



**Independent Financial Brokers of Canada**

740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

December 21, 2018

Financial Services Regulatory Authority of Ontario  
130 Adelaide Street West, Suite 800  
Toronto ON M5H 3P5

*Submitted via the FSRA online submission portal*

**Re: Request for Comment on FSRA Interim Fee Rule and Proposed Assessment and Fee Rule**

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to respond to the Financial Services Regulatory Authority of Ontario (FSRA) on its proposed Interim Fee Rule and the Proposed Assessment and Fee Rule. IFB supports FSRA's consultative approach with stakeholders, and IFB looks forward to continuing this relationship and providing further input to FSRA as it moves to become operational in the Spring of 2019.

IFB is a voluntary, federally incorporated not for profit professional association representing approximately 3,500 licensed financial advisors across Canada. The majority of IFB members are located in Ontario, and are licensed as life/health insurance agents. Many hold other financial licenses or accreditations in order to permit them to provide consumers with more comprehensive services, such as securities (mutual funds), mortgages, general (P&C) insurance, financial planning, etc.

IFB members are individuals, most of whom own or operate small to medium sized financial practices in their local community. IFB does not represent employees or career agents of financial institutions.

IFB supports professional standards in the life/health insurance industry by:

- i) Offering large scale and smaller regional educational events focused on compliance, industry and regulatory updates, ethics, and best practices;
- ii) Offering a comprehensive, affordable professional liability program specifically tailored to the independent practitioner;
- iii) Providing regular updates on industry, compliance and regulatory issues to members;
- iv) Offering online programs, such as IFB's AML/ATF course specifically designed for independent life agents; and,
- v) Requiring new members to attest their adherence to IFB's code of conduct and standards of practice and annually thereafter, on renewal.

Advocating on behalf of our members to ensure government, regulators, industry stakeholders and others understand the value that independent advice brings to consumers is an important part of the work that IFB does on behalf of its members.

IFB will comment on the proposed "rules" as they relate to life insurance agents licensed under Ontario's *Insurance Act*.



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### *Interim Fee Rule*

We understand that the Interim Fee Rule is intended to be a temporary measure, to ensure that FSRA is funded by the sectors it regulates and can carry out its legislated mandate without delay or reliance on funding from the Consolidated Revenue Fund. We further understand that FSRA only intends to adopt the Interim Fee Rule if there is insufficient time to adopt the Proposed Fee Rule prior to FSRA's launch date.

As the Interim Fee Rule will continue the current fee assessments used by FSCO, we have no objection.

### *Proposed Assessment and Fee Rule*

IFB supports the proposed fixed rate approach for insurance agents. This is consistent with the need for individual licensees to have predictable and stable licensing costs. However, the rate will need to be reviewed on a regular basis (for example, every 3 years) in order to adapt to potential changes in the marketplace that may affect the number of licensees, and activity in the sector.

We wish to draw attention to Section 6.1, where FSRA identifies "support for regulatory principles" as part of its vision to be an efficient and effective regulator. As FSRA considers its priorities, and potential issues related to the current licensing structure, IFB is restating its position that anyone providing financial advice and/or product recommendations to consumers should be appropriately licensed and regulated. Consumers who purchase any form of insurance should be able to rely on intermediaries who are duly licensed, and subject to similar regulatory oversight.

In Ontario, sellers of incidental insurance products, such as credit card disability insurance, mortgage insurance, automobile financing, etc., are not licensed. Some Canadian jurisdictions have already implemented a licensing regime applicable to the sale of incidental insurance, and we support Ontario doing so, too. Licensure provides consumers with greater protection and recourse in the event of a complaint. Given the large number of consumers who are exposed to the incidental insurance market, we believe this is a gap in the current system in Ontario.

In closing, IFB encourages FSRA to:

1. maintain an open and transparent dialogue with industry stakeholders, including changes to the fee assessment structure, as FSRA's operational costs become more defined based on its actual experience;
2. avoid cross-subsidization of costs between sectors where possible, so each sector's assessment accurately reflects the costs and regulatory activity attributable to that sector;
3. identify improvements to the current licensing regime, including any gaps; and
4. consider a recommendation to amend Section 11(3) of the *Financial Administration Act* to restrict money received from administrative penalties from being paid into the Consolidated



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Revenue Fund and instead used to support activities consistent with the sector the AMPs are assessed against.

Thank you for the opportunity to comment.

Please contact the undersigned, or Susan Allemang, Director, Policy & Regulatory Affairs (email: [sallemang@ifbc.ca](mailto:sallemang@ifbc.ca)) should you wish to discuss our comments further.

Yours truly,

A handwritten signature in cursive script that reads 'Nancy Allan'.

Nancy Allan  
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May 8, 2018

Financial Services Commission of Ontario  
5160 Yonge Street  
16th Floor  
Toronto, ON M2N 6L9

Sent via email: [marketconduct@fsco.gov.on.ca](mailto:marketconduct@fsco.gov.on.ca)

Dear Sirs/Mesdames:

**Re: Consultation Draft – Superintendent’s Guideline No. 01/18  
*Treating Financial Services Consumers Fairly***

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Financial Services Commission of Ontario’s (“FSCO”) Consultation Draft of Superintendent’s Guideline No. 01/18 *Treating Financial Services Consumers Fairly Guideline* (the “Guideline”).

**1. ABOUT ADVOCIS**

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in a number of key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than financial advisors, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

## **2. OUR COMMENTS**

### **FSCO and Advocis must work together to lead the change**

We are supportive of FSCO's efforts to enhance the regulatory framework in a way that ensures consumers are treated fairly. The principles set forth in the Guideline advance that objective, so we are by-and-large supportive of them. We appreciate and agree with FSCO's desire to cultivate a consumer-focused business culture that goes beyond strict legal requirements. We also see the Guideline as yet another example of the shift in regulatory focus from solvency regulation to market conduct regulation, which we believe is the right approach to advance the primacy of the consumer's perspective.

However, we are concerned with how the Guidelines will be implemented. The Guidelines are drafted at a high level, and to put their intentions into action, some entity must be charged with taking the lead on the interpretation, implementation and enforcement of the concepts therein. We urge FSCO to ensure that stakeholders such as Advocis, which represents the financial advisors and planners who interact directly with the public, be granted a leadership role throughout this initiative. Advocis' position stands in stark contrast to entities such as the CLHIA which, despite first and foremost representing the interests of their member insurance companies, have previously been trusted by insurance regulators to lead the advancement of regulatory and public policy.

FSCO must be cognizant of the competing loyalties that could challenge the CLHIA's ability to give full effect to the Guideline. Consider for a moment that the senior executives of CLHIA's member companies have a fiduciary duty to their respective companies and shareholders. Also consider that these same executives direct the actions of the CLHIA, being the trade association for the insurance companies. Further, an insurance company's duty to the consumer/client is to treat them fairly, which is a far lower duty than the fiduciary duty their executives owe to the company. The potential challenge to fulfilling the spirit of the Guideline is clear.

At the other end of the spectrum is Advocis: members of our professional association voluntarily agree to adhere to a Code of Professional Conduct<sup>1</sup> that features, as its primary tenet, the advisor's commitment to serving the best interest of the client. As such, Advocis and its member advisors do not face the competing loyalties that necessarily impair the ability of the CLHIA and its member companies to implement the Guideline. Therefore, it is clear that professional associations such as Advocis must be trusted with a leadership role if FSCO and consumers are to fully realize the benefits of the Guideline.

### **Going beyond 'fair treatment' to 'best interest'**

The Guideline speaks to important concepts of consumer protection such as the exercise of due skill, care and diligence, product suitability, continuing service and addressing conflicts of interest. We believe the best way to make these concepts meaningful is to animate them through a duty to act in the client's best interest. However, given the gravity of a best interest duty, it must be implemented in a particular and careful manner:

*Subjecting advisors and planners to a best interest duty without granting them professional standing would be fundamentally unfair*

Certain stakeholders have argued that a best interest duty be implemented, and compliance therewith judged, by regulators who are distinctly separate and uninvolved with the day-to-day operation of providing retail clients with financial advice. Given this detachment, it is our position that regulators do not appreciate the complete nature of the work that advisors and planners do and are therefore not in a proper position to apply "best interest" principles to their daily practice. This is not intended to be a slight; this is just the reality that regulators are sensibly focused on "macro" issues of laying the groundwork for healthy, functioning and fair markets.

A best interest duty is a professional standard of care meant to ensure that a client receives the utmost in their advisor's care and judgment, driven by an underlying ethical responsibility to do what is right for that client. It necessarily involves subjective assessments that take into account the client's objectives, risk tolerance and financial position, as well as external conditions known at the time and projected out into the future. The breaching of a best interest obligation carries significant ramifications for the client, advisor, and the reputation of the industry as a whole, so a fair

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<sup>1</sup> The Advocis *Code of Professional Conduct* can be found at: <http://www.advocis.ca/pdf/Advocis-CPC.pdf>. The explanatory notes can be found at: <http://www.advocis.ca/pdf/AdvocisCPC-ExplanatoryNotes.pdf>.

hindsight determination of whether a decision was in the client's best interest requires an understanding of the real-world practice dynamic in play when the advisor made that decision.

It would be manifestly unfair to apply a best interest duty to a professional group while failing to involve them in their own regulation. Critically, we draw attention to the fact that there is no other profession, whether it be law, medicine, or so on, whose members are subject to a best interest duty while not being accorded professional standing and given a voice in their own regulation. Regulators in those other industries recognize that they have an important role to play in setting the framework, but they cannot, should not and do not attempt to regulate the nuances of the day-to-day professional relationship between practitioner and client to judge whether a particular action is in the client's best interest. Instead, they respectfully leave professional proficiency and conduct regulation to accredited self-regulatory bodies, such as the College of Physicians and Surgeons of Ontario or the Chartered Professional Accountants of Canada.

In short, we support a best interest duty and believe that the duty should be a fundamental part of animating the principles in the Guideline – so long as the duty is interpreted and applied by those who are connected with the client-facing work of advisors and are therefore positioned to understand the nuances of an advisor's real-world practice.

*Only advisors and planners themselves, through their own professional association, can interpret and apply a best interest duty in a manner that is fair to all stakeholders*

A best interest duty must be part of a regulatory framework that is flexible, contextual, principles-based and client-centered. This includes the granting of professional standing to financial advisors and planners and the creation of an official role for their professional association in interpreting and enforcing the best interest duty. This is no greater than the respect and deference granted to other professions.

A significant feature – indeed, perhaps the defining feature – of the “best interest” concept is its moral ambition, which lies in the expectation by the client of true good faith on the part of the advisor or planner. In this light, the ultimate focus of the duty is trained on the advisor or planner's motives and actions in advancing the client's overall interests, and not merely on the state of the client's accounts at any given point in time. Embedding a best interest obligation in the Guideline will make for a more robustly interpreted and applied obligation – which is of course an outcome very much in any client's best interest.

In interpreting and enforcing the best interest duty, the professional body would be enriched by the first-hand knowledge of its practicing member advisors, some of whom would serve as members of the professional body's hearing tribunals that consider whether a member breached the duty. As in the case of any profession, it is the professionals within it who best understand how the concept

should be applied to the practice in which they work. Because of the involvement of active practicing members, the knowledge and understanding of the professional body would be constantly refreshed and in tune with the practices of the day. This flexible and evolving approach would be the superior way to address novel situations or changing market conditions.

We urge FSCO to use the opportunity of the promulgation of the Guideline to advance the professionalization of financial advisors and planners and grant them agency in their own regulation – which also makes possible the animation of the Guideline's principles through the lens of a best interest duty.

### **Privacy**

The Guideline speaks of FSCO's expectation that licensees will protect the private information of financial services consumers through the establishment of policies and procedures regarding the protection and use of personal and financial data and a positive obligation to inform consumers of any privacy breach.

Given the increasing importance of the protection of consumers' privacy and data, and the repercussion that can follow from a breach, we believe the Guideline should go further by requiring licensees to identify who, within an organization, will be responsible for ensuring the policies are put into action. The principle of proportionality discussed in the Guideline should apply, with larger licensees being required to name a specific officer that is charged with these duties.

### **3. CONCLUSIONS AND NEXT STEPS**

We believe that the concept of "treating clients fairly" means going beyond the letter of the law. It means creating a business culture that puts consumers at the centre of everything that the financial services industry does. The Guideline represents key principles towards meeting that objective.

Once the principles are agreed to by stakeholders, the next step is to interpret the Guideline, integrate the concepts into daily business practices and have an accountability or enforcement structure that makes adherence with the Guideline truly meaningful. Here, FSCO should leverage the position of Advocis, whose members owe a duty first and foremost to their clients, rather than other stakeholders who may be in a position of divided loyalty that makes it challenging for the principles to be fully realized.

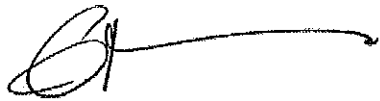
To ensure that clients are treated with the utmost in ethical service, the Guideline should be informed by a best interest obligation. However, this duty must be interpreted and enforced by financial advisors and planners themselves, through their chosen professional association, rather than by regulators or other entities who are not attuned to their daily practice. This is the way that



best interest obligations are applied in other professions, and advisors and planners deserve the same professional respect.

We look forward to working with FSCO as it finalizes the Guideline. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or [eskwarek@advocis.ca](mailto:eskwarek@advocis.ca).

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP  
President and CEO



Jim Virtue, CFP, CLU, CA  
Chair, National Board of Directors



Canadian Foundation for  
Advancement of Investor Rights  
Fondation canadienne pour l'avancement  
des droits des investisseurs

March 30, 2017

The Honourable Charles Sousa  
Minister of Finance  
7 Queens Park Crescent, 7<sup>th</sup> Floor  
Toronto, Ontario M7A 1Y7

Dear Minister Sousa,

**Re: Financial Services Regulatory Authority of Ontario Act, 2016**

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It is our understanding that Bill 70, Building Ontario Up for Everyone Act (Budget Measures), 2016 has received royal assent, and therefore, the Financial Services Regulatory Authority of Ontario Act has come into force. We would like to congratulate you on the passing of legislation to establish a new regulator to govern insurance, pensions, mortgage brokers (and in the future financial planners).

FAIR Canada contributed to the policy-making process by making two submissions<sup>1</sup> to the Expert Panel that was formed to review the mandates of the Financial Services Commission of Ontario, the Financial Services Tribunal and the Deposit Insurance Commission of Ontario, in addition to an in-person meeting. We are grateful to the Expert Panel for their tremendous efforts and work.

Given the work currently underway to operationalize the FSRA, FAIR Canada would like to highlight two key recommendations included in our comments to the Expert Panel that we believe are essential to an effective regulatory structure.

Firstly, in order to achieve its consumer protection mandate, the FSRA's should have consumer representation on its board of directors. We therefore support the appointment of at least two (depending on the total number of directors appointed) directors to the board who will represent the interests of financial consumers. The appointment of qualified people whose body of work is known to reflect and foster the interests of financial consumers would be in the public interest.

Secondly, we recommend that an independent statutory consumer advisory panel be a statutorily mandated feature of the FSRA and that it be appropriately funded and afforded a broad mandate to represent the interests of financial consumers in the areas the new agency oversees. Consumers currently have little to no engagement on financial services issues, especially in respect of the areas that the new financial agency is set to regulate. FSCO continually struggles to obtain consumer input into the policy-

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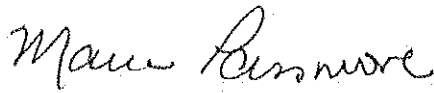
<sup>1</sup> FAIR Canada's Comments on Preliminary Position Paper on the Review of Mandate of FSCO (December 14, 2015), available online at: <https://faircanada.ca/submissions/fair-canada-comments-on-expert-panels-recommendations-to-restructure-fsco/>; and FAIR Canada's Comments on Review of Mandate of FSCO (August 21, 2015), available online at: <https://faircanada.ca/submissions/fair-canada-comments-on-review-of-mandate-of-fsco-2/>

making process. By contrast, industry associations and players have significant representation and influence. A consumer advisory panel would be invaluable to the policy-making process of the new regulator and help the FSRA fulfil its mandate.

Our recommendations are not new. The 2009 Expert Panel on Securities Regulation Final Report and Recommendations ("Expert Panel Report") commented on the lack of engagement of retail investors in the securities regulatory process, and recommended the establishment of a national, statutory, independent investor panel. Such a panel was in the draft National Securities Act. In similar fashion, a consumer panel would be an invaluable resource to the mandate of the new agency. In addition, the Standing Committee on Government Agencies, Report on Agencies, Boards and Commissions reviewing the Ontario Securities Commission, in 2010 recommended that the Commission establish an investor advisory body, based on the financial services consumer panel in the United Kingdom and that the Ministry of Finance take the steps necessary to create an investor representative on the Commission's board of directors. The same should hold for the new agency.

Please note we will be making a copy of this letter publicly available on our website. We would be pleased to discuss this letter with you at your convenience or any of the other recommendations in our comment letters. Please feel free to contact Marian Passmore at 416-214-3441 ([marian.passmore@faircanada.ca](mailto:marian.passmore@faircanada.ca)).

Sincerely,



Marian Passmore  
Director of Policy and COO