

INVESTOR ADVISORY PANEL

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By E-mail

Ontario Ministry of Finance
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Re: IAP Response to Regulation of Financial Planners – Consultation Paper

The Investor Advisory Panel (IAP) welcomes this opportunity to provide input on the regulation of financial planners in Ontario by responding to this Consultation. We are an independent advisory body mandated to voice investor viewpoints and concerns as an integral part of the Ontario Securities Commission's rule-making and policy-making process.

The IAP is pleased to see the Ministry moving forward to implement the recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (Expert Committee). Given the Ontario Securities Commission's mystery shopping report found 48 different titles used across various industry platforms, the IAP has long been concerned that the unregulated use of titles puts retail investors at a disadvantage as they seek professional and qualified advice.

Hence, the IAP is supportive of the Expert Committee's recommendations and, as it appears the proposed framework for regulating financial planners and financial planning follows the Expert Committee's recommendations, the IAP is generally supportive of the Consultation's proposed regulatory framework.

One issue that is not clear from the Consultation is what body would be responsible for the regulatory oversight of financial planning and financial planners? Given that there is already a plethora of accrediting bodies, self-regulatory organizations and two principal regulators, the Expert Committee recommended that the mandate of the Ontario Securities Commission (OSC) and Financial Services Commission of Ontario/Financial Services Regulatory Authority (FSCO/FSRA) be broadened through legislation to regulate both financial planning and financial advice. The IAP agrees with the recommended approach of the Expert Committee. However, the Consultation is silent with respect to how regulation is

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to be accomplished and what body or bodies will be given regulatory authority. Perhaps this is to be addressed in the future.

The IAP is of the view that the current regulatory framework and the investing public would not be well served by the introduction of a further regulator or self-regulatory body to oversee financial planning. Prior to implementation of any regulatory scheme the Ministry should make clear what its intended approach is to regulatory authority and harmonization of the regulation of financial planning and financial advice.

The Expert Committee recommended that the current regulators could use a “standard setter” approach to credentialing those individuals authorized to hold out and provide financial planning advice. It is the view of the IAP that while these credentialing bodies (standard setters) may reserve to themselves a right to revoke their credentials for failure to maintain the credential or a breach of their code of ethics, this should in no way restrict or limit the discipline jurisdiction of the regulator over the individual, their firm or the dealer by whom they are employed or with whom they are associated.

To expand the authority of credentialing bodies to that of de facto self-regulatory organizations would simply confuse the existing regulatory environment to the detriment of consumers. It will be important not to dilute the proficiency and credentialing requirements of the more academically rigorous credentialing programs. Accordingly, only the leading credentialing bodies should be considered for authorization as standard setters.

Proposal to Restrict the use of the “Financial Planner” Title

The proposed standards, set out in the consultation document, are a good framework by which to set the credentialing standards and would greatly benefit Ontarians. To reiterate though, any authority on the part of a credentialing body to revoke its credential or discipline its membership should not supplant the discipline and regulatory authority of the OSC or FSCO/FSRA.

As the Expert Committee pointed out there is a range of credentials and titles for those who hold themselves out as being qualified to provide “financial planning”. The consumers of Ontario would likely be well served if the Ministry only asked the Financial Planning Standards Council, the Canadian Securities Institute, the Institute of Advanced Financial Planners and perhaps the Institute for Advanced Financial Education to come together and propose a harmonized standard and credentialing program for those who seek a designation. This approach could also be used to assess foreign credentials and the requirements these individuals would need to fulfill to be accredited and for those whose current credentials are inadequate and need to be upgraded.

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For those individuals who fall short there should be a transition period of not more than two to three years.

Proposal to Prohibit Titles Similar to “Financial Planner”

The Expert Committee specifically addressed the use of titles and the interrelationship between financial planning and financial advice. The Expert Committee provided a definition as follows:

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.

The Expert Committee identified that financial planning is now inextricably linked to the provision of financial advice. The IAP agrees with this view and understands that it is next to impossible to disentangle financial advisory and financial planning services. It is better to look at the provision of financial advisory services through the eyes and needs of the consumer, which should mean that any individual who seeks to provide financial advisory services must have a financial planning accreditation. The only exception would be if the consumer is only engaging in the acquisition of a financial product without either the holding out of or the provision of financial advisory or planning services by a regulated individual, dealer or firm.

Accordingly, it would be the view of the IAP that when it comes to titles the only titles that could be used by an individual would be “Financial Planner”, “Financial Adviser” or a combination thereof in conjunction with their recognized educational credential.

Given the advisory nature of the services being provided, it would also be important that firms and individuals using titles connoting the provision of financial planning or financial advisory services be required to adhere to a meaningful and robust “best interest” standard.

Proposal to Create a Central, Publicly-Accessible Database

With the exception of only a handful of individuals who solely provide financial planning advice, nearly all individuals or firms who currently provide financial advisory or financial planning services are already regulated by one or more of Ontario’s financial services regulators or self-regulatory bodies. If there is to be a central database it should be for all of

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those who are regulated to provide financial services to the public. To create a database solely devoted to financial planners would simply exacerbate an already overly complex system of registries which consumers need to check out so as to research the financial services person they are either dealing with or considering dealing with.

The current registries and databases need to be harmonized so that consumers need to do their research only once. This was the recommendation of the Expert Committee and the IAP agrees with their recommended approach. One of the existing databases/registries can be adapted to maintain all the regulators' and self-regulatory organizations' publicly accessible data. This would benefit not only consumers but the financial services industry as well.

The database should include the contact information of the regulated individual, their current credentials and credential history, their financial services licence or licences, the firm or firms with which they are associated and their discipline history. Should the database be utilized by jurisdictions other than Ontario, it would also be important to include the provinces/territories in which an individual is licensed and for what services they are licensed in each jurisdiction.

Technological Innovations

The regulation of financial planning and financial advisory services, as being contemplated, ought not to impede the development of technological innovations used in conjunction with the services of a regulated individual.

Robo-advisory services that are intended to be made available to consumers without the intervention of individual advisors or planners may well prove to be more problematic. It would be the view of the IAP that any proposal in this regard would have to be carefully evaluated by regulators and the standard setting/credentialing organizations so as to determine the quality and suitability of the advice being provided by the software and whether it was equivalent to that which would be provided by licensed and credentialed individuals. Protection for consumers utilizing robo-advisory services would also be a challenge. The financial security of the firms seeking to use robo-advice would need to be assessed and third-party insurance/bonding protecting the consumer a needed requirement.

These are just some preliminary thoughts of the IAP in regard to this question. We would welcome further dialogue should the Ministry so wish.

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Conclusion

The IAP is pleased to have had the opportunity to provide its views with respect to this Consultation. As a body that is mandated to “to solicit and represent the views of investors” the IAP would gladly provide the Ministry further assistance with respect to the policy and approach to the regulation of financial planners and financial planning services.

Sincerely,

“Letty Dewar”

Letty Dewar
Chair, Investor Advisory Panel