated, but note that execution of any such plan almost certainly involves products and services that are well regulated.

We believe that mechanisms of redress for investors are already in place, and while there is room for improvement in how these mechanisms operate (see, for example, our report Redress in Retail Investment Markets: International Perspectives and Best Practices) we do not anticipate benefit from imposition of a another new system.

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

In the current environment, consumers are most susceptible to harm from conflicts of interest with those who provide advice. Consumers are ill-prepared to discern the different standards of care assumed by their advisers, and find it difficult to identify instances where recommendations and advice are motivated by something other than the consumer's best interests. In the current environment, those who provide financial advice are not required to refer to themselves in terms that would make it clearer what role they fulfill (i.e. "adviser" vs. "salesperson") and disclosures intended to identify conflicts of interest are often ignored by consumers as part of "legal boilerplate" language. As a result, consumers often are sold products that are less than optimal for the purpose intended and/or more costly than necessary. In a 2014 survey of CFA Institute members representing a broad cross-section of investment professionals, Canadian CFA Institute members cited "misaligned incentives of investment management services" and "mis-selling by financial advisers" as the two most serious ethical issues facing the Canadian market in 2015.

We are not aware of evidence of more than isolated incidences of harm to consumers from creation of substandard or defective financial plans. Financial planning necessarily involves incorporating uncertainty and even well-crafted plans may ultimately not reflect outcomes that are very unusual or difficult to anticipate. We do not believe that additional regulation would offer additional consumer protection commensurate with the costs of additional regulation that would be borne by consumers.

6. 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?

We see benefit in allowing consumers a single portal to access disciplinary and enforcement information about practitioners. Through our members in Canada, we are aware of the

National Registration Database ("NRD") that currently enrolls all other securities registrants in regard to other Canadian regulatory regimes. Given the existence of a functioning registry for similar activities, we suggest that the Expert Committee look to the NRD as a mechanism to provide investors with relevant information about individuals providing financial advice and engaged in financial planning.

We wish to note that a Register of Relevant Providers was introduced in Australia under the Future of Financial Advice Act. The Register offers consumers a view of practitioner registration information, including education, products that the practitioner may advise on, membership in relevant professional bodies, and details about disciplinary actions taken against the registrant. This, too, may serve as a template for the Expert Committee to employ.

Conclusion

We support the Expert Committee's research into the issue of whether regulation is needed for those who engage in financial planning and give financial advice. Should you have any questions about our positions, please do not hesitate to contact any of the signatories, below.

Sincerely,

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September 16, 2015

BY EMAIL

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Dear Sirs/Mesdames:

Re: Financial Planning/Advice Consultation (the "Consultation")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the following questions posed in the Consultation.

We are supportive of the consultation process that the Ministry of Finance is undertaking with respect to financial advisory and planning activities. We believe the lack of regulation of financial planners is an important issue. We would encourage the Ministry to co-operate with the other provinces and territories to ensure that any measures taken would apply across Canada. It is already confusing for investors to understand the categories of registration under the securities registration regime set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as well as what each category actually means in terms of obligations to that investor. This problem will be exaggerated to the extent any new requirements relating to the financial advisory industry are not harmonized across the country.

In the Ontario Securities Commission (the "OSC") Notice 11-771 - *Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2016*, the OSC acknowledged the importance of a well-functioning investor/advisor relationship to the economic well-being of Ontarians. As CFA

[1]The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

charterholders, we have agreed to uphold the Code of Ethics, which requires us to put the best interest of our clients ahead of our own. As a general comment, we wish to stress the importance of implementing a statutory best interest standard on all persons providing investment or financial planning advice. Such a standard would help ensure that an investment or allocation of financial resources is in fact in a client's best interests, and would help mitigate concerns relating to potential conflicts of interest, particularly as it relates to decoupling financial or planning advice from sales commissions. The end users of these services, the investment industry and society as a whole would benefit if all professionals offering financial planning and investment advice were held to this high standard.

1. *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.*

In broad terms, financial planning generally involves determining an approach to allocating an individual's or an entity's financial resources. Typically, the financial planning process will result in a written investment policy or broader financial plan. Such planning tends to be strategic. The financial plan may be adjusted every year or every few years, but usually not as frequently as implementation decisions, i.e. which specific funds or investment vehicles in which to invest. We would consider a financial planner to be anyone receiving compensation, either directly or indirectly, for assisting with this planning process or with any decisions regarding allocation of financial resources.

We do not believe there is a practical distinction between financial planning and providing financial advice. While it would be possible to draw such a semantic distinction, doing so would be counter-productive from the point of view of protecting the end users of these services. Many end users of financial products and services are not going to understand or appreciate distinctions in which some financial planning activities are regulated while others are not, and this could potentially expose the end users to negative consequences if such distinctions were used.

Similarly, we believe it would be counter-productive to attempt to regulate individual titles. If financial planners are regulated, for example, and retirement planners are not, it would be very difficult to educate all potential users on this distinction. Regulation of certain titles would just invite those who wish to avoid the regulatory requirements to invent new titles that are not covered by the regulations.

However, while the adoption of a very broad definition of financial planning is the only way to prevent those who do not wish to be regulated from defining their activities in such a way as to avoid regulation, there is a danger that regulation of financial planning, if it is too broadly defined, may have the unintended consequence of restricting many professionals' ability to provide the same level of assistance to clients in future as they currently provide. For example, a lawyer assisting a client with estate planning, or an accountant assisting a client with tax planning, or a CFA charterholder assisting a client with an investment policy, may all be providing some financial planning advice. It is hoped that none of these services would be restricted in future by onerous regulatory requirements

imposed upon financial planners. We would therefore urge the Ministry to avoid a detailed regulatory framework and use principles-based regulation that fully recognizes the protections already afforded investors and end users of financial planning advice by these various professions.

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

We would consider the current regulatory scheme to be incomplete. There are clearly gaps in coverage at the current time, but we feel there has been a lot of positive improvement in regulation achieved by the CSA and provincial regulators over the past several years. Many investment advisers are already required to be regulated under existing securities legislation. The Client Relationship Model has been a significant step forward in the protection of retail investors. And we are hopeful that the on-going initiatives, including the current consideration of a best interests standard and the study of mutual fund fees, will lead to even better investor protection in future. We would therefore urge the government to integrate any additional regulatory requirements with the existing securities regulation rather than merely laying on an additional, possibly redundant, level of regulation.

A major gap in current regulatory coverage arises from the fact that much of the current regulation tends to be product-focused rather than service-focused. This is a significant gap since determining the tactical allocation of an investor's assets often has a more profound effect on the overall success of a financial plan than decisions regarding which specific funds or investment products in which to invest to implement the plan.

Gaps in regulatory coverage are not limited to retail investors. Consultants to pension funds and other institutional investors who actively assist these institutional investors with all aspects of their investment programs currently are not regulated, and therefore the trustees of such investment funds are entirely left to their own devices in determining the skill, education level, ethics, and possible conflicts of interests, of their advisors.

However, it is the more vulnerable members of society who are most in need of regulatory protection. We were pleased to attend a roundtable last year hosted by the Ontario Securities Commission on the topic of seniors' investment issues, and it became clear through the discussion at this roundtable that there is a real need to provide many seniors with greater protection, especially since questions of competency may arise later in life, rendering any sort of caveat emptor approach problematic.

3. *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?*

We believe that the most appropriate overall legal standard for investment advisors and financial planners should be a best interest standard. Investment and financial planning professionals should be required to put the interests of their clients ahead of their own and their employer's business interests. Given such a general standard, conflicts of interest should not be tolerated.

At the very least, proper disclosure of any real or potential conflicts of interest should always be mandatory. The increased requirements under CRM2 have been a move in the right direction in this regard. However, disclosure alone, no matter how detailed and complete, can never be expected to fully protect the end users of financial planning advice, since the knowledge and information asymmetry may be too great. End users of financial planning advice expect to be able to trust their financial planners without having to conduct extensive due diligence to determine the financial planners' trustworthiness.

At the current time, many of those with the title of 'financial planner' are actually commission-based salespeople. This leads to a systematic conflict of interest which is very much to the detriment of the recipients of these financial planners' advice. The latest study of the mutual fund fee issue, which was made public earlier this year, pointed out the obvious fact that funds paying higher commissions tended to be recommended more often. If financial planners are regulated, but a high standard of care is not established and the compensation-driven conflicts of interest are not eliminated, the regulation will fail to provide adequate protection to the end-users of these services. In fact, such regulation would be worse than nothing, for it will result in the end-users having a false sense of security, believing their interests are being protected in a way that they are not.

4. *To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated? Please consider the following in your response:*

    a. *Licensing and registration requirements;*

We consider the key issues in protecting end-users of financial planning services to be the establishment of an overall best interests standard of care and the elimination of compensation-driven conflicts of interest. Any licensing or registration that does not directly deal with these central issues will be of little benefit to the end-users of financial planning services.

Licensing and registration requirements would be useful from the point of view of establishing basic levels of competency. However, we would urge a simple, cost-effective approach that would recognize the existing credentials of the many professionals working in this area, especially existing registrants, rather than forcing another layer of redundant registration upon these professionals.

With respect to the use of financial designations, we generally agree with the criteria set out by IIROC, which include a rigorous curriculum, an emphasis on ethics, and a method for determining the individual's current status regarding the designation and whether the designation has been issued by a reputable or accredited organization. In particular, we strongly support the emphasis on ethics, as we believe it is an essential criterion for an investment professional. We also urged in our 2013 letter to IIROC to require dealer members to use objective measures when examining the rigor of each of the financial designations' curriculum. Such objective measures would include exam pass rates, number of exams, length of each exam, as well as the length and type of work experience required to attain the designation. A

summary of such measures should also be published, as we strongly believe the transparency of these objective measures is very important for enhancing investor awareness and protection.

It is important that any additional licensing or registration requirements be simple, cost-effective, integrated with existing regulation, and recognize existing professional credentials so that the compliance costs of such licensing and registration do not outweigh the consumer protection benefits.

b. Education, training and ethical responsibilities;

We believe that the best approach to regulation of financial planning would be inclusive rather than exclusive. There are numerous professional bodies whose services overlap in the financial planning space. A minimum set of educational requirements, training and ethical responsibilities may be established, but we would hope the regulation would recognize and respect the current standards established by existing professional bodies such as the Law Society of Upper Canada, CPA Ontario, the CFA Institute, the Canadian Institute of Actuaries, etc. rather than imposing another set of criteria, which may be less appropriate and possibly less rigorous, on to these professionals.

It would be unrealistic to expect every financial planner to be an expert in every possible aspect of financial planning, so a single uniform educational standard would also be unrealistic. There will be times, for example, when an investment expert will need to bring in the services of a tax expert or a legal expert. A best interests standard would entail any professional sourcing the best possible advice for the client rather than attempting a "do-it-all-yourself" approach.

c. Titles and designations of individuals who engage in financial planning and/or the giving of financial advice;

In 2013, IIROC published a Request for Comments - Use of Business Titles and Financial Designations as set out in IIROC Notice #13-0005. We agree with the conclusions drawn by IIROC from its Dealer Member survey and investor research about the confusion faced by retail investors due to the plethora of titles and designations currently used by advisors. We believe it is an important investor protection initiative to educate investors, to the extent possible, with respect to the qualifications and experience required for various advisor designations, and to ensure that advisors' titles provide meaningful information to clients, potential clients, and the general public.

It is important that persons providing financial planning services do not misrepresent their qualifications. As part of our comments to IIROC, we indicated that IIROC should limit the choice of titles that can be used by firms in formulating their policies and procedures on the use of titles. An example of such a list would contain a small number of broad categories based on registration type, and a limited

choice of variations in titles within each such category based on a clear differentiating factor, such as seniority in the firm, that can be comparable across categories. If the number of possible titles was limited and these titles were used consistently by all representatives and across firms, it would be easier to educate the public on their meaning and would help investors compare advisors at different firms on a more appropriate basis.

However, as discussed in question #1 above, if only those using certain titles are regulated, and others are free to offer unregulated services by using different titles, then such regulation is unlikely to be very effective.

d. Specific activities that should be included or excluded in a regulatory scheme;

As discussed in question #1 above, we do not believe that it is feasible to attempt to narrowly define financial planning. We believe a broad-based definition is the most practical approach, as long as it does not lead to any restriction or diminishment of professionals' abilities to provide service to their clients.

e. Costs and other burdens of regulation;

We would urge the government to keep the costs and other burdens of regulation to a minimum by relying as much as possible on the existing regulatory framework and by relying on the numerous professional bodies involved in the financial planning area to all self-police their own memberships.

Since professionals from a lot of different professional bodies are currently engaged in assisting their clients with aspects of what would broadly be considered financial planning, we do not feel it would be appropriate to choose any single professional body to act as a self-regulatory organization, especially if this would entail forcing other professionals to have to pay fees to and follow the rules of this single organization or cease to assist their clients with financial planning in future.

In particular, no single professional body should be given a monopoly with respect to licensing or certification of education, training, or ethics. Other professionals would then be faced with having to pass along such costs to their clients, or they would be restricted in the assistance they could provide to their clients.

Also, any single professional body may have biases embedded in its membership. We believe that if there is to be a regulator of financial services, it should be entirely independent of any single professional group. Using the provincial securities regulator in this regard would appear to be the best alternative.

f. Regulation of compensation; and

Most abuses in the financial planning area are likely to arise from conflicts of

interest in which the financial planner's level of compensation is affected by the advice given.

In April 2013 we responded to the *CSA Discussion Paper and Request for Comment 81-407—Mutual Fund Fees.* In our letter we stated, "To fully protect investors and ensure cost transparency, we are of the view that the payment of trailing commissions cannot be made from the manager to the dealer, but must instead be made directly from the ultimate client."

The principle here is the same. The only way to effectively eliminate conflicts of interest with regard to compensation is to have all payment for financial planning services come directly from end-user clients. Users of financial planning services should not be placing reliance on any financial planners who are compensated in any way by the providers of financial products. To the extent that the level of compensation may vary based upon the advice given or the financial plan adopted, the financial planning advice is tainted. Mere disclosure of such a conflict of interest is not sufficient.

g. Complaints and discipline mechanisms.

In order to control costs and reduce complexity as much as possible, we would urge the use of the existing regulatory framework wherever feasible. In this regard, there is already a well-developed complaints mechanism through the Ombudsman for Banking Services and Investments (OBSI).

In the same regard, we would consider the Ontario Securities Commission to be in the best position to provide any enforcement and discipline mechanisms as required by the regulation of financial planners in Ontario.

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

In general, we feel that most investors in Ontario are receiving valuable financial planning advice from a number of professional sources, although there are undoubtedly some cases of substandard advice. However, we would like to emphasize one of the benefits of the current environment is the fact that a large number of professionals are able to offer assistance to clients in areas that may overlap with pure financial planning.

It would be hard to measure in the retail investor space the effect of any inadequate or deficient financial plans. However, a lot of 'financial planners' are also registrants who are compensated for selling investment products to clients, and from time to time these registrants have been found guilty of placing their clients in unsuitable investment products.

Again, most of the current problems we are aware of arise in situations of conflicts of interest, where the 'financial planner' is being compensated for possibly churning the

client's account or providing unsuitable advice that will lead to greater commissions or other forms of compensation for the adviser.

We are also aware of situations in which consultants or advisers to pension funds regulated by the Financial Services Commission of Ontario have provided very poor advice to their pension fund clients which resulted in a substantial loss of assets. While the pension funds were considered accredited investors, since these were multi-employer plans, the loss in assets resulted in reductions in the plan members' benefits, so that it was the less sophisticated rank and file members who had no control over the investment decisions that suffered the financial loss.

6. *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?*

While a central repository of information concerning consumer complaints and ongoing investigations might be useful, a full registry might be too costly and burdensome to establish and maintain.

We believe the best protection for the end-users of financial planning advice will be holding all financial planners to a best interests standard. Our fear with this type of central registry is that it implies a *caveat emptor* approach, where the end-users of financial planning advice are expected to conduct due diligence to ensure that they will not be cheated, or at least that their financial planner has not cheated others in the past. Leaving the end-users of financial planning advice to try to fend for themselves in this way is not the best approach.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Robin Pond*

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