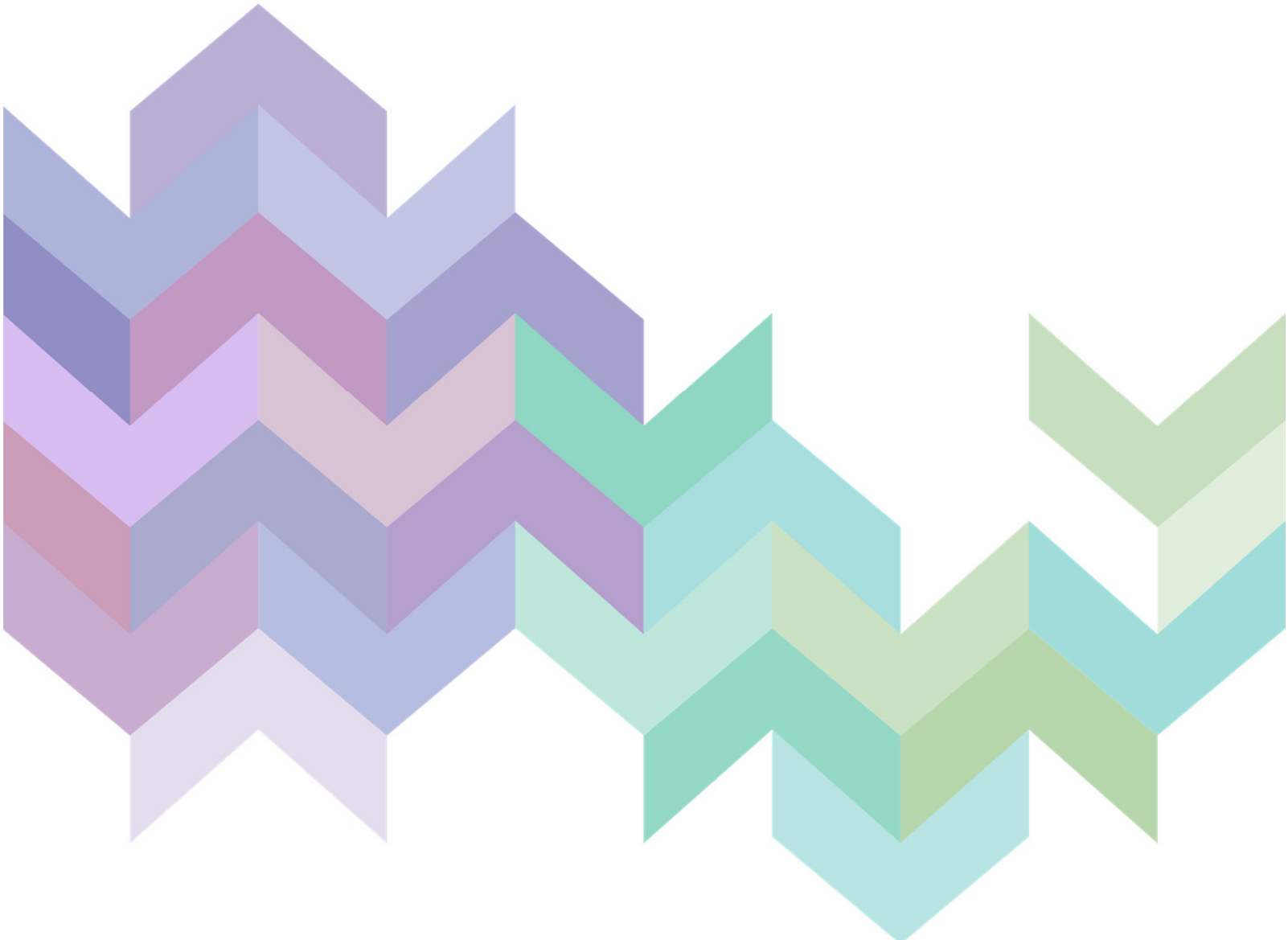
Ontario

FINANCIAL ADVISORY AND FINANCIAL PLANNING REGULATORY POLICY ALTERNATIVES

FINAL REPORT OF THE EXPERT COMMITTEE TO CONSIDER FINANCIAL ADVISORY AND FINANCIAL PLANNING POLICY ALTERNATIVES

November 1, 2016



This document contains the final policy recommendations of the independent Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (Expert Committee). The views, opinions and recommendations expressed in this document are solely those of the Expert Committee and are not made on behalf of the Government of Ontario. They do not necessarily reflect the official policy, position or views of the Ontario government.

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LETTER FROM CHAIR

November 1, 2016

The Honourable Charles Sousa
Minister of Finance
7 Queen's Park Crescent, 7th floor
Toronto, Ontario M7A 1Y7

Dear Minister Sousa,

We are pleased to present our final report and recommendations for the regulation of financial planning and financial advice in Ontario.

It was made abundantly clear to us during the course of our research and consultation that reform is required to the current fragmented framework for regulating financial services in Ontario. A harmonized regulatory framework for financial planning and financial advice would not only better protect consumers, but also provide a more streamlined approach to the regulation of financial services in Ontario. The plethora of misleading titles used in the financial services industry combined with the lack of a clearly articulated duty to act in the best interest of the consumer leaves Ontarians vulnerable. We articulate our concerns in Chapter 3 of this report.

We heard from Ontarians via our submission and consultation processes. We heard a clear consensus among consumers, industry and regulators alike that reform is required. Our aging population and the decreased availability of defined benefit retirement arrangements, which previously were the mainstay of Ontarians' retirement security, are just two of the changes that give rise to the need for changes to better protect consumers. Changes to the regulatory framework for those providing financial planning and financial advice have simply not kept pace with the increasing reliance that Ontario consumers place on their financial planners and financial advisors.

Despite recognition that change is required, there is little consensus among stakeholders as to the appropriate reforms. Our priority has been to make recommendations which ensure that Ontario consumers are well-protected when they engage the services of financial planners and financial advisors. In addition, we have endeavored to rationalize the approach to regulation by the different regulatory bodies in an environment where the financial products offered by the securities, mutual fund and insurance sector are increasingly homogenous and the individuals offering the financial planning and financial advisory services are often cross-licensed. Our recommendations are intended to improve regulatory efficiency in the financial services industry.

As indicated in Chapter 2, this is not the first time that regulatory reform of financial planning and financial advice has been recommended. For example, in 2001, an important attempt at reform was attempted and failed. The government clearly acknowledged the pressing need in the Ontario Economic Outlook and Fiscal Reviews since 2013 and Ontario Budgets of 2014 through 2016. We urge that our recommendations for legal reform be considered and implemented as soon as possible.

To be properly implemented, our recommendations for regulatory reform will require considerable co-operation among regulatory bodies. Given the need for co-operation and harmonization of the proposed regulatory changes across the securities, insurance and mortgage brokering sectors, we have suggested legislative reform that would mandate the implementation of our recommendations. We have also suggested legislative oversight of the implementation of our recommendations and public reporting of progress. Without this approach, which is outlined in Chapter 7, we doubt that reform can be achieved on a timely basis.

During our deliberations and consultations, we encountered some issues for further consideration that were outside of our direct mandate. Of particular note were the issues surrounding financial redress for consumers when they have been poorly served by firms or individuals engaged in financial planning and the giving of financial advice. A streamlined process for consumers to receive redress and/or compensation in the appropriate circumstances is long overdue. We have outlined our thoughts in this regard in Chapter 11.

Combined, our Committee has over 120 years of experience in financial services and the law relating to the financial services industry. We met 42 times over the course of our mandate in addition to time spent communicating with each other, ministry staff and the public, as well as drafting three public documents and doing research. I would like to thank my fellow committee members for their hard work and thoughtful contributions in fulfilling our mandate.

We would like to thank you for the opportunity to be engaged in this pressing project that is so important to Ontario consumers. We also thank those that attended our consultation sessions and made written submissions to us for their thoughtful presentations and assistance in helping us come to our recommendations for reform. Finally, we thank our support staff at the Ministry of Finance for their dedicated assistance – without which this report would not have been possible.

Malcolm Heins

Chair of the Expert Committee to Consider
Financial Advisory and Financial Planning
Policy Alternatives

GLOSSARY

CCIR – Canadian Council of Insurance Regulators

CCMR – Cooperative Capital Markets Regulator

CSA – Canadian Securities Administrators

FSCO – Financial Services Commission of Ontario

FSRA – Financial Services Regulatory Authority

GIO – General Insurance OmbudService

IIROC – Investment Industry Regulatory Organization of Canada

MFDA – Mutual Fund Dealers Association of Canada

KYC – Know-Your-Client

OBSI – Ombudsman for Banking Services and Investments

OLHI – OmbudService for Life and Health Insurance

OSC – Ontario Securities Commission

RIBO – Registered Insurance Brokers of Ontario

SBID – Statutory Best Interest Duty

SRO – Self-Regulatory Organization

DEFINITIONS

Conflict – a situation that has the potential to undermine a person or firm's impartiality including the possibility that an individual or firm places his, her or its own interest above the client's.

Holding Out – to represent or give the impression to the general public or a particular person of being qualified or entitled to engage in Financial Planning or Financial Advice, whether explicitly or implicitly by title or action.

Financial Planning or Financial Advice – any review and analysis of a consumer's: current financial and personal circumstances; present and future financial needs; priorities and objectives; the risks associated with his or her current circumstances; future needs; objectives; and, priorities which can but need not include the establishment of strategies to address and mitigate these matters whether or not a formal financial plan is prepared.

Financial Product – includes a "security" as defined in the *Securities Act* (Ontario); a contract of insurance, as defined in the *Insurance Act* (Ontario); and any investment in a mortgage or any mortgage type product, including syndicated mortgages.

Financial Product Sales – an interaction or process involving a consumer and an individual or firm wherein the individual or firm provides an opinion, suggestion, or recommendation to the consumer to buy or sell or hold a Financial Product including any associated investment advice, opinion, suggestion, or recommendation relating to the Financial Product or the consumers' financial affairs.

Regulators – regulatory agencies that have authority by legislation to regulate aspects of financial services in Ontario.

Self-Regulatory Organizations (SROs) – regulatory agencies that have authority by recognition order or statute to regulate aspects of financial services in Ontario.

EXECUTIVE SUMMARY

Our Committee was given the specific mandate to provide its advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation. In the report that follows, we conclude definitively that financial planning and the giving of financial advice should be regulated, and we describe in detail the appropriate scope of this regulation.

Our report consists of eleven chapters. Chapters 1-3 set the foundation for our recommendations.

First, we introduce our Committee, mandate, core principles and the process by which we developed our recommendations.

Second, we set the context for our recommendations, describing the evolution of financial services away from the provision of mere transactions towards the provision of more holistic advisory services. We discuss why current regulation has not fully adapted to this shift, and why Ontario's regulatory framework remains fragmented.

Third, we explain how the status quo harms consumers. In our view, the three most glaring contributors to harm are: the lack of specific, harmonized regulation of financial planning and financial advice; the confusing titles and credentials used by providers of financial planning and advisory services; and the lack of an explicit obligation to act in the client's best interest.

Chapters 4-6 set out the crux of our recommendations: **a tripartite approach** to address these harms. We include a pictorial representation of this approach at the end of this section.

The first element of our tripartite approach is to develop a specific, harmonized regulatory framework for financial planning and financial advice. Our recommended framework is meant to ensure that no one can provide financial planning or financial advice without regulatory oversight and that regulated providers of financial planning and financial advice are subject to harmonized standards for these activities.

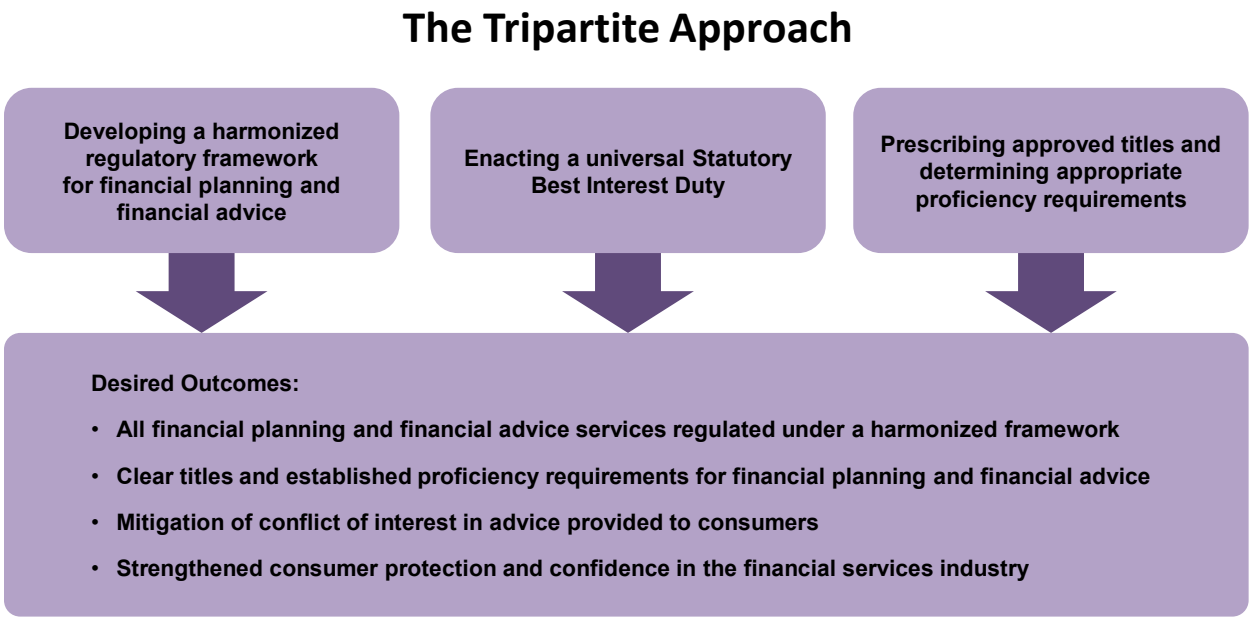
The second element is to clear up the confusing array of titles and credentials currently used within the industry. We recommend that regulators restrict the use of titles so that titles accurately reflect the credentials that underlie them. We specifically recommend a strict credential requirement in order to use the title "financial planner."

The third element is to enact a universal statutory best interest duty. With certain limited exemptions, we believe that every individual and firm in Ontario that provides financial planning or financial advice should be required to act in the client's best interest. We support recent efforts by some members of the Canadian Securities Administrators in this regard, but we firmly believe that this duty should apply to all providers of financial planning and financial advice in Ontario, regardless of which body regulates them or what product they sell.

Chapter 7 sets out our recommended approach to implementing these three interlocking reforms.

In Chapters 8-10, we provide additional recommendations about several other critical areas: the regulation of referral arrangements, the creation of a central registry for consumers and fostering financial literacy.

Chapter 11 concludes by pointing out several vital issues that extend beyond the specific mandate of our Committee, yet warrant further attention from the government.



RECOMMENDATIONS

1. Regulation of Financial Planning or Financial Advice

We recommend that:

a) The mandates of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) / (proposed) Financial Service Regulatory Authority (FSRA) be statutorily broadened explicitly to empower these Regulators to regulate Financial Planning or Financial Advice.

b) Regulation be required of any individual and firm that represents to consumers in Ontario that it is engaged in Financial Planning or Financial Advice either expressly or implicitly; or through Holding Out by way of titles, described services or otherwise. No individual or firm should be permitted to provide, or Hold Out as providing, Financial Planning or Financial Advice without regulatory oversight.

With the OSC and FSCO/FSRA empowered to regulate Financial Planning or Financial Advice, we recommend that:

a) Individuals and firms, in Ontario, that Hold Out that they are engaged in Financial Planning or Financial Advice and that are regulated by the existing regulatory framework for securities, insurance and mortgage brokering have any associated Financial Planning or Financial Advice activities regulated by their existing Regulator (or Regulators for those who have more than one licence).

b) Individuals and firms, in Ontario, that Hold Out that they are engaged in Financial Planning or Financial Advice and whose activities occur outside the current regulatory framework for securities, insurance and mortgage brokering have their Financial Planning and Financial Advice activities regulated by FSCO/FSRA.

c) The OSC and FSCO/FSRA develop a harmonized regulatory framework governing Financial Product Sales and the provision of Financial Planning and Financial Advice services in Ontario. Financial Product Sales, Financial Planning and Financial Advice should be subject to one set of regulatory standards across the regulatory framework. These standards should include a universal statutory best interest duty, restricted titles and proficiency requirements as described in our subsequent recommendations.

d) Not-for-profit organizations or government agencies and their staff who offer financial counselling or coaching that is free of charge and who do not directly or indirectly (through referral arrangements or otherwise) engage in Financial Product Sales be exempted from all Financial Planning and Financial Advice regulation.

2. Titles

a) To reduce consumer confusion, Regulators should work together, within a reasonable timeframe, to develop a circumscribed list of approved titles that are descriptive of regulated activities. Those engaged in Financial Planning and the giving of Financial Advice should only be permitted to use approved titles.

b) In order for an individual to Hold Out as providing Financial Planning or use the title "financial planner," whether or not the individual is also engaged in Financial Product Sales, we recommend that the individual be required to hold an appropriate credential as described below.

c) In order for an individual to Hold Out as providing Financial Advice or use a title incorporating the words "advisor" or "adviser," the scope of the advisory services and Financial Product Sales being provided to the consumer by the individual should be absolutely clear and these services should be consistent with the individual's regulatory status.

d) Those who provide or Hold Out as providing Financial Planning or Financial Advice should not be permitted to use corporate positions or titles in retail client-facing activities given the consumer confusion that results or can result from the use of such titles.

3. Financial Planning Proficiency and Credentials

a) In order to Hold Out as providing Financial Planning, individuals should be required to be proficient to provide Financial Planning services, which means that they ought to have sufficient education, training, integrity and experience that a reasonable person would expect necessary to provide a competent financial plan for a consumer.

b) The OSC and FSCO/FSRA should together determine the proficiencies required in order to Hold Out as providing Financial Planning. We recommend that the Regulators, following a review of independent credentialing bodies with experience in the field of standard-setting and credentialing for Financial Planners, recognize the appropriate credentialing entity or entities to credential the individuals who wish to Hold Out as Financial Planners. Recognition of the credentialing entity or entities should be premised on the education requirements, experience requirements, ethical standards and self-disciplinary processes of the entity or entities and the extent to which they meet the required proficiencies set by the OSC and FSCO/FSRA.

4. Statutory Best Interest Duty

a) We recommend that Ontario adopt and apply a universal Statutory Best Interest Duty (SBID) to all individuals and firms that engage in Financial Product Sales or Hold Out as providing Financial Planning or Financial Advice.

b) We recommend that the only exemptions that should apply to this universal SBID are as follows:

I. The individual or firm is already subject to a SBID by virtue of his, her or its licensing and registration requirements (e.g. as in the case of portfolio managers).

II. The individual or firm is already subject to a professional legal duty of care and fiduciary duty, and the advice being provided is incidental to his, her or its principal business or profession that is also regulated (e.g. as in the case of lawyers and accountants).

III. The individual or firm operates an order execution platform and no Financial Planning or Financial Advice is being provided to the customer, and the individual or firm is exempt from suitability requirements (e.g. as in the case of discount brokers).

5. Implementation

We recommend implementation of our recommendations through a new legislative framework empowering the OSC and FSCO/FSRA to regulate Financial Planning or Financial Advice in their respective mandates and directing the harmonization of their regulation of Financial Planning or Financial Advice to the extent practicable.

6. Referral Arrangements

We recommend that no individual or firm that engages in Financial Product Sales, or Holds Out as providing Financial Planning or Financial Advice, be permitted to enter into a referral arrangement with a third party for the referral of a customer or prospective customer who is to be provided with Financial Planning, Financial Advice or Financial Product Sales, unless the referral arrangement accords with conditions equivalent to those set out in Part 13 (Division 3) of National Instrument 31-103.

7. Central Registry

We recommend creating and maintaining a single, free, comprehensive central registry, with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals and firms that provide Financial Planning, Financial Advice and Financial Product Sales in Ontario.

8. Financial Literacy

We recommend that government, regulators, public and private schools (through their respective curriculum bodies and school boards), non-profit organizations and the financial services industry support and actively encourage financial literacy and investor education of Ontarians.

Issues for Further Consideration

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

- The need for a simplified complaint and redress process for consumers of Financial Planning, Financial Advice and Financial Product Sales.
- A simplified approach to the handling of consumer complaints related to regulatory offences in the provision of Financial Planning, Financial Advice and Financial Product Sales.
- A consumer-friendly process for recovery of financial losses from firms or individuals by consumers as a consequence of negligent Financial Planning, Financial Advice and Financial Product Sales services.

CHAPTER 1 – INTRODUCTION

Ontario has no comprehensive legal framework to regulate the activities of individuals and firms that offer financial planning and financial advice. The absence of a comprehensive regulatory framework has raised questions about duties of care, proficiency, quality standards and conflicts of interest. This absence is notable in an environment where consumers face increasingly complex financial decisions that are critical to their future and in particular to their financial security.

The Ontario government committed in 2013 to investigating the merits of more tailored regulation pertaining to individuals engaged in financial planning and the giving of financial advice. It consulted with stakeholders and persons interested in the financial planning and advising sectors in 2014. Subsequently, the Ontario government announced that it would appoint an expert committee mandated to provide advice and recommendations in a final report to the government in 2016.

Our Committee was appointed by the Minister of Finance in April 2015 with the specific mandate to provide its advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation.

The Committee's members are:

- **Malcolm Heins (Chair)**, a lawyer, director and business advisor with over 30 years of experience in the insurance business who successfully reformed the regulation of paralegals during his tenure as the CEO of the Law Society of Upper Canada;

- **Anita Anand**, the J.R. Kimber Chair in Investor Protection and Corporate Governance at the Faculty of Law, University of Toronto, with a research focus on regulation of capital markets and the inaugural Chair of the Investor Advisory Panel of the Ontario Securities Commission;

- **Paul Bates**, a Fellow of the Institute of Chartered Professional Accountants, a former financial industry executive and regulator, and the former Chair of the Investor Education Fund, with experience in investor advocacy; and

- **Lawrence Haber**, who has had a diverse career in the capital markets, as a securities lawyer, financial industry executive and corporate board member, and as a special policy adviser to Ontario Securities Commission staff.

Currently the Chair of the Board of Diversified Royalty Corp., a TSX-listed royalty finance company where he was also previously the Chief Executive Officer.

During the course of our review, we have kept the following core principles in mind:

(a) **Investor and Consumer Focus** – focus on furthering the public interest including the protection of consumers;

(b) **Industry Consideration** – give due consideration to the importance of the financial services industry in Ontario and to the concerns of market participants;

(c) **Regulatory Efficiency** – seek to make recommendations that are not unduly complex and that avoid unnecessary or duplicative regulation;

(d) **Sensitivity to Existing Policy Initiatives** – be sensitive to existing policy initiatives; and

(e) **Enhancing Regulatory Cohesion and Consistency** – seek to avoid recommendations that would result in regulatory fragmentation or that might produce or increase opportunities for regulatory arbitrage.

In applying these principles and in pursuing our mandate, we were conscious not to read our mandate overly broadly to include compensation structures applicable to financial planners and financial advisors. We also understood our mandate to apply to those who give advice in addition to those who undertake financial planning. In fact, as will be discussed in later chapters, we see these two activities – financial planning and the giving of financial advice – as overlapping, inextricably-linked services on a spectrum of activities.

Prior to writing this report, we reviewed the existing academic literature, previous consultations by the Ministry of Finance, information previously gathered by the ministry and the approach in other jurisdictions. We consulted interested parties via an Initial Consultation Document released on June 24, 2015. We asked for written submissions by September 21, 2015 addressing six questions critical to our deliberations. Our Initial Consultation Document is set out at Appendix A. We also met with the regulatory organizations in Ontario familiar with the subject matter of our mandate.

The response to our request for submissions over the course of the past year has been impressive: in response to our Initial Consultation Document, we received 107 submissions (see Appendix B) which were virtually unanimous in suggesting that reform to the current regulatory environment for financial planning and advisory services is warranted.

We then published our Preliminary Policy Recommendations Document on April 5, 2016 (see Appendix C). Again, the response was significant as we received a total of 221 submissions[1] (see Appendix D). We also held public consultations throughout the province during May and June 2016 (see Appendix E). As a result, it is clear that this final report is a product of this considerable input from stakeholders.

The submissions, together with our research, led us to affirm with some amendment the recommendations for reform together with a list of issues for further consideration. In making our recommendations, we were guided by our core principles above and the clearly articulated need for change.

We have reviewed the final report of the Expert Panel that was tasked with reviewing the mandates of the Financial Services Commission of Ontario (FSCO), the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario. The Expert Panel's recommendation for the establishment of a new Financial Services Regulatory Authority (FSRA) with flexibility and comprehensive authority with respect to market conduct is integral to our own recommendations. Even so, we have referred to FSCO and the proposed FSRA jointly in our report so as to make clear that our recommendations should be implemented regardless of the establishment of the FSRA.

[1] 53 submissions were prepared by an individual or organization; the remaining 168 submissions were part of an online petition campaign.

CHAPTER 2 – EVOLUTION OF FINANCIAL SERVICES REGULATION

This chapter outlines the evolution of the financial services sector and its regulation – as the Expert Committee sees it. This chapter reflects the Committee's knowledge and considerable firsthand experience in the sector.

In order to provide context for our recommendations contained in this report, it is useful to describe the framework in which the financial industry has been regulated in Ontario, as well as how regulation focuses on the sale of financial products and not on the provision of financial planning or financial advisory services.

The Legal and Constitutional Context

Canada has a federal constitutional system of law based on an explicit division of powers in the Constitution Act, 1867. Under the Constitution, certain matters are within the jurisdiction of the Government of Canada while others are within the jurisdiction of the provinces and territories. For example, the regulation of banking is within the jurisdiction of the Government of Canada, while the day-to-day regulation of securities and mortgage brokering is a matter of provincial and territorial jurisdiction. Regulation of insurance companies is generally split between federal and provincial and territorial jurisdiction.

In addition, the selling of financial products by individuals employed by or associated with securities dealers, insurance agencies, mortgage brokerage firms and mutual fund firms is generally a matter of provincial and territorial jurisdiction. Banking activities, such as deposit-taking services and the provision of banking services such as credit and lending, remain a matter of federal jurisdiction.

Thus, much of financial product sales and services and associated financial planning or financial advice in Canada is a matter of provincial and territorial jurisdiction. As a result, provincial and territorial agencies and regulatory bodies were constituted and empowered to regulate these financial firms and their activities. In Ontario, these agencies are the Ontario Securities Commission (OSC) and FSCO.

Additionally, various self-regulatory organizations (SROs), such as the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) on the securities side and the Registered Insurance Brokers of Ontario (RIBO)[2] on the insurance side have specialized expertise and knowledge and have been established to regulate the activities of their members in the public interest, subject to the legislative authority of the provinces and territories and their respective regulatory agencies.

Over time, a number of organizations formed to represent the firms and individuals that engage in financial product sales activities. These organizations, which include associations like the Investment Funds Institute of Canada, the Financial Planning Standards Council, the Financial Advisors Association of Canada (Advocis) and the Canadian Life and Health Insurance Association represent their members on regulatory and policy matters and have played an important role in the development of Canada's regulatory system today.[3]

Furthermore, there are a number of pan-Canadian organizations that coordinate the efforts and activities of provincial and territorial regulatory agencies that engage in activities that are the same or substantially similar to each other across the country. For example, the Canadian Securities Administrators (CSA) is a body organized among the provincial and territorial securities regulators in Canada; it operates as a forum to develop, manage and enforce common policies, rules, regulations and approaches to securities and securities-related activities across Canada. Another example is the Canadian Council of Insurance Regulators (CCIR), a body of provincial and territorial insurance regulators, which works to develop solutions to common regulatory issues.

In recent decades, as financial markets have become more complex and international in scope, efforts to form national regulatory organizations to administer and enforce laws and regulations across Canada have developed. For example, there have been a number of attempts to bring securities regulation under federal constitutional jurisdiction. In 2011, the Supreme Court of Canada held that the federal government did not have constitutional jurisdiction to enact a securities act that it had proposed. Currently, there is a joint effort underway by the federal government and several of the provinces and territories to form a Cooperative Capital Markets Regulator (CCMR). The CCMR would

[2] RIBO regulates registered brokers who sell property and casualty insurance. RIBO licensees could also sell accident and sickness insurance and life insurance. The life insurance-related activities would be regulated by FSCO. From a wealth management perspective, this report is primarily concerned with the life insurance and life agent sector. However, the activities of RIBO and its licensees should also be involved in the regulatory reform that we recommend as the management of risk through property and casualty insurance and accident and sickness insurance is an important consideration in financial planning given the positive impact these classes of insurance can have on wealth preservation.

[3] See additional industry associations listed under Appendices B and D.

replace the securities regulatory bodies in those participating provinces and territories with one regulatory body. This body would also have jurisdiction to regulate systemic risk and financial market crimes.

In summary, because of Canada's constitutional history, jurisdictional and regulatory responsibility for financial institutions and their activities is divided among the federal, provincial and territorial governments. Efforts have been made to coordinate, harmonize and standardize this regulatory activity through various formal and informal structures, but there are inherent limits to these legal and jurisdictional efforts that make them imperfect.

The Development and Evolution of Canadian Financial Regulation

Historically, financial firms in Canada were not integrated. Legally and operationally the activities of banks, insurance companies, securities dealers and mortgage brokerage firms were kept largely separate from each other. Banks were not permitted to own insurance companies or investment dealers, and insurance companies were not permitted to own banks or investment dealers.

Regulation of the financial industry followed a similar pattern. Securities regulators regulated sales and trading activities of securities dealers as well as their investment banking and underwriting activities. Insurance regulators regulated sales of insurance policies as well as the capital adequacy and other prudential issues related to insurance companies. Banking regulators regulated banking and lending activities of banks and the sale of banking products as well as capital adequacy and other prudential issues relating to banks.

Thus, the regulation of these various entities and their operational and product sales activities developed in silos. Furthermore, regulation was largely focused on the transactions that occurred between these financial firms and their customers rather than on the nature of the ongoing relationships between these firms and their customers.

In recent decades, this state of affairs evolved for several reasons:

I. As a result of policy, regulatory and legal shifts in the late 1980s, Canadian financial institutions were permitted to merge or acquire firms in other sectors and combine several lines of business under one corporate domain. During the early 1990s, Canadian banks acquired investment dealers, mutual fund companies, mutual fund and insurance sales and distribution networks, mortgage syndication operations and trust companies. Insurance companies similarly acquired mutual fund companies and mutual fund sales and distribution networks. Some mutual fund companies also acquired or built large retail sales distribution networks.

During the same period, access to Canada by foreign financial institutions was permitted in a number of different ways that had not previously existed, while barriers to access by these foreign firms were relaxed or eliminated. What emerged during this period of consolidation and convergence was the integrated financial institution, with a range of financial products and services offered by affiliated firms under common ownership and management, across a number of product lines, and under the jurisdiction of a number of federal, provincial and territorial laws, rules, regulations and regulators.

II. During this same period, financial products became more complex and the lines between types of financial products became blurry. For instance, conventional debt products were being structured in some cases to have embedded equity or equity-like characteristics. Insurance products such as segregated funds were developed to have some equity and/or mutual fund-like characteristics. Derivative products were also developed to achieve a broad range of investment product solutions that in many cases did not necessarily correlate with the type of financial institution producing them or the product salesperson marketing and selling them. In short, the firm-level convergence was paired with financial product convergence.

III. Concurrently, the relationship between individual financial product salespersons and their clients also shifted from a transactional relationship to a more holistic advisory relationship. Under this evolved approach, relationships were sustained over time and not just at the moment of specific transactions.

IV. Furthermore, the relationship between product salespersons and their employer firms also changed, evolving from a traditional employer-employee relationship into one which became a more independent, contractual type of relationship. In some cases, these independent contractor relationships were formalized. In others, they remained in the employer/employee legal form, but also contained a number of elements relating to independence and other factors that made them more of a hybrid type of relationship. In addition, salespersons were in many instances able to have relationships with more than one financial institution (being able to sell insurance and mutual funds, for example) through affiliations with different and legally separate firms. Financial firms also acquired a significant number of networks of salespersons, some by bulk purchase and some by one-off transactions of acquisitions of individual salespersons or small teams of individuals. In all of these cases, the acquiring financial institution paid consideration either to other financial firms or to the individual salespersons joining them or to both, regardless of whether the individual salespersons were operating in the employer/employee model or in the independent contractor model. Regardless of

the form of legal relationship between firms and their salespersons, legislation and industry rules and regulations required (and continue to require) firms to be legally responsible for the activities of the individuals involved in product sales activities and to supervise these activities. So, while the nature of the relationships between firms and their salespersons and between firms and their clients evolved, the regulatory structures and legal responsibilities remained more or less constant.

Importantly, during this same period the relationship between financial product salespersons and their customers evolved, through marketing, advertising, and various other means. The transactional nature of these relationships was de-emphasized (notwithstanding the legal and regulatory framework which focused on transactional regulation) and the holistic and advisory nature of these relationships was emphasized. Customers became clients. Salespersons became "advisors," "financial advisors," and "financial planners." Titles, marketing and other forms of communication reinforced these evolving paradigms.

V. Today, technological changes are fundamentally reshaping the nature of advisory services and financial product sales. The emergence of online advising, for instance, means that consumers can receive financial advice without ever meeting a planner or advisor in person. Under the online advising model, the actual financial transaction is further de-emphasized, as clients are typically invested in one of a limited number of predetermined diversified portfolios. With the transactional aspect of asset management largely automated and unseen, robo-advisors emphasize their low costs and valuable and convenient advisory services. Even within traditional financial services firms, the trend from financial transactions towards advisory services will be accelerated by technology, as the automation of many aspects of portfolio management, client relationship management and compliance will allow for a greater emphasis on advice, planning and personal relationships.

The Current Regulatory Context

As a result of these developments over the past quarter century, both the perceptions and the substance of the relationships between financial product salespersons and their customers morphed into something very different from what they were before these developments occurred. However, a commensurate adjustment to regulation of the firms and individuals in the financial industry to reflect these new realities has not taken place. As noted throughout this report, this has led to an expectations gap, consumer and investor confusion, frustration for salespersons and financial firms, regulatory uncertainty, and a general lack of clarity in the financial industry about roles, duties, expectations and standards of care.

This is the current context – a patchwork quilt of a financial industry regulatory fabric. This is the backdrop our Committee had for preparing our recommendations. It is tempting, as some have suggested, to assume we can start with a blank slate and design a framework for the regulation of financial planning and financial advice in Ontario from scratch. However, we do not have this luxury, and in any event, we were not mandated to do so. We were asked to make recommendations within the context of this complicated reality, and that is what we have done. Our approach recognizes the realities of today's regulatory system and suggests ways to improve the system and outcomes for investors and consumers and to address the expectations gap.

We also recognize that we are not the first to propose consumer protection improvements within this fragmented system. Many of our recommendations are not novel. Looking back on previous efforts, we believe the challenge is not in identifying areas of improvement, but rather in implementation.

There have been several previous attempts, including a proposal developed by a special CSA committee[4] and another by IIROC[5], to establish requirements relating to financial planning applicable to registered firms and individuals in Ontario.[6]

In 2001, pursuant to the proposal developed by a special CSA committee, the OSC proposed a rule intended to apply to individuals and firms registered to trade or advise under securities laws.[7] This rule would have required individuals who used a variety of titles to meet specified financial planning proficiency standards. The Ontario Minister of Finance at the time returned the rule to the OSC for further consideration noting the importance of the balance struck between compliance costs and investor protection. While further discussions and consultations took place relating to the rule, no further action to implement it occurred.

[4] The special CSA Committee was sponsored by members of the CSA and the Joint Forum of Financial Market Regulators and included representatives of government insurance regulators and insurance councils. In Ontario, the OSC and FSCO intended to attempt to coordinate the rule and regulation that would be required under their respective acts. See: https://www.fsco.gov.on.ca/en/insurance/lifehealthbulletins/Archives/Pages/lh-01_01.aspx

[5] IIROC Proposed Financial Planning Rule. See: https://www.osc.gov.on.ca/documents/en/Marketplaces/srr-iiroc_20080808_pro-fin-plan-rule.pdf

[6] The Mutual Fund Dealers Association is currently is currently considering Rule proposals that would prohibit Approved Persons from using the title "Financial Planner" unless they have appropriate proficiency.

[7] Multilateral Instrument 33-107, "Proficiency Requirements for Registrants Holding Themselves out as Providing Financial Planning and Similar Advice" See: https://www.osc.gov.on.ca/documents/en/Securities-Category0/rule_20010216_proficiency.pdf (2001) 24 OSCB 1107.

In 2008, IIROC proposed a rule to define "financial planning" and set out the proficiency and supervision requirements to be met by its dealer members in providing financial planning services. Commenters raised a number of different concerns with the proposed rule including an overarching view that a more holistic approach to the regulation of financial planners would be preferable to the relatively limited measures proposed by IIROC. IIROC formally withdrew further consideration of the rule in February 2014.[8]

In its 2013 Ontario Economic Outlook and Fiscal Review, the Ontario government committed to investigate the merits of proceeding with more tailored regulation of financial planners. As a result, in January 2014, Ministry of Finance staff undertook a consultation exercise that included two roundtable sessions which were well-attended by representatives from industry associations, consumer advocacy groups, industry practitioners, among others.[9] The ministry received 23 written submissions from stakeholders expressing views on multiple aspects of this issue and raising a variety of concerns, including adequate proficiency requirements, appropriate quality standards, and potential conflicts of interests.[10] No consensus emerged on the most appropriate regulatory framework to pursue.

In February 2014, MPP Rick Bartolucci (the then-MPP for Sudbury), introduced a private members' bill (Bill 157) which contemplated the introduction of a regulatory framework for all financial advisors.[11] Bill 157 received second reading on March 20, 2014 and was referred to the Standing Committee on Finance and Economic Affairs. Bill 157 died on the Order Paper when the writ was dropped for the June 2014 Ontario provincial election.

In addition to regulatory or legislative initiatives, industry and other efforts to develop an oversight and regulatory framework for financial planning and financial advice have been ongoing for a number of years. In May 2011, five industry associations formed The Coalition for Professional Standards for Financial Planners (Coalition) with the aim of establishing a common set of national standards to provide Canadians with clarity and better protection when engaging financial planners.[12]

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[8] IIROC Notice: Withdrawal of Proposed Financial Planning Rule. See: http://www.iiroc.ca/Documents/2014/b5989d2f-23eb-4eca-821b-5c10da96fca0_en.pdf

[9] A list of participants can be found in the transcripts of the roundtables. See: http://www.fin.gov.on.ca/en/consultations/fpfa/10-Jan-14-MOF-Roundtable.html and http://www.fin.gov.on.ca/en/consultations/fpfa/14-Jan-14-MOF-Roundtable.html

[10] See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions.html

[11] Bill 157, Financial Advisors Act, 2014. See: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2934

[12] The five industry associations included: Advocis; Financial Planning Standards Council; Canadian Institute of Financial Planners; the Institute of Advanced Financial Planners; and, the Institut québécois de planification

In recent years, there have also been various developments internationally aimed at reforming the regulation of financial planning and advisory services in other jurisdictions. Our Committee is aware of these developments (see Appendix F). While we have examined the approaches adopted by other jurisdictions, we note that the international experience is not directly transferrable to the unique Canadian context. As such, in this report, we have tailored an approach that would work in Ontario.

The Ontario Minister of Finance asked us for recommendations that are achievable and actionable. We were not asked to propose a wholesale or radical restructuring of the financial regulatory system or industry in Ontario, and we have not attempted to do so. However, we have made recommendations that will require leadership – both from the government in empowering Regulators to carry out these recommendations, and from Regulators as they work together to create a strengthened and harmonized regulatory framework.

Consistent with our core principles articulated in Chapter 1, we have made recommendations that: (a) have an investor and consumer focus and are focused on furthering the public interest and protection of consumers; (b) give due consideration to the importance of the financial industry in Ontario and the concerns of market participants; (c) seek regulatory efficiency and are not unduly complex and which avoid unnecessary or duplicative regulation; (d) are sensitive to existing policy initiatives; and (e) are designed to avoid regulatory fragmentation and not to produce or increase opportunities for regulatory arbitrage.

It is in this context that our recommendations should be understood. It is also in this context that readers of this report should understand why we explicitly or implicitly reject some of the suggestions made to us during our public consultation process on these issues, including:

(a) recommendations that we propose a radical restructuring of the financial industry in Ontario or its compensation structures or its relationship structures;

(b) recommendations to disintermediate financial salespersons from their firms and regulate and treat them separately and individually as professionals;

(c) recommendations regarding a single enforcement regime for aggrieved investors; and

(d) delay making some of our recommendations until other regulatory initiatives have run their course.

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financière. Advocis later left the Coalition to pursue its own interest in developing a broader model that was not limited to financial planners but instead encompassed all types of advisors, including financial planners.

In making our recommendations, we have taken all of this into account: the legal and historical context of financial regulation in Canada and Ontario; the development and evolution of the financial industry in particular the changes in the legal, regulatory, business and relationship landscape that has occurred during the past quarter century; and, the current regulatory and business context. It is with this historical context in mind, filtered through the lens of our core principles, that we make the recommendations contained in this report.

CHAPTER 3 – CONSUMER HARM IN THE CURRENT CONTEXT

When consumers engage a financial planner or financial advisor, they expect to receive advice intended to help them meet their savings/investment and retirement goals. They expect unbiased advice from an individual who is appropriately qualified to offer Financial Planning or Financial Advice. This expectation remains consistent across the current regulatory silos.

As outlined in the previous chapter, Ontario's current regulatory framework is fragmented and largely focused on the sale of Financial Products. This product sales-oriented regulatory framework has only partially adapted to the growing planning and advisory component of most retail financial transactions today. To the extent that progress occurs, it is applied inconsistently across regulatory silos.

Our Committee focused on providing achievable and actionable recommendations that work within the confines of the existing regulatory framework – despite its inherent fragmentation. After stakeholder consultations and careful deliberation, we identified three distinct contributors to consumer harm that our recommendations aim to address:

1. Fragmented Regulatory Regime;
2. Misleading Titles and Credentials; and
3. Misplaced Trust.

Fragmented Regulatory Regime

More than ever, Ontarians rely on financial planners and financial advisors to help them achieve their financial goals. According to research published by members of the CSA, 49 per cent of Canadians had a financial advisor in 2012, up from 42 per cent in 2006.[13] In 2016, nine out of ten mutual funds were purchased through a financial advisor.[14] In 2014, 70 per cent of new life insurance protection purchased in Canada was bought on an individual basis (by personal or family decision) usually through a life insurance agent.[15] This reliance is compounded by the knowledge asymmetry between advisors

[13] 2012 CSA Investor Index. See: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/2012%20CSA%20Investor%20Index%20-%20Exec%20Summary%20-%20FINAL%20_EN_.pdf

[14] 2016 Canadian Investors' Perceptions of Mutual Funds and the Mutual Fund Industry. See: https://www.ific.ca/wp-content/uploads/2016/09/IFIC-Pollara-Investor-Survey-September-2016.pdf/15057/

[15] Canadian Life and Health Insurance Facts: 2015 Edition. See: https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Factbook_2/$file/2015_FactBook_ENG.pdf

and consumers: in 2016, research suggests that 43 per cent of all investors relied almost solely on their advisor as a source for investing information.[16]

In part, this reliance on advice is driven by the decline of traditional workplace pension plans. Recent decades have seen a dramatic shift away from defined benefit pension plans, in favour of defined contribution pension plans, or no workplace pension plans at all. As the Ontario Pension Board noted in its 2015 submission:

> "This transformation results in a transfer of risk from employers to employees, a move from collective risk pooling to individual risk bearing, and an increased need for financial products and advice for the decumulation/retirement phase."[17]

While the recent agreement to expand the Canada Pension Plan will likely provide working Canadians with a higher income floor in retirement, the decline of workplace pension plans means that individuals will still need to save and invest for their own financial futures. From older workers who need guidance on how to plan for retirement and draw down their savings to younger workers who may have no workplace savings options at all, Ontarians will increasingly need and depend on receiving quality Financial Planning or Financial Advice.

Defined benefit pension plan administrators are subject to what amounts to extensive consumer protection legislation and regulatory oversight. Defined benefit plan coverage, however, is declining in favour of defined contribution plans. This transformation results in a transfer of risk from employers to employees, a move from collective risk pooling to individual risk bearing, and an increased need for financial products and advice for the decumulation/retirement phase. This means a vacuum in consumer protection coverage is emerging just as the need to protect retail financial consumers is rising.

– Ontario Pension Board (September 2015)

Yet today there is no general regulatory framework for Financial Planning or Financial Advice in Ontario. This leads to two significant consumer protection issues.

First, there is a clear regulatory gap. Regardless of their qualifications, people can call themselves a "financial planner" or "financial advisor" in Ontario. Unless they also sell financial products, they are not regulated. This is not to say that these unregulated individuals are doing something wrong. Many are fee-only financial planners that provide invaluable and impartial planning and advisory services to consumers.

[16] 2016 CSA Investor Education Study 2016. See: https://www.osc.gov.on.ca/documents/en/About/csa_investor-education-study.pdf

[17] Ontario Pension Board: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/ontario-pension.html

Yet without regulatory oversight, consumers have no way of determining which individuals or firms warrant their trust or are qualified to provide these services.

Second, those under regulatory supervision are regulated for their product sales activities, not their financial planning or advice services per se. The regulatory framework focuses on whether the financial planning or advice process leads to a suitable product sale, not on the quality of the financial planning or advice itself.

We discuss the connection between Financial Planning and Financial Advice further in Chapter 4. For now, we simply note that the growing importance of these activities within a generally product sales-focused regulatory regime means that financial advice in particular is understandably viewed by the industry as simply a function of the sales process and not a standalone activity. As the Investment Funds Institute of Canada and the Investment Industry Association of Canada noted in their joint September 2015 submission to us:

> "[…] financial advice provided by a registrant typically involves specific product recommendations with some elements of a financial needs analysis."[18]

While the Canadian Life and Health Insurance Association observed in its July 2015 submission that:

> "Within the life insurance industry, an individual acting as a financial advisor identifies a client's needs for life insurance and makes recommendations about life insurance products that are suited to those needs. In most cases, where a need is identified, the value of the financial advice lies primarily in the acquisition of a product that addresses the identified need."[19]

Consumers meet with financial advisors in order to get financial advice. They expect advice that is unbiased, in their best interest and not simply about selling them a particular product. What they often receive, however, is simply product sales advice.

Our proposed regulatory framework aims to ensure that consumers receive financial planning and advice from providers who are appropriately regulated and required to place clients' interests ahead of their own.

[18] Investment Funds Institute of Canada and Investment Industry Association of Canada: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/investment-funds.html

[19] Canadian Life and Health Insurance Association: July 2015 Submission: See http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/clhia-submission.html

We also heard from numerous stakeholders about the lack of consistency in the current regulatory system. While Regulators and SROs have made efforts to harmonize, the basic structure of Ontario's regulatory system remains fragmented. To give an example: one individual could call himself or herself a "financial advisor" and be approved to sell only insurance products like segregated funds under the supervision of FSCO. Another individual could also call himself or herself a "financial advisor," but be approved to sell only mutual funds under the supervision of the MFDA. For a consumer, these individuals may seem indistinguishable, as they have the same title and sell similar products. However, they are subject to different regulatory regimes for both the products they sell and the advisory services they provide.

This fragmentation harms the industry too. It can lead to regulatory arbitrage, where individuals deliberately choose to operate within a licensing regime they deem to be less restrictive or more lucrative. Worse, individuals who are under investigation or banned from conducting business under one license can continue to operate in another channel. The prevalence of dually-licensed individuals makes this issue even more important: for instance, FSCO reported to the Expert Committee that an estimated 46 per cent of life insurance agents are licensed to sell mutual funds and an estimated 14 per cent are licensed to sell securities. Given the increasing degree to which financial planners and advisors have become dually-licensed, the growing similarities of financial products and the increased importance of financial planning and advisory services, we believe it is time to harmonize to the fullest extent possible the provision of Financial Planning or Financial Advice. In Chapter 4, we recommend that the Ontario government develop a regulatory framework specific to Financial Planning or Financial Advice. We call for the current regulatory framework to be leveraged in the creation of a harmonized set of standards.

Misleading Titles and Credentials

In Ontario today, consumers seeking Financial Planning or Financial Advice are likely to encounter individuals with titles and credentials that may not clearly reflect an individual's specific qualifications, expertise and the nature of the services provided. During our two rounds of consultation, one theme was consistently raised by interested parties: the multitude of titles and credentials currently used in Ontario's financial services industry lead to confusion and jeopardize consumer protection.

With the exception of the mortgage brokering sector[20], there are currently no uniform or universal regulatory standards regarding the use of titles.[21] Rather, the use of titles is

[20] The *Mortgage Brokers, Lenders and Administrators Act, 2006* requires that licensees only use the title provided by their licensing category, in English or French: "mortgage broker" or "broker" ("courtier en hypothèques" or "courtier"); "mortgage agent" or "agent" ("agent en hypothèques" or "agent"). Abbreviations

left to the discretion of individuals or firms. Individuals refer to themselves by a range of different titles, such as "financial planner," "financial advisor," "investment advisor," "financial consultant," "retirement specialist," "wealth coach" and employ other similar types of titles, which are currently subject to limited (if any) regulatory constraint and are not standardized.

Recently, the OSC, IIROC and MFDA jointly conducted a “mystery shopping” exercise to gain better insights into advisory practices and investor experience in Ontario. The exercise included visits to investment dealers, mutual fund dealers, exempt market dealers and portfolio managers. Over the course of this exercise, a total of 48 different business titles were observed.[22] The mystery shopping report notes that:

> ***The dozens of permutations of financial planning titles that currently exist also leads the consumer to believe they are dealing with a qualified individual when, that may not be the case. All of these titles may or may not be providing the same service, but in the eyes of the consumer, there is no way to know for certain. We also see the standardization of certifications across the board as a way of ensuring that consumers are getting services from qualified professionals who are accountable for the decisions that they make.***
>
> ***– Central 1 Credit Union (June 2016)***

> “[f]rom the perspective of an investor, the number and variety of titles encountered when shopping for advice can make the process of choosing an advisor a complex one. The use of certain titles does not always give sufficient information regarding an advisor’s specific qualifications, expertise or accreditations. Moreover, titles that differ across and within firms may suggest to a potential investor that advisors offer different types of investment products or services when they do not. The issue is further complicated by the use of certain qualifying adjectives in business titles, such as ‘senior’ or ‘vice president’ that may or may not denote rank within an organization. These titles may lead to an impression that an advisor has greater experience, credentials or tenure than a peer whose title lacks such a qualifier, or that the advisor has a certain position in the firm hierarchy associated with a specific corporate function."[23]

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of these titles are permissible. Advertising materials may additionally include an equivalent title in another language.

[21] While we acknowledge that regulators on the securities side have provided guidance in relation to the use of titles, its application does not extend to the broader financial services sector.

[22] Mystery Shopping and Investment Advice: Insights into Advisory Practices and the Investor Experience in Ontario (2015). See: http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf

[23] Ibid.

The wide array of credentials used, in addition to business titles, convey additional expertise in a particular area and can lead to further confusion among consumers. The requirements to attain and retain these credentials vary considerably. According to IIROC:

> "[s]ome financial designations, including professional designations like the Chartered Accountant designation, require a specified number of years of work or hours of classroom study, passing an examination, and continuing education. The requirements for others are much less rigorous; in fact, some financial designations may be obtained after a weekend seminar or through online self-study, with a self-administered examination."[24]

The responsibility for understanding this alphabet soup of credentials (and distinctions among them) is often left entirely on the consumer.

Titles and credentials are used to give an impression of expertise and instil consumer trust. Where these titles or credentials are not backed up by real expertise, this trust may be misplaced. It means well-qualified and credentialed individuals have to compete with unqualified or less qualified persons for business. Moreover, certain titles and credentials could lead consumers to believe that a best interest responsibility exists in what may in fact be a product sales relationship. Fixing this dynamic is an important matter of consumer protection in Ontario and in the interests of the financial services industry, too.

Our preliminary recommendations, which are similar to our current recommendations regarding titles, received broad support from both financial services industry representatives and consumer advocacy groups. In Chapter 5, we call on the Ontario government to take concrete steps to address the proliferation of titles and credentials, and the confusion they cause, in the interest of consumer protection.

Misplaced Trust

Clients expect to be provided with advice that is in their best interest and place a high level of trust in their advisor. Research has found that "…7 out of 10 investors believe their advisor has a legal duty to put the client's best interests ahead of his or her own."[25]

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[24] IIROC Notice: Use of Business Titles and Financial Designations. See: http://www.iiroc.ca/Documents/2013/4e2e7417-7b4b-43d6-a47a-e14a9d7cb7f8_en.pdf

[25] The Brondesbury Group, Investor Behaviour and Beliefs: Advisor Relationships and Investor Decision-Making Study – Investor Education Fund (2012). See: http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf.

Currently, there is no explicit statutory requirement to act in a client's best interest applicable to providers of Financial Product Sales, Financial Planning or Financial Advice services in Ontario. Many in the industry, including industry representative groups, suggest that some financial service providers may already owe a best interest obligation to their clients, through SRO rules, ethics obligations or otherwise. In our view, these requirements are not sufficiently robust and do not ensure a uniform level of protection to all Financial Product Sales, Financial Planning or Financial Advice.

Anecdotally, Plan staff is aware that members have been encouraged to transfer out their commuted values by many financial advisors because they are told that they can earn a better retirement income with their advisor or have more flexibility or control. This investment strategy may include unrealistic return assumptions and Plan staff question whether the member has been fully informed of the investment fees and risk that will be taken on compared to the low-risk and no-cost deferred pension option that exists with the Plan.

- CAAT Pension Plan (June 2016)

We heard clearly throughout our consultation that the absence of a statutory best interest duty (SBID) in Ontario creates numerous consumer protection concerns. The current suitability obligations do not afford a sufficient level of protection for consumers. Notably, the absence of a SBID creates an expectations gap for consumers. As the recent CSA consultation paper notes:

> "Most investors incorrectly assume that their registrants must always provide advice that is in their best interest. As a result, clients have misplaced reliance or trust on their registrants, resulting in opportunities for some registrants to take advantage of their clients and creating an expectations gap between clients and registrants. Most investors place too much reliance on their registrants, which exacerbates the agency problem inherent in the client-registrant relationship and can result in sub-optimal investments."[26]

During our two rounds of consultation, some commenters noted that advisors may tend to recommend products that are unsuitable for clients and/or generate higher compensation. Some parties also highlighted the use of leverage (borrowing to invest), based on an advisor's recommendation, which could provide additional compensation-

[26] CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients. See: http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf.

generating funds.[27] When used inappropriately, leverage can be risky for investors and lead to significant financial losses.

In our view, the adoption of a SBID is necessary to protect Ontario's consumers and to ensure that their trust in those providing them Financial Product Sales, Financial Planning or Financial Advice services is well-placed. In Chapter 6, we call on the Ontario government to take a leadership role in implementing a universal SBID across the province's financial services sector.

Conclusion

The average retail consumer of financial services in Ontario today is more likely to receive product sales advice rather than high-quality Financial Planning or Financial Advice that is in their best interest. Firms and individuals use a multitude of titles and credentials to imply financial planning or advisory expertise and potentially lead consumers to believe that a best interest responsibility exists. This dynamic persists because the current regulatory framework focuses on the sale of the Financial Product and has only partially adapted to the growing influence of Financial Planning or Financial Advice on financial transactions. This is why, in Ontario today, there is no general regulatory framework for Financial Planning or Financial Advice nor does a provider of such services have any legal obligation to act in his or her client's best interest. Our recommendations in the subsequent chapters are intended to address these harms.

[27] For example, Peter Whitehouse: August 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/peter-whitehouse.html.

CHAPTER 4 – REGULATION OF FINANCIAL PLANNING OR FINANCIAL ADVICE IN ONTARIO

1. Regulation of Financial Planning or Financial Advice

We recommend that:

a) The mandates of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) / (proposed) Financial Service Regulatory Authority (FSRA) be statutorily broadened explicitly to empower these Regulators to regulate Financial Planning or Financial Advice.

b) Regulation be required of any individual and firm that represents to consumers in Ontario that it is engaged in Financial Planning or Financial Advice either expressly or implicitly; or through Holding Out by way of titles, described services or otherwise. No individual or firm should be permitted to provide, or Hold Out as providing, Financial Planning or Financial Advice without regulatory oversight.

With the OSC and FSCO/FSRA empowered to regulate Financial Planning or Financial Advice, we recommend that:

c) Individuals and firms, in Ontario, that Hold Out that they are engaged in Financial Planning or Financial Advice and that are regulated by the existing regulatory framework for securities, insurance and mortgage brokering have any associated Financial Planning or Financial Advice activities regulated by their existing Regulator (or Regulators for those who have more than one licence).

d) Individuals and firms, in Ontario, that Hold Out that they are engaged in Financial Planning or Financial Advice and whose activities occur outside the current regulatory framework for securities, insurance and mortgage brokering have their Financial Planning and Financial Advice activities regulated by FSCO/FSRA.

e) The OSC and FSCO/FSRA develop a harmonized regulatory framework governing Financial Product Sales and the provision of Financial Planning and Financial Advice services in Ontario. Financial Product Sales, Financial Planning and Financial Advice should be subject to one set of regulatory standards across the regulatory framework. These standards should include a universal statutory best interest duty, restricted titles and proficiency requirements as described in our subsequent recommendations.

f) Not-for-profit organizations or government agencies and their staff who offer financial counselling or coaching that is free of charge and who do not directly or indirectly (through referral arrangements or otherwise) engage in Financial Product Sales be exempted from all Financial Planning and Financial Advice regulation.

Background

Our Committee was tasked with providing advice and recommendations to the Ontario government regarding whether and to what extent Financial Planning or Financial Advice should be regulated in Ontario, and the appropriate scope of such regulation.

In our Preliminary Policy Recommendations Document, we recommended that all individuals and firms that provide or Hold Out to provide Financial Planning services be regulated. We further recommended leveraging the existing regulatory framework to support such regulation. Those individuals and firms regulated under the current framework for Financial Product Sales activities would continue to be regulated by their existing regulator, while those individuals and firms outside of the current regulatory oversight framework would be regulated by the proposed FSRA or the current FSCO. Finally, we recommended that the regulatory framework governing Financial Planning – which would include education, training, credentialing and licensing – be harmonized and universally applicable.

We received extensive in-person and written feedback on these recommendations. In this feedback, several key themes emerged.

First, there was consensus that individuals and firms operating outside of the current regulatory framework should be brought under regulatory oversight.

We appreciate the care the committee has taken to recommend against regulatory duplication and to support a framework that would require any new financial planning regulation to be conducted through regulatory organizations where these exist, e.g. IIROC and the MFDA, and to bring unregulated financial planning activities under the auspices of the newly structured Financial Services Regulatory Authority.

- Investment Funds Institute of Canada (June 2016)

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".

- Investment Industry Association of Canada (June 2016)

Second, there was widespread agreement that any regulatory framework governing Financial Planning or Financial Advice would need to be harmonized, as the framework would rely upon multiple regulators that have historically focused on product-based regulation. Many commenters noted the current fragmentation of financial services regulation in Ontario. Throughout our consultations, we heard concerns that regulating Financial Planning or Financial Advice in an uncoordinated way could lead to further regulatory fragmentation and consumer confusion.

Third, there was a lack of consensus about the design of this harmonized regulatory framework. Many commenters supported our preliminary recommendation of leveraging the existing regulatory system. However, other commenters advocated for other approaches, such as accrediting a professional body that would oversee financial planners,[28] or creating a delegated administrative authority to oversee all financial advisors in Ontario.[29]

> ***We are supportive of the Expert Committee's recommendation that financial planning be regulated as a discreet activity within the existing framework, which will avoid the potential for duplication and overlap of regulatory efforts. The MFDA regulates Approved Persons as well as the firms responsible for their supervision… The creation of a new body to regulate only the financial planning activities of Approved Persons, without a consideration of the overall dealer supervisory framework or an established regulatory infrastructure, would cause fragmentation, duplication and added costs for industry and consumers. The objectives of the Expert Committee can be achieved more expeditiously and effectively by leveraging the existing regulatory framework.***
>
> ***- Mutual Fund Dealers Association of Canada (June 2016)***

Finally, there was disagreement about the scope of activities that should be captured by this harmonized regulatory framework. There was no consensus on the definition of financial planning or its relation to financial advice. Some commenters urged us to take a narrow approach – for instance, defining financial planning solely as the act of developing a comprehensive written financial plan[30] – while others encouraged us to view financial planning and financial advice as synonymous.

[28] Financial Planning Standards Council: June 2016 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/2016/financial-planning-standards-council.html.

[29] Advocis: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/financial-advisors.html.

[30] Investment Funds Institute of Canada and Investment Industry Association of Canada: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/investment-funds.html.

We carefully considered the views of stakeholders who provided input to determine what our proposed regulatory framework should look like in practice. Reflecting this valuable feedback, our recommended regulatory approach is detailed below.

Financial Planning and Financial Advice

Our Preliminary Policy Recommendations Document and the extensive stakeholder input that followed made clear that Ontario needs a harmonized regulatory approach to financial planning and financial advice. Yet our task was also to recommend the appropriate scope of this regulatory framework. This, in turn, demands a clear understanding of what is meant by "financial planning" and "financial advice."

There has been debate about how to define these terms, how they inter-relate, and the extent to which financial planning is currently regulated within the provision of financial product sales. This controversy mainly emanates from those who argue that financial planning and financial advice are different activities. This position holds that advisory services – typically provided as part of the sale of a Financial Product – need not constitute financial planning. Or put differently, that it is possible to provide financial advice without detailed knowledge of the consumer's current financial circumstances and future needs.

IIROC agrees that the answer to the question of what is required to be a Financial Planner must be the same across all of the Responsible Regulators. We fully support harmonization of the education, training, credentialing and licensing of individuals engaged in the provision of Financial Planning.

- Investment Industry Regulatory Organization of Canada (June 2016)

As the Expert Committee has noted, it is believed that most entities currently practicing financial planning and advising are already licensed to sell and advise on financial products. It does not make sense to create a new layer of regulation for the relatively small proportion of financial planners and advisors who are currently unregulated. The most streamlined and least costly solution for consumers and the industry is to leverage the proven, effective and efficient frameworks already in place.

- Financial Services Commission of Ontario (June 2016)

In our view, this position ignores the scope of current Know-Your-Client (KYC) requirements for financial product sales and is inconsistent with consumers' expectations about their financial advisor's role and responsibilities.

The inextricable link between financial planning and financial advice became clear through our consultations. For instance, the MFDA informed us that many of its registrants engage in activities that may be considered financial planning as part of the advisory process and that it regulates its members' advisory services.[31] IIROC noted that it regulates financial advice and that a significant majority of persons that provide financial planning are subject to an existing regulatory regime for their financial advice activities.[32] Advocis, the Chartered Professional Accountants of Ontario and the American Institute of Certified Public Accountants all stated that advisory and financial planning services are so linked that distinguishing them serves little purpose.[33] This stance is borne out by recent data, with one survey of bank employees for example showing that 98.5 per cent of financial advisors in banks created financial plans for their clients.[34]

Our view is that the terms "financial planning" and "financial advice" describe a spectrum of activities ranging from the development of financial plans to the provision of product-based recommendations. We recognize that financial planning is a specialized discipline that requires skills and training beyond simply selling particular financial products. However, we believe that attempting to draw a bright line between what constitutes financial planning and what constitutes financial advice sets up a false distinction. These terms describe overlapping, inextricably-linked services on the same spectrum of activities.

Our goal is not to create a rigid definitional framework for the regulation of these activities. Instead, we seek to ensure that all financial planning and financial advice is regulated, and to create a principles-based regulatory foundation for Regulators to oversee these activities.

For the purposes of developing a harmonized regulatory framework, therefore, we believe that financial planning and financial advice should be considered together under a single broad definition. This broad definition, capturing the full spectrum of financial planning and financial advice services, allows for more tailored regulation based on the actual activities an individual or firm Holds Out as providing:

[31] Mutual Fund Dealers Association of Canada: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/mutual-fund-dealers.html
[32] Investment Industry Regulatory Organization of Canada: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/investment-regulatory.html
[33] See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/
[34] See: http://www.investmentexecutive.com/-/major-focus-on-financial-planning?redirect=%2Fsearch%3Fp_p_id%3Dsearch_WAR_search10%26p_p_lifecycle%3D0%26p_p_state

Financial Planning or Financial Advice – any review and analysis of a consumer's: current financial and personal circumstances; present and future financial needs; priorities and objectives; the risks associated with his or her current circumstances; future needs; objectives; and, priorities which can but need not include the establishment of strategies to address and mitigate these matters whether or not a formal financial plan is prepared.

We are mindful that Financial Planning and Financial Advice do not take place in a vacuum. Financial Planning is often and Financial Advice is usually inextricably-linked with Financial Product Sales. As previously discussed, regulation has remained focused on these sales activities, while the financial services industry has increasingly moved towards a planning or advisory role. We define "product sales" as follows:

Financial Product Sales – an interaction or process involving a consumer and an individual or firm wherein the individual or firm provides an opinion, suggestion, or recommendation to the consumer to buy or sell or hold a Financial Product including any associated investment advice, opinion, suggestion, or recommendation relating to the Financial Product or the consumers' financial affairs.

With these definitions in mind, we recommend creating a regulatory framework specifically focused on Financial Planning or Financial Advice. This will enable the OSC and FSCO/FSRA (along with the SROs) to holistically regulate all aspects of Financial Planning or Financial Advice in addition to the Financial Product Sales activities of their registrants and licensees.

We agree with the Expert Committee that financial service providers already regulated by an existing regulator should also have their financial planning services overseen by that same regulator. Financial planning services and advice are so closely related to the "financial product advice" or "financial product sales" activity that it would be problematic to try to have a different regulator separately oversee each of these activities when there is a necessary interconnectedness and it is performed by the same person.

- FAIR Canada (June 2016)

SIPA agrees 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.

- Small Investor Protection Association (June 2016))

Our recommended framework is not meant to inhibit Financial Product Sales, disrupt the current regulatory system or compel all providers of Financial Product Sales to become financial planners. Instead, we believe that (a) there must be regulatory oversight of all Financial Planning or Financial Advice activities, (b) this regulation must be tailored to the services provided, and (c) consumers should be clear on the titles and credentials of their planner or advisor and the duty of care that they are owed.

Regulation on the Basis of "Holding Out"

In our preliminary recommendations, we suggested an activities-based approach to the regulation of Financial Planning. We have been persuaded by the submissions during the consultation period that a better approach would be to capture broadly within the regulatory framework all individuals and firms providing Financial Planning or Financial Advice or Holding Out as providing the same.

In order to protect consumers, it is important for any individual or firm providing or Holding Out as providing Financial Planning or Financial Advice be regulated within our proposed regulatory framework. We settled on a broad definition of "financial planning" and "financial advice" for the purpose of this report so as to be clear about the scope of activities that should now come within the purview of the new regulatory framework. Indeed, the proposed legislation establishing the proposed regulatory framework should clearly prohibit the provision of Financial Planning or Financial Advice by anyone other than regulated individuals and firms.

The harmonized framework will first capture any individual or firm that is providing or Holding Out as providing Financial Planning or Financial Advice for regulation. However, within the new regulatory framework, we recommend using a Holding Out test to distinguish financial planning from financial advisory services and to determine if the financial planning regulatory requirements apply in any particular case. Determining the intersection between Financial Planning and Financial Advice within the new regulatory

We agree that individuals who hold out as financial planners should be regulated. Further, we strongly recommend that holding out be the basis of regulation in this area.

- Canadian Life and Health Insurance Association (June 2016)

A new financial planning regulatory framework should focus on regulating the use of the title "Financial Planner" and the activities of those who hold themselves out as financial planners.

- Investment Funds Institute of Canada (June 2016)

Regulation should be focused on individuals and firms holding themselves out as financial planners as opposed to regulation focused more broadly on financial planning activity.

- Portfolio Management Association of Canada (June 2016)

framework should be the responsibility of the Regulators and SROs acting under their authority to regulate the provision of Financial Planning or Financial Advice.

Proposed Regulatory Framework

Our proposed regulatory framework relies upon the broad definition of Financial Planning or Financial Advice and Holding Out as a trigger for regulatory oversight. With these foundational aspects in mind, our proposed regulatory framework for Financial Planning or Financial Advice consists of three key elements.

First, we recommend closing the current regulatory gap. There is no general regulatory framework today for Financial Planning or Financial Advice in Ontario. Individuals or firms can refer to themselves a "financial planner" or "financial advisor." Yet unless they also sell Financial Products, they are not required to be registered or licensed. This presents a clear consumer protection issue. Throughout our consultations, we heard clearly that no one should be allowed to operate as a financial planner or financial advisor unless subject to regulatory oversight. Our recommendations would close this gap, by requiring anyone providing or Holding Out as providing Financial Planning or Financial Advice to be regulated. Going forward, these currently unregulated individuals and firms would have their Financial Planning or Financial Advice activities regulated by FSCO/FSRA.

Currently, a person in Ontario can hold out as a financial planner without having to be registered. The individual holding out as a financial planner may provide high quality professional services and advice for a price that is transparent. However, it is also possible that the individual may have no real qualifications or expertise to be performing these services and may provide deficient services and advice and fundamentally flawed financial plans that significantly harm consumers. This regulatory gap needs to be closed.

- FAIR Canada (June 2016)

In order to further the objective of avoiding conflicting or duplicative requirements, we support the Committee's recommendation that those individuals and firms that provide financial planning services and whose financial product sales and advice activities are regulated by the existing framework for securities, insurance and mortgage brokering should have any associated financial planning activities regulated by their existing regulator(s).

- Canadian Bankers Association (June 2016)

Second, we recommend that individuals and firms that Hold Out as providing Financial Planning or Financial Advice and are currently regulated for Financial Product Sales activities should have their Financial Planning or Financial Advice activities specifically regulated by their existing Regulator(s). The trigger for regulation is Holding Out, that is, using the regulated titles; advertising

Financial Planning or Financial Advice services; or otherwise Holding Out (explicitly or implicitly) as offering Financial Planning or Financial Advice. This framework would apply to all categories of securities, insurance and mortgage services providers who Hold Out as providing Financial Planning or Financial Advice.

Ontario has multiple regulators with oversight over Financial Product Sales and Financial Planning or Financial Advice activities. The regulatory framework is largely based on the type of product(s) that are offered by the financial firm and advisor. As previously noted, stand-alone Financial Planning, in the absence of Financial Product Sales, is not captured by existing regulatory regime. Even when a regulated firm or individual does engage in regulated Financial Product Sales, their associated Financial Planning activity is not specifically regulated.

As noted in Chapter 2, Ontario's product-based regulatory framework means there is a lack of uniformity between the different Regulators and SROs. While many of their rules are based on the same or similar principles, they are not always identical. For example, registration, licensing eligibility, business conduct and complaint handling are not consistently or similarly regulated across the securities, insurance and mortgage brokering sectors. Moreover, each Regulator and SRO has its own approach to compliance, including requirements for compliance systems and the frequency and depth of regulatory monitoring, including compliance review and any subsequent regulatory action.[35] We heard clearly that regulatory duplication within this fragmented framework could prove costly for businesses and, ultimately, the consumer.

We agree that harmonized standards should be used for the regulation of financial planners. We support the Expert Committee's proposal that licensed insurance agents and mutual fund representatives who hold themselves out as financial planners should continue to be regulated by their existing regulatory bodies

- Sun Life Financial (June 2016)

Utilizing the existing regulatory regime to address any potential gaps with the regulation of financial planning, as recommended by the Expert Committee in their preliminary report, will allow Ontario's policymakers to leverage a well-functioning regulatory framework and avoid the costly duplication of regulation.

- Manulife (June 2016)

[35] See: http://www.auditor.on.ca/en/content/annualreports/arreports/en14/303en14.pdf.

Accordingly, the third element of our proposed regulatory framework is that it should be fully harmonized across regulatory bodies. All individuals and firms governed by the framework should be subject to universal standards for education, training, credentialing, licensing and duty owed to clients. While these are described in further detail in subsequent chapters, the three key foundations of this harmonized framework include: clear proficiency and credentialing requirements; restrictions on the use of misleading titles; and the introduction of a universally-applicable statutory best interest duty.

We are in agreement with the committee that those who claim to provide financial planning services (either expressly or implicitly through holding themselves out as a Financial Planner) should be subject to regulatory requirements. We support using the existing regulatory framework to oversee and implement these new requirements.

- Canadian Securities Institute (June 2016)

Taken together, our recommendations will ensure that all individuals and firms that provide or Hold Out to provide Financial Planning or Financial Advice in Ontario will be regulated and subject to a harmonized framework. We believe that this approach will significantly advance consumer protection in Ontario. It will benefit millions of Ontarians by raising the standards not just for financial planners but all those who provide Financial Planning or Financial Advice in the province.

By leveraging the current regulatory framework, our approach avoids the risk of further regulatory fragmentation inherent in the delegated administrative authority approach set forward by Advocis and Bill 157, which did not become law. Fundamentally, we do not believe it is appropriate to create a new regulator within Ontario's already fragmented regulatory system. Our approach also captures a much wider range of firms and individuals than would be regulated under the Financial Planning Standards Council's narrow, credential-focused framework. And most importantly, it will allow consumers to clearly know for the first time that their financial planner or financial advisor is well-qualified, well-regulated and has an obligation to act in their best interest.

Exemptions

We recommend that not-for-profit organizations or government agencies and their staff who offer financial counselling or coaching that is free of charge and who do not directly or indirectly (through referral arrangements or otherwise) engage in or benefit from Financial Product Sales should be exempted from all Financial Planning or Financial Advice regulation. These organizations, such as Prosper Canada, provide a valuable service to Ontarians and should not be subject to a strict regulatory regime for these pro-bono activities.

We thank these organizations for their feedback on our Preliminary Policy Recommendations Document and for making us aware of the risk that our proposed framework could undermine their commendable work.

We would also propose that lawyers and accountants be exempted from Financial Planning or Financial Advice regulation provided that they are not Holding Out as providing Financial Planning or Financial Advice and the advice being provided to clients is incidental to their core business.

CHAPTER 5 – TITLES AND CREDENTIALING

2. Titles

a) To reduce consumer confusion, Regulators should work together, within a reasonable timeframe, to develop a circumscribed list of approved titles that are descriptive of regulated activities. Those engaged in Financial Planning and the giving of Financial Advice should only be permitted to use approved titles.

b) In order for an individual to Hold Out as providing Financial Planning or use the title "financial planner," whether or not the individual is also engaged in Financial Product Sales, we recommend that the individual be required to hold an appropriate credential as described below.

c) In order for an individual to Hold Out as providing Financial Advice or use a title incorporating the words "advisor" or "adviser," the scope of the advisory services and Financial Product Sales being provided to the consumer by the individual should be absolutely clear and these services should be consistent with the individual's regulatory status.

d) Those who provide or Hold Out as providing Financial Planning or Financial Advice should not be permitted to use corporate positions or titles in retail client-facing activities given the consumer confusion that results or can result from the use of such titles.

3. Financial Planning Proficiency and Credentials

a) In order to Hold Out as providing Financial Planning, individuals should be required to be proficient to provide Financial Planning services, which means that they ought to have sufficient education, training, integrity and experience that a reasonable person would expect necessary to provide a competent financial plan for a consumer.

b) The OSC and FSCO/FSRA should together determine the proficiencies required in order to Hold Out as providing Financial Planning. We recommend that the Regulators, following a review of independent credentialing bodies with experience in the field of standard-setting and credentialing for Financial Planners, recognize the appropriate credentialing entity or entities to credential the individuals who wish to Hold Out as Financial Planners. Recognition of the credentialing entity or entities should be premised on the education requirements, experience requirements, ethical standards and self-disciplinary processes of the entity or entities and the extent to which they meet the required proficiencies set by the OSC and FSCO/FSRA.

The proliferation of titles and credentials described in Chapter 3 benefits neither the financial services industry nor its consumers. Our recommendations are intended to reduce confusion and allow Ontario consumers to better identify qualified individuals who can help them meet their financial goals.

The previous chapter called for the creation of a harmonized regulatory framework in Ontario, with Holding Out serving as the basis for regulation. For this proposed framework to be effective, clearing up the multitude of titles and credentials in the financial services marketplace is key. A limited number of clear titles will reduce consumer confusion and support more efficient competition by financial services providers by clarifying the services they actually provide.

List of Approved Titles

We call on the Ontario government to task Regulators with developing a circumscribed list of approved titles for all providers of Financial Planning or Financial Advice. The proposed list must encompass the entire financial services sector, regardless of regulatory silos.
Our rationale is simple: consumers do not view the financial services sector through regulatory silos and they deserve to receive adequate protection no matter which type of Financial Products they wish to buy, sell or hold.

A list of approved titles will allow consumers to better identify qualified individuals to help them meet specific financial objectives. While we defer to the Regulators to determine the precise list, we offer the following guidance.

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.

- Investment Industry Association of Canada (June 2016)

CFA Institute absolutely supports regulatory limitations on the use of the titles Advisers or Financial Planners. Their use connotes a higher standard of care on the part of those using them, often beyond what they are bound by law to maintain... Likewise, the inflated use of credentials and professional designations can give investors in some circumstances unwarranted comfort about professional capabilities and training of their Advisers or Financial Planners.

- CFA Institute (June 2016)

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.

- Independent Financial Brokers of Canada (June 2016)

First, the list of approved titles should be descriptive of the regulated activities and Regulators should ensure that titles align with services that an individual is regulated and qualified to provide.

Second, in relation to Financial Planning, the provision of such services or use of the title "financial planner" should be subject to regulatory standardization. Regulators should agree upon proficiency requirements associated with the provision of Financial Planning. We recommend a standard-setter approach whereby Regulators would recognize specific credentials, granted by independent and approved standard-setting organizations. This credential or credentials would need to be attained in order for a person to be permitted to provide Financial Planning services in Ontario.

Third, in relation to Financial Advice activities (that can range from Financial Product Sales to portfolio management), we recommend that Regulators approve only a limited number of titles in order to curb consumer confusion.[36] Regulatory requirements that apply to the provision of Financial Advice or the use of a title incorporating the words "advisor" or "adviser" should be standardized to ensure that consumers can clearly understand the regulatory status associated with each title. Regulators may wish to seek industry input in determining appropriate titles, as necessary.

We agree that there should be a list of approved titles that are descriptive of the regulated activities and that those be the only titles permitted.

– Federation of Mutual Fund Dealers (June 2016)

FSCO strongly agrees with the Expert Committee's recommendation that the use of titles by those engaged in the provision of financial product sales and advice and/or financial planning should be prescribed in order to reduce consumer confusion. Moreover, restrictions on use of titles must be harmonized where across regulatory sectors in order to be most effective.

– Financial Services Commission of Ontario (June 2016)

We agree that the regulator should approve appropriate designations. In approving designations from among the current plethora available, the regulator must select only those designations that are truly focused on both comprehensive financial planning and meeting the high standards set for professional designations.

– Canadian Securities Institute (June 2016)

[36] We note that the CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* contemplates a restriction on client-facing titles in order to mitigate potential consumer confusion.

Fourth, the success of our recommendation and proposed framework for titles will be contingent on a prohibition on titles other than those prescribed by the Regulators.[37] Firms and individuals Holding Out as providers of Financial Planning or Financial Advice should only be able to use a title approved by the Regulators in Ontario.

Finally, in addition to developing the circumscribed list of approved titles, we recommend that Regulators also prohibit the use of corporate titles by providers of Financial Planning or Financial Advice in retail client-facing activities. Corporate titles are often used to imply expertise or experience that may not be warranted. This practice goes against the clarity of titles we intend to promote via our proposed framework and could contribute towards consumer confusion.

Our ultimate objective, as noted above, is to reduce consumer confusion. Allowing for a limited number of approved titles would help consumers to:

- Avoid being misled by the multitude of titles currently used in the Ontario marketplace which are often not reflective of an individual's regulatory status, specific qualifications and expertise or the nature of the services provided; and

- Better set expectations in relation to the services being provided when consumers engage an individual qualified to provide Financial Planning or Financial Advice.

We stress again the importance of applying the proposed framework for titles in a harmonized manner across the entire financial services sector in Ontario. The Implementation Working Group process, outlined in Chapter 7, would provide Regulators with the optimal vehicle to achieve this objective.

[37] A similar prohibition on titles has been employed in Quebec which could serve as a point of reference.

Financial Planning Proficiency and Credentials

A regulatory framework for credentials is essential for consumers to know that their financial planner has appropriate knowledge and training. Individuals offering Financial Planning services in Ontario can today use a wide array of credentials with stark differences in attainment and retention requirements, or no credentials at all. Certain credentials require years of study and work-related requirements while others may be obtained following a weekend seminar. For retail consumers, it is difficult to differentiate between the various credentials and to know how they may affect the quality of service received.

> ***We also recommend that multiple organizations, rather than a single, prescribed provider, be accredited to educate, train and license individuals engaged in financial planning. Further, individuals whose existing credentials meet or exceed the harmonized standards should be grandfathered under the new regime.***
>
> ***– Canadian Bankers Association (June 2016)***

We recommend that Regulators employ a standard-setter approach in relation to credentials for providers of Financial Planning. Specifically, Regulators should incorporate credentials of independent standard-setting organizations into the proficiency requirements associated with Holding Out as providing Financial Planning services or using the ”financial planner” title. Incorporation would be beneficial because third-party standard-setting organizations can provide independent requirements for education, experience, attestation to ethical standards and self-disciplinary processes.

Industry input should be sought during the process of identifying appropriate credentials. To reiterate: the use of any credential, other than those approved by Regulators, should be prohibited for the purposes of providing Financial Planning services in Ontario.

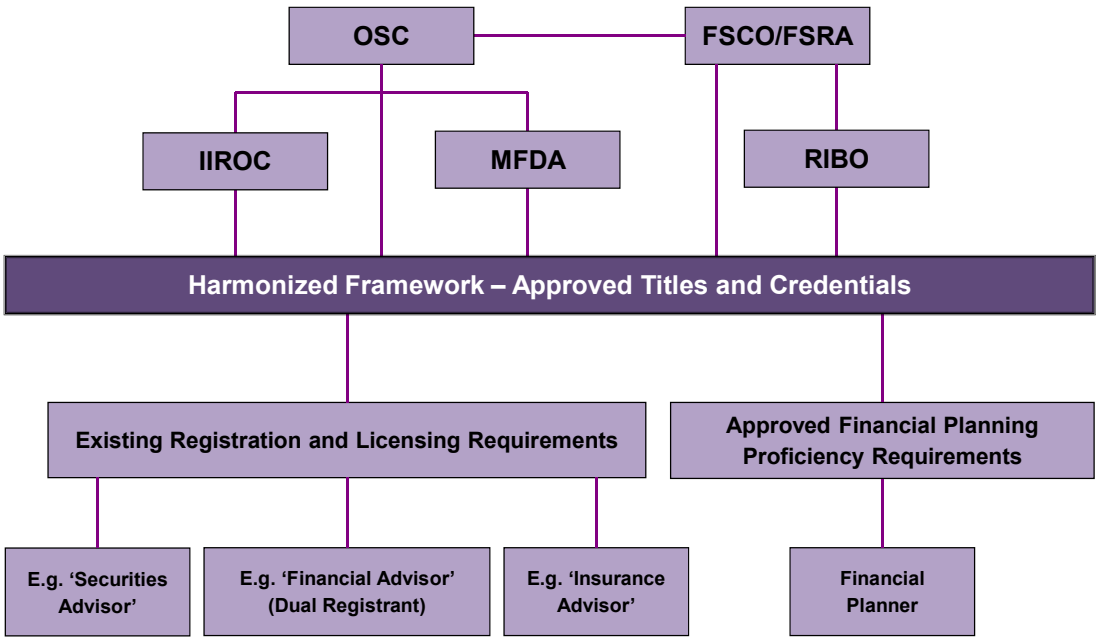
Regulators, with industry input, should determine appropriate grandfathering provisions for existing providers of Financial Planning. Moreover, the list of approved credentials should be subject to a periodic review (for example, every five years) to ensure the continued relevancy of specific credentials.

Our Committee puts forth the following guiding principles with respect to assessing the appropriateness of incorporating approved credentials into the proposed regulatory framework for Financial Planning:

- the reputation of the independent standard-setting organization offering said credential and the robustness of its process and oversight;
- the required industry experience;
- the requirements for continuing education;
- whether there is an attestation to ethical standards; and
- the structure of self-disciplinary processes, if any.

Indeed, precedent for a standard-setter approach already exists within the securities regulatory framework in Ontario. For instance, registration to act on behalf of a portfolio manager requires attainment of the Chartered Financial Analyst Charter (with relevant industry experience) or the Canadian Investment Manager designation (with relevant industry experience). We see merit in this approach and recommend its application in relation to Financial Planning services across the broader financial services sector.

Proposed Framework for Titles and Credentials



CHAPTER 6 – STATUTORY BEST INTEREST DUTY

4. Statutory Best Interest Duty

a) We recommend that Ontario adopt and apply a universal Statutory Best Interest Duty (SBID) to all individuals and firms that engage in Financial Product Sales or Hold Out as providing Financial Planning or Financial Advice.

b) We recommend that the only exemptions that should apply to this universal SBID are as follows:

I. The individual or firm is already subject to a SBID by virtue of his, her or its licensing and registration requirements (e.g. as in the case of portfolio managers).

II. The individual or firm is already subject to a professional legal duty of care and fiduciary duty, and the advice being provided is incidental to his, her or its principal business or profession that is also regulated (e.g. as in the case of lawyers and accountants).

III. The individual or firm operates an order execution platform and no Financial Planning or Financial Advice is being provided to the customer, and the individual or firm is exempt from suitability requirements (e.g. as in the case of discount brokers).

Rationale

Consumers expect to be provided advice that is in their best interest and place a high level of trust in their advisor. As noted in Chapter 3, research has found that "…7 out of 10 investors believe their advisor has a legal duty to put the client's best interests ahead of his or her own."[38] Indeed, it is understandable that consumers believe that when they receive Financial Planning or Financial Advice, it is in their "best interest." The current lack of a SBID therefore creates an expectations gap for consumers, while conflicts of interest have been demonstrated to lead to significant and long-term economic harms.[39]

[38] The Brondesbury Group, Investor Behaviour and Beliefs: Advisor Relationships and Investor Decision-Making Study – Investor Education Fund (2012). See: http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf.

[39] The Brondesbury Group, Mutual Fund Fee Research (2015). See: http://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20150611_81-407_mutual-fund-fee-research.pdf.

SBID Would Provide Clarity

Applying a SBID would clarify the duty owed to consumers by those providing Financial Planning or Financial Advice and Financial Product Sales, and would bring regulatory requirements in line with consumer expectations. A SBID will help to close the expectations gap, provide a principled foundation for client relationships, and elevate the standard of care in consumers' favour. It would also assist in the professionalization of providers of Financial Planning or Financial Advice and Financial Product Sales. With a SBID in place, consumers and their financial planners or financial advisors will both benefit from greater clarity regarding the nature of the relationship.

Conflicts of Interest

The current regulatory framework governing Financial Planning or Financial Advice and Financial Product Sales does not adequately guard consumers against conflicts of interest that could influence the recommendations they receive. Today, advisors under the securities regulatory regime must meet KYC and suitability requirements, meaning that the investments they sell to their clients must be suitable for the client's financial circumstances, goals and risk tolerance. Similarly, using facts and information obtained from the client, advisors under the insurance regulatory regime must conduct a needs-based analysis before selling the client an insurance product.

We fully support the Committee's recommendation that a Statutory Best Interest Duty be adopted and applied to all those providing Financial Planning services and/or Financial Product Sales and Advice. We believe such a duty is imperative if regulation is to truly protect consumers.

- Ontario Pension Board (June 2016)

The CAAT Plan favours more transparency and accountability in such interactions. Specifically, the Plan supports the recommendation to apply a statutory best interest duty to all individuals and firms that provide Financial Product Sales and Advice and/or Financial Planning in Ontario. If financial advisors are encouraging clients with a defined benefit pension plan to commute the value of their lifetime pensions, they ought to have a duty to act in the best interest of clients and to disclose any conflict of interest, including all direct and indirect compensation they will receive. The CAAT Plan favours the mandatory disclosure of investment fees and commissions and a clear explanation of the investment and other risks being borne by the client.

- CAAT Pension Plan (June 2016)

The current framework does not require that providers of Financial Planning or Financial Advice and Financial Product Sales robustly address actual or perceived conflicts of interest.[40] The current regulatory framework places a high degree of reliance on the disclosure of conflicts of interest. This is not optimal for the client, as the efficacy of disclosure is limited, particularly where there are sizable information and literacy asymmetries between consumers and their financial planners or advisors. Furthermore, disclosure alone could potentially have perverse effects that exacerbate consumer reliance despite the conflicted advice and result in moral licensing on the part of financial planners or advisors. As noted in the CSA Consultation Paper 33-403, "…disclosure alone is a generally inadequate mitigation mechanism because of its limited impact on a client's decision-making process."[41]

Under a SBID, conflicts of interest must be avoided or controlled in a manner that prioritizes the client's best interest, ahead of the interests of the financial planner or financial advisor or their firm.

I firmly agree that, to the greatest extent possible under the law (i.e. taking into account over a century of precedent), all financial planners should be held to a fiduciary-like (best interests of the client) standard.

- John J. De Goey (May 2016)

Applying a Statutory Best Interest Duty would make it clear that a legal duty of care has been established. In a commercial environment, it would be expected that all companies, under whichever self regulatory body they are found, would be suitably concerned about the liability associated with failing this standard and would, in their own self-interest, provide rigorous supervision of adherence to this much higher standard.

- Gordon Stockman (May 2016)

A SBID would neither guarantee return nor restrict compensation. Rather, it would more clearly delineate financial planners' and financial advisors' legal responsibility to provide unbiased, consumer-focused advice.

[40] For instance, advisors may recommend financial products that pay a higher commission than a similarly-suitable product, or simply fail to fully consider the impact of product cost in their suitability analysis. Moreover, advisors may recommend Financial Products when an alternative strategy that does not remunerate the advisor (such as paying off high-interest debt or purchasing appropriate products outside the boundaries of the advisor's registration) would be in the client's best interest.

[41] CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients. See: http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf.

CSA Regulatory Best Interest Duty Proposal

At the time of writing, most Canadian securities regulators were consulting on a regulatory best interest duty for firms and individuals under their jurisdiction. While we strongly support this effort, we note that the securities regulators' proposal would apply only to those individuals and firms registered with securities commissions. Consumers do not typically think in terms of regulatory silos and rightly expect any individual or firm providing Financial Planning or Financial Advice and Financial Product Sales to be governed by similar regulatory requirements. Adopting a best interest duty within only one segment of the market risks regulatory arbitrage and undermines consumer protection. Accordingly, we propose a universal SBID that would apply to all individuals and firms providing Financial Planning or Financial Advice and Financial Product Sales in Ontario.

Ontario should not wait for members of the CSA to act. The CSA initiative is commendable and contains important detail on how a best interest duty could be implemented in practice. However, there is no certainty that the recommendations embedded in the CSA proposal will be implemented in participating CSA jurisdictions. Further, if implemented such a duty would apply to the securities sector only. Ontario should take the lead and enact a universal SBID in the interests of consumers across the province.

Detail

The adoption and application of a SBID would be a major step toward stronger consumer protection in Ontario. It would recognize the extent to which the industry has gravitated towards emphasizing professionalism and its advisory role in the purchase and sale of Financial Products. However, a number of commenters raised valid questions about the SBID, particularly about how it would apply in practice and how it would relate to the common law concept of fiduciary duty.

A SBID would provide certainty and clarity, eliminating the need for a determination of whether a fiduciary duty arises at common law in individual circumstances. It would also eliminate the need to consider the scope of each ostensible fiduciary relationship and determine which duties apply in each case. Historically, the common law relating to fiduciary duties carries strict rules relating to loyalty and conflicts.

FAIR Canada agrees that consumers deserve to receive financial planning services or financial advice from investment firms and their individual registrants that have a statutory duty to act in the consumer's best interest.

- FAIR Canada (June 2016)

Importing these rules to the financial sector would likely cause confusion, especially because breach of fiduciary duty may give rise to equitable remedies which may be more generous than is appropriate. A SBID would insulate against the importation of undesirable or unnecessary elements of a fiduciary duty, and permit a customized articulation of the standard that is tailored to the financial advisory context.

Applying the SBID in practice requires more than simply mandating that individuals and firms providing Financial Planning or Financial Advice and Financial Product Sales must act in the best interest of their clients. In order to provide the customized articulation of the standard, the SBID must also be animated by a set of guiding principles that explain what acting in their clients' best interest actually means. In this, we support the five high-level principles identified in CSA Consultation Paper 33-404:

1. act in the best interests of the client;
2. avoid or control conflicts of interest in a manner that prioritizes the client's best interests;
3. provide full, clear, meaningful and timely disclosure;
4. interpret the law and agreements with clients in a manner favourable to the client's interest where reasonably conflicting interpretations arise; and
5. act with care.

These five principles clarify how individuals and firms should interpret and apply the SBID in their dealings with clients and reflect the SBID we recommend. While we support the forgoing principles, our Committee would further define the fifth principle as containing a responsibility to act with *reasonable* care.

We heard from many providers of financial services that they already put their client's interest first. For these individuals and firms, a SBID may simply codify their existing approach to their client obligations, and provide clear principles upon which to base their relationships with clients. Moreover, some organizations already see their rules or other requirements as creating an implied best interest duty.

FSCO agrees that a uniform best interest duty, based on a uniform and codified standard of care, should be developed and applied to all those who sell and advise consumers on financial products or who practice financial planning. Having the best interest duty in statute… would give regulators the legislative authority to enforce it.

- Financial Services Commission of Ontario (June 2016)

For example, IIROC's dealer member rules require IIROC members to address conflicts "…considering the best interests of the client…" while approved persons must do so "…consistent with the best interest of the client…"[42] IIROC noted in its submission that: "We believe that, taken together, our Dealer Member Rules and guidance put the best interest of the client before the interests of IIROC-regulated firms and their representatives."[43]

MFDA rules require that conflicts of interest be addressed "…by the exercise of responsible business judgment influenced only by the best interests of the client."[44] While Certified Financial Planners, under their code of ethics, are expected to "…always place the client's interests first" and "…place the client's interests ahead of his/her own and ahead of all other interests."[45] One of the CCIR's principles for managing conflicts of interest is that "The interests of the consumer must be placed ahead of those of the advisor."[46] The first item in Advocis' Code of Professional Conduct is "Priority of Client's Interest: An Advocis Member shall act in a client's best interests."[47] As noted in chapter 3, in our view, these requirements are not sufficiently robust and do not ensure a uniform level of protection for all Financial Product Sales, Financial Planning or Financial Advice.

To sum up, the proposed SBID is not meant to impose a common law fiduciary duty upon individuals and firms providing Financial Planning or Financial Advice and Financial Product Sales. In line with the proposed framework for a regulatory best interest standard described in CSA Consultation Paper 33-404, we see the SBID instead as creating an overarching principle that would guide the relationship between consumers and financial planners or financial advisors. The SBID, then, would set a minimum statutory duty that would govern advisor-client relationships. Whether a particular relationship with a client triggers a fiduciary duty would continue to be context-specific and continue to remain with the purview of the courts.

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[42] IIROC Notice: Managing Conflicts in the Best Interest of the Client. See: http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf.

[43] Investment Industry Regulatory Organization of Canada: June 2016 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/2016/investment-industry-regulatory-organization-of-canada.html.

[44] MFDA Staff Notice: Conflicts of Interest – MFDA Rule 2.1.4. See: http://www.mfda.ca/regulation/MSN/MSN-0054.pdf.

[45] See: http://fpsc.ca/docs/default-source/FPSC/standards-and-enforcement/standards_of_professional_responsibility.pdf?sfvrsn=42.

[46] See: https://www.clhia.ca/domino/html/clhia/clhia_lp4w_lnd_webstation.nsf/resources/Financial+Advisors/$file/The_Approach_RefDoc_EN.pdf

[47] See: http://www.advocis.ca/pdf/Advocis-CPC.pdf.

Exemptions

We recommend that the only exemptions that should apply to this universal SBID are as follows:

- The individual or firm is already subject to a SBID by virtue of his, her or its licensing and registration requirements (e.g. as in the case of portfolio managers);
- The individual or firm is already subject to a professional legal standard of care and fiduciary duty, and the Financial Planning or Financial Advice being provided is incidental to his, her or its principal business or profession which is also regulated (e.g. as in the case of lawyers and accountants); and
- The individual or firm operates an order execution platform and no Financial Planning or Financial Advice is being provided to the customer, and the individual or firm is exempt from suitability requirements (e.g. as in the case of order-execution only services provided by discount brokers).

These exemptions would avoid unnecessary duplication for those already subject to a SBID or fiduciary duty, and would ensure that intermediaries that do not provide Financial Planning or Financial Advice (such as discount brokers) are not subject to the same standard of care as providers of Financial Planning or Financial Advice.

CHAPTER 7 – IMPLEMENTATION

5. Implementation

We recommend implementation of our recommendations through a new legislative framework empowering the OSC and FSCO/FSRA to regulate Financial Planning or Financial Advice in their respective mandates and directing the harmonization of their regulation of Financial Planning or Financial Advice to the extent practicable.

Rationale

Given the history associated with the regulation of Financial Planning and Financial Advice in Ontario and our assessment of the different Regulators, accreditation bodies, professional bodies and representative organizations, we have concluded that legislation will be required if our recommendations are to be implemented.

We recommend broadening the regulatory mandate of the OSC and FSCO/FSRA through legislation to regulate Financial Planning or Financial Advice (as previously articulated). Specifically, we recommend establishing an Implementation Working Group, consisting of both the OSC and FSCO/FSRA, which would implement the recommendations emanating from this review. The legislation would mandate the Implementation Working Group to:

- Develop a harmonized regulatory framework reflecting the tripartite approach outlined in this report.
- Establish a central registry for providers of Financial Planning or Financial Advice across Ontario's financial services sector (as articulated in Chapter 9 of this report).

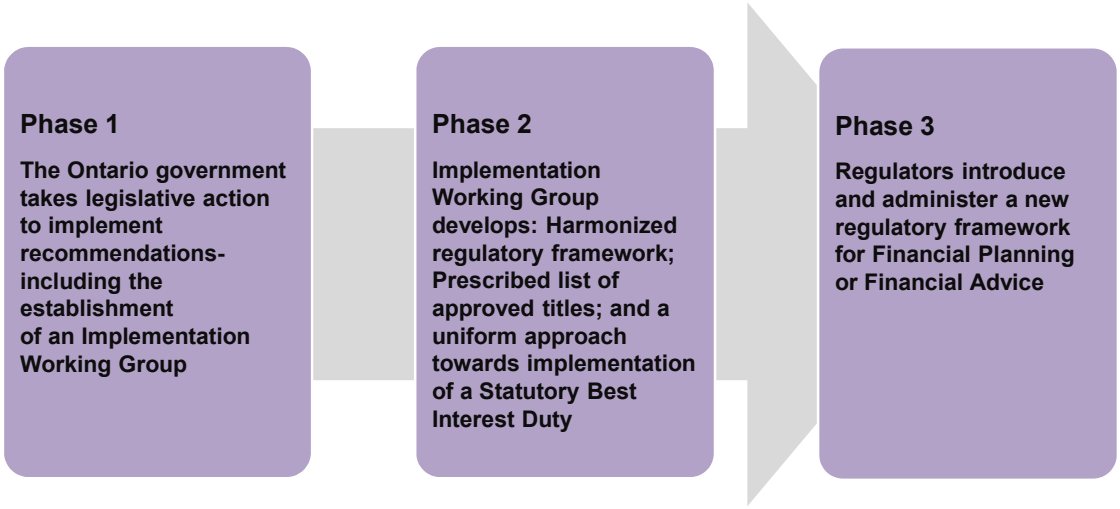
PIAC suggests that, if possible, the "one universal set of regulatory standards" be created in a process creating the legislative framework implementing the Expert Committee's policy recommendations (i.e. regulations).

– Public Interest Advocacy Centre (June 2016)

A harmonized regulatory regime in Ontario will require our proposed regulatory framework to be applied across all distribution platforms, including the banking sector. This measure may necessitate a degree of cooperation between the provincial and federal governments in the interest of consumer protection.

The legislation should also enable reciprocity of regulatory sanctions and disciplinary measures across Regulators. Currently, an individual facing disciplinary action in one capacity in the financial services industry may continue to work with consumers in another capacity. There is little systematic reciprocity of sanctions among Regulators.[48] This is a clear gap in consumer protection that must be addressed under the harmonized regulatory framework outlined in this report.

We see the path for the Ontario government as consisting of three phases depicted below:



We view the Implementation Working Group as a critical bridge from our review towards the development and implementation of the proposed regulatory framework outlined in this report. The Implementation Working Group would commence the all-important task of developing a harmonized regulatory framework designed to allow Ontario consumers to engage the services of financial planners or financial advisors with confidence.

The Implementation Working Group could choose to fulfill its mandate through further consultation with stakeholders around the specifics of the Committee's policy recommendations. However, the legislation should be clear that the broader policy objectives of our recommendations should be implemented within a reasonable time period of one to three years. Through the Implementation Working Group, Regulators should be required to publicly report on their progress in achieving their new mandates.

[48] Investment Industry Regulatory Organization of Canada: September 2015 Submission. See: http://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/investment-regulatory.html.

The standard-setter approach to credentials outlined in this report will allow Regulators that have not had the mandate historically to regulate Financial Planning, to leverage existing industry expertise and infrastructure. Recognizing appropriate credentialing entities, via the standard-setter approach, will help Regulators to avoid reinventing the wheel and allow industry participants to work with recognized credentialing bodies that already operate in the Ontario marketplace.

[H]armonization may not necessarily mean recognition of a single credential or designation, to the exclusion of all others. We believe there are opportunities to leverage off of existing proficiency programs and providers.

- Investment Industry Regulatory Organization of Canada (June 2016)

A better alternative, we believe, would be for the Committee to recommend the establishment of an independent standards-setting body comprising of professional organizations. This body would, in turn, be overseen and its standards enforced by existing statutory regulators and SROs.

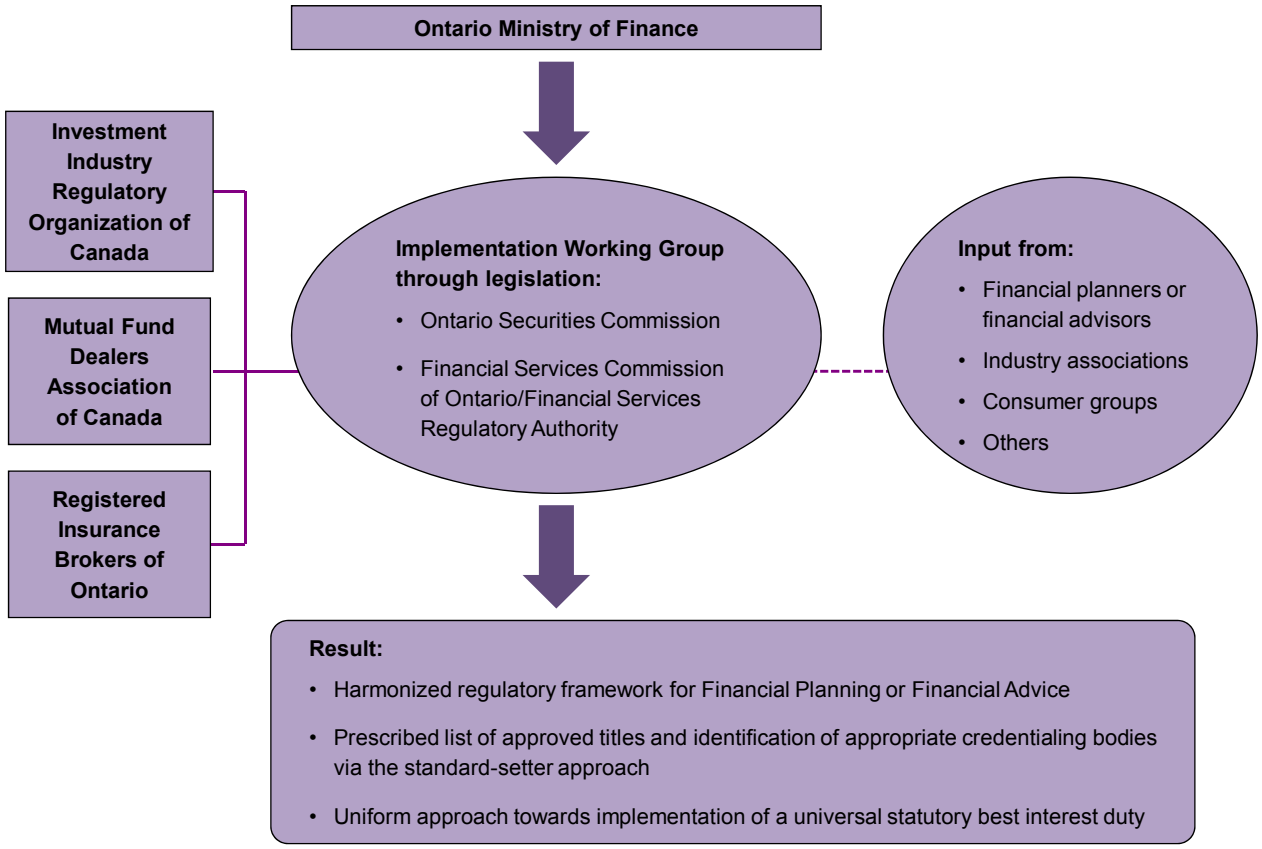
– CFA Institute (June 2016)

We wish to address an issue raised by individual financial planners or financial advisors during our consultations. We heard that Regulators today do not adequately recognize and respond to issues relating to the inherent advisory component of their business, in line with the expectations of their clients. Put differently, regulation primarily focuses on Financial Product Sales without necessarily appreciating the increasingly-important advisory component (as has been outlined at length in this report). This theme is one of the key rationales behind Advocis' proposal for a delegated administrative authority model. During our consultations, financial planners and financial advisors repeatedly noted the importance of having adequate representation among the entities that regulate their activities.

As a Committee, we see merit in this position. Yet this goal should not lead to further fracturing of Ontario's already fragmented financial services regulatory framework via the introduction of yet another regulatory body, as proposed in the Advocis model. With the mandates of the OSC and FSCO/FSRA broadened to incorporate Financial Planning or Financial Advice, both Regulators should ensure that their policy-making process receives the benefit of continued input from individuals and firms that provide ground-level financial planning or advisory services. Regular input and dialogue could be achieved by way of advisory groups comprising of individual financial planners or financial advisors.

Our Committee's policy recommendations are interconnected and should be adopted in a holistic manner. By establishing a harmonized regulatory framework for Financial Planning and Financial Advice, Ontario can close an important regulatory gap. The harmonized framework would enable providers of financial planning and advisory services to enhance professionalism by virtue of prescribed titles and recognized credentials. Finally, implementation of a SBID would clarify the duty owed to consumers by providers of Financial Planning and Financial Advice, and would bring regulatory requirements in line with consumer expectations.

Proposed Working Group Process



CHAPTER 8 – REFERRAL ARRANGEMENTS

6. Referral Arrangements

We recommend that no individual or firm that engages in Financial Product Sales, or Holds Out as providing Financial Planning or Financial Advice, be permitted to enter into a referral arrangement with a third party for the referral of a customer or prospective customer who is to be provided with Financial Planning, Financial Advice or Financial Product Sales, unless the referral arrangement accords with conditions equivalent to those set out in Part 13 (Division 3) of National Instrument 31-103.

Rationale:

Consumers often need several different types of financial services including investment advice, mortgage brokering and insurance. A firm or individual that provides one of these services may not necessarily be licensed to provide the others. And even if the firm or individual can provide these other services, a different firm or individual might be better placed to serve the needs of a particular consumer. Indeed, under the proposed regulatory framework outlined in this report, the SBID would obligate a firm or individual to refer a client to a different provider(s) if said referral is in the best interest of the client. Accordingly, with the adoption of a SBID, referral arrangements could become more prevalent.

Referral arrangements from one individual or firm to another can help consumers access the financial services and products that meet their needs. From a regulatory standpoint, however, it is important that these referral arrangements be clearly disclosed to consumers. Moreover, consumers should be assured that such arrangements lead them to individuals and firms with the appropriate licensing and credentials to provide the services they require.

Referral fees should be transparent (the amount of the fees, the impact or consequences of their presence) and should be disclosed to the consumer in plain language before engaging the financial service provider. Any relationship that a financial planner has with others providing financial advice should be reasonable and should be disclosed prior to the engagement.

– FAIR Canada (June 2016)

I agree that there must be complete transparency of compensation and referral arrangements at all times. Too frequently consumers are not aware of the inherent conflicts with such arrangements and cannot comprehend the implications of such.

– Tom Trainor (June 2016)

In our Preliminary Policy Recommendations Document, we recommended prohibiting referral arrangements unless the person or firm receiving the referral fee is regulated as a provider of Financial Product Sales or Financial Planning or Financial Advice and owes a best interest duty to consumers. We received extensive in-person and written feedback on this proposal. Many commenters observed that within the securities regulatory system, the investor protection concerns raised by referral arrangements are mitigated by certain regulatory requirements. Specifically, commenters pointed to the conditions for permitted referral arrangements set forth in Part 13 (Division 3) of National Instrument (NI) 31-103.

Under section 13.8 of NI 31-103, a registered firm or individual must not participate in a referral arrangement with another firm or individual unless, among other things, the terms of the referral arrangement are set out in writing ahead of time. The registered firm is also required to record all referral fees, and the registrant must ensure that information about the referral arrangement is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

Furthermore, section 13.9 of NI 31-103 requires the registered firm or individual to verify the qualifications of the person or company receiving the referral, while section 13.10 sets out specific disclosure requirements. Our principal concern with referral arrangements focused on consumers being referred to individuals without appropriate credentials or licensing to provide the service. Taking into account stakeholder feedback, we therefore conclude that this concern is sufficiently addressed within the securities sector by NI 31-103.

We support the call for transparency about referral fees as a needed disclosure relating to potential conflicts of interest and costs. These disclosures should apply to Advisers, Financial Planners and all who act in some capacity to advise clients about investments, financial products and financial plans. We also agree with the desire to ensure that fee recipients are regulated firms for purposes of enforcing best-interest rules.

– CFA Institute (June 2016)

Division 3 of Part 13 of National Instrument 31-103 (which currently governs IIROC registrants) sets out specific conditions which must be met before a registered individual can participate in a referral arrangement, including written disclosure to the client.

- Investment Industry Regulatory Organization of Canada (June 2016)

We support restrictions and regulation of referral fees in line with what is found in National Instrument 31-103.

– Primerica (June 2016)

We support restrictions and regulation of referral fees in line with the requirements of National Instrument 31-103.

– Investment Funds Institute of Canada (June 2016)

In our view, this concern is not sufficiently addressed within the insurance and mortgage brokering sectors. To that end, we recommend that within the proposed regulatory framework that all individuals and firms that provide Financial Planning or Financial Advice and Financial Product Sales wishing to enter into a referral arrangement to adhere to conditions equivalent to those set out in Part 13 (Division 3) of National Instrument 31-103.

CHAPTER 9 – CENTRAL REGISTRY

7. Central Registry

We recommend creating and maintaining a single, free, comprehensive central registry, with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals and firms that provide Financial Planning, Financial Advice and Financial Product Sales in Ontario.

Rationale:

Consumers in Ontario lack an industry-wide mechanism to verify a financial planner or financial advisor's registration, license, credentials and disciplinary history. While this information exists in certain sectors, it is fragmented across the entire financial services industry. From the consumer's point of view, conducting a proper background check currently may seem complicated and require searching several different databases. Additionally, the information returned from a search may not be presented in a way that is meaningful to average consumers and may not inform their decision-making. For example, if an individual is not registered, the results should make this clear and flag considerations for consumers' information. The onus for due diligence is placed entirely on consumers within an environment that is difficult for them to navigate.

Conducting a proper registrant background check currently is very complicated and requires searching several different databases. An online central registry created jointly by all relevant Ontario financial Regulators would provide a "one-stop location" where retail financial consumers can access the information they need to perform a background check on their service providers and their firms. The onus for due diligence would no longer be placed entirely on consumers within an environment that is difficult for them to navigate.

– Kenmar Associates (April 2016)

Currently, an Ontario consumer wishing to conduct a background check on his/her financial planner or financial advisor could potentially have to find and use:

- The National Registration Search tool available via the CSA website.
- The Disciplined Persons List tool available via the CSA website.
- The AdvisorReport tool available via the IIROC website.
- The Check an Advisor tool available via the MFDA website.
- The insurance and mortgage brokering licensing links and enforcement actions database available via the FSCO website.
- The Canadian Insurance Regulators Disciplinary Actions database.

Therefore, we recommend that the Regulators and SROs jointly create an online central registry to provide a "one-stop location" where consumers can access the information they need to perform a background check on their service providers and their firms.

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.

- Independent Financial Brokers of Canada (June 2016)

PMAC supports the creation of a single, free and comprehensive central registry containing all relevant information regarding licensing and registration status, credentials and disciplinary history of regulated firms and individuals. This would be a great benefit to consumers.

– Portfolio Management Association of Canada (June 2016)

The license data maintained in this central registry should be current and at minimum include: the name and registration status of these individuals and firms; the dates they became registered; their discipline history including any publicly-announced charges; the qualifications and credentials of the individuals and firms as well as the meaning of the various titles and registrations, developed in accordance with previous recommendations; and a glossary of all terms used in the registry. This central registry should be user-friendly, provide information that is meaningful and be easily accessible without cost to the consumer. It should also be accessible to consumers who may not be technically literate (for example, some seniors) by phone or otherwise.

Convenient access to consolidated information in this day and age of rapid technological advancements is a reasonable expectation for most consumers of financial services in Ontario. Indeed, the harmonized regulatory framework outlined in this report demands a comprehensive central registry where consumers can easily access background information about their financial planner or financial advisor, regardless of regulatory boundaries.

During our consultation process, many parties expressed general support for this recommendation. However, multiple parties highlighted currently operational registries (noted above) and asked us to leverage the existing infrastructure to the extent possible.

The Implementation Working Group (discussed in Chapter 7) should coordinate in developing a central registry that should include, to the extent practicable, integration of existing infrastructure. Furthermore, the legislation implementing the new regulatory framework should mandate that the Regulators and, where applicable, the SROs support the central registry.

CHAPTER 10 – FINANCIAL LITERACY

8. Financial Literacy

We recommend that government, regulators, public and private schools (through their respective curriculum bodies and school boards), non-profit organizations and the financial services industry support and actively encourage financial literacy and investor education of Ontarians.

Rationale:

Financial literacy is critical to helping consumers make informed financial decisions. Financially literate consumers are better equipped to attain financial security and avoid financial abuse. Increasingly, the burden of making sound financial decisions rests on the shoulders of consumers. Indeed, employers are increasingly shifting away from defined-benefit retirement plans towards defined contribution plans or even no employer sponsored retirement savings plans. This shift towards personal financial management has been matched by increasingly-complex Financial Products that require a level of sophistication beyond the financial literacy level of many consumers.

A 2012 "Benchmarking" Study carried out by the Brondesbury Group on behalf of the Investor Education Fund illustrates the challenge:

We support this recommendation, particularly for schools and other organizations to include such education in their curricula. Without this type of push, we doubt that this recommendation will have a successful outcome. If it were to work, it would serve as an example for other markets within and outside of Canada. While we strongly support investor education, we note that the burden must be on the Financial Planners and Advisers to act in investors' best interests by managing any conflicts of interest.

– CFA Institute (June 2016)

The Benchmarking Financial Knowledge Survey is a set of 21 questions that focus on concepts with long-term importance and generally accepted relevance to the building of educated financial consumers. The selection of concepts for the survey was based on a detailed review of issues addressed in other jurisdictions. This survey is a repeat of a survey conducted in 2010. The current survey was administered to a random sample of 1,000 Ontarians in October 2012. Overall results are accurate to within ±3% some 19 out of 20 times.

On average people get 11.2 out of 21 questions correct for a score of 53%. In 2010, the average was 11.5 correct out of 23 questions for 50%. If we consider 60% correct as a notional "passing grade", then 36% of Ontarians passed in 2012, up from 29% in 2010. Half of Ontarians answer fewer than half the questions correctly.[49]

The questions included areas of financial planning, investing risk and return expectations, borrowing and credit.

The results of this study and other work[50] indicate that, notwithstanding the investments in financial literacy made in the education system by industry and by the Regulators and SROs, there continues to be a broad asymmetry of financial knowledge generally among Ontarians.

As a Committee, we emphasize the value of financial literacy and investor education. In our view, increased financial literacy may support better financial choices and greater consumer participation, resulting in a more vibrant financial services sector in Ontario. Unsurprisingly, this recommendation was met with virtually universal approval during our consultation process.

The Credit Unions of Ontario are very supportive of the Committee's recommendation for financial literacy and investor education to be supported and encouraged by government, regulators, public and private schools, non--profit organizations and the financial services sector.

– Central 1 Credit Union (June 2016)

[49] The Brondesbury Group, Benchmarking Financial Knowledge, 2012 – Investor Education Fund (2012). See: http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/Investor-Education-Fund-2012-Benchmark-Survey.pdf.

[50] Strengthening Investor Protection in Ontario – Speaking with Ontarians (2013). See: https://www.osc.gov.on.ca/documents/en/Investors/iap_20130318_strengthening-investor-protection.pdf.

CHAPTER 11 – ISSUES FOR FURTHER CONSIDERATION

Issues for Further Consideration

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

- The need for a simplified complaint and redress process for consumers of Financial Planning, Financial Advice and Financial Product Sales.
- A simplified approach to the handling of consumer complaints related to regulatory offences in the provision of Financial Planning, Financial Advice and Financial Product Sales.
- A consumer-friendly process for recovery of financial losses from firms or individuals by consumers as a consequence of negligent Financial Planning, Financial Advice and Financial Product Sales services.

Rationale:

In the course of our review and deliberations, we heard about a number of important issues outside the scope of our mandate. We highlight some of these issues as they warrant further consideration outside the context of this review. In particular, we are struck by the veritable maze of different Regulators and approaches to consumer complaints.

The consumer's interest should be paramount, yet there is no clear process or line of redress when a legitimate complaint arises. In order to pursue a complaint, an aggrieved consumer must attempt to understand the particular regime that applies either to the advice received or to the relevant product. The complaint process is not intuitive. It is difficult to understand let alone pursue.

Investors require an effective avenue of redress for legitimate complaints arising from dealings with a financial planner. PMAC agrees that an opaque and fragmented consumer redress framework is contrary to the public interest and should be addressed as soon as possible.

– Portfolio Management Association of Canada (June 2016)

There must be access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely, and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers.

– Financial Services Commission of Ontario (June 2016)

Regulatory Matters:

In this era of multiple licences, it is also entirely possible for more than one Regulator or SRO to be involved in a consumer complaint. Given the overlapping regulatory channels that consumers in the financial services industry face, we note the need for developing a more streamlined process for consumers to utilize when an issue relating to redress or potential redress arises.

Consumers would benefit from a simplified and transparent approach to the handling of complaints. They need to know: which body will deal with the complaint; whether further action will be taken; the status of that action; and the outcome.

From the perspective of regulatory efficiency, we believe that the OSC and FSCO/FSRA should give consideration to aligning their regulatory and disciplinary processes and that of the SROs not only to create a single point of entry for the consumer into the complaint process but also to reduce overall costs.

Civil Matters:

In Ontario today, when it comes to the recovery of financial losses, matters are even more complex. A financial services consumer with a legitimate complaint against a provider of Financial Product Sales, Financial Planning or Financial Advice has the following possible venues for redress, depending on the Financial Product in question:

- Ombudsman for Banking Services and Investments (OBSI);
- OmbudService for Life and Health Insurance (OLHI);
- General Insurance OmbudService (GIO);
- IIROC Arbitration Program;
- Regulatory orders or settlement agreements (compensation, disgorgement, etc.); and
- Civil remedy (via a court process).

Ontarians (and all Canadians) should have access to an independent ombudservice that provides for a binding decision. FAIR Canada believes this is absolutely essential to adequately protect consumers. When consumers believe they have been harmed (through non-compliance with suitability obligations, for example), they deserve to have access to an ombudservice that fully meets international standards and our international obligations. This should be the expectation and the reality for all financial services complaints.

- FAIR Canada (June 2016)

From a practical perspective, access to the courts via a civil remedy is not usually practical. The Ontario Small Claims Court's monetary jurisdiction is presently set at $25,000, an amount too small to resolve most matters involving losses in the financial advisory sector. For larger matters, the consumer would have recourse only to the Ontario Superior Court of Justice. Litigation before this body is an expensive and complex endeavor and, other than in the most egregious situations with significant damages, beyond the means of most consumers.Consequently, the most practical option for today's consumer is to seek redress before OBSI, OLHI or GIO.

However, these ombud services fall short of delivering the kind of redress to which consumers should have access. During the course of our review, multiple parties brought to our attention inherent deficiencies in the functioning of OBSI, as currently structured. These deficiencies stem from OBSI's lack of binding decision-making authority. Parties noted, and we concur, that absent this authority OBSI is unable to effectively fulfill its critical role as an ombudsman in the province's financial services sector.

We direct the government's attention towards a recent independent review conducted of OBSI's operations and practices for investment-related complaints, which revealed some troubling trends:[51]

- In 2015, 18 per cent of non-backlog complainants who OBSI considered should receive compensation, received less than OBSI recommended (on average $41,927 less); including 3.5 per cent who were at risk of receiving nothing.

[T]he challenge with an investor raising a complaint with the OBSI is the non-binding nature of the process. In PIAC's view this is becoming a barrier to the OBSI's effectiveness since participants in the scheme are becoming more likely to ignore an OBSI recommendation.

- Public Interest Advocacy Centre (June 2016)

OBSI shares the Expert Committee's view that further consideration should be given to the need for simplified complaint and restitution mechanisms for consumers, a simplified approach to regulatory complaints, and a consumer-friendly process for recovering financial losses by consumers of financial planning and financial product sales and advice.

– Ombudsman for Banking Services and Investments (June 2016)

[51] Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate (2016). See: https://www.obsi.ca/en/download/fm/539/filename/2016-Independent-Evaluation-Investment-Mandate-1465218315-e9fa5.pdf.

- OBSI's requirement to "name and shame" firms who refuse its recommendations has, in fact, been counter-productive. This practice has served to reinforce OBSI's limitations and undermine public confidence in both the resolution system and the investment market.

The report notes that OBSI operates not as a true industry ombudsman, but rather as a dispute resolution service. The evaluators conclude that the playing field is, indeed, tilted in favour of the financial services sector.[52] This comes at the expense of consumers in Ontario and elsewhere in Canada.

When it comes to insurance matters, neither OLHI nor GIO has the authority to make binding decisions, either. Furthermore, complaints relating to the activities of individual life insurance agents (or "advisors") are likely to fall outside OLHI's mandate – which is focused on life and health insurance companies.[53] Essentially, in the event of a wrongdoing by a dually-licensed financial planner or financial advisor, consumers may have to deal with two different ombud services if they hold both securities and insurance products in their portfolio.

We believe that the fragmented regime for redress and the inability of ombud services to make binding decisions harms consumers and requires further consideration. There needs to be a consumer-friendly process for recovery of financial losses from firms or individuals by consumers as a consequence of negligent Financial Planning, Financial Advice and Financial Product Sales services.

We call on the government and Regulators in Ontario and other Canadian provinces to move quickly to resolve this matter in the interest of consumer protection. Consumers deserve the opportunity to participate in the financial services sector with the advantage of having an effective complaint and redress mechanism, if needed.

[52] Ibid.
[53] Independent Review Report - OmbudService for Life & Health Insurance (2012). See: http://olhi.ca/wp-content/uploads/2016/02/Independent-eview-Report-OLHI.pdf.

APPENDIX A – INITIAL CONSULTATION DOCUMENT (JUNE 2015)

Introduction

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.

To better understand these issues, the Ontario government committed in 2013 to investigating the merits of more tailored regulation of those engaged in financial planning and giving financial advice and held two consultations with stakeholders involved in the financial planning and advising sectors in 2014.

Subsequently, the Ontario government announced that it would appoint an expert committee that would be mandated to provide key recommendations and submit its final report to the government for review in 2016.

In April 2015, the Minister of Finance appointed an independent expert committee to be known as the "Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives" (Expert Committee) whose membership consists of:

Malcolm Heins (Chair), a lawyer, director and business advisor, who successfully reformed the regulation of paralegals during his tenure as the CEO of the Law Society of Upper Canada;

Anita Anand, a Professor of Law at the Faculty of Law, University of Toronto, with a research focus on regulation of capital markets and the inaugural Chair of the Investor Advisory Panel of the Ontario Securities Commission;

Paul Bates, a Chartered Professional Accountant, Fellow of the Society of Management Accountants, a Certified Management Consultant and the former Chair of the Investor Education Fund, with experience in investor advocacy; and

Lawrence Haber, a former securities lawyer and former financial industry executive. Currently, the Chair of the Board of Diversified Royalty Corp. and a special policy advisor to Ontario Securities Commission staff.

Mandate of the Expert Committee

The Expert Committee will provide advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation. Specifically, the Expert Committee's analysis will include consideration of the following:

a) Education, training, proficiency, ethics and enforcement requirements that should apply to those engaged in financial planning and the giving of financial advice;

b) Licensing and registration requirements that should apply to those engaged in financial planning and the giving of financial advice;

c) The legal means, if any, to address conflicts of interest and potential conflicts of interest;

d) The use of titles and designations and whether they should be regulated; and

e) 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.

Core Principles to be Followed by the Expert Committee

In undertaking its activities, the Expert Committee shall endeavour to adhere, to the extent reasonably practicable, to the following core principles:

a) **Investor and Consumer Focus** – The Expert Committee will focus on furthering the public interest including the protection of consumers;

b) **Industry Consideration** – The Expert Committee will provide due consideration to the importance of the financial services industry in Ontario and to the concerns of market participants;

c) **Regulatory Efficiency** – The Expert Committee will seek to make recommendations that are not unduly complex and that avoid unnecessary or duplicative regulation;

d) **Sensitivity to Existing Policy Initiatives** – The Expert Committee will be sensitive to existing policy initiatives; and

e) **Enhancing Regulatory Cohesion and Consistency** – The Expert Committee will seek to avoid recommendations that would result in regulatory fragmentation or that might produce or increase opportunities for regulatory arbitrage.

Research and Data Gathering Process

The Expert Committee's research and data gathering process will include review, consideration and analysis of:

a) Transcripts and submissions made previously to the Ministry of Finance;

b) Information gathered by the Ministry of Finance including reports and legislation from other jurisdictions;

c) Academic literature;

d) Information that may be gleaned from a public consultation process; and

e) Any research commissioned by the Expert Committee.

Request for Submissions

The Expert Committee invites interested parties to provide a written submission addressing the following questions:

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.

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

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?

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.

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.

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?

Process for Making Submissions

Submissions addressing the questions above may be sent by email to Fin.Adv.Pln@ontario.ca. Please use subject line: Financial Planning/Advice Consultation and please indicate the specific question to which you are responding to in your submission. Alternatively, you may send your submission by mail to:

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

Submissions must be received on or prior to **September 21, 2015**.

Please note that information submitted may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act.* Please do not submit personal information or specific identifying details of individuals, companies or other entities unless the specific information is already publicly available. Please also note that the Expert Committee may make the submissions it receives publicly available. Please do not forward confidential information that you would not want to be made public.

If you have any questions or concerns, please contact Shameez Rabdi at (416) 325-3577 or Shameez.Rabdi@ontario.ca.

APPENDIX B – LIST OF COMMENTERS ON JUNE 2015 INITIAL CONSULTATION DOCUMENT

Alternative Investment Management Association

American Institute of Certified Public Accountants

Basciano, Philip

Brock, Gordon

Business Career College Corporation

Callery, Brian

Canadian Association of Retired Persons

Canadian Bankers Association

Canadian ETF Association

Canadian Institute of Financial Planners

Canadian Life and Health Insurance Association

Canadian Securities Institute

Capesky, Michael

Central 1 Credit Union

Cerullo, Vince

CFA Institute

Chambre de la sécurité financière

Chartered Professional Accountants of Ontario

Curry, Joseph

Curry, Lorne

De Goey, John J.

Dietrich, Theresa

Dorris, Aaron

Efficient Wealth Management Inc.

Elford, Larry

Etherington, Kirsteen

Etherington, Mark

Etherington, Paul

FAIR Canada

Federation of Mutual Fund Dealers

Financial Advisors Association of Canada

Financial Planning Standards Council

Financial Services Commission of Ontario

Firstbrook, John

Fischer, H. Alex

Fleischacker, Robbie

Fleischacker, Robert S.

Gilroy, Bradley

Gooden, Andrew

Gratton, Linda

Hansell, Ronald

Hedden, John

Hetu, Robert

Hinan, William

Hnatiak, Barbara

Hostick, Dan

Houle, Angela

Howe, Philip

Hub Financial Inc.

Hudson, Chris

Independent Financial Brokers of Canada

Institute of Advanced Financial Planners

Investment Funds Institute of Canada & Investment Industry Association of Canada

Investment Industry Regulatory Organization of Canada

Investors Group Inc.

Jolley, David

Jones, Tim

Juvet, David

Kenmar Associates

Kirkham, Nancy

Knowledge Bureau

La Gamba, Michelle

La Gamba, Vince

La Gamba, Sara

Luesby, Jonathan K.

Lunz, John

MacLeod, Bev

Manulife Securities

Mawani, Amin

McAuley, John

McFadden, Debra A.

McFarlane, Jacquelynne

McGruer, David

MD Financial Management

Milner, Michael

Milner, Noel

Mutual Fund Dealers Association of Canada

Ontario Pension Board

OReilly, Karin

OSC Investor Advisory Panel

Penson, Robert

Pitch, Raymond

Pollock, Johnathan

Poole, William

Portfolio Management Association of Canada

Primerica Financial Services

Public Interest Advocacy Centre

Sampson, Mark

Shumak, Brian

Small Investor Protection Association

Stephenson, Jacob

Stockman, Gordon

Sun Life Financial

The Canadian Advocacy Council for Canadian CFA Institute Societies

The Canadian Payroll Association

Thomas, Michael

Tribe, J R Harvey

Weichel, Tom

Whitehouse, Peter

Wild, Philip C.

Wildman, Libby

Willis, Ron

Wise, Julian

Yanke, Dennis

Zavitz, Justine

Zelasko, Chris

APPENDIX C – PRELIMINARY POLICY RECOMMENDATIONS DOCUMENT (APRIL 2016)

Introductory Comments

At present, Ontario has no comprehensive legal framework to regulate the activities of individuals and firms that offer financial advisory and financial planning services. The absence of such a framework has raised questions about proficiency, quality standards and conflicts of interest in this sector. Gaps in regulation have become more conspicuous in an environment where individual Ontarians face increasingly complex financial decisions that are critical to their future financial security.

In 2013, the Ontario government committed to investigate the merits of more tailored regulation of individuals engaged in financial planning and the giving of financial advice. Accordingly, in 2014, the Ministry of Finance conducted a consultation with stakeholders and other persons interested in the financial planning and advising sectors. Subsequent to this, the Ontario government announced that it would appoint an Expert Committee mandated to provide advice and recommendations in a final report to the government in 2016.

Our committee was appointed in mid-April of 2015 with a mandate to provide advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and, the appropriate scope of such regulation. The committee's members are:

Malcolm Heins (Chair), a lawyer, director and business advisor, who successfully reformed the regulation of paralegals during his tenure as the CEO of the Law Society of Upper Canada;

Anita Anand, a Professor of Law at the Faculty of Law, University of Toronto, with a research focus on regulation of capital markets and the holder of the J.R. Kimber Chair in Investor Protection and Corporate Governance;

Paul Bates, a Fellow of the Institute of Chartered Professional Accountants, a former financial industry executive and regulator, and the former Chair of the Investor Education Fund, with experience in investor advocacy; and

Lawrence Haber, who has had a diverse career in the capital markets, as a securities lawyer, financial industry executive and corporate board member, and as a special policy adviser to Ontario Securities Commission staff. Currently, the Chair of the Board of Diversified Royalty Corp., a TSX listed royalty finance company.

The committee set about its task with the following core principles in mind:

a) **Investor and Consumer Focus** – focus on furthering the public interest including the protection of consumers;

b) **Industry Consideration** – give due consideration to the importance of the financial services industry in Ontario and to the concerns of market participants;

c) **Regulatory Efficiency** – seek to make recommendations that are not unduly complex and that avoid unnecessary or duplicative regulation;

d) **Sensitivity to Existing Policy Initiatives** – be sensitive to existing policy initiatives; and

e) **Enhancing Regulatory Cohesion and Consistency** – seek to avoid recommendations that would result in regulatory fragmentation or that might produce or increase opportunities for regulatory arbitrage.

Our Process

In pursuing our mandate, we reviewed materials relating to the 2014 Ministry of Finance consultation, previous legislative and regulatory initiatives, publicly available research reports, academic literature and media articles. We also reviewed the approach to this sector's regulation in other jurisdictions. Additionally, we met with regulatory and self-regulatory organizations with subject-matter expertise relating to our mandate.

We solicited public input through an Initial Consultation Document, which called for written submissions to six critical questions (the comment period ran from June 24th to September 21st, 2015; see Appendix B).

Furthermore, we examined the Preliminary Position Paper of the Expert Panel that the Province has tasked with reviewing the mandates of the Financial Services Commission of Ontario, the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario. Their preliminary recommendation for the establishment of a new Financial Services Regulatory Authority, one that has flexibility and comprehensive authority over market conduct regulation in certain sectors, is integral to our own recommendations.

The response to our request for written submissions from the public through the Initial Consultation Document was impressive: we received 107 submissions. The submissions were virtually unanimous in suggesting that reforms to the existing regulatory environment for financial planning and financial advisory services are warranted.

What We Learned from Our Research and Initial Consultation[54]

The submissions we received, together with our own extensive research and consultation with current regulatory and self-regulatory organizations, led us to conclude that there are gaps and inconsistencies in the regulation of Financial Planning and Financial Product Sales and Advice. The following observations have been important in the formulation of our preliminary recommendations for reform. They are based on what we heard in the submissions, the consultations and our review of the relevant literature within and outside of Canada.

There is a lack of regulatory oversight for providers of Financial Planning who do not sell Financial Products (and thus are not overseen by a regulator or self-regulatory organization).

Even providers of Financial Planning who are regulated for the sale of Financial Products are only regulated for certain aspects of Financial Planning.

There are varying degrees of proficiency among the providers of Financial Planning and no consistency in accreditation.

There is an absence of an explicit obligation for providers of Financial Planning or Financial Product Sales and Advice to act in their clients' best interest. This is detrimental both to consumers who rely on these services to achieve their financial goals and to confidence in the financial services industry.

The plethora of titles and designations utilized in the financial services industry may cause consumer confusion, making it difficult for consumers to be certain of the qualifications and expertise of their financial advisory or financial planning service providers.

There is a stark asymmetry in financial knowledge between providers of Financial Planning or Financial Product Sales and Advice on the one hand and consumers on the other.

Given the fragmented regulatory framework for financial services in Ontario, it is difficult for consumers to find relevant information required to make important decisions relating to their financial affairs.

[54] See **Appendix A** for definitions of the capitalized terms used.

While there is a consensus that regulatory reform is required, there is no clear consensus as to a particular regulatory approach.

Regulatory duplication could be disadvantageous to both industry and consumers.

Our Preliminary Policy Recommendations

We have put forward eight preliminary policy recommendations for reform together with a list of issues for further consideration. In making these preliminary recommendations, we are guided by our core principles and the clearly articulated need for change. In determining these recommendations, we settled on broad definitions of key terms in order to preclude individuals or firms from evading consumer-focused regulatory protections by characterizing their services as falling outside the scope of our recommendations.

The following preliminary policy recommendations are presented with a view to inviting further public input. We will take into account input from the upcoming consultation process in preparing our final report for the Ontario government. This consultation process is outlined in Section E below.

Regulation of Financial Planning in Ontario

We recommend that Financial Planning in Ontario be regulated as follows:

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).

Rationale: In response to our initial consultation, multiple parties emphasized the need to leverage the existing regulatory framework and avoid regulatory duplication that could prove costly for businesses and, ultimately, consumers. As a committee, we were mindful of the core principles outlined in our Initial Consultation Document that include consideration for regulatory efficiency and sensitivity to existing policy initiatives. In our deliberations, we considered the possibility of recommending a new regulatory body to undertake the regulation of Financial Planning by individuals or firms not otherwise regulated. We believe that the number of individuals and firms that provide Financial Planning services on a stand-alone basis would be too small to warrant the costs associated with a new regulatory body. We believe that the better approach is to recommend regulation of Financial Planning as a discreet activity within the existing regulatory framework. In our view, an Ontario-based integrated regulator of financial services, such as the proposed FSRA, is 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 outlined in the ensuing recommendation.

Harmonization of Standards

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.

Rationale: A recurring theme raised by commenters was the broad spectrum of qualifications and expertise possessed by individuals currently offering Financial Planning services in Ontario. From the consumer's point of view, it is difficult to navigate through the various credentials to ascertain their Financial Planning services providers' qualifications. This dynamic is exacerbated in an environment where many consumers rely heavily on a Financial Planning services provider to guide their financial decisions in order to yield improved financial security. It is essential, therefore, that providers of Financial Planning services possess a minimum level of proficiency and expertise. Since Financial Planning encompasses various sectors, we recommend that Regulators work cooperatively to develop a harmonized set of regulatory standards (including, if necessary, approving appropriate credentials) that apply consistently to all providers of this activity.

Statutory Best Interest Duty

We recommend that a Statutory Best Interest Duty[55] (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.

Rationale: Currently, in Ontario, providers of Financial Product Sales and Advice and/or Financial Planning services are not subject to an explicit statutory requirement to act in their client's best interest. While Financial Planning as an activity is not subject to a general regulatory framework, the provision of Financial Product Sales and Advice generally is subject to know-your-client and suitability requirements — these requirements vary across sectors. As noted by multiple commenters, the focus of the suitability standards is limited to the sale of a Financial Product. Yet consumers expect to receive financial advice from an individual who is acting in their best interest.[56] Commenters highlighted, however, that this expectation exists in a commission-oriented sales environment that may give rise to a Conflict in the recommendations provided to consumers. Multiple submissions noted that advisors may recommend products which are not in fact in the best interest of clients and that product recommendations are influenced by commissions. We believe that consumers who receive Financial Product Sales and Advice and/or Financial Planning services should receive those services from individuals who and firms that have a statutory duty to act in the consumer's best interest. Applying a SBID would make clear the legal duty of care and significantly reduce, if not eliminate, confusion (for consumers as well as individuals and firms that provide Financial Product Sales and Advice and/or Financial Planning) about whether a duty to act in the best interest of the client applies in a given situation. It would also bring regulatory requirements in line with consumer expectations.

[55] An explicit obligation designed to ensure that clients' interests are put first and Conflicts are avoided.
[56] See, for example: The Investor Education Fund (2012), "Investor behaviour and beliefs: Advisor relationships and investor decision-making study".

Exemptions

We recommend that the only exceptions that should apply to the proposed universal SBID are as follows:

a) The individual or firm is already subject to a SBID by virtue of his, her or its licensing and registration requirements (e.g. as in the case of portfolio managers);

b) The individual or firm is already subject to a professional legal standard of care and fiduciary duty, and the advice being provided is solely incidental to his, her or its principal business or profession which is also regulated (e.g. as in the case of lawyers and accountants); and

c) The individual or firm is a mere "order taker," and no financial advice is being provided to the customer, and the individual or firm is exempt from suitability requirements (e.g. as in the case of discount brokers).

Rationale: While we recognize the need for and value of a SBID, we wish to avoid imposing duplicative obligations on professionals who are already subject to substantially similar requirements. Also, we wish to restrict the imposition of a SBID to activities and recommendations that have the potential to influence a consumer's financial decisions. Accordingly, we have recommended an exemption to the universal SBID for activities that constitute a mere order-taking function.

Referral Arrangements

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. There must also be full transparency with respect to the referral arrangement, including compensation.

Rationale: We wish to ensure that consumers who seek Financial Product Sales and Advice and/or Financial Planning can be assured that they are receiving service from individuals who have the appropriate credentials and licensing. There will be circumstances when a provider of one area of service, for example Financial Planning, wishes to refer their client to a provider of Financial Product Sales and Advice, and who also wishes to enter into a referral fee arrangement with that provider. Our aim here 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.

Titles and Holding Out

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. Specifically, we recommend that:

a) Regulators work together to develop a circumscribed list of approved titles that are descriptive of the regulated activities and that these are the only titles permitted to be used by individuals and firms in their Financial Product Sales and Advice and/or Financial Planning activities;

b) Use of the title “Financial Planner”, whether explicitly or by Holding Out that this service is being provided, is circumscribed to individuals regulated as outlined in Recommendations 1 and 2 above;

c) Individual designations, qualifications, and credentials (other than professional, academic qualifications, and those approved by the Regulators) are not permitted; and

d) Those engaged in providing Financial Product Sales and Advice and/or Financial Planning are not permitted to use corporate positions or titles given the consumer confusion that results and can result from the use of such titles.

Rationale: A prevalent theme raised by a number of commenters was the multitude of titles used in Ontario’s financial services industry and the resulting scope for consumer confusion. There are currently no uniform or universal regulatory standards regarding the use of titles and Holding Out. Rather, the use of titles and Holding Out are in the hands of the individuals or firms who provide Financial Product Sales and Advice and/or Financial Planning services which leads to confusion. Individuals refer to themselves by a range of different titles, such as “financial advisor”, “wealth advisor”, “retirement planner”, “wealth coach” and employ other similar types of titles, none of which are currently subject to regulatory constraint or standardization.

This practice benefits neither the financial services industry nor its consumers. Our recommendation is intended to mitigate the noise, allowing consumers an opportunity to more easily identify professionals who can help them meet their financial goals.

Central Registry

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

Rationale: At present, consumers lack an industry-wide mechanism to verify a financial planner or financial advisor's registration, license, credentials and disciplinary history information. While this information exists in specific sectors, it is fragmented across the entire scope of activities encapsulated by Financial Product Sales and Advice and Financial Planning services. From the consumer's point of view, conducting a proper background check currently may appear to be very complicated and require searching several different databases. The onus for due diligence is placed entirely on consumers within an environment that is difficult for them to navigate. Therefore, we recommend that an online central registry be created jointly by Regulators to provide a "one-stop location" where consumers can access the information they need to perform a background check on their service providers and their firms.

Financial Literacy and Investor Education

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.

Rationale: Financial literacy is critical to ensuring that consumers make informed decisions that in turn will further their ability to attain financial security and avoid financial abuse. Increasingly, the burden of making sound financial decisions rests on the shoulders of consumers. Indeed, as some commenters pointed out, employers are increasingly shifting away from defined-benefit retirement plans towards defined contribution plans or even no employer sponsored retirement savings plans. This shift is problematic in the face of increasingly-complex Financial Products that require a level of sophistication beyond the financial literacy level of average consumers. As a committee, we emphasize the value of financial literacy and investor education. In our view, increased financial literacy may result in better choices and greater consumer participation resulting in a more vibrant financial services sector in Ontario.

Issues for Further Consideration

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; and

c) A consumer-friendly process for recovery of financial losses by consumers.

Rationale: A number of important issues outside the scope of our mandate arose in the course of our initial consultation process and deliberations. We highlight some of these issues as they warrant further consideration outside the context of this review. In particular, we have been struck by the veritable maze of different Regulators and approaches to consumer complaints. The consumer's interest is of paramount importance yet there is no clear line of redress when a legitimate complaint arises. Rather, in order to pursue a complaint, the consumer must attempt to understand the particular regime that applies either to the advice received or to the relevant product. In other words, the complaint process is not intuitive and is difficult to understand let alone pursue. We believe that this fragmented regime is disadvantageous to consumers and requires further consideration.

Upcoming Consultation Process

As a committee, we welcome public input on our preliminary policy recommendations expressed in this document. We are committed to making informed policy recommendations to the Ontario government and invite input from all interested parties, including financial services industry participants and consumers.

Written submissions, commenting on our preliminary policy recommendations, should be provided in electronic format (preferably Word or PDF) by email to: Fin.Adv.Pln@ontario.ca.

Written submissions must be received on or prior to **June 17, 2016**.

We will also conduct public consultation sessions in multiple locations across Ontario this spring. Please visit http://www.fin.gov.on.ca/en/consultations/fpfa/ for a list of dates, locations and other information on the consultation sessions.

Please note that information submitted may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*. Please do not submit personal information or specific identifying details of individuals, companies or other entities unless the specific information is already publicly available. Please also note that the Expert Committee may make the submissions it receives publicly available. Please do not forward confidential information that you would not want to be made public.

APPENDIX A – Definitions

Financial Planning – any review and analysis of a person's: current financial and personal circumstances, present and future financial needs, priorities and objectives, the risks associated with his or her current circumstances, future needs, objectives and priorities which can but need not include the establishment of strategies to address and mitigate these matters whether or not a formal financial plan is prepared.

Financial Product – includes a "security" as defined in the *Securities Act* (Ontario); a contract of insurance, as defined in the *Insurance Act* (Ontario); and any investment in a mortgage or any mortgage type product, including syndicated mortgages.

Financial Product Sales and Advice – an interaction or process involving a consumer and a person or company wherein the person or company, engaging in the business of providing advice, provides an opinion, suggestion, or recommendation to the consumer regarding a decision or course of conduct relating to the consumer's financial affairs, including an opinion, suggestion, or recommendation to buy or sell or hold a Financial Product or provide general financial management or investment advice.

Conflict – a situation which has the potential to undermine a person or firm's impartiality including the possibility that an individual or firm places his, her or its own interest above the client's.

Holding Out – to represent or give the impression to the general public or a particular person of being qualified or entitled to engage in Financial Product Sales and Advice or Financial Planning, whether explicitly or implicitly by title or action.

Regulators – regulatory agencies that have authority by legislation or by a recognition order to regulate Financial Product Sales and Advice and Financial Planning in the province of Ontario.

APPENDIX D – LIST OF COMMENTERS ON APRIL 2016 PRELIMINARY POLICY RECOMMENDATIONS DOCUMENT

Alan Goldhar

American Institute of CPAs

Amin Mawani

Brian Shumak

CAAT Pension Plan

Canadian Bankers Association

Canadian Federation of Pensioners

Canadian Institute of Financial Planners

Canadian Life and Health Insurance Association

Canadian Securities Institute

Central 1 Credit Union

CFA Institute

Chambre de la securite financiere

Chartered Professional Accountants of Ontario

David McGruer

Dennis Yanke

FAIR Canada

Federation of Mutual Fund Dealers

Financial Advisors Association of Canada

Financial Planning Standards Council

Financial Services Commission of Ontario

Gordon Stockman

Heather Snipper

IGM Financial

Independent Financial Brokers of Canada

Institut québécois de planification financière

Institute of Advanced Financial Planners

Investment Funds Institute of Canada

Investment Industry Association of Canada

Investment Industry Regulatory Organization of Canada

James Clark

Jamie List

John J. De Goey

Kenmar Associates

Knowledge Bureau

Larry Williams

Manulife

Mark Schneider

Mutual Fund Dealers Association of Canada

Ombudsman for Banking Services and Investments

Ontario Pension Board

Ontario Real Estate Association

Portfolio Management Association of Canada

Primerica Financial Services Ltd

Prosper Canada

Public Interest Advocacy Centre

Rogers Financial Group

Royal Bank of Canada

Scott Madams

Small Investor Protection Association

Sonny Goldstein

Sun Life Financial

Tom Trainor

APPENDIX E – ACROSS-THE-PROVINCE CONSULTATION SESSIONS

Toronto: Session I
May 03, 2016
34 Attendees

Ottawa Session
May 12, 2016
17 Attendees

Windsor Session
May 16, 2016
6 Attendees

Hamilton Session
May 20, 2016
9 Attendees

Thunder Bay Session
May 26, 2016
8 Attendees

Toronto Session II
June 2, 2016
80 Attendees

APPENDIX F – DEVELOPMENTS OUTSIDE ONTARIO

Our Committee is aware of regulatory developments in other jurisdictions in relation to Financial Planning or Financial Advice. While developments elsewhere provided some context for our work, we remained mindful of Ontario's unique regulatory structure and our mandate. These developments elsewhere did not determine our proposed regulatory framework. The success or failure of rules elsewhere does not necessarily show whether they could work in Ontario. Accordingly, in this report, we have set out a tailored, Ontario-specific regulatory approach for Financial Planning or Financial Advice that will deliver strong consumer protection while recognizing the realities of Ontario's complex regulatory system.

Quebec

In order to use the title "financial planner" or "planificateur financier" ("F.Pl") in Quebec, an individual must complete certain academic training or have an academic equivalency, complete the Institut québécois de planification financière's (IQPF) Professional Training Course and pass the IQPF exam. A holder of the IQPF diploma then applies to the Autorité des marchés financiers for a certificate authorizing him/her to act in the financial planning sector using the title Financial Planner or the F.Pl. abbreviation. The IQPF is the only organization authorized to grant financial planning diplomas in Quebec and establishes rules concerning the ongoing professional development of financial planners.

British Columbia

Generally, the regulatory framework applying to individuals providing Financial Product Sales in British Columbia is comparable to the framework in Ontario. One key difference, however, is that in B.C., the duty to act fairly, honestly and in good faith with clients[57] expressly applies when registrants hold themselves out as "financial planners" or by similar titles.[58] For this reason, the British Columbia Securities Commission (BCSC) "…will not normally register a dealing representative if the individual intends to hold herself or himself out as a "financial planner" or by similar title, or as having proficiency in financial planning"[59], unless the individual satisfies the BCSC as to their qualifications. The BCSC's qualifications are that: (1) The individual is licenced by the Financial Planning Standards Council of Canada to use the designation

[57] See: BC Reg. 194/97 *Securities Rules*, s. 14.
[58] See: BC Policy 31-601 *Registration Requirements*, s. 3.1(e).
[59] Ibid.

"Certified Financial Planner" (CFP) or (2) has similar qualifications and, where appropriate, is subject to similar continuing education requirements.[60]

The United States

In the United States, consumers commonly receive financial advisory and financial planning services from investment advisers,[61] broker-dealers,[62] and insurance agents. According to the United States Government Accountability Office, "[f]inancial planners are primarily regulated as investment advisers by the Securities and Exchange Commission (SEC) and the states, and are subject to laws and regulation governing broker-dealers and insurance agents when they act in those capacities. Federal and state agencies have regulations on marketing and the use of titles and designations that also can apply to financial planners."[63] Investment advisers generally provide advice regarding securities. While brokerage firms traditionally offered transaction execution services, over time their business models have evolved to include advisory services.[64]

U.S. securities legislation imposes an obligation on investment advisers to act as fiduciaries in dealings with their retail clients. Broker-dealers are subject to a suitability standard in dealing with retail clients. Over the past few years, there has been ongoing debate in the U.S. regarding the appropriateness of the duty applicable to broker-dealers. The SEC has been considering the standard of conduct for broker-dealers and investment advisers for several years.[65]

In April 2016, the U.S. Department of Labor issued a final rule expanding the circumstances in which broker-dealers, investment advisers, insurance agents and others are treated as fiduciaries when providing retirement investment advice. The DOL rule is scheduled to take effect in April 2017.[66]

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[60] Ibid.

[61] The *Investment Advisers Act of 1940* defines an "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."

[62] A "broker" is anyone engaged, as agent, in the business of effecting transactions in securities for the account of others. A "dealer" is anyone engaged, as principal, in the business of buying and selling securities for a person's own account through a broker or otherwise. The term "broker-dealer" is often used because of the frequent overlap of their duties.

[63] See: http://www.gao.gov/new.items/d11235.pdf.

[64] See http://www.sec.gov/News/Speech/Detail/Speech/1370543077131 for reference to advisory services by broker-dealers and "blurry line" between the activities of broker-dealers and investment advisers.

[65] See: https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

[66] See: https://www.dol.gov/ebsa/regs/conflictsofinterest.html.

Australia

The Australian government announced the Future of Financial Advice (FOFA) reforms in April 2010. The objectives of the FOFA reforms were to improve the trust and confidence of Australian retail investors in the financial services sector and ensure the availability, accessibility and affordability of high quality financial advice.

Following FOFA, persons providing financial advice must meet minimum training standards and hold an Australian Financial Services (AFS) licence (or be authorised as a representative of an AFS) to carry on a business of providing financial product advice and must also comply with conduct and disclosure obligations when dealing with retail clients.[67]

The FOFA reforms for financial advisers include:

- A statutory requirement to act in the best interests of the client;
- A ban on conflicted remuneration and embedded commissions;
- An obligation to renew clients' agreement to ongoing fees every two years;
- An annual fee disclosure statement;
- Proficiency requirements.[68]

In 2013, the Australian government introduced a package of changes to FOFA to reduce compliance costs and regulatory burden on the financial services sector.[69] After initially being disallowed by the Senate, these regulations were implemented in 2014 and 2015.[70]

[67] See: ASIC Regulatory Guide 175; Licensing: Financial product advisers – conduct and disclosure. October 2013.
[68] See: ASIC Regulatory Guide 146 Licensing: Training of financial product advisers (Financial planners covered under RG 146.141). Effective September 24, 2012, Sections D and E of this guide are under review. The review will enable ASIC to explore options pending final policy positions following from CP 153 Licensing: Assessment and professional development framework for financial advisers.
[69] See: http://futureofadvice.treasury.gov.au/Content/Content.aspx?doc=home.htm.
[70] Ibid.

The United Kingdom

In 2006, the U.K. Financial Services Authority (now the Financial Conduct Authority (FCA)) launched the Retail Distribution Review (RDR). Based on the RDR, several rules came into force on December 31, 2012. One of the most significant rule changes required that a firm making a recommendation to a retail client in the U.K. to invest in an investment product would no longer be allowed to earn a commission set by the product provider.[71] Instead, the firm would be paid an adviser charge agreed with the client in advance. The rules also required that advisers subscribe to a code of ethics, hold an appropriate qualification, carry out at least 35 hours of continuing professional development each year, and hold a Statement of Professional Standing from an accredited body.

In December 2014, the FCA released the first phase of its Post-Implementation Review (PIR) intended to measure the progress of RDR initiatives. Among other things, the PIR noted that:[72]

- A vast majority of advisers were now qualified to the new minimum standards and or beyond. Advisers were also increasingly focused on the provision of more holistic, ongoing advisory services;
- The ban on commissions had reduced product bias from adviser recommendations as reflected in a decline in the sale of products which paid higher commissions prior to the introduction of RDR reforms;
- Consumers benefited from lower product prices (which had fallen by at least the amount paid in commission pre-RDR); and
- There was little evidence to suggest that the availability of advice had been reduced significantly as a consequence of RDR measures.

In August 2015, the UK government launched the Financial Advice Market Review (FAMR) to examine how financial advice could work better for consumers. The final FAMR report was released in March 2016. It found that the RDR had enhanced standards and professionalism in the financial advice market; however, the number of financial advisers had declined in the U.K. and access to financial advice had become more costly for consumers seeking help in relation to smaller amounts of money or with simpler needs.[73]

[71] See: https://www.fca.org.uk/your-fca/documents/post-implementation-review-of-the-retail-distribution-review-phase-1.
[72] See: https://www.fca.org.uk/publication/research/rdr-post-implementation-review-europe-economics.pdf.
[73] See: https://www.fca.org.uk/static/fca/documents/famr-final-report.pdf.