

INVESTOR ADVISORY PANEL

September 14, 2018

By Email

Financial Planning Standards Council
Suite 902 – 375 University Avenue
Toronto, Ontario
M5G 2J5

Dear Madams and Sirs,

RE: Response to Request for Comments on Proposed Amendments to the Standards of Professional Responsibility – Conflicts of Interest

The Investor Advisory Panel (IAP) welcomes this opportunity to respond to a request for comment issued by the Financial Planning Standards Council (FPSC) regarding its *Standards of Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning* (the Standards of Professional Responsibility). The IAP is an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule making and policy making process.

We congratulate the FPSC and your Standards Council on presenting recent proposals to amend the Standards of Professional Responsibility. These are important proposals. They underscore FPSC's fundamental commitment to the wellbeing of investors and other financial services consumers by requiring the highest levels of proficiency and integrity in financial planning.

Additionally, the proposals bring clarity to the client-first principle. Most noteworthy is the suggested wording on conflicts of interest that manages to be both simple and clear: *"Disclose and mitigate conflicts of interest in the client's favour."*

We commend this formulation as one that can and should be applied broadly to all financial services providers. In a single phrase it establishes that:

- (a) Disclosure is a necessary but insufficient response to a conflict of interest;
- (b) A proper response must go beyond mere sensitivity to or consideration of the conflict's impact – there must be an active response ("mitigate") that diminishes the impact; and
- (c) Conflicts must be mitigated in a manner beneficial to the client's interests ("in the client's favour"). If that can't be done, the residual risk of harm posed by the conflict cannot be justified and the conflict must be avoided altogether.

With the same overall aim in mind, the Canadian Securities Administrators (the “CSA”) are currently proposing a rule that would require registrants to “address, in the best interest of a client, all conflicts of interest” between the registrant and their clients. We strongly support that aim, but we have concerns about the wording chosen by the CSA.

In addition to being less clear than the FPSC formulation, the CSA’s proposal may also be less effective because its operative word (“address”) can denote, in its ordinary meaning, merely directing one’s attention to the existence of a conflict instead of taking action to neutralize it. That may not be the CSA’s intention. They may mean their wording to convey an obligation to mitigate or resolve conflicts of interest. But the wording is ambiguous. It leaves open a possible interpretation that registrants can operate while conflicted so long as they identify and remain mindful of how the conflict may harm their client’s interests.

This ambiguity should be eliminated in order to prevent misinterpretation. If the CSA intends mitigation of conflicts to be a requirement, they should say so unequivocally. We believe the FPSC formulation would be well suited for that purpose and its adoption by the CSA would help establish a uniform standard across the financial services industry. We therefore encourage you to move forward with your formulation on conflicts of interest and urge you to join in recommending that the CSA harmonize their proposal with it.

Thank you for this opportunity to comment on the proposed amendments to the Standards of Professional Responsibility. We wish you every success with this initiative.

Yours truly,



Neil Gross, Chair
Investor Advisory Panel