THE BENEFITS ALLIANCE GROUP

Mr. Mark White, CEO
The Financial Services Regulatory Authority
25 Sheppard Ave, Suite 100
Toronto ON
M2N 6S6

June 21, 2021

Dear Mr. White,

The Benefits Alliance Group (BA) is pleased to provide comments on the latest iteration of The Financial Professionals Title Protection Act (the Act) and proposed Rules.

In addition to our comments below, we have included:

- Appendix "A" – *An Investment Toward Enhanced Consumer Outcomes*, which outlines the benefits associated with supplemental titles to assist in consumer understanding of the title Financial Advisor; and,

- Appendix "B" which is a legal analysis in support of our position with respect to the application of supplemental titles under the Act.

Our comments will focus primarily on the title Financial Advisor, but the substance of our comments are applicable to the title Financial Planner in many respects.

Who We Are

BA is a national organization comprised of 30 independent member firms comprising 240 Advisors and 500 staff employed by those firms. Collectively we administer over 8,000 employee benefits plans, covering approximately 550,000 employees, with over

$1.4 Billion in group insurance premiums. We also administer over 1,500 group retirement plans with over $3.5 Billion in retirement plan assets.

We are highly selective in who qualifies to join BA, and prospective firms are peer nominated. Given the important role that Group Advisors play in the lives of all Canadians from coast, to coast, to coast, only the best Group Advisors who are committed to the highest levels of professionalism are invited into our membership.

BA is an industry advocate promoting professionalism and excellence in client service, and from a policy perspective, we want to ensure that all Canadians receive the best advice available.

Our mission is to represent the best interests of our clients and their employees. We are committed to continuing education and professional development to ensure our members provide the highest standards of service and excellence.

Our Analytical Framework

Having employed a principles-based approach to drafting the Act and Rules the Financial Services Regulatory Authority (FSRA) has greater flexibility and a broader canvas on which to work in achieving its desired outcomes. This flexibility will be of assistance in the review of applications from individuals and groups for the approval of designations that qualify one to use the title Financial Advisor. And while flexibility is important, it must not come at the price of the integrity of the Act, nor compromise the purpose underlying the Act – consumer protection, consumer understanding, enhanced consumer outcomes, and raising the professional bar for registrants who opt-in.

Principles-based regulation should not be conflated with the absence of prescriptive drafting. It is well accepted that even in a principles-based environment there is a need and a place for prescription. The art is in determining when it is appropriate for prescriptive drafting in place of the flexibility associate with principles-based drafting.

Our analysis below categorizes issues as "foundational principles" and "architectural principles".

Foundational principles are axiomatic and as the term foundational implies, represents the footings upon which the legislative and regulatory structure rests. If foundational principles are compromised, the purpose of the Act and Regulations are at risk – the outcome, at best will be suboptimal, and in the worst scenario, introduces moral

hazards or market failures that are harmful to all stakeholders. There should be no compromising with respect to foundational principles.

The majority of issues fall under the category of architectural principles that lend themselves to greater flexibility, allowing regulators and stakeholder to adopt a nuanced approached to achieving the desired outcome. Unlike the axiomatic nature of foundational principles, architectural principles give greater life to the language in legislation and regulation allowing regulators and stakeholders to approach outcomes with more creativity and discretion.

It is our view that matters related to qualifying as a credentialing body should be viewed as foundational in nature – the operations of the credentialing bodies will directly influence and impact consumer protection, confidence and the equitable treatment of all participants under the Act. Matters relating to titles that may be caught by sections 2 and 3 of the Act as being comparable to, and therefore confusing to consumers, would neatly fit within the scope of architectural principles. Similarly, the process and procedures to bring forward to the FSRA designations for approval would also fall under the category of architectural principles as would the use of supplemental titles.

General Comments

BA supports higher standards and levels of professionalism for anyone who wishes to use the title Financial Advisor. Individuals and companies are increasingly reliant on the varied services provided by professionals to meet both their immediate needs and changes to their needs that occur in one's natural life cycle. Through addressing and adapting to the diversity of client needs, we have also seen the organic maturing of the financial service industry. Market demands have resulted in some Advisors pursuing areas of specialization while other have remained generalists.

An important element in the evolution of financial services is the move away from a product and sales centric approach that defined the advisor/client relationship, to a trust and advice based professional relationship. In support of the evolution from sales to professional relationship we have also witnessed the development of demanding designation programs that have assisted Financial Advisor in the honing of their skills and knowledge. This has fueled the rise of professional standards that the advisor community initiated for the betterment of their industry and their clients.

The rise of meaningful designation programs has also led to a significant industry and consumer dilemma in that competing with these meaningful courses, designations, and titles, we have also seen the emergence of designation programs and business

models that are not operating to the same high standards. The result, titles based on designations have proliferated. The outcome, consumers are unable to differentiate a title based on a rigours educational program requiring years of study to one that is based on a weekend seminar.

This has brought us to an inflection point – action must be taken to address the increasing divide between meaningful designations and title programs, and weekend seminar programs operated more like designation and title mills designed for commercial gain and marketing purposes than meaningful professional development programs. The Act is a major step forward in addressing this problem. The Act ensures that only meaningful and qualified designation programs overseen by an accredited credentialing body will qualify a registrant for the use of the title Financial Advisor. Consumers will now be able to identify a meaningful designation by virtue of a registrant's use of the titles Financial Advisor.

Architectural Principles

Matters falling under the heading architectural principles represent an opportunity for regulators and stakeholders to work cooperatively and creatively in addressing issues not immediately contemplated or present when the Act and Rules were drafted. Herein lies the flexibility that distinguishes principles-based regulation and sets it apart from prescriptive regulation.

Supplemental Titles

Consumers of financial advice are increasingly reliant on the service of professional Financial Advisors. The Act provides assurance and protection to the client that if their financial expert is using the title Financial Advisor that they can rest assured that their financial expert has met the higher professional standards required by governments, regulators, and approved credentialing bodies.

An area requiring closer examination is consumer understanding of the titles Financial Advisor. Better consumer understanding leads to better choices, and optimal consumer outcomes. This chain of causation can be easily optimized with very little effort on the part of governments or the regulators.

Financial services and the provision of financial advice is a complex area and one that is critical to the long-term financial and general health of all Ontarians and Canadians.

It is the breadth of the services that a Financial Advisor provides that makes a concise definition challenging to articulate. And as the FSRA and government are hearing from countless voices representative of consumers, consumer advocates, professional associations, individual advisors, advisor tied to companies, companies, SROs, and trade associations, the scope of the roles filled by Financial Advisors in addressing risk, investment, insurance, healthcare, pensions, retirement, to name just a few, cannot be neatly fit into a simple all-encompassing definition.

The complexity stems from the breadth of needs and services that a client may require. No two clients are alike – each individual or group has unique characteristics and circumstances that must be addressed. It is this breadth of services provided by Financial Advisors that makes defining what a Financial Advisor does so difficult. Some Financial Advisors will provide general services and advice, while others may choose to specialize and focus on a particular subset of services and advice to a more targeted group of clients.

While the initial step of protecting the titles Financial Advisor assist consumers and clients in recognizing licensees who are committed to higher professional standards, the details of those higher standards are not clear to the average consumer. Because of the Act, consumers now know that they can trust that title users are professional and have undertaken the appropriate training and are under the oversight of a professional credentialing body. This is very much like the use of LL.B. or JD by lawyers, or MD by doctors. The consumer does not need to understand the rigor behind the designations, as they know that they can trust in the designation granting credentialing body and universities to ensure that the user of the designation has earned the right to hold out as a professional and their conduct is overseen by a governing body.

As outlined in Appendix "A" and "B", BA has proposed the introduction of supplemental titles that more closely resemble the actual services and activities undertaken by a Financial Advisor. Consumer interests are served through meaningful supplemental titles that would only be available for use by qualified Financial Advisors. For example, a Financial Advisor could add to their business card, and website the appropriate approved supplemental title:

- FA, Investment Advisor;
- FA, Insurance Advisor; or,
- FA, Group Advisor.

This would make the identification of a Financial Advisor's specialization clear to the public and enhance consumer understanding of what services to expect from the Financial Advisor that they engage.

Not all Financial Advisors may want to specialize, and that is perfectly acceptable as generalists play a very important role too. Like the practise of law, not all lawyers want to hold out as specializing in a particular area of law. In medicine, not all doctors want to pursue specializations. Financial Advisors should be no different. But the inclusion of supplemental titles would be very helpful to consumers and can be achieved simply.

Capital Market Modernization and Client Focused Reforms (CFR)

Another unique feature that complicates the oversight of registrants providing financial services is that Financial Advisors are increasingly dual licensed. Certainly, in the case of Group Advisors, the services that they provide fall within both the insurance and securities sector.

The recent final report of the Ontario Government's Capital Markets Modernization Taskforce (Taskforce or Final Report) that was established by the Ontario Minister of Finance noted that there is a need for regulators from the insurance sector and securities sector to work more closely given the increased product, service, and regulatory convergence that is taking place. The Report also notes the need for titles to appropriately reflect, in a general way, the services that a consumer can expect from their Advisor:

> "… [t]o assist with investor awareness, the Taskforce recommends that they work with the SROs to develop a regime that will clarify titles for all registrant categories and will provide additional clarity to investors with respect to proprietary channels."

The OSC and the Taskforce have both identified titles as important to consumer protection and understanding. The idea that the CFR and Taskforce in the securities sector have identified titles as critical to providing "additional clarity to investors" is entirely consistent with what BA is recommending and is consistent with the purpose and objectives of the Act and proposed Rule. Additionally, this illustrates an alignment between the discrete financial sectors and overwhelming support by stakeholders for greater symmetries and harmonization between sectors.

The goal should be the enhanced benefits and outcomes for consumers with minimal regulatory disruption. We again emphasize that the inclusion of supplemental titles that are approved and assist consumers in identifying the services they require is

entirely compatible with the purpose and scope of the Act, and that the inclusion of approved supplemental titles can be achieved through guidance by the FSRA and other regulatory bodies in the financial services sectors.

Titles Caught and Not Caught

The FSRA states that the "goal for implementing the Financial Planning and Financial Advisor title protection framework is to mitigate consumer confusion and provide confidence to consumers and investors that the individual with whom they are dealing is qualified to provide financial planning or advisory services." We are fully supportive of this goal.

We appreciate the balancing of interests that the FSRA is trying to achieve in determining which titles are deemed too similar to that of Financial Advisor and which would be acceptable.

The guiding question is, would a title lead a reasonable consumer to believe that the licensee using the title has the equivalent level of skill, knowledge and professionalism as that of a Financial Advisor? The question is easy enough to ask, but absent meaningful consumer input, it is difficult to answer. A simple solution would be to protect the title Financial Advisor and only allow qualified individuals to use this title – as the Act does. And for those who do not qualify, the title "salesperson" applies. From a behavioural economics perspective such a policy would likely drive more registrants toward higher degrees of professionalism simply to avoid a title that may be viewed as less favourable. Such an approach would have a polarizing effect, while being fully supported by those committed to the achievement of the higher standards and levels of professionalism, it would be opposed by those who do not want to opt-in to the new higher standard required to qualify for the use the title Financial Advisor.

As BA reviews the list of example acceptable and unacceptable titles, we are struck by a number of titles that we believe consumers would view as equivalencies. This goes to the heart of the purpose of the Act. If the regulators are not able to properly contain titles that are not within the protect zone, and that consumers view as equivalent, then the purpose of the Act is compromised.

As a general comment we would propose excluding titles that incorporate the word "consultant". By its very nature, people have come to associate the term "consultant" as an equivalency to professional or specialization.

The debate surrounding appropriate and inappropriate titles is not one that needs to be settled prior to the Act becoming operational. It falls within the area BA has

referred to as architectural principles. BA believe that the best experts available to address this matter are consumer. We propose that the FSRA and OSC, as senior regulators, establish a consumer focus group to address this matter and get their feedback. Regulators and industry stakeholders can all bringing their considerable expertise and experience to this question but what is truly needed is the consumer prospective.

Foundational Principles

Foundational principles by their nature must be consistent, clear, and adhered to by all stakeholders choosing to operate in areas that fall under this heading.

Qualifying as a Credentialing Body

The Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Funds Dealers Association (MFDA), as established SROs, have robust complaint, investigation, hearing, decision, appeal and enforcement mechanisms. Applicants who apply for FSRA approval as a credentialing body will be assuming conduct oversight of their professional members. The oversight mandate includes an important quasi-judicial function, as such, high minimum standards of operation must be in place to ensure the integrity of their actions, and operations. Public interest would dictate that the standards must be set at a high and consistent level for all credentialing bodies.

Referring again to the increasing trend toward dual licensing, in addition to product and regulatory convergence between the securities and insurance sectors, we would argue that the existing standards and procedures employed by IIROC and the MFDA be the minimum threshold for credentialing bodies approved by the FSRA. If the FSRA were to set operational standards for approval as a credentialing body that were below those currently used by IIROC and the MFDA, it would result in a number of negative outcomes. Foremost, consumers could not be assured that all Financial Advisors are being held to the same standard, nor that investigations, hearings and outcomes are pursued with the same rigour and consistency under the new regime. Additional, if the operational standards are different between credentialing bodies overseeing Financial Advisors, the risk of regulatory arbitrage is introduced, whereby the advisor may select as their credentialing body one that does not have the same standards or resources to properly assume all of the responsibilities with the same rigour associated with appropriate oversight.

In order to avoid the application of inconsistent standards between credentialing bodies and the resultant regulatory arbitrage, regulators are left with two choices. Lower the operational standards used by IIROC and the MFDA to reflect the standard set for new credentialing bodies, or ensure that the IIROC and MFDA standards are the baseline entrance requirements for all credentialing bodies. An outcome where the standards are inconsistent between credentialing bodies is unfair to Financial Advisor who are working from within a more robust oversight regime, and it is also unfair to consumers who would be unaware of differing levels of rigour and oversight associated with different credentialing bodies. As a foundational principle we are of the view that there can be little debate on the issue of standards to be set and the need for all SROs to have consistent operational and structural requirements

Further, as credential bodies fall under the scope of foundational principles, we are of the opinion that they must operate to the highest ethical standards and where possible conflicts must be avoided. All actions and decision of the credential body must be made exclusively in light of their mandate as SROs, answerable to the FSRA in the insurance sector, and the OSC in the securities sector. While conflicts of interest arise in many forms and circumstances, certain conflicts can be addressed through structural requirements of the credentialing body. A guiding foundational principle should be that the sole focus of a credentialing bodies board is to carry out its mandate as established by the FSRA – there can be no bifurcation of responsibilities between the board or levels of boards, and the board must be answerable to the senior regulator and its members exclusively. Here again, we are of the view that there should be no compromise.

There is also the need to ensure that in the case of existing SROs, that any complaint, investigation, hearing, decision, and enforcement measures taken by a new credentialing body, be immediately shared with existing SROs and other credentialing bodies. This is critically important as the existing SRO are also the licensing bodies – and in the case of the insurance sector, the credentialing bodies would have to inform the FSRA of any actions and decisions. Conversely, the current SROs and FSRA would likewise advise the other credentialing bodies of any action assumed under existing legislation and rules that govern the conduct oversight of an advisor or planner. Coordination between the SROs, senior regulators, and newly established credentialing bodies is critical.

Avoidance by any professional Financial Advisor of the highest level of compliance, oversight, and enforcement must be avoided, and the same holds true for approved credentialing bodies. Hard choices must be made by any entity applying to become a credentialing body. The role of the credentialing body is foundational to the proper operation and success of the Act. While there are areas where compromise can be

achieved, the composition, role, and operational structure of the credentialing body is an area where compromise can undermine the entire purpose of the Act and result in harm to consumers. As such care must be exercised.

Conclusion

Thank you for the opportunity to participate in this important initiative, and should you have any questions with respect to our comments or accompanying documents, please don't hesitate in contacting the undersigned.

Sincerely,

Mike Macoun
President, The Benefits Alliance Group
Mike.macoun@benefitsalliance.ca

Todd Stephen
Board Chair, The Benefits Alliance Group
todd.stephen@omg.ca

Mike Skube
Advocacy Committee Chair, The Benefits Alliance Group
mike@mlsfinancial.ca

Attachments:
Appendix A – *An Investment Toward Enhanced Consumer Outcomes*
Appendix B – Legal Analysis