



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

June 17, 2016

Via Electronic Mail

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
Email: Fin.Adv.Pl@ontario.ca

Re: Financial Advisory and Financial Planning Policy Alternatives

Dear Expert Committee Members:

The American Institute of CPAs (AICPA) appreciates the opportunity to comment on the Expert Committee's Financial Advisory and Financial Planning Policy Alternatives proposal.

We commend the Ministry of Finance and its Expert Committee in their efforts to improve consumer protection by strengthening the regulatory framework for firms and individuals that offer financial advisory and financial planning services. As stated in our September 2015 response as well as in our June 2nd testimony, we believe the single most important element towards making a meaningful difference in the interest of the public is to ensure that all providers of personalized financial planning advice to individuals adhere to a principles-based statutory best interest duty. We are confident that this can be accomplished within the existing framework of professional and financial regulators without resulting in duplicative regulation.

The AICPA is the world's largest association representing the accounting profession, with more than 412,000 members in 144 countries and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including approximately 25% who practice in personal financial planning, making AICPA the largest body of professional financial planners in the US. AICPA sets standards for the profession, including the *Statement on Standards in Personal Financial Planning Services* (SSPFPS), which delivers authoritative guidance to members who provide personal financial planning services. It also develops and grades the Uniform CPA Examination, and offers specialty credentials for CPAs who concentrate on personal financial planning, among other areas. AICPA's primary objective is to protect the best interest of the public.

We are commenting on your proposal in support of our colleagues at CPA Ontario. There has been substantial interest in your efforts from the Global Accounting Alliance which represents the 11 largest accounting organizations, including AICPA and CPA Canada, internationally. For well over a century, CPAs and CAs in the United States, Canada, United Kingdom, Australia, and other countries have been providing personal financial planning services. We have been examining and evaluating their regulatory regimes,

and our comments are influenced by our collective findings and extensive professional activities in this space.

Summary of Support and Recommendations

As stated above, we particularly commend your recommendations in connection with the section on the statutory best interest duty. We believe CPAs should be recognized as meeting this duty versus exempted from it. We also believe a financial literacy program is an important step in increasing public knowledge about financial planning.

If the committee determines in its final report to the Ontario government that the best course of action is to regulate financial planning services, we urge you to consider the following points, as stated in our June 2nd testimony:

- Regulated professionals should be recognized in the existing regulatory framework and acknowledged as meeting the recommendations given the rigorous regulatory regimes already in place for professionals.
- We strongly urge you to involve professional bodies with extensive experience in setting and enforcing standards and whose members have a long history of providing financial planning services, including CPA Ontario, to assist in creating the minimum standards in Ontario.
- CPAs engaged in financial planning services should continue to be able to hold out as financial planners within the existing regulatory framework for the CPA profession.

Below are our specific comments on the preliminary policy recommendations:

1. Regulation of Financial Planning in Ontario

- a) Regulation should be required of any individual who or firm that provides Financial Planning services either expressly or implicitly through Holding Out by way of titles, described services or otherwise;*
- b) Individuals who and firms that provide Financial Planning and whose Financial Product Sales and Advice activities are regulated by the existing regulatory framework for securities, insurance and mortgage brokering should have any associated Financial Planning activities regulated by their existing regulator or regulators for those who have more than one licence; and*
- c) Individuals or firms performing Financial Planning activities outside the current regulatory framework should have their Financial Planning activities regulated by the proposed Financial Services Regulatory Authority (FSRA).*

We agree that an independent body should be established for the purpose of working with existing regulators to set and ensure compliance with minimum standards and guidelines. One of the core principles noted in your preliminary report is to “seek to make recommendations that are not unduly complex and that avoid unnecessary or duplicative regulation”. However, regulated professional bodies are not considered in your framework as outlined above. We believe that CPA Ontario should be recognized as an existing regulator and that CPAs in Ontario should be acknowledged as meeting the recommendations in this report given the rigorous regulatory framework in place for CPAs as detailed in CPA Ontario’s submission to the expert committee.

Our colleagues in the UK have seen firsthand the results of a flawed regulatory framework when putting in place a single regulator that does not recognize distinctions between the professional and industrial

models. Allowing professionals to continue to be overseen by their existing regulated professional bodies will ensure that Ontario puts a regulatory framework in place that best serves the public and does not result in unintended consequences.

Personal financial planning services are a core service of the accounting profession globally. CPAs and CAs have been practicing in this space for well over a century, long before these services were commonly referred to as personal financial planning and long before many of today's specialty designations were established. CPAs and CAs regularly advise clients on matters such as tax, estate, retirement, risk management, charitable and life transition planning in their ordinary course of business. The vast majority of our profession provide these services purely in an advisory capacity and they are not compensated for assets under management or product sales, which meets the public need for objective and conflict free advice. Because the public now commonly refers to these services as financial planning, many CPAs and CAs hold out as providing financial planning even though products are not being sold.

A small percentage of CPAs and CAs get compensated for assets under management and even fewer for selling products. In these scenarios, they are required to comply with the relevant regulatory frameworks in place for securities and insurance in addition to their professional responsibilities, though the professional regulatory oversight has more rigorous requirements in place.

2. Harmonization of Standards

We recommend that the education, training, credentialing and licensing of individuals engaged in the provision of Financial Planning be harmonized and subject to one universal set of regulatory standards.

We support the establishment of minimum standards and guidelines. We strongly believe that it is in the best interest of the public and the Ontario government that regulated professional bodies such as CPA Ontario and other allied organizations, whose members have a long history of providing personal financial planning services, work in conjunction with the government or other independent body to set these minimum standards. It would be beneficial to draw from existing professional codes of conduct and standards, including perspectives, views and trends from our colleagues globally, in creating the minimum standards for financial planning.

To ensure that professionals are not faced with duplicative regulations, those who already meet the minimum standards should be recognized as such and not subject to further requirements. As noted in our response to item 1, we believe that enforcement of these standards should take place through the existing professional and financial regulatory framework.

3. Statutory Best Interest Duty

We recommend that a Statutory Best Interest Duty (SBID) be adopted and applied to all individuals who and firms that provide Financial Product Sales and Advice and/or Financial Planning in Ontario. This SBID should be based on a uniform and codified standard of care.

As noted earlier, we believe the single most important element towards making a meaningful difference in the interest of the public is to ensure that all providers of personalized financial planning advice to individuals adhere to a principles-based statutory best interest duty. We strongly recommend that the government or other independent body work with regulated professional bodies and other allied organizations involved in personal financial planning, including CPA Ontario, to establish the requirements of the SBID. Enforcement of the SBID should be overseen through the existing professional and financial regulatory framework.

4. Exemptions

We recommend that the only exceptions that should apply to the proposed universal SBID are as follows:

- a) The individual or firm is already subject to a SBID by virtue of his, her or its licensing and registration requirements (e.g. as in the case of portfolio managers);*
- b) The individual or firm is already subject to a professional legal standard of care and fiduciary duty, and the advice being provided is solely incidental to his, her or its principal business or profession which is also regulated (e.g. as in the case of lawyers and accountants)*
- c) The individual is a mere “order taker” and no financial advice is being provided to the customer and the individual or firm is exempt from suitability requirements (e.g. discount brokers)*

We appreciate the committee’s acknowledgement of the existing best interest standard of care and duty extended to Chartered Professional Accountants. However, CPAs, lawyers and portfolio managers should be recognized as already meeting the statutory best interest duty rather than exempted from it. We agree that the SBID should only apply when personalized financial planning advice is provided.

5. Referral Arrangements

We recommend that no individual who or firm that provides Financial Product Sales and Advice or Financial Planning be permitted to pay a referral fee to a third party for the referral of a customer or prospective customer who is to be provided with Financial Planning or Financial Product Sales and Advice, unless the other person or firm receiving the referral fee is regulated as a provider of Financial Product Sales and Advice or Financial Planning and owes a best interest duty to consumers. There must also be full transparency with respect to the referral arrangement, including compensation.

We agree that there must be transparency of compensation received at all times, including through referral arrangements. CPAs should be recognized as regulated professionals given their rigorous standards and oversight as outlined in CPA Ontario’s response. CPA Ontario has rules in place specifically addressing requirements when CPAs receive referral fees or commissions in addition to stringent initial and ongoing proficiency standards, and requirements to provide objective advice and avoid conflicts of interest.

6. Titles and Holding Out

We recommend that the use of titles by individuals and firms engaged in the provision of Financial Product Sales and Advice and/or Financial Planning be prescribed in order to reduce consumer confusion.

Specifically, we recommend that:

- a) Regulators work together to develop a circumscribed list of approved titles that are descriptive of the regulated activities and that these are the only titles permitted to be used by individuals and firms in their Financial Product Sales and Advice and/or Financial Planning activities;*
- b) Use of the title “Financial Planner”, whether explicitly or by Holding Out that this service is being provided, is circumscribed to individuals regulated as outlined in Recommendations 1 and 2 above;*
- c) Individual designations, qualifications, and credentials (other than professional, academic qualifications, and those approved by the Regulators) are not permitted; and*
- d) Those engaged in providing Financial Product Sales and Advice and/or Financial Planning are not permitted to use corporate positions or titles given the consumer confusion that results and can result from the use of such titles.*

We believe that designations should continue to be monitored through the existing professional regulatory framework. The term “financial planning” includes a broad range of services that CPAs have been providing for decades such as tax, retirement, estate and life transition planning. Because the public now commonly refers to these services as financial planning, CPAs engaged in financial planning services should continue to be able to hold out as financial planners without being subjected to duplicative regulatory requirements.

7. Central Registry

We recommend that a single, free, comprehensive central registry be created and maintained, with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals who and firms that provide Financial Product Sales and Advice and/or Financial Planning to Ontarians.

A single registry would be helpful to consumers if it includes all of the qualified providers of personal financial planning services, and makes clear the regulations and oversight in place for each of these providers so that the consumer can make an informed decision when hiring a financial planner. Consumer confusion with choosing an advisor will persist given the various levels of standards, ethics and competencies in place (e.g. – there are education, licensing and regulatory frameworks in place today for some financial planning professionals that will remain more rigorous than any minimum standards resulting from this effort).

We caution that the registry not be used to act as a government sanction for those listed to provide service and that the registry not become a marketing tool that is not helpful in distinguishing among providers. We concur with the concerns raised by our colleagues at CPA Ontario in their submission.

8. Financial Literacy and Investor Education

We recommend that financial literacy and investor education of Ontarians be supported and actively encouraged by the Ontario government, regulators, public and private schools (through their respective curriculum bodies and school boards), non-profit organizations and the financial services industry.

The ultimate responsibility for making sound financial decisions is with the individual. We support efforts to engage and further educate the general public so that individuals are more capable of making informed decisions.

9. Issues for Further Consideration

- a) *The need for simplified complaint and restitution mechanisms for consumers of Financial Planning and Financial Product Sales and Advice;*
- b) *A simplified approach to the investigation, prosecution and adjudication of consumer complaints related to regulatory offences in the provision of Financial Planning and Financial Product Sales and Advice; and*
- c) *A consumer-friendly process for recovery of financial losses by consumers.*

We support a simplified and consumer-friendly process as it relates to restitution for legitimate consumer complaints. We encourage you to include CPA Ontario in future discussions given their experience in this area and their long standing professional discipline process.

Availability to Serve as a Resource

Thank you for considering our views on the Expert Committee's Financial Advisory and Financial Planning Policy Alternatives. If you would like to discuss our comments in greater depth or have any questions, please contact Jeannette Koger, AICPA Vice President, at 919.402.4807 or jkoger@aicpa.org or Andrea Millar, AICPA Associate Director of Personal Financial Planning, at 919.402.4818 or amillar@aicpa.org. We are also happy to put you in touch with our colleagues in the UK and Australia who can provide useful insight based on outcomes of financial planning regulation in their jurisdictions as well. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Jeannette Koger". The signature is written in a cursive, flowing style.

Jeannette Koger, CPA, CGMA
Vice President
American Institute of CPAs