

April 30, 2004

Mr. John Stevenson  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> floor, Box 55  
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson:

Re: OSC's Fair Dealing Model (FDM) Concept Paper

Financial Planners Standards Council (FPSC) appreciates the opportunity to comment on the Fair Dealing Model Concept Paper.

As the independent not-for-profit organization dedicated to the development and advancement of a financial planning profession in Canada, FPSC shares the underlying goals of the FDM. However, we are not certain that there is sufficient justification for such a radical overhaul of the existing regulatory system. We are hopeful the proposed second concept paper, inclusive of the cost-benefit analysis will be helpful in this regard.

Generally, we consider the objectives outlined in the Concept Paper to be admirable, particularly with respect to client/advisor relationships that are appropriately transparent, promote full disclosure of possible conflicts of interests, and are based on clearly defined roles and responsibilities understood and agreed upon at the outset of the engagement. It has been FPSC's experience that when these goals are pursued with the dual commitment to protection of the public and market efficiency, the industry will rally to support and actively participate in their attainment. As the Concept Paper points out, industry leaders have already adopted best practices that fully support these objectives because they make "good business sense."

#### FPSC's shared goals

FPSC wishes to ensure that, as the concepts underlying the FDM are fleshed-out more concretely and with greater detail regarding outcomes and application, the OSC carefully considers the extent to which FPSC has succeeded in encouraging industry to adopt best practices that attain similar objectives with respect to the provision of competent and trustworthy financial planning advice and services to Canadians. We request that consideration be given to the extent to which the industry has adopted the CERTIFIED

FINANCIAL PLANNER™ (CFP™) certification standards as those that define the financial planning profession, protect the public and, therefore, make “good business sense.” FPSC hopes to ensure that any and all changes in regulation of the financial services industry in Ontario and elsewhere in Canada, are contemplated with the understanding that mitigating duplicative efforts in setting standards governing the conduct and proficiency of industry participants best serves the dual goals of market efficiency and public protection.

We also recognize that the Concept Paper is a precursor to discussions that will explore more fully the details of how the FDM might be implemented. And while we are happy to comment generally on the broad concepts, particularly how we believe FPSC might assist OSC in attaining its broad objectives, we will withhold our assessment of the overall merits of so radical a change in regulatory approach until such time as the details are more fully developed, disclosed and subjected to a comprehensive cost-benefit and industry impact analysis. However, we are eager to be assured that the FDM represents an approach that is considered a positive step toward harmonization of national regulations and rules governing our industry by the other members of the CSA and the Joint Forum. Without this assurance, we see little merit in undertaking an approach that necessitates on-going industry consultation and extensive analysis of existing rules, regulations and standards. This pursuit is undertaken at great expense to industry and the public. Therefore, we believe support for concepts underlying the FDM should first be sought of other provincial securities administrators and stakeholders. The details of how the FDM will be introduced within a harmonized approach to the regulation of the industry across Canada can then be given practical consideration. From an industry perspective, knowing whether or not specific aspects of the model will be adopted across multiple jurisdictions is critical to the accurate assessment of the practicality and impact of the FDM.

#### FDM and the CFP™ today and tomorrow

The CFP designation represents uniform financial planning standards of competence and ethical practice recognized and implemented in all sectors and all provinces.

FPSC has continually developed, broadened and increased the rigour of the CFP standards since they were first introduced to industry in 1996. Two recent FPSC initiatives that will clearly advance the development of the profession are:

1. the new Financial Planning Practice Standards (Appendix A) and;
2. the development of a new competency matrix resulting from the detailed and comprehensive analysis of the knowledge, skills and abilities required of CFP professionals to adequately service the financial planning needs of their clients.

These initiatives are designed to further our objectives of clearly defining for the public and the advisor their roles and responsibilities in a financial planning engagement, and of ensuring quality and consistency of professional practice that adequately services the needs and meets the expectations of Canadians today.

We were pleased to note that while FPSC and our initiatives were not explicitly recognized in the FDM Concept Paper, it makes the general observation that “industry organizations also set standards governing conduct, disclosure and proficiency that their members agree to uphold” and that “many of these requirements address the relationships among clients, representatives and firms more directly than current OSC regulations.” In fact, close to 8,000 of the more than 16,000 individuals in Canada who meet and adhere to the CFP standards fall within the OSC’s jurisdiction. These individuals have met the highest uniform standards of proficiency in financial planning that exist today, adhere to a strict Code of Ethics (Appendix B) and will be required by April 2005 to comply with the new Practice Standards that instructively interpret the application of the CFP Code of Ethics in a financial planning engagement.

The FDM Concept Paper proposes that proficiency standards imposed will vary according to the nature and scope of the services provided, but all rules would flow from the three core fair dealing principles dealing with transparency, full disclosure and clearly understood roles and responsibilities. These principles are inherent in the Financial Planning Practice Standards and CFP Code of Ethics. Furthermore, the Practice Standards provide guidance in determining when an engagement does and does not include financial planning. In this way the Practice Standards help advisors manage client expectations and mitigate confusion resulting from the “unacceptable lack of clarity which,” according to the Concept Paper, “contributes to many of the problems in relationships between investors and advisors.”

The FDM Concept Paper also notes that regulation that requires “better documentation and reporting, both at account opening and on an ongoing basis,” and sets “clear standards of conduct for representatives that resolve the fundamental conflict between sales and advice,” could and should expedite fair and timely dispute resolution in our courts. Here too the Financial Planning Practice Standards and the CFP Code of Ethics can play an important role. Clearly, CFP codified standards of ethics and practice will assist firms in fulfilling their key obligation to supervise the activities of the representatives that deliver their financial planning services. And they will provide for the “clear allocation and documentation of responsibilities that should strengthen the hand of internal compliance departments” and assist the courts in identifying industry standards of practice in personal financial planning.

We choose not in this submission, to enter into a discussion about whether or not the basic suppositions of the Concept Paper regarding the current state of client/adviser relations have been adequately evidenced and statistically supported. However, we do wish to acknowledge the tremendous strides industry has made in implementing best practices that support the fundamental principles that are inherent to the FDM. FPSC is particularly encouraged by the rally of support we have garnered with respect to the new Financial Planning Practice Standards. When the Financial Planning Practice Standards become mandatory, they will uniformly apply to all CFP professionals working in various businesses in all sectors of the financial services industry. The support and cooperation of the industry that has already been demonstrated is a practical necessity.

In conclusion, we would like the authors of the FDM Concept Paper to consider the fact that, while OSC regulations may lag behind market realities of advice-driven business models, the industry has for some time understood that the sale of product is generally the ultimate vote of confidence in the advice that has led to the transaction and in the advisor that has provided that advice. As a result, market reality includes an abundance of comprehensive and unbiased information readily accessible to Canadians about how best to assess the quality and relevance of advice offered. Where financial planning is offered, the CFP designation is the professional benchmark recognized by industry and consumers.

FPSC remains steadfast in our belief that the coordinated, cooperative efforts of public regulators and private sector industry initiatives in developing and implementing financial planning standards will result in enhanced consumer protection and a robust industry capable of serving the needs of Canadians. We commend OSC for maintaining a process whereby any change in the regulatory framework of the financial services industry remains transparent and inclusive of all key industry stakeholders.

Thank you for this opportunity to share our comments. We look forward to working with the OSC to achieve our common goals.

Yours truly,  
Donald J. Johnston  
President