



ANDREW J. KRIEGLER
President and Chief Executive Officer

June 17, 2016

Expert Committee to Consider Financial Advisory
and Financial Planning Policy Alternatives

Via email to: Fin.Adv.Pl@ontario.ca

Dear Sirs/Mesdames:

Re: Response to Preliminary Policy Recommendations

We thank the *Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives* for this opportunity to provide comments on the Preliminary Policy Recommendations.

IIROC continues to support the regulation of financial planning in Ontario. In particular we agree with the Expert Committee's recommendation that Ontario's existing financial services regulators, including IIROC, the Ontario Securities Commission ("OSC"), Mutual Fund Dealers Association ("MFDA") and the proposed Financial Services Regulatory Authority ("FSRA") (together, the "Responsible Regulators") regulate Financial Planners in Ontario.

As an established and effective public interest regulator of financial services, IIROC welcomes the opportunity to explicitly include Financial Planning in our mandate in Ontario and we look forward to working with the Responsible Regulators and with all stakeholders to effectively regulate Financial Planning in Ontario.

IIROC – Who We are and How We Regulate

IIROC is the national public interest self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. With over 400 staff in

Investment Industry Regulatory
Organization of Canada

Organisme canadien de
réglementation du commerce
des valeurs mobilières

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Toronto, Montreal, Calgary and Vancouver, IIROC sets high-quality regulatory and investment industry standards, protects investors and supports healthy capital markets across Canada.

IIROC regulates almost 14,000 individuals in Ontario (over 28,000 nationwide). IIROC regulates approximately 170 Dealer Members, of which 115 have their head offices in Ontario.

IIROC has four primary areas of operation which allow it to successfully perform its regulatory and oversight functions:

- i. Registration (which includes Proficiency and mandatory continuing education);
- ii. Policy/Rule making;
- iii. Compliance; and
- iv. Enforcement.

The regulation of Financial Planning will be seamlessly integrated into this existing framework.

- i. Registration (Licensing)

Investment dealers (also referred to as Dealer Members), their partners, directors, officers and staff who conduct or supervise regulated activities are subject to a rigorous regulatory approval process by IIROC. Individuals wanting to work at IIROC-regulated firms in specific roles must apply to IIROC for approval and meet specific regulatory requirements and high ethical standards. These requirements pertain to integrity, solvency, conflicts of interest and client service as required under IIROC rules and applicable provincial securities legislation. IIROC must assess individuals to be “fit and proper” before we will approve them to work at an IIROC-regulated firm in these specific roles.

Individuals who provide Financial Planning services and are not currently IIROC registrants will be required to meet similarly rigorous standards if IIROC becomes their Responsible Regulator.

Proficiency

IIROC also has proficiency requirements both for new registrants and for existing registrants on an ongoing basis. The proficiency requirements are specific to the category of approval held by the individual (i.e., Supervisor, Chief Compliance Officer, etc.).

IIROC registrants are also subject to a mandatory Continuing Education Program which requires registrants to complete a certain number of course hours in a multi-year cycle.

Individuals who provide Financial Planning services as IIROC registrants will also be required to satisfy proficiency requirements specific to the types of services they provide. As discussed more fully below, IIROC looks forward to working with the Responsible Regulators and stakeholders to establish common proficiency standards for all Financial Planners.

ii. Policy

IIROC develops recommendations to amend existing rules, establish new rules, and interpret existing rules, all with the goal of promoting high standards for the investment industry and a strong culture of compliance among IIROC-regulated firms and individuals.

The rule-making process is supported by several policy committees made up of representatives from IIROC's membership.

Rule proposals require IIROC Board approval, followed by publication for public comment. IIROC invites feedback from investors and investor organizations, IIROC-regulated firms and other market participants, industry stakeholders, and members of the public. Finally, proposed rules are submitted to the Canadian Securities Administrators ("CSA", which includes the Ontario Securities Commission), for their review and approval. Where possible and appropriate, we try to ensure our rules are harmonized with other regulators, including the CSA.

We followed this process when IIROC introduced its Proposed Financial Planning Rule and accompanying Guidance Note in 2008 (which was subsequently withdrawn with the

establishment of this Expert Committee). We will follow the same process, including extensive consultation, with respect to any forthcoming rules regarding Financial Planning.

iii. Compliance

IIROC is responsible for monitoring the compliance of its regulated dealer firms and their registered employees with rules related to business conduct, financial operations and trading practices.

Business Conduct Compliance staff monitors IIROC-regulated firms to ensure they implement policies, procedures and appropriate controls in compliance with all non-financial regulatory requirements, including those of IIROC, provincial securities legislation and federal legislation. In performing this function, staff conduct regular reviews and on-site examinations of investment dealers, focusing on issues such as suitability, client account supervision and due diligence, employee activities and internal controls. As a Responsible Regulator, these reviews would include the supervision and provision of Financial Planning.

iv. Enforcement

IIROC's Enforcement department is responsible for the enforcement of IIROC's Dealer Member Rules, relating to the sales, business and financial conduct of IIROC-regulated firms and their registered employees, as well as the Universal Market Integrity Rules (UMIR) relating to trading activity on all Canadian equity marketplaces.

Where IIROC initiates formal disciplinary action against a respondent (an IIROC-regulated firm or individual registrant) a formal hearing takes place before an IIROC hearing panel. The hearing panel is an independent expert administrative panel.

IIROC Comments on the Expert Committee's Preliminary Recommendations

Recommendation #1 - Regulation

As stated above, we are pleased with the Expert Committee's recommendation that IIROC should be a Responsible Regulator for Financial Planners in Ontario.

With respect to the definition of Financial Planning recommended by the Expert Committee, we would only seek to clarify that if, in the context of performing the functions listed in that definition, an individual also engages in activity that otherwise requires approval by IIROC under our existing requirements, the individual must also obtain that separate and additional approval.

We agree with the identified rationale that regulatory duplication should be avoided in order to avoid undue costs for businesses and ultimately, consumers.

However, in order to fully meet this objective, the Expert Committee should require individuals who provide Financial Planning and are not currently regulated by a Responsible Regulator but are *employed with or acting on behalf of* a firm who is regulated by an existing regulator, to be subject to the same regulator. This would ensure that all individuals providing Financial Planning with a firm are regulated by the same regulator for those activities. For example, a Financial Planner working for an IIROC-regulated firm (but who is not otherwise an IIROC registrant), would be regulated by IIROC. Supervision would be seamless as both the individual and the supervisor would be operating under the same specific regime.

Similarly, this requirement should extend to individuals who are dually-licensed and regulated by more than one Responsible Regulator. The Responsible Regulator for the individual should be the same as the Responsible Regulator for the individual's employer or its affiliates.

Recommendation #2 - Harmonization

IIROC registrants are already subject to high standards that protect investors. For example, IIROC registrants are subject to rules which include the requirement to observe high standards of ethics and conduct in the transaction of their business. OSC, IIROC and MFDA registrants are all required to act honestly, fairly and in good faith. IIROC looks forward to working with the other Responsible Regulators and stakeholders to develop consistent, high standards for Financial Planners which are the same or as rigorous as the IIROC rules in this regard.

IIROC recommends that each Responsible Regulator use these common standards to develop its own rules that are equivalent to, or exceed those standards. This will allow each

Responsible Regulator to tailor its rules to reflect the specific and unique nature of its registrants, and also to provide for internal consistency with its existing rules.

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. However, harmonization 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. We also support a continuing education requirement for individuals engaged in Financial Planning.

In 2008 IIROC was prepared to move forward with rules establishing minimum standards for the provision of financial planning services by IIROC registrants. The objective of the proposed rule was to ensure that certain education and proficiency standards are met by those providing financial planning services and to ensure that specific standards are met in the supervision of these individuals. IIROC remains committed to achieving both of these objectives together with the other Responsible Regulators.

Harmonizing standards across the Responsible Regulators also provides a further opportunity for mutuality and reciprocity of sanctions. IIROC has already taken steps to negotiate formal agreements with other regulators across the country in efforts to mutualize sanctions ordered for serious misconduct.

Coordinated and efficient regulation of Financial Planning will further allow the Responsible Regulators to eliminate regulatory arbitrage and improve investor protection by ensuring that individuals cannot jump from platform to platform in order to avoid disciplinary sanctions.

Specifically, if an individual is suspended or expelled by one Responsible Regulator for sufficiently serious misconduct relating to his or her financial planning activities, the other Responsible Regulators could recognize that sanction, and that individual would not be permitted to register as a financial planner with them. We would also further expect that the

individual would not be able to be registered in *any* capacity with any of the Responsible Regulators.

The next step includes IIROC's efforts to obtain the power to enforce monetary sanctions in the courts through changes to the Ontario *Securities Act*. The OSC and the Superintendent of the Financial Services Commission of Ontario (to be replaced by FSRA) have the power to file their orders for administrative penalties with the Superior Court. For the regulation of Financial Planning to be truly harmonized, with equal sanctions and consequences for all Financial Planners, IIROC should have the same power to enforce any monetary sanctions it levies against Financial Planners who are under our jurisdiction.

This power, together with the mutual recognition of sanctions, would ensure that sanctioned individuals could not work in another registered capacity in the financial services industry, and could not avoid payment of a monetary sanction once they have left the industry. Closing this gap gives the public the confidence of knowing that they can trust their financial services providers, and in turn, have trust in the capital markets in Ontario.

Recommendations #3&4 – Statutory Best Interest Duty (SBID) and Exemptions

IIROC fully supports efforts to better align the interests of registrants with the interests of their clients, to improve outcomes for clients. In early April of this year, IIROC released a notice titled "Managing Conflicts in the Best Interest of the Client", affirming our intention to strengthen compliance by IIROC-regulated firms with the "best interest" requirements of our Conflicts of Interest rule. We are focusing on the management of compensation-related conflicts of interest, which we believe is a key part of any discussion regarding the alignment of regulated firms' and individuals' interests to those of their clients. The need for this alignment is already a guiding principle inherent within IIROC's current regulatory regime. 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. However, we acknowledge that further clarification of our rules and guidance may be necessary to make this point absolutely clear.

Shortly after we released our Notice, the CSA released Consultation Paper 33-404, “Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward their Clients”. IIROC has committed to working with the CSA through its consultation process to ensure a consistent standard of care for all regulatory platforms. We welcome the opportunity to widen that sphere of cooperation to include the Responsible Regulators.

IIROC urges the Expert Committee to consider the work that continues to be undertaken by the CSA, IIROC and others on this issue. The discussion with respect to a SBID for Financial Planners should take place in the context of this greater discussion. Included in the discussion should be a consideration of whether the best interest standard is better established through statute, or through rule-making by each Responsible Regulator. The latter would allow for the standard to apply to all financial service providers (and not just Financial Planners). Moreover, for IIROC, it would also allow for application of the standard across Canada, and not just in Ontario.

Recommendation #5 – Referral Arrangements

IIROC supports the principle of transparency in referral arrangements, and existing requirements that apply to IIROC licensees provide such transparency.

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.

The CSA Consultation Paper also reminds registrants of their obligations under 31-103 in making referrals for products or services including financial planning.

As IIROC registrants are already subject to the requirements of 31-103, any rules regarding referral arrangements which specifically apply to Financial Planners should be harmonized with these requirements.

Recommendation #6 – Titles and Holding Out

IIROC is strongly in favour of simplicity, consistency and clarity when it comes to the titles of individuals who provide financial services to Ontarians. We agree that all Financial Planners should have a single title that reflects their status as a Financial Planning licensee.

With respect to those individuals that provide Financial Product Sales and Advice, IIROC rules currently prohibit registrants from holding themselves out to the public in any manner, including by the use of a business title, that deceives or misleads, or could reasonably be expected to deceive or mislead a client. We support the CSA's continuing consultation regarding potential reform relating to titles, and its consideration of the question of whether regulating titles more strictly will raise any issues or challenges for registrants or clients. Considering the issue in this context ensures that changes are made across all platforms, and on a national basis.

Recommendation #7 – Central Registry

IIROC currently offers *AdvisorReport*, a web-based tool which allows consumers to research the background, qualifications and disciplinary information of over 28,000 individuals at IIROC-regulated firms, across Canada. *AdvisorReport* provides comprehensive information including whether an individual or firm was formerly regulated by IIROC.

Individuals who provide Financial Planning and become regulated by IIROC would also be included in *AdvisorReport*.

We would be happy to discuss the potential to leverage this database and our expertise in implementing your recommendation.

Recommendation #8 – Financial Literacy and Investor Education

Investors are a key IIROC stakeholder and investor protection is at the centre of our public interest mandate.

IIROC has undertaken a number of initiatives aimed at investor protection and education, including online tools, partnerships with government agencies including Seniors Secretariats/Ministries, investor education and protection groups, and the publication of brochures and investor bulletins. These resources contain information regarding the services provided by IIROC registrants, the standards in place for these registrants, and the protections available for their clients.

IIROC has also been an active participant in the International Forum for Investor Education (IFIE) for many years. IFIE enables regulators and other stakeholders to share best practices relating to investor education.

As a Responsible Regulator these resources will also reflect content relating to Financial Planning. IIROC will also work with the Responsible Regulators and stakeholders to further develop resources regarding Financial Planning for all Ontarians.

Conclusion

IIROC is committed to the effective regulation of Financial Planners in Ontario. In our view, the regulation of Financial Planning could be seamlessly integrated into IIROC's existing framework and our mandate to protect investors and support healthy capital markets.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Andrew J. Kriegler". The signature is fluid and cursive, with a large initial "A" and "K".

Andrew J. Kriegler
President and Chief Executive Officer