

OSC Investor Advisory Panel
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Expert Committee to Consider Financial Advisory and Financial Planning Policy
Alternatives

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The Investor Advisory Panel is an initiative by the OSC to enable investor concerns and voices to be represented in its rule and policy making process. We are pleased to offer our comments to the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives, which we feel is an important step to creating a fairer and more transparent financial planning industry for retail investors. 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:

- Education, training, proficiency, ethics and enforcement requirements that should apply to those engaged in financial planning and the giving of financial advice;
- Licensing and registration requirements that should apply to those engaged in financial planning and the giving of financial advice;
- The legal means, if any, to address conflicts of interest and potential conflicts of interest;
- The use of titles and designations and whether they should be regulated; and
- The need for a central registry of information regarding providers of financial planning and financial advice, which could include the ability for consumers to register complaints and have access to the registry.

Included below are our general comments on how financial planning and the giving of financial advice are regulated in Ontario as well as our responses to the questions posed by the Expert Committee in the consultation document.

Background:

The IAP has voiced its concerns in the past over how poorly both financial advice and financial planning are regulated in Ontario. Far too often investors are led to believe that they are receiving sound, professional advice from advisors and planners when, in many cases, they are actually dealing with sales people. At the same time, there is no clear definition of what financial advice or planning is nor are there consistent training programs, practices, and guidelines that govern who can call themselves a financial planner

or advisor.

This myriad of issues has taken its toll on consumer confidence. From the perspective of the investor, the industry appears opaque and often times untrustworthy according to our 2013 study on how investors view their relationship with their financial advisors.

Highlights from this include:

- *Only 20% of investors strongly agree that they generally trust their financial adviser's advice and 25% strongly agree (39% agree- 64% overall) that how a financial adviser is paid impacts the recommendations that they receive.*
- *There is strong support for a statutory best interest duty: 93% agree that it is needed (with 59% strongly agreeing that it is needed).*
- *An investor/adviser power imbalance exists for most but is particularly problematic for those who lack confidence in their financial literacy. This places advisers in a powerful position. The majority (58%) rely on their financial adviser as their main source of information. More than four in ten do not know how their adviser is being paid.*

The message couldn't be more clear: there is a serious knowledge asymmetry that exists between Ontario investors and their advisors. This is unacceptable given the importance of financial planning and advice to Ontarians (savings, retirement, peace of mind, health). A host of surveys and studies have documented fundamental gaps in Canadians' knowledge of financial topics, and yet they have more responsibility for ensuring their financial security than ever before.

Ontarians rely heavily on financial advice, and their expectation is that the advice they receive from professionals is in their best interests. Receiving professional advice on their personal money matters should be considered as important as receiving professional advice in other key areas, such as medical and legal matters. To that end, the regulatory framework does not presently correspond to Ontarians' expectations. Advice is not always in the client's best interests. Moreover, many do not understand how the compensation arrangements work and how they might impact the advice they receive.

Any change must start with the consumer in mind. The current regulatory approach is industry- and product-focused, built on a series of archaic and outdated silos. Investors do not typically understand what their rights are and those seeking holistic advice on investments, insurance, and tax planning are poorly served by the current approach. As we also note below, the system as it stands now leaves ample room for regulatory arbitrage.

While the IAP is pleased to see the Ontario government undertaking this initiative, we believe regulators have for years neglected their responsibility on the question of advice and planning. It's time to change that.

Responses to specific questions:

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

No.

All segments of Ontario's financial services industry are aggressively expanding their highly profitable wealth management businesses, competing for the same retail consumer. Each segment—insurance, banks, investments—has its own separate regulator, providing very different standards of investor protection. It is up to the consumer to navigate through these regulatory silos seeking the fair, consistent and robust investor protection that Ontario consumers have every right to expect but which, absent government and regulatory action, does not currently exist.

This is unacceptable.

It is time to break down the regulatory silos and harmonize regulation - the goal must be to have the same rules for comparable services and products. And to ensure consistent compliance and enforcement of the rules, a single independent regulatory organization is required.

In the absence of harmonized rules, the current system enables the practice of regulatory arbitrage, in which gaps and inconsistencies between regulatory bodies and jurisdictions in product recommendations and compliance and enforcement activities can be easily exploited. For example, regulators are introducing CRM 2's new cost and account performance disclosure. If they also move to eliminate compensation incentives like mutual fund embedded commissions which bias advisor product recommendations, it is reasonable to believe that regulatory arbitrage will become even more prevalent. It is already happening—there have been reports of a significant increase in segregated fund assets, a product not under OSC oversight or OBSI dispute resolution.

On that note, the Panel has repeatedly pointed out growing problems with the dispute resolution services available to consumers of financial services. The Ombudsman for Banking Services and Investments (OBSI) can only make recommendations regarding compensation for losses. There is a growing trend of noncompliance with OBSI recommendations. There is also some indication that industry players who receive a recommendation to compensate proceed to negotiate with the investor to reduce the size of the award. There needs to be an independent body that provides consumers with a single point of access that can make binding, enforceable decisions. Nor can OBSI deal with systemic issues. Where such issues exist, there is no mechanism for advising other affected investors of the problem.

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?

A best interest standard is long overdue in Ontario and the rest of Canada. This would require the advisor to be the true agent of the client, putting the client's interests first. It is a basic first step in investor protection. Both planning and advisory services must be subject to the same conduct rules, the first and foremost being the application of a fiduciary

standard in their dealings with clients. Different rules can apply to the planning and advisory functions to the extent that they are required because of the differences in functions that are performed.

There is simply no room for conflicts of interest in the giving of financial advice or the execution of a financial plan. Caveat emptor has no place in a relationship as important to Canadians as their relationship with their financial advisor or planner. The standard should be the same as for doctors and lawyers, namely a fiduciary standard that requires the advisor to always act in the client's best interest.

A best interest standard that extends across all areas of financial advice and financial planning would also eliminate concerns over regulatory arbitrage because the sale of products such as mutual funds and segregated funds would be held to the same fiduciary standard.

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:

As we have stated before, it is simply unacceptable that anyone in Ontario today can call themselves a financial planner (or advisor, or seniors specialist, for that matter) with no formal training or proficiency requirements. The Panel has in the past commented on the need for title reform and improvements to current proficiency standards. We have noted that such changes are absolutely necessary in light of the damaging asymmetry that exists between investors and their advisors (as noted in the above research). From the perspective of the average investor, registrants using the same title can differ profoundly in the advice, products and services they are permitted to offer.

We recommend that titles be regulated so that they clearly indicate what advice and products a registrant is qualified and permitted to recommend. At the same time, educational, continuing training, licensing, registration and ethical requirements need to correspond to the nature of the services being provided by the advisor and be updated frequently, given the ongoing changes in the financial industry. Such requirements need to be set by bodies acting independently of the industry and in the best interests of investors.

What legal standard(s) should govern conflicts of interest and potential conflicts of interest that may arise in financial planning and the giving of financial advice?

We have noted above the need for a best interest standard - this will go a long way towards addressing the inherent asymmetry in the investor-advisor relationship. In addition to this, compensation must be regulated. To the extent that persons other than their clients compensate advisors and planners, there will be a conflict of interest. It is true that he who pays the piper calls the tune. If someone other than the client is compensating an advisor (either wholly or partially) then their interests will come into play in the advisor's recommendations. At the same time, clients should only have to pay for services received;

advisors should not be permitted to simply charge an annual fee, based on the size of a client's portfolio to cover advisory services. Such a fee would be nothing more than a direct substitute for embedded commissions or similar charges that are not clearly and directly related to the provision of a service.

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

Conflicts of interest and poor and inconsistent regulation in the financial advice and planning industry is highly detrimental to individuals. Planners and advisors who do not act in the best interests of his or her clients will cause suboptimal returns and poor overall performance relative to an individual's financial goals and needs. Given that the burden of saving for retirement and other life events has been shifted onto consumers, this should be a serious concern for policymakers.

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?

Yes. In the interests of transparency information of that importance should be made available in a consumer friendly fashion. This would also be the only source of information on systemic issues stemming from planners' or advisors' complaint/discipline history.