



VIA EMAIL

February [23], 2011 *Deadline – February 25*

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Dear Sirs/Mesdames:

RE: The Canadian Institute of Financial Planners (CIFPs) - Response to Consultation Paper dated December 20, 2010 - Consultation on Possible Options for the Incorporation of Individual Representatives of Registered Dealers and Advisers in Canada (the Consultation Paper)

On behalf of its over 4,200 members, The Canadian Institute of Financial Planners (CIFPs) is pleased to provide the working group of provincial/territorial government officials responsible for the Consultation Paper with comments on the Consultation Paper and the questions posed therein.

CIFPs is the professional association for financial planners in Canada. Many of the over 4,200 members of CIFPs are certified financial planners (CFP®). CIFPs provides financial planners with education, professional support and advocacy services on issues, such as those set out in the Consultation Paper, that have potential to impact financial planners. As financial planners, the members of CIFPs include individuals registered as dealing representatives associated with firms registered as mutual fund dealers (members of the Mutual Fund Dealers Association of Canada) or as investment dealers (members of the Investment Industry Regulatory Association of Canada). CIFPs members can also be licenced insurance agents and many members are duly licenced as securities dealers and as insurance agents.

The issues identified in the Consultation Paper are of real significance to many CIFPs members, particularly those registered as dealing representatives with securities firms that are also licenced as insurance agents. Accordingly, CIFPs welcomes the movement of the various provincial governments participating in the Consultation Paper to publicly air various solutions to the issues identified over the years by the Canadian Securities Administrators, but which to date remain unresolved, particularly for those financial planners who are associated with IIROC member firms.

CIFPs is very much in favour, at a high level, of a uniform, pan-industry approach that would provide dealing representatives with additional business flexibility with a minimum of regulatory burden, while preserving individual representative responsibility for advice to clients and the registered firm's oversight over the individual representatives and clients. It is of utmost importance for any solution to not differentiate between financial planners, depending on the nature of their licencing – that is, whether they are registered with IIROC or MFDA firms or are licenced as insurance agents. Our members presently experience significant differences depending on whether they are registered dealing representatives of MFDA firms, that permit the practice of “directed commissions” or whether they are registered dealing representatives of IIROC firms that do not. As outlined in the Consultation Paper, those of our members that are licenced insurance agents do not experience any restrictions in how they operate their insurance

business. We do not view that the issues perceived with “incorporated salespersons” to be insurmountable and consider that this flexibility should be provided to financial planners in ways that mirror the flexibility provided to other professionals that have been permitted to incorporate.

In short, we urge the working group to move forward with its proposals. Allowing all financial planners to incorporate would go a long way to ensuring that no one type of financial services firm and its representative is disadvantaged over other types of firms and representatives. Allowing incorporation for financial planners and other financial industry professionals is simply permission for these individuals to provide services to clients with the same degree of integrity and investor protection, but in a more cost effective and efficient manner. Nothing in the proposals suggested in the Consultation Paper should be construed as condoning lesser investor protection or diminished regulation.

CIFPs wishes to provide the working group with responses to the questions posed in the Consultation Paper.

Q1. Should governments allow a broader range of registered dealers and advisers to redirect remuneration to a non-registered corporation?

We assume this question is asking whether the MFDA’s practice of allowing “directed commissions” should be permitted for all types of advisers. As noted above, we believe that governments and regulatory authorities should allow a broader range of registered dealers and advisers to redirect commissions to non-registered corporations, but on a uniform, consistent basis that deals with the regulatory issues identified. This would promote a level playing field for all financial services firms and representatives across Canada. This would also facilitate the mobility of talent between industry sectors and provide additional career opportunities without disadvantaging an individual’s tax position.

Although a non-registered corporation is not registered with the securities commissions, its corporate information and the nature of its operations must be disclosed to the relevant securities regulators as it relates to a registered dealing representative. Should payment of commissions to a non-registered corporation be allowed we recommend that the dealer; the registrant and the payee enter into a regulatory agreement similar to the MFDA agreement required for its members.

Q2. Should governments allow individual representatives of registered dealers and advisers to incorporate?

The option for individual sales representatives to incorporate should they choose to do so should be allowed. Individuals who are employees of a registered firm or that do not have other business interests may not realize the benefit of incorporation; however, providing this option allows the sales representative to consider a variety of business structures and determine the most suitable option in their situation.

Q3. If yes to question 2 - which incorporation option would in your view be the most effective and balanced alternative?

We consider that a professional corporation approach should be developed for financial planners and other financial industry participants, which can be chosen by an individual if it suits their business objectives. No matter which approach is taken, dealer liability, sales representative liability and liability to clients must not be diminished in any manner. Implementing an incorporation model also should not impact the current supervisory and compliance requirements under securities legislation.

At a minimum, the approach taken by the MFDA could be adopted uniformly across Canada and across all sectors, but CIFPs recommends that a more wholesale legislative approach be adopted – one that parallels the ability of other professionals to incorporate.

We note that the approach described as the Alberta Securities Commission approach appears to be unnecessarily cumbersome, simply due to the annual permit mechanism and we recommend more simple regulatory administration- that is a one-time notice of incorporation, with notices of any changes. This would be consistent with other aspects of the securities regulation of registrants.

Q4. Are there other provisions or options that should be considered to ensure that the use of a corporation continues to preserve the registrant-client legal relationship for both firms and individual sales representatives by their registered dealer and adviser?

We understand the concerns about the protection and preservation of client interests along with preserving the integrity of the capital markets. Any model adopted should ensure that there is no dilution of the sales representative's legal responsibility and new legislation/regulations would likely be required to define that the acts of the sales representative's corporation are deemed to be the acts of the sales representative.

Q5. Do you have any concerns or comments about potential income tax consequences or regulatory obstacle regarding each option?

All of the options identified in the Consultation Paper provide the registrant with a choice on how to structure their business affairs. Because financial planners are generally agents (independent contractors), it is their responsibility to seek independent tax advice. There are tax advantages for options 1 and 2 as commissions would be taxed at the lower corporate tax rate, income splitting between family members could be established and a broader range of business expenses would be permitted. The MFDA option possesses potential tax risk and as such this option is not optimal.

Q6. Do you have any concerns or comments about the potential impact of the incorporation options on investor protection?

CIFPs views investor protection as critical, but believes that investor protection need not be diminished with an incorporation model. With any of the models proposed in the Consultation Paper, a framework needs to be developed to address concerns that a corporate structure may be used to shield sales representatives from liability to their clients. This framework should include safeguards to ensure that the sales representative continues to remain subject to liability claims from clients and responsible to the dealer for complying with securities laws and dealer compliance policies. We believe this model is achievable – particularly when the experience of the MFDA with its directed commissions rule, as well as the experience of the incorporation regimes for other professionals are examined.

Thank you for considering our comments. Please contact Keith Costello, the President and Chief Executive Officer of CIFPs at 647-723-6447 or kcostello@cifps.ca if you have any questions about our comments or you would like to meet with our members to discuss them. We would be very pleased to set up meetings with our members so you could better understand the perspective of financial planners.

Yours truly,



Keith Costello
President & CEO