

Financial Services  
Commission  
of Ontario



Commission des  
services financiers  
de l'Ontario

## REGULATING FINANCIAL PLANNERS AND ADVISORS

Response to the Initial Consultation Document of the Expert Committee to Consider  
Financial Advisory and Financial Planning Policy Alternatives

September 21, 2015

Attention:  
Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives  
Fin.Adv.PIn@ontario.ca

## EXECUTIVE SUMMARY

In April 2015, the Minister of Finance appointed an independent expert committee known as the “Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives” (Expert Committee). The mandate of the Expert Committee is to 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. In its consultation paper released June 24, 2015, the Expert Committee has identified specific questions for which it requests stakeholder consideration and comment.

The legislative mandate of the Financial Services Commission of Ontario (FSCO) is to provide regulatory services that protect the public interest and enhance public confidence in the industries it regulates. In response to the agency mandate review that is being conducted by the Expert Advisory Panel<sup>1</sup>, FSCO has been assessing its mandate and areas of authority, in order to identify opportunities to improve the effectiveness of the regulation of the financial services sector in Ontario, further reduce costs to the province and align with international regulatory standards and principles for consumer protection. Moreover, through its market conduct oversight FSCO already oversees the giving of financial advice in its regulated sectors. For these reasons, FSCO appreciates the opportunity to provide comments on this consultation.

FSCO’s main observations and comments are as follows:

- Most financial advisors are already regulated to sell specific products, however financial planning may involve multiple sectors and regulators.
- There is a lack of centralized oversight of suitability of the overall advice that financial planners give to their clients and no industry-wide disciplinary process; this poses risks to consumers.
- There should be uniform principles and standards for financial planners; these should align with international standards and principles.
- A regulatory framework for financial planning should require a clearly defined and articulated body of knowledge, skills and abilities unique to this profession.
- Any legislation should be flexible to ensure it keeps pace with innovation.
- Regulatory integration would increase efficiencies and reduce costs.
- There are proven regulatory frameworks already in place that could be leveraged.

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<sup>1</sup> *Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal and the Deposit Insurance Corporation of Ontario*; Consultation paper released April 21, 2015.

# INTRODUCTION

FSCO is a regulatory agency that falls under the responsibilities of the Minister of Finance. FSCO is responsible for the regulation of ten financial services industries in Ontario, which includes more than 75,000 individuals and businesses as financial services market participants. It is entrusted with supervisory authority over pension plans representing more than four million pension plan members and approximately \$520 billion in pension plan assets, and the province's credit unions and *caisses populaires* with \$33 billion in total deposits.

FSCO's approach to regulation is outlined in its [Regulatory Framework](#). It is a consistent and comprehensive approach based on certain principles used to guide FSCO's regulatory activities and fulfill its mandate to protect the public interest and enhance public confidence in the sectors it regulates. This approach includes applying a risk-based approach to regulatory activities, being proactive to prevent non-compliance, and making evidence-based decisions using research and data to identify high-risk areas of concern or non-compliance.

FSCO's integrated approach to supervising various but increasingly interconnected financial services industries has provided a series of benefits for the province such as cost efficiencies; consistent and modern regulation across sectors; and a more comprehensive understanding of the financial services industry.

This paper presents a series of observations and recommendations that align with the Core Principles of the Expert Committee as well as with FSCO's strategic goals, which are:

- be risk-based, proactive, evidence-based, balanced, transparent, service-oriented, and collaborative in our work;
- further a coordinated national approach to regulatory issues; and
- be a recognized thought leader in regulatory policy.

FSCO's consumer protection activities are enhanced by the existence of these strategic goals.

# FSCO'S OBSERVATIONS AND RECOMMENDATIONS ON THE EXPERT COMMITTEE'S CONSULTATION QUESTIONS

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*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.*

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FSCO's understanding is that *financial planning* involves taking a holistic view of a client's financial situation, and creating a plan that helps the client to meet specific financial goals over time. *Financial advising* involves helping clients to implement their financial plans by recommending - and usually also selling - specific products to clients. In the majority of cases, financial planners also act as financial advisors and are licensed to advise on and sell certain products – typically, insurance and/or securities products.

FSCO regulates the giving of financial advice in the sectors for which it has this authority (e.g.: insurance, mortgage broking). Almost 50% of life insurance agents are also licensed to sell securities products and are therefore subject to the oversight of the securities regulator for their sales advice in that sector.

The fact that there is no statutory definition of what constitutes a financial planner and a financial plan, and how these differ from product-specific, regulated financial advising and financial advice, creates confusion in the marketplace. Consumers may believe they are receiving unbiased financial planning services, but may instead be dealing with a financial salesperson (e.g.: an employee of a financial institution), or someone licensed to sell only specific products. In alignment with the Expert Panel's focus on furthering the public interest, including the protection of consumers, consideration could be given to adopting a uniform definition of financial planning in which the regulated activities contain unique elements not found in other regulated professions. For example:

- Provision of a financial plan including at least four of the following six major financial determinants in life:
  - cash and debt planning;
  - income tax planning;
  - investment planning;
  - retirement and financial independence planning;
  - insurance and risk planning; and/or
  - estate planning.

- Delivery of a tailored personal “Financial Plan” to the client; and
- Agreement on the terms of the service to be provided and its duration.

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

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As the Expert Committee has noted, financial planners and advisors are one of the last groups of specialized practitioners in Ontario whose professional title is not regulated by law. Anyone, regardless of their training, can hold themselves out to the public as a “financial planner” or “financial advisor”. This paper will refer to them collectively as “financial planning professionals”. Many are in fact licensed and regulated with respect to the products they sell. While many may belong to a professional association, this is purely voluntary, and their membership requirements and codes of conduct may vary.

Existing regulation is focused on the sale of specific products, rather than on the entire advisory relationship between the client and the financial planning professional. Two important issues that have been identified concerning this product-specific regulatory approach are (i) lack of centralized oversight of suitability of the overall advice that financial planners give to their clients, and (ii) lack of an industry-wide disciplinary process that would apply to financial planning professionals. FSCO, the Ontario Securities Commission and self-regulatory organizations (SROs) are empowered to impose a variety of sanctions on the advisors for whom they have oversight when misconduct is found. However, a regulator’s enforcement powers are limited to its respective sector, while the majority of financial planning professionals operate across sectors, and may recommend a combination of products that span those sectors.

Using FSCO’s regulatory framework as a benchmark, efficient and effective regulation of financial planning professionals would require the ability to oversee activities in a diverse range of financial sectors as well as considerable cooperation with other regulators. There may be a strong argument for consumer-focused legislation as opposed to product-focused legislation. That being said, FSCO supports the Expert Committee Core Principles that seek to avoid unnecessary, duplicative or inconsistent regulation. It is important that any proposed regulatory scheme to govern financial planning professionals does not result in regulatory fragmentation or duplication.

FSCO has had recent experience bringing on board a new regulated sector that was also subject to other regulation. In spring 2013, as part of its commitment to reduce fraud and abuse in the auto insurance system, the Ontario government introduced legislation giving FSCO the authority to license and oversee the business and billing

practices of Health Service Providers (HSPs) who invoice auto insurers directly for specified goods and services. Many of the individual HSPs were already regulated by their professional health colleges and subject to Codes of Ethics, therefore FSCO's oversight is in those areas in which there was a regulatory gap. Transparency and communication were essential in order to avoid confusion for the sector when developing and implementing the new licensing regime.

Oversight must also be kept current in order to adequately protect consumers. It should reflect the dynamic nature of the financial services industry and the impact of advances in technology. FSCO participates in regular reviews of the legislation it administers. For example, the most recent Five-Year Review of the Credit Unions and *Caisses Populaires* Act, 1994, will be completed this year. Any regulation proposed for financial planning professionals should include a mandatory periodic review.

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*To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated? 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?*

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## Integrated Regulation of Financial Planning and Advisory Services

In an environment where the lines that once delineated the various financial services industries are increasingly blurred, regulatory integration may be appropriate to increase efficiencies and reduce costs. FSCO supports the Expert Committee's Core Principle of "Enhancing Regulatory Cohesion and Consistency" through regulatory integration when there is alignment and potential overlap of regulatory functions. Financial planning professionals may prefer the consistent requirements and oversight of a single regulator, while the regulator would have fuller profiles of the professionals' business activities.

A regulatory framework for financial planning professionals would comprise a set of core regulatory activities and requirements in statute. However, rather than add to the regulatory burden imposed on these professionals and their employers by creating a new regulatory body, it would be efficient to leverage one of the proven, effective and efficient frameworks already in place.

## Core Regulatory Requirements

### *Licensing and registering individuals and businesses to conduct certain activities*

Requirements for FSCO licensing include background checks and stringent suitability and education standards, as well as some title restrictions and mandatory errors and omissions (E&O) insurance. The Superintendent of Financial Services has the right to refuse a licence or to issue a conditional licence if there are concerns about an applicant's suitability.

The title of "financial planner" or "financial advisor" and related terms would be strictly regulated and defined in statute. An example of regulating by title is that of the licensing requirements introduced in the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA), which came into force on July 1, 2008. For the first time in Ontario, it required all individuals and businesses who conduct mortgage broking activities to be licensed.

Similar to what may be considered for financial planning professionals, the MBLAA restricted the use of titles such as "mortgage broker" and "mortgage agent";<sup>2</sup> in this case to those who meet education, experience and suitability requirements for licensing. Under the MBLAA a mortgage agent is defined as an individual who has a mortgage agent's licence, which in turn allows the individual to deal or trade in mortgages on behalf of a brokerage. Individuals cannot hold themselves out as mortgage agents unless they are licensed. The mortgage broking licensing regime has resulted in increased consumer protection and enhanced professionalism in the industry. There has been a dramatic rise in industry compliance with statutory requirements over the years since the law's implementation.

A regulatory framework for the financial planning profession should require a clearly defined and articulated body of knowledge, skills and abilities, beyond product-specific knowledge and licences necessary to sell financial services and products. The combined competencies ascribed to the title of "financial planner" should be unique to that profession and clearly understood by consumers. It is important for consumers to be confident in the unique skill set of financial planners that enables them to provide holistic, rather than just product-specific, financial advice. For example, FSCO works with the industry to develop proficiency requirements and training programs for licensing in various sectors. Self-regulatory bodies and trade associations could potentially help prepare candidates for provincial registration and regulation by providing education and administering exams.

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<sup>2</sup> In addition to the French equivalents of "courtier en hypothèques" and "agent en hypothèques".

E&O insurance requirements for the financial planning profession should be specific to the activity of financial planning. Having E&O insurance under another licence is not sufficient as the policy should be able to cover claims as needed, regardless of the product sold. For example, many mortgage brokers and agents licensed with FSCO are also licensed to sell real estate by the Real Estate Council of Ontario. FSCO ensures that mortgage broking licensees are aware of the distinct requirements under FSCO (e.g.: a separate E&O insurance policy is required specifically for mortgage broking activities). Under many of FSCO's administered statutes, E&O is a licensing requirement and it must be in a form approved by the Superintendent, with extended coverage for fraudulent acts.

*Ensuring market conduct compliance with suitability requirements and other standards of practice*

All financial planning professionals should be subject to statutory best interest standards/professional duties of care towards their clients. They would be required to place the best interests of their clients ahead of their own when providing advice. This includes:

- acting with the skill, care, diligence and good judgment of a professional;
- disclosing all material facts including conflicts of interest;
- avoiding conflicts of interest; and
- fully disclosing and fairly managing, in the clients favour, unavoidable conflicts of interest.

Client suitability requirements should extend over time and financial plans would be periodically reviewed for accuracy, given the changes in clients' circumstances over time, when giving advice on an ongoing basis.

Transparency between financial planning professionals and their clients is an important element of consumer protection, particularly with respect to compensation. If financial planning professionals were permitted to choose between fee-only (independent) and commission-based (restricted) practice, there should be disclosure of the difference to clients before they agree to use the services. Any commissions would be fully disclosed, and an annual disclosure notice provided with all fee and service information for the previous and coming years.



## Core Regulatory Activities

Any regulatory framework for financial planning and advising should provide an adequate range of supervisory tools so that problems can be detected early and enforcement measures can be escalated. For example, FSCO uses different tools for monitoring and assessing compliance with the law; these tools include not only the review of complaints received but also pro-active examinations or audits of regulated entities. Not all circumstances require the same allocation of regulatory efforts and resources. Lower risk situations and well-managed entities generally require less oversight, while higher risk situations generally require more intensive scrutiny or stronger intervention.

### *Monitoring compliance*

Ensuring that financial planning professionals comply with their standards of practice is key to a robust regulatory framework. FSCO's approach to regulation is risk-based, with a compliance rather than dispute resolution focus. It analyzes complaints from a systemic perspective (e.g.: are they originating from a breakdown of internal controls, unmitigated risks, weak governance, complexity of product, etc.) and assesses how licensees adjust their behaviours or controls to prevent a recurrence.

FSCO monitors intermediaries by various methods, including confirming continuing education and E&O insurance requirements, reviews of consumer complaints, random desk and on-site compliance examinations, and product suitability reviews. In addition, life insurance companies are statutorily responsible for screening and monitoring their agents and for reporting any non-compliance to FSCO.

Recent FSCO initiatives involved reviews of life insurance agents and mortgage brokers to ensure the advice they were giving consumers was suitable; and enhanced technology allowing life insurance agents to update their E&O insurance policy information for FSCO's records online.

### *Taking enforcement action and intervention*

Financial planning professionals that fail to comply with their statutory obligations must be sanctioned. FSCO uses a progressive enforcement strategy. It seeks to correct non-compliant behaviour first by educating the sectors (e.g.: publishing statistics and

anonymized collective results from examinations and audits; highlighting common compliance issues in sector newsletters and in bulletins).

FSCO investigates allegations against its regulated entities and takes appropriate action if the evidence warrants. FSCO can apply Administrative Monetary Penalties (AMPs) for some contraventions under the Insurance Act and the MBLAA. Enforcement measures can progress to licence conditions/suspensions/revocations and prosecutions under the Provincial Offences Act. Those subject to a disciplinary proceeding for contravening the law, as proposed by the Superintendent of Financial Services, are entitled to a *de novo* hearing before the Financial Services Tribunal (FST).

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

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Consumers dealing with licensed individuals (such as life insurance agents or mortgage brokers and agents) are protected by the current regulatory framework with respect to the sectors in which these individuals are licensed. However, given the many titles and designations in financial planning, there is potential for confusion amongst consumers about which financial professionals are regulated and which are not. Many advisors have multiple designations or certifications. In addition, with different oversight bodies involved, consumers do not have access to a central source for licensing or disciplinary information.

Financial planning professionals may be compensated in different ways, and the comparative cost and value is not always transparent to consumers. Fee disclosure requirements differ between specific products (e.g.: the final stage in implementation of the Client Relationship Model Phase 2 by the securities industry will result in more transparent fees and charges for mutual funds).

Moreover, there are differing standards of care across the industry. For example, some professions that engage in financial planning or advising may be deemed to have a fiduciary, or near-fiduciary duty to their clients, while others are held to a different duty of care.

## Protecting Consumers in an Increasingly Interconnected and Global Financial Services Environment

Following the financial crisis of 2008, ensuring that financial services regulatory frameworks effectively foster a strong financial services sector and protect the interests of consumers became a global priority. Financial services professionals and businesses are becoming increasingly interconnected and global, sometimes operating in multiple jurisdictions both in Canada and internationally. As a result, national and international regulatory standards are being developed to ensure risks are effectively addressed and that regulatory services are more consistent, appropriate and effective.

FSCO strives to play a leadership role in the development of national regulatory standards by working collaboratively with other regulatory bodies across the country. For example, through the Canadian Council of Insurance Regulators (CCIR) FSCO is involved in national efforts to implement a market conduct co-operative supervisory framework for insurers and intermediaries that aligns with international best practices.

In addition to harmonization across Canada, FSCO also closely monitors and supports the adoption of international standards. In 2011, the Organization for Economic Co-operation and Development (OECD) published financial consumer protection principles, the G20 High-level Principles on Financial Consumer Protection. These principles, which are designed to assist G20 member countries in enhancing their domestic financial consumer protection regimes, build on and complement policy developed by the World Bank and other international organizations, standard-setting bodies and individual jurisdictions. This renewed policy and regulatory focus on financial consumer protection in the international community was a result of the increased complexity of financial products and rapid technological change, all coming at a time when basic access to financial products and the level of financial literacy remain low in a number of jurisdictions.

To align with the G20 Principles, some financial regulators around the world have attempted to make rules simpler and clearer for consumers by expressing financial regulation and policy in terms of key principles. The rationale is that the overarching principles would govern financial consumer protection and would be applicable even where specific regulations have not been enacted. This is consistent with the Expert Committee focus on furthering the public interest, including the protection of consumers.

The following are examples of principles that have been adopted internationally by regulators in alignment with the G20 High-Level Principles, and that FSCO endorses

and generally expects of its regulated entities. FSCO recommends that the Expert Committee consider these principles as part of the oversight of financial planning and advisory services in Ontario.

### *Oversight of Regulatory Body*

The regulatory body should have clear and objectively defined responsibilities, appropriate governance; operational independence; accountability for its activities; adequate powers; resources and capabilities; defined and transparent enforcement framework; and clear and consistent regulatory processes. A level playing field across all financial services is encouraged as appropriate.

For example, FSCO has responsibilities and authority that are clearly set out in statute. It is accountable to the Minister of Finance but operates independently within its areas of authority. Its Regulatory Framework applies to all its regulated sectors. FSCO publishes the Regulatory Framework, Agency Business Plan, Annual Report, and Statement of Priorities on its public website.

### *Fair Treatment of Consumers*

Consumers should be treated equitably, honestly and fairly at all stages of their relationship with the financial planning professional.

### *Disclosure and Transparency*

Consumers should be provided with key information on the fundamental benefits, risks and terms of any financial product or service which they purchase. Information about these services or products should be presented in a manner that is clear, simple, not misleading and appropriate for the specific delivery channel. Conflict of interests should be disclosed by the financial planning professional. Ultimately, consumers may suffer financial loss if they do not have access to knowledgeable and unbiased advice.

### *Financial Education and Awareness*

Financial education and awareness should be promoted by both industry players and government, and clear information on consumer protection, rights and responsibilities should be easily accessible online and on site.

### *Responsible Business Conduct*

Financial planning professionals must work in the best interest of consumers.

## *Complaint Handling Mechanisms*

Financial planning professionals must ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely, and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers.

A good example of such a mechanism in a FSCO-regulated sector is that of insurance. Insurers must have robust complaint-handling protocols in place as required under the Insurance Act. In addition, they make use of third-party dispute resolution services such as the General Insurance Ombudservice and the OmbudService for Life and Health Insurance.

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*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?*

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A central information registry is important for consumer protection. It would also benefit the vast majority of financial planning professionals by providing an additional resource through which consumers could locate and select them.

For example, on the FSCO website, consumers can access the licensing status of all FSCO registrants through its [Licensing Link](#) by searching by name or licence number, and can read warning notices and information on enforcement actions. FSCO also works with other regulators to share information on individuals and entities that operate in other sectors and/or jurisdictions. In December 2013, CCIR and CISRO launched the [Canadian Insurance Regulators Disciplinary Actions \(CIRDA\)](#) database, a single point of access for decisions taken by insurance regulators across Canada against insurance companies, intermediaries, and individuals licensed to sell insurance products.

## CONCLUSION

Although there is a modern regulatory framework already in place for the significant number of financial planning professionals who are licensed under product-specific legislation, there is no centralized oversight of the whole range of activities and advice that a financial planning professional may provide. There are also gaps in consumer protection for those who seek the services of unregulated individuals, FSCO would like

to see a more centralized approach to supervising the various financial services and products that these professionals offer their clients.

The financial services sector, market participants and its services and products continue to evolve resulting in changing risks for financial services consumers, as well as increased complexity. Any legislation contemplated for financial planning professionals should be flexible to ensure it keeps pace with innovative markets. This can be achieved through policy options that are mindful of the changing landscape and are forward looking, and through built-in periodic reviews of any legislation.

The Expert Committee is mindful of regulatory efficiencies. Regulatory integration is a cost-efficient way of making sure that financial services consumers are adequately protected.

Regulatory integration also has the potential to enhance the expertise and knowledge of the regulatory body, and allow it to use resources more effectively. An integrated regulator is better able to:

- keep pace with a fast growing, innovative market;
- have the powers and resources to protect consumers from actual and potential harm;
- have the tools to apply the principle of proportionality to regulated entities; and
- deliver a well-functioning market where consumers have access to the advice and services they need.

FSCO encourages the Expert Committee to consider recommending that financial planning professionals be regulated in the manner that best aligns with the Committee's Core Principles: furthering the public interest by protecting consumers, avoiding duplicative regulation, utilizing regulatory efficiencies, and enhancing regulatory cohesion and consistency.