



ANDREW J. KRIEGLER
President and Chief Executive Officer

September 21, 2015

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

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

Dear Sirs/Mesdames:

Re: Response to consultation document of committee on financial planning

Introduction

IIROC is a national public interest self-regulatory organization, with offices in Toronto, Montreal, Calgary and Vancouver, overseeing all investment dealers and trading activity on debt and equity markets across Canada. Our jurisdiction extends to approximately 180 investment dealers and their roughly 28,000 individual registrants - almost 14,000 of whom are in Ontario. Our employees are on the front lines, setting and enforcing rules regarding the proficiency, business and financial conduct of IIROC-regulated firms and their registered employees.

In our 2014 submission to the Ministry of Finance we stated that we support efforts to ensure that those who hold themselves out as financial planners meet a clearly defined and rigorous standard of competence, proficiency and ethical practice, and that a coordinated approach would benefit consumers and the financial planning community. We believe that the government can leverage the existing regulatory framework to address identified public policy concerns, but that any tailored solution for the regulation of financial planning should not impose further confusion, duplication and costs on the investing public and the industry.

We proposed a rule in 2008 that would have established a basic regulatory framework for the provision and supervision of financial planning by our Dealer Members and their representatives. Briefly, the proposed rule required financial planning activities to be performed through, and supervised by Dealer Members, to ensure that representatives of Dealer Members who engaged in financial planning activities were competent to perform these activities. A copy of the proposal is attached as Appendix "A".

We withdrew the proposal in early 2014, in part because other initiatives underway (including the formation of this Expert Panel) might result in a more coordinated and harmonized approach to the regulation of financial planning and financial advice generally than the IIROC proposals could have achieved on their own.

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.

We defined “financial planning” as follows in our proposal:

Financial planning is the comprehensive process of determining how clients can meet their goals through the management of financial resources. It may encompass some or all of budgeting and planning; investments; tax; educational expenses; risk management; retirement; and estate planning. Financial planning may be an ongoing service provided to the client or a one-time service.

While our proposal did not suggest a definition of “financial advice”, it did identify the range of activity that would not be subject to the proposed rule, which corresponds generally to the provision of financial advice which is already subject to IIROC’s oversight:

Planning directed primarily at making investment recommendations, even where any of the other factors listed above are taken into consideration, is not financial planning.

If a client or potential client has previously engaged another person to provide financial planning services and approaches a Dealer Member to implement the investment portion of the financial plan, the Dealer Member is deemed not to be acting in a financial planning capacity and this rule does not apply. However, in making investment recommendations to such a client, the Dealer Member has the same suitability obligations as for all other clients and may not rely solely on the plan or the outside planner to meet those obligations.

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

In most of Canada, financial planning does not require individual registration and need not be performed within a regulated entity. An individual who describes him or herself as a “financial planner” may conduct both activity that is regulated, and activity that is not. For example, an individual who provides financial advice that includes selling securities is subject to IIROC’s jurisdiction, but that same individual may offer financial planning services that are not currently regulated by IIROC.

As a result, a significant majority of persons that provide financial planning are subject to an existing regulatory scheme as investment advisors, securities dealers, mutual fund dealers and insurance agents, or a combination of the foregoing. Some combination of the OSC, IIROC, the MFDA and FSCO oversee these regulatory schemes.

As IIROC’s proposal demonstrated, there is a need to regulate financial planning. It is clearly in the public interest to ensure those who hold themselves out as financial planners meet a defined and rigorous standard of competence, proficiency and ethical practice.

However, we do not believe the creation of one more financial regulator in an already fragmented regulatory landscape would serve consumers well. Any move to regulate financial planners must take into consideration the need for policy coordination and harmonization among all existing financial regulators.

Currently among financial regulators, differing standards exist for entry, proficiency, continuing education, sales practices, disclosure, complaint handling and enforcement. This fragmentation has led to consumer confusion, regulatory gaps and overlap. The creation of yet another financial regulator is likely to create even more confusion for consumers, duplication and added costs, as well as increased opportunities for regulatory arbitrage.

IIROC recommends that existing regulatory bodies introduce clear rules to fully regulate financial planning for those individuals already operating within their respective platforms and that those rules be consistent and harmonized across all such platforms. Such consistency and harmonization will reduce the risk of consumer confusion and opportunities for regulatory arbitrage, while facilitating any future consolidation of the regulatory platforms involved in regulating financial planning. As is explained in more detail in our response to Question 6, we also believe that there should be mutual recognition of sanctions among these regulators.

Financial planners who do not already perform activities under an existing regulatory platform should be brought under the jurisdiction of an existing regulator.

It should also be noted that, because many insurance products are indistinguishable from financial investment products, we recommend this committee consult and co-ordinate with the Expert Advisory Panel currently reviewing the mandates of Financial Services Commission of Ontario (FSCO), the Financial Services Tribunal (FST) and the Deposit Insurance Corporation of Ontario (DICO), to ensure consistency and, again, avoid duplication and further regulatory fragmentation.

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?

Keeping in mind the distinction between financial planning and financial advice proposed in our response to Question 1, we believe that *the process of determining how clients can meet their goals through the management of financial resources* should be subject to a best interests standard that is consistent across all of the applicable regulatory platforms.

IIROC's current requirements hold its Dealer Members and their representatives to a high standard. The Canadian Securities Industry Standards of Conduct, as set out in the *Conduct and Practices Handbook*, contain the following statement:

Priority of Client's Interest: The client's interest must be the foremost consideration in all business dealings. In situations where the registrant may have an interest that competes with that of the client, the client's interest must be given priority. [emphasis added]

IIROC Dealer Member Rule 42 also sets out standards for Dealer Members and their representatives in addressing conflicts of interest. Dealer Members are required to address conflicts of interest in a fair, equitable and transparent manner, and considering the best interests of the client. Dealer Members' representatives are required to address conflicts of interest between themselves and the client in a fair, equitable and transparent manner, and consistent with the best interests of the client. [emphasis added]

The Canadian Securities Administrators (CSA) are currently examining the prospect of imposing a statutory "best interests" standard which would require registrants on all platforms subject to CSA jurisdiction (including IIROC Dealer Members and their representatives) to act in their clients' best interests when providing financial advice. IIROC is an active participant in those discussions.

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?

As noted above, we recommend that existing regulatory bodies introduce clear rules to fully regulate financial planning for those individuals already operating within their respective platforms, and that those rules be consistent and harmonized across all platforms to ensure that all those who hold themselves out as financial planners meet a defined and rigorous standard of competence, proficiency and ethical practice.

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.

Among existing financial regulators, differing standards exist for entry, proficiency, continuing education, sales practices, disclosure, complaint handling and enforcement. This can lead to consumer confusion and misunderstanding, regulatory gaps and increased opportunity for regulatory arbitrage.

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?

Given the current fragmentation among financial regulators, the public interest would be greatly served by the creation of a single, central registry co-ordinated among all financial regulators, as well as mutual recognition of sanctions among financial regulators across Ontario.

No formal agreements currently exist among financial regulators to prevent registrants with discipline histories, including unpaid fines and permanent bans, from registering or maintaining registration with other organizations. As a result, individuals who engage in serious misconduct in one capacity in the financial services industry can continue to work with the public in another capacity. For example, when individuals apply for IIROC registration and/or approval, while we take individuals' disciplinary history with another regulator into consideration on a case-by-case basis, there is no automatic recognition by IIROC of a sanction imposed by another regulator. And while, in the case of IIROC, consumers can search names, qualifications and history of a registrant, there is no reference to registrants' history related to other regulators.

A single, co-ordinated registry would be an important first step in better serving the public interest by coordinating the disciplinary activities of the regulators involved in the oversight of financial planning.

Summary:

- There is need for regulation of financial planning. As a public interest regulator, IIROC strongly believes it is in the public interest to ensure all those who hold themselves out as financial planners meet a defined and rigorous standard of competence, proficiency and ethical practice.
- However, because significant fragmentation already exists among financial regulators, which can lead to consumer confusion, duplication, cost and regulatory gaps, it is not in the public interest to create yet another financial regulator.
- Existing regulatory bodies should introduce rules to regulate financial planning for those individuals operating within their platform, and those rules should be consistent and harmonized across all platforms.
- Financial planners who are not currently registered under any platform should be brought under the scope of an existing regulator.
- There should be greater overall harmonization among financial regulators, including consistent standards of proficiency, registration and discipline. The creation of a central registry co-ordinated among all financial regulators, as well as mutual recognition of sanctions among financial regulators would be an important first step.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Andrew J. Kriegler". The signature is stylized with a large initial "A" and a long, sweeping underline.

Andrew J. Kriegler
President and Chief Executive Officer