

Sent via email

June 2, 2023

Attention: Mark White, CEO  
Financial Services Regulatory Authority of Ontario (FSRA).  
[Mark.white@fsrao.ca](mailto:Mark.white@fsrao.ca)

### **Financial Services Regulatory Authority of Ontario Notice of Changes and Request for Further Comment Proposed Rule 2022 – 001 Assessments and Fees**

<https://www.fsrao.ca/engagement-and-consultations/fsras-proposed-2022-fee-rule-now-open-further-consultation>

Kenmar appreciate the opportunity to provide input to this important consultation. The focus of this letter is on the FA title. The FSRA FP title regime may reduce consumer confusion but it will not prevent individuals from providing financial advice/planning services. It may constrain exempt market individuals, Scholarship plan salespersons and insurance agents from abusing the FA title. There is some positive clarification surrounding financial planning in Ontario. That being said, we much prefer the Quebec approach used to regulate financial planners.

Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at [www.canadianfundwatch.com](http://www.canadianfundwatch.com). Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for investment fund investors. Kenmar routinely interact with regulators in supporting consultations. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

***"Doing the right thing is more important than doing the thing right."***- Peter Drucker, Father of Management

### **Executive Summary /Situational Analysis**

The only substantive matter actually put before commenters is the level of fees to be charged to the CIRO CB unit.

As investor advocates we are caught in a real bind. We have serious reservations with the Ontario FSRA Baseline Competency Profile (BPC) for the FA title and are uncomfortable with CIRO taking on a new mandate as an accredited Credentialing Body (CB), especially when the FSRA FA title standard is below that required of former IIROC registrants. Canadians want and need financial advice that will allow them to meet their life goals. That involves a lot more than investing in mutual funds, securities.

If approved as a CB, CIRO will be able to grant accreditation to some 47,000 registered representatives in Ontario to use the FSRA Financial Advisor title –

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including persons who are only licensed to sell mutual funds. Even non- accredited CIRO registrants in other provinces could continue to use a Financial Advisor tile as long as the Dealer grants approval.

As a CB, CIRO will be granting Ontario FSRA FA title use to registered mutual fund salespersons creating a risk that investors may be misled into thinking they are dealing with someone who is providing them with broad-based financial advice, when the individual is likely more focused on selling them an investment product. Consumers may rightfully expect that a professional , like an Financial Advisor, works to a fiduciary standard which is clearly not the case with the FSRA FA title.

A number of previously FSRA approved Credentialing Bodies can already grant the use of the FSRA FA title. We must now choose between questionable choices and hope that, over time, the system will correct itself. Given that CIRO has established investigation and enforcement powers, we must choose the option with the least investor harm, albeit with considerable discomfort.

We want to stress though that CIRO would be complying with the legislation that was drafted by FSRA and proclaimed in force by the Ontario government. The FA title is NOT a CIRO policy instrument. The Ontario FSRA/OSC CB accreditation places CIRO in a position where they must assist Members in complying with the Ontario legislation and FSRA FA title obligations. They are impacted by it but they are not the drivers of this initiative. Frankly, we question whether CIRO staff even support the FPTPA or the relatively low FA BCP that has been formulated.

We question the decision of this consultation effectively making CIRO an Ontario FSRA accredited CB without full CSA member endorsement and having CIRO legitimize the FSRA FA title. The big issue for us is that Canadians will trust the Ontario FSRA **Financial Advisor** title to their detriment.

**The title protection framework puts the Ontario government's weight behind professional titles that consumers are supposed to be able to rely on as meaning something about the user's skill, knowledge and conduct. In this letter we provide rationale why (a) the government should upgrade the Ontario FSRA FA title Baseline Competency Profile (BCP) and (b) politics aside, CIRO should be left to deal with its existing mandate, consolidation and other regulatory challenges and the number of accredited CBs be cut to one. If however, CIRO becomes a CB, we agree the fees charged to it should be adjusted given its established infrastructure and oversight by the CSA/OSC.**

### Introduction

*"Ontario's title protection was "built to fail" when it comes to consumer protection. Instead of taking a regime like Quebec's ... which is very clear to consumers, we have a regime that has two names ... and does not cover off the myriad other titles that are very confusing to consumers" -Laura Tamblyn Watts, president and CEO of CanAge in Toronto. (Chair of FSRA's consumer advisory panel*

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and a member of the CIRO's board, speaking on behalf of CanAge, not her other industry roles) **At one-year mark, investor advocates say Ontario's title regime adds confusion, not clarity** | Advisor's Edge  
<https://www.advisor.ca/news/industry-news/at-one-year-mark-investor-advocates-say-ontarios-title-regime-adds-confusion-not-clarity/>

As has been well covered in the media and elsewhere, the Ontario Financial Professional Title Protection Act (FPTPA) is flawed. The enforcement powers provided under the FPTPA Act can hardly be considered credible deterrence tools. There is no need to recite all the issues here. In effect, the FPTPA protects only the use of the FA title, not the profession of financial advice. It **does not** directly regulate the conduct of credential holders. Individuals who choose not to use the FA title will still be permitted to market and provide financial advice to Ontarians. **A number of impressive sounding advisor titles will co-exist with and compete with the FSRA FA title.**

It should be noted that new CSA CFR rules contain relatively robust provisions regarding the use of misleading advisor titles. When enforced, these rules protect retail investors, regardless of FPTPA. Registered Firms must approve title usage. Historically, securities regulators and SRO's have not dealt effectively with title misrepresentation and inflation. See **OSC Staff Notice 31-715, IIROC Notice Number 15-0210 and MFDA Bulletin Number 0658-C - Mystery Shopping for Investment Advice: Insights into advisory practices and the investor experience in Ontario** <https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-715/osc-staff-notice-31-715-iiroc-notice-number-15-0210-and-mfda-bulletin-number-0658-c-mystery> We are cautiously optimistic that titles approved for use by CIRO member Firms will not be misleading except for the FA title which is approved by the Ontario government .

The proposed FSRA changes would reduce the fees payable by Credentialing Body (CB) entities that are already subject to a Recognition Order.( other provincial regulators also have Recognition Orders in place with CIRO) . According to the consultation, such Recognition Order outlines a robust process for the oversight of the entity's operations, governance and administration, and is deemed by the FSRA, sufficiently broad so as to cover regulatory requirements for credentialing bodies ( basically an independent personnel competency and conduct certificate granting authority , focussed on personnel education/training and testing to documented standards) .

FSRA is proposing an amendment to the Fee Rule that, if approved, would reduce CIRO fees, recognizing that the Ontario Securities Commission provides oversight of its activities under a OSC Recognition Order. We are informed that FSRA, the OSC, and New SRO are collaborating to ensure that CIRO's participation as a CB under the Ontario title protection framework would not result in regulatory duplication. The consultation does not refer to other CSA Members' participation which also oversee CIRO.

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In addition to the reduction in fee structure for CIRO CB, other approved credentialing bodies could, according to the consultation, also see an overall reduction in fees payable to FSRA with the **potential** addition of thousands more FA credential holders under the framework. Actually, if CIRO attracts a high participation rate, the membership of other FA CB's could fall to the point where their economic viability is threatened.

**NOTE:** While CIRO has applied to add a CB unit to its structure/mandate, the OSC has not. It has wisely decided to laser focus on the long list of 2023-24 regulatory priorities and address the 26 recommendations for improvement contained in the Ontario Auditor General's Report. See **OSC efforts undermined by lobbying and politics, says audit:** *IE Efforts to enhance investor protection in Ontario have been undermined by a combination of government interference, industry lobbying and regulatory dissonance, according to a review of the Ontario Securities Commission (OSC) by the province's auditor general.* <https://www.investmentexecutive.com/newspaper/news-newspaper/osc-efforts-undermined-by-lobbying-and-politics-says-audit/> Advisory personnel with PM's, EMD's or Scholarship Plan Dealers will have to utilize one of the other FSRA approved CB's (other than CIRO CB unit) to obtain FA title use entitlement in Ontario.

We note that the Ontario FSRA title framework doesn't extend beyond Ontario. Ontario can't override other provinces authority.

As the financial services industry has evolved, so have clients' needs and expectations. They're seeking more than just security selection from their *Financial Advisor*—they want a trusted financial coach to guide them through all the complexities of their financial lives. That includes debt management, planning for retirement, life insurance assistance and tax guidance. See **APPENDIX C detail on FSRA's consumer research survey** "The top three services that FA clients expect from their FA are investment advice (76%), retirement planning advice (57%) and wealth management (49%)"

<https://www.fsrao.ca/industry/financial-planners-and-advisors-sector/notice-changes-and-request-further-comment-fntp-rule> See also National **Occupational Code Financial Advisor 11102** <https://noc.esdc.gc.ca/Structure/NocProfile?objectid=Y0aZzJd7NTVjDB0Cr50oYF7SPqE0EplnSYG6dxq43bY%3D> The FSRA FA Baseline Competency Profile deviates markedly from the Canadian national code.

### Fee structure

Per the consultation, the CIRO CB unit would not be assessed the variable fee element of the annual assessment under subsection 8.1(2) of the FSRA 2022 Fee Rule. Although we remain unconvinced CIRO should add a CB unit to its mandate, **if it is to be, then its capabilities should most definitely be recognized by a reduced assessment compared to the other accredited CBs.**

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In general, we're not convinced that fees assessments should enable the recovery of FSRA costs incurred to design and implement the FA/FP framework created by the government of Ontario.

The level of FA CB fees, while important, is a secondary consideration as is so-called "regulatory burden" reduction. We have a concern that the reduction in cost recovery resulting from accrediting CIRO (for FA title) will fall on the back of CB's related to the Financial Planning (FP) title. Depending on materiality, this might be significant enough to reduce access to financial planning services for Ontario consumers. To be clear, any increase in the cost of financial planning services is a negative in that access to trusted personalized financial planning for Canadians may be reduced.

**We recommend that the only fees payable by CIRO should be the cost of an annual operational audit by FSRA accreditation staff (or OSC/authorized independent third party) to the terms stipulated in the CB Accreditation approval document the cost of maintaining the Ontario FSRA title registry.** This will be effective in keeping the costs of regulation CB to a minimum.

As an aside, we mention that a **national title registry** would be a positive, but that requires Ontario to be willing to harmonize with other provinces.

**The costs and expenses for operating the FA CB unit of CIRO should not be allocated in whole or in part to the regular operations of CIRO as a securities SRO. The fee charged to FA title holders should reflect the costs incurred for running the CIRO FA CB (i.e. no subsidization).**

In the event other provinces such as Saskatchewan decide to accredit CIRO as a CB for their own unique FA standard and Act, FSRA fees charged to CIRO would need to be reviewed based on the facts and circumstances existing at that time.

**Despite political obstacles , we urge the CSA to step up to the plate and forge a plan that incorporates the views of all the provinces, not just Ontario, into a single FA standard Canadians can be proud of. A harmonized pan-Canadian standard makes a lot of sense and will reduce regulatory costs and consumer confusion. An aspirational outcome to be sure. We also recommend a single FA CB for Canada to reduce costs and investor confusion.**

### General Commentary

From our perspective, the approval of the CIRO as a CB fails to distinguish between an investment product sales license and actual financial advice at a level of proficiency required to functionally advise financial consumers.

We know that financial consumers seeking personalized financial advice rely on the FA title as a proxy for professionalism; FSRA's own research backs this up. If CIRO is allowed to enter a professional framework on the back of a sales license alone,

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financial consumers will continue to be exposed. The whole point of the title protection framework was to make it easy for consumers, at a glance and based on a professional title, to know which intermediaries have undertaken professional education and hold themselves to a higher standard. Allowing a sales license to qualify largely impairs that promise. At the same time, we acknowledge that an IIROC registrant, bound by CFR and robustly enforced by CIRO, could arguably approximate consumer expectations for a financial advisor in select cases. Of course, individual proficiency and personal ethics are important, but the Dealer/industry culture norm and the Dealer/industry standards also influence registrant behaviour.

**Points to consider:** Will transforming investment product sellers into FA's improve anything from a consumer protection standpoint? Should an individual that can only sell actively-managed mutual funds be called a *financial advisor*? Should individuals who are constrained by proprietary product shelves be eligible for FA title use? Should an FA be permitted to directly or indirectly receive compensatory payments from product providers for recommending their product? Will CIRO Registered individuals granted the Ontario FSRA FA title be permitted to use that title in other provinces or territories where they do business? Should credentialed FA's be permitted to participate in initial public offerings of new shares or bonds?

*"The concern was never that the industry is rife with financial advisors operating with no qualifications .The problem has always been and continues to be, 'What are you and what do you do?'" To that end, Ontario's title protection has "made things worse, not better. There's a real risk of consumer harm here."* - Jean-Paul Bureaud, Executive Director of FAIR Canada

<https://www.advisor.ca/news/industry-news/at-one-year-mark-investor-advocates-say-ontarios-title-regime-adds-confusion-not-clarity/>

In effect, the consultation is implicitly asking commenters to (a) accept the FSRA FA standard in Ontario; (b) accept that CIRO's sales license is an appropriate FA professional credential; (c) accept that CIRO is an appropriate Credentialing Body (CB) for credentializing the FSRA FA title and (d) that CIRO is fully qualified as a CB.

A FSRA approved CB should have independent directors , a curriculum guidance team, a rigorous examination system and process consistent with generally accepted standards for credentialing established by ISO 17024 and/or I.C.E. (NCCA) ,a Code of Professional conduct, a registry for FA title holders , a tailored complaint handling process and other tools relevant to a modern, accredited personnel credentialing Body. In addition, since CIRO course delivery is subcontracted, it should have adequate staff to approve and monitor educational institutions that deliver the FA curriculum. Does newly constituted CIRO have the attributes, structure and dedicated resources essential to being an accredited CB?

*"Suffice it to say, numerous groups are calling on the government and FSRA to learn from these initial missteps and improve the framework. But until then, investors would be wise to look out for themselves when working with someone*

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*calling themselves a financial advisor or financial planner.”* **Ontario’s Title Protection Framework Failing Consumers?:** FAIR FOCUS May 2023  
<https://myemail.constantcontact.com/Fixing-Complaint-Handling-for-Bank-Customers.html?soid=1102284477892&aid=kDXt7Wz4CxU>

In other words, **CAVEAT EMPTOR!**

FSRA should provide a channel of communications for consumers in the event they are dissatisfied with CIRO’s handling of their inquiry/complaint.

### Issues tied to multiple CB’s

It appears to us that the title protection framework is intentionally designed so that **any** professional designation granting or licensing body that **meets minimum requirements** can apply to be approved by Financial Services Regulatory Authority (FSRA) as a credentialing Body. We are not convinced that fierce competition among CB’s will lead to consistent results or desired outcomes. Competing ECB’s in the banking sector has not served consumers well; the Canadian government is in the process of establishing a single, non-profit banking External Complaints Body (ECB) for Canadians.

Non-SRO CBs will have to demonstrate how they will assess the suitability of a prospective FA credential holder, should disciplinary action or enforcement action be taken by CIRO (or other accredited approved CB). It will be interesting to see precisely how these CB’s serve the Public interest in a competitive environment.

Michael Thom, Managing Director of CFA Societies Canada had this to say about the FSRA approved CB’s:

*“There are those [credentialing bodies] that have made genuine attempts and investments in process, curriculum quality and people to do this right, and they shouldn’t be thrown in the trough with others that are attempting to very plainly make a buck.”* See **At one-year mark, investor advocates say Ontario’s title regime adds confusion, not clarity** | Advisor’s Edge  
<https://www.advisor.ca/news/industry-news/at-one-year-mark-investor-advocates-say-ontarios-title-regime-adds-confusion-not-clarity/>

Respected advisor and industry commentator Dan Hallett has expressed his concern regarding the appropriateness of self-regulators becoming Credentialing Bodies:

*“In his comment letter submitted during the first round of consultations in 2020, Hallett warned that having self-regulatory organizations become credentialing bodies in the province would be a wasted opportunity for title protection. He was afraid that people qualified to sell securities investment funds could simply fill out an application and pay their way into being a financial advisor (FA) or financial planner (FP), creating “a rubber stamp for the status quo.”..”*  
<https://www.wealthprofessional.ca/news/industry-news/title-protection-regime-comes-under-fire/370488>

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In September 2022, FSRA accredited the for-profit Canadian Securities Institute (CSI is owned by U.S. - based Moody's Analytics, MCO: NYSE) as a FSRA FA CB. At the time, a number of observers commented that this new designation appeared to be substantively based on an individual's registration with MFDA. In other words, little has been achieved by the FPTPA from the consumer's perspective Re the 80,000+ MFDA approved persons/ mutual fund salespersons affiliated with CIRO (the MFDA is now consolidated in CIRO).

*"But the problem is that now that the SROs are part of the framework, that effectively makes everyone who was licensed at the MFDA or IIROC a financial advisor, regardless if they have any credentials. So, effectively, the financial advisor title is now a giant whitewash rubber stamp for the entire industry"- Jason Periera, President of the Financial Planning Association of Canada (FPAC)*

We are baffled why CIRO would apply to establish a CB unit while faced with the numerous challenges of consolidating the MFDA/ IIROC, implementing CFR, writing a new rulebook and addressing the many long -standing issues associated with complaint handling/ OBSI. Achieving accreditation as a CB is a demanding task with significant accountability (and liability). Further, by applying to FSRA, CIRO is effectively agreeing to credential its registrants to utilize the investor advocate shunned FSRA FA title. A real mystery given the stature of CIRO Board and senior management. We regard the diversion of resources to the CB task as constituting a risk to CIRO achieving its primary mission- investor protection.

That being said, an advantage CIRO has as a CB is its established capability of CIRO compliance oversight and enforcement to **its** standards. Another potential benefit of CIRO acting as a CB would be its ability to detect uncredentialed title use. One , perhaps unintended consequence , of CIRO adding a CB mandate is that thousands of registrants will fall under CIRO CB instead of participating in other CB's . This could result in a reduction in the number of accredited CB's which we regard as a positive.

A shortcoming is that CIRO regulates investment sales /advice, not financial advice per se. In any event, we expect that CIRO will need to make organizational and practice adjustments to become and remain a well-functioning, independent CB.

**To the greatest practicable, CIRO should not allow an individual who is employed by or represents a CIRO Dealer Member to use the FA title unless they are licensed by CIRO as a "Registered Representative", "Associate Portfolio Manager" or "Portfolio Manager", irrespective of the fact that they may hold the FSRA approved FA credential.** Such a rule would reduce the damaging effects of widespread FA title use.

To better understand the investor protection implications of the FPTPA, more information is required from FSRA regarding the implications of a CIRO enforcement action against an individual holding the FA title. Specifically, (a) must CIRO communicate its enforcement actions to all other FSRA approved CBs? and (b) must other CBs be required to formally recognize CIRO enforcement action(s)?



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**FSRA should take steps to avoid any situations where an individual using the FA title could avoid enforcement sanctions by moving to another financial sector/CB.**

As an aside, we feel obligated to express our concerns about some of the CB's that the FSRA has already approved. Some of the institutions that have been approved have/had some deficiencies including the fact they were supposed to effect enforcement, but didn't have a solid mechanism to track complaints. Others had an educational curriculum that was deficient in key areas, such as ethical conduct. It remains to be seen if the shortcomings are corrected in practice. There is also the real risk of "CB shopping" because of the high level of CB competition promoted under FPTPA.

**Where a CIRO registered person also holds the FA or FP credential from a non-CIRO CB and there are alleged violations of CIRO Rules in respect of an individual title holder, CIRO regulatory processes must take precedence to ensure that clients are not negatively impacted.**

When client complaints involving CIRO registrants are directed to non-CIRO CB's for investigation without notification to CIRO, clients may not be aware of other options available for handling their complaints and avenues for redress. **In light of the more robust complaint handling regime of CIRO in contrast to those of non-SRO CB's, and the availability of OBSI ,consumers must clearly understand and be directed to CIRO for handling their complaint . In all cases, CIRO complaint handling processes must take priority.**

**NOTE:** Four FSRA FA credentials already exist: The CSI DFSA, the Advocis' professional financial advisor (PFA), the Canadian Institute of Financial Planning's registered financial and retirement advisor (RFRA) and registered retirement analyst (RRA). CIRO will add yet one more credential to the mix. **Unless the Financial Advisor (FA) title is consistently used in all consumer interactions, these added credentials could further confuse retail financial consumers.** An alphabet soup of credentials will negate the planned protective value of Financial Advisor title protection.

CIRO Ontario registrants should not be required to use CIRO's FSRA FA Credentialing Body to obtain FSRA FA credentialing.

We note that CSI will be a competitor to CIRO as well as its key supplier. The competition could create conflicts- of-interest and pricing distortions.

### **Other comments**

FP Canada has provided an idea for expanding the FSRA FA Baseline Competency Profile (BCP).

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*"Specifically, we recommend that the FCAA expand the current BCP approval criteria under the Product -Focused approach to include a new requirement that FA credentials not only require education related to the products and services by an individual but must also require **an understanding of the implications of the products an individual recommends on other areas of the client's financial picture.**"* - FP CANADA™ RESPONSE TO FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN (FCAA) CONSULTATION ON PROPOSED FINANCIAL PLANNER AND FINANCIAL ADVISOR REGULATION  
[https://www.fpcanada.ca/docs/default-source/resources/fp-canada-amended-fcaa-consultation-submission.pdf?sfvrsn=59b88334\\_3](https://www.fpcanada.ca/docs/default-source/resources/fp-canada-amended-fcaa-consultation-submission.pdf?sfvrsn=59b88334_3)

Kenmar Associates have advocated that, to ensure consistency, **all FA CB's be bound by a single Code of Professional Conduct issued by the FSRA.** This would benefit compliance and enforcement and instill Public confidence.

Given the continuing changes in financial products, technology, AI, income tax rules, social benefits and financial consumer needs, **Kenmar recommend that the FSRA adopt a formal periodic review cycle of the baseline competency profile for the FA title.** FSRA- approved FA CB's should be required to update their credentialing program to comply with the changed FSRA competency/conduct profile.

The FSRA is filling the role of a trusted CB accreditation Authority. In this capacity it has a fiduciary duty to set standards independently and objectively after taking stakeholder input into account. And there needs to be a continuous review of their adequacy/fitness for purpose. Given that the FA title competency profile does not have the support of financial professionals or consumer groups, the FSRA should not, in good conscience, proceed. **We fail to see how this behaviour would be acting in the Public interest.**

When FSRA creates and maintains a publicly accessible centralized registry of approved FA title holders, we do not believe it is necessary for FA title holders to provide additional disclosure to their clients of the credential they hold.

**We recommend that FA title holders registered with CIRO be required to explicitly disclose their product coverage (i.e., securities, mutual funds-only, option contracts, futures contracts) and product shelf restrictions and the potential impact of the restrictions on the advice provided.**

**The CIRO CB unit should be required to publish an Annual Report that describes its credentialing operations, including but not limited to : governance ,organization ,finances, key issues , system improvements/ challenges ,FA title statistics, FA related enforcement actions , interactions with non- CIRO CB's ,the FSRA and OBSI , assessment of the FA title, consumer education initiatives, consumer complaints received and the results of an Annual independent Audit . If the CB audit is performed by the OSC, there may not be any costs involved.**

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**A CIRO member Dealer should have the right to approve (or not) the use of the FA title in its business . In particular, if the Dealer feels the FA title is a misrepresentation of the Rep's activities , the Dealer should remove the Reps right to use the FSRA title.**

### **Consumer education- SRO literature**

Kenmar supports consumer education as an important contributor to investor protection. Where possible, education initiatives should be centralized/coordinated, to provide the greatest transparency and benefit for investors. **To avoid confusion, CIRO should ensure its literature distinguishes between registrant proficiency (and) conduct and that associated with the FA title. We are concerned that extensive promotion of the FSRA approved FA title could harm large numbers of unsuspecting investors.**

### **Information security and Privacy (CIRO CB unit)**

**FSRA should define the privacy level of FA title holder information - how is it to be treated by the FSRA accredited Credentialing Body unit with respect to CSA overseen CIRO?** Privacy considerations are important with respect to information sharing between accredited CBs/regulatory bodies.

### **Responsibility and Accountability of CIRO member Dealers**

**CIRO Dealers must commit to provide the training, tools, software , IT support , policies/procedures, compliance oversight and supervision to support FSRA FA titled advisors.**

**CIRO Dealers should ensure all marketing, sales and other literature does not overstate or exaggerate the services to be provided by any Rep it has permitted to use the FA title.**

**Dealers should not rely solely on a CB FA credential.** Dealers should ensure that maintaining competence for a representative takes into account such matters as changes in the market and to client base, products, legislation and securities regulation.

**CIRO member Dealers should not permit the use of the FSRA FA title in Ontario unless they have confirmed the status with the applicable CB.**

Dealers should ensure that FA title holders do not provide personalized *financial* advice in areas for which they are not qualified. Dealers may be permitted to allow representatives to provide financial planning services as long as they are satisfied of competency and the Financial Planner (FP) title is not used (unless the individual has a FSRA FP credential in good standing).

Dealers should ensure that their representatives' training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support should be provided to ensure that any relevant training needs are

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satisfied. Dealers should also review at regular intervals the quality and effectiveness of such training. Dealers must review on a regular basis representatives' competence and take timely, appropriate action to ensure that they remain competent for their role.

CIRO registrants should **not** be permitted to retain the FA title while they are under strict supervision or under suspension.

### Summation

Without changes, consumer protection will NOT be enhanced by FPTPA. Registrants of CIRO (IIROC) already provide a reasonable level of investor protection. The FSRA product-focussed FA title, if adopted across Canada, could make selecting a financial advisor more perilous and confusing for Canadian financial consumers. Investors will not realize they are dealing with a product salesperson - an individual whose training and education are not centered on holistic advice, including elements of tax optimization, estate planning or financial planning.

**In our opinion, credentialing people who pass the CIRO FA titling standard (not a proficiency standard for personalized financial advice), a license to distribute products will mislead financial consumers, with seniors and vulnerable clients most impacted.**

**With the controversial FSRA FA title, a CB regime that incorporates CIRO could impair the credibility and reputation of the recently formed CIRO.**

The province of Saskatchewan is contemplating to institute a higher, more fulsome, financial advisor standard than Ontario's. Will Saskatchewan (Quebec, BC or other provincial regulators) request that CIRO act as a CB for their own FA BCP standard? If they do, this could result in a real mess-the opposite of CSA harmonization. Multiple CB's for multiple FA standards. **Or worse, we could face contagion, where the lower Ontario FSRA FA BCP becomes the standard for Canada. Our worst nightmare is that all mutual fund salespersons in Canada will be able to legitimately use the *Financial Advisor* title.**

**NOTE:** In March, the New Brunswick government introduced Bill 29, Financial Advisors and Financial Planners Title Protection Act, after first consulting on title protection in 2021. Bill 29 includes potential administrative penalties for using a restricted title without a required credential or otherwise contravening the act — \$10,000 for individuals and \$25,000 for non-individuals. In principle, an individual could be required to pay \$10K to the applicable CB and fines to CIRO for various breaches of its rules including misrepresentation. It is not clear whether NB will also accredit CIRO for its version of the FA title.

**Ideally, the FSRA should work with all stakeholders and expeditiously come to an agreement on the competency skill/conduct set deserving of an FA title that would be applicable across Canada and satisfactory to all provinces, not just Ontario.**

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This would be a big step towards building up the financial advice profession in Canada. Kenmar also suggest that more analysis and debate be effected before deciding that CIRO is an appropriate Credentialing Body for financial advice professionals and that there are no unintended consequences of adding such a demanding function to its mandate .

We urge the Financial Services Regulatory Authority of Ontario to engage with professional Associations and financial consumers. The opportunity to do the right things right should not be missed. **A pause to reflect would be, in our opinion, in the Public interest and demonstrate FSRA's growing stature as a forward looking, responsive regulator.**

**We recommend that the FSRA review the FPTPA in 2023/24 to (a ) assess whether or not it has achieved its objectives (b) whether or not the objectives were sufficient in scope to protect retail consumers from misleading advisor titles and ( c) whether the accredited CB's have provided adequate controls and consumer protection.**

Kenmar Associates agree to public posting of this Comment Letter.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Sincerely,

Ken Kivenko P.Eng. (retired)  
President, Kenmar Associates

### Literature Review

**ISO 17024 Conformity assessment- General requirements for bodies operating certification of personnel** (available from ISO for a fee)  
<https://www.iso.org/obp/ui/#iso:std:iso-iec:17024:ed-2:v1:en> ISO 17024 has a number of requirements for organisational structure, quality management system elements, competence of personnel, confidentiality, etc. The certification body must also describe the certification process, how candidates are evaluated and define periods of recertification. In addition, the personnel certification body must be able to demonstrate how conflict of interest is managed and must have mechanisms in place to objectively evaluate the outcome of the certification process. Many personnel credentialing bodies are accredited by accrediting bodies to the ISO/IEC 17024 standard, which was designed to harmonize the personnel certification process worldwide.

### Personnel Certification - Documents

<https://anab.ansi.org/credentialing/personnel-certification/documents>

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### **ISO 17024: Wikipedia**

[https://en.m.wikipedia.org/wiki/ISO/IEC\\_17024](https://en.m.wikipedia.org/wiki/ISO/IEC_17024)

### **FINANCIAL ADVISORS AND PLANNERS: IN SEARCH OF REGULATORY PRINCIPLES**

<https://www.thomsonreuters.ca/en/westlaw-canada/canadian-business-law-journal/financial-advisors-planners-search-regulatory-principles.html>

### **Enhancing Investors' Trust 2022 CFA Institute Investor Trust Study**

[https://www.cfainstitute.org/-/media/documents/article/Enhancing-Investors-Trust-Report\\_2022\\_Online.pdf](https://www.cfainstitute.org/-/media/documents/article/Enhancing-Investors-Trust-Report_2022_Online.pdf)

### **2023 Canada Full-Service Investor Satisfaction Study – satisfaction tumbles | J.D. Power**

**Only a fraction of investors receives comprehensive advice:** *The study shows that only 6% of investors in Canada are receiving a comprehensive level of service and advice from their wealth management professionals.* Comprehensive advice is defined as personalized guidance from an advisor that addresses all financial and wealth management needs; demonstrates an intimate understanding of the client's lifestyle and goals; puts the client's best interests first; includes a financial plan; ensures clients understand the fees they pay; and is an integral part of the client's life. <https://www.jdpower.com/business/press-releases/2023-canada-full-service-investor-satisfaction-study>. A shameful but not surprising statistic. An OSC IAP study found similar results. **This is why FA title regulation must be robust.**

### **IG Wealth Management Estate Planning Study: Despite Aging Population, Most Canadians Lack Estate Plan**

*Only one-quarter (25 per cent) of Canadians have an estate plan*

<https://www.newswire.ca/news-releases/ig-wealth-management-estate-planning-study-despite-aging-population-most-canadians-lack-estate-plan-826182868.html>

This is disturbing news given the large number of "advisors" out there. Financial advisors need to pay more attention to other aspects of a client's overall financial health besides the sales transaction component.

### **A MEASURE OF ADVICE: How much of it do investors with small and medium-sized portfolios receive? : OSC IAP**

*"In our view, these survey results raise important concerns about the scope of advice currently being provided to investors with small and medium-sized portfolios: while many are getting some advice on highly-relevant matters, a number of key topics seem to be left unaddressed in many cases. This leads us to question whether the advice being provided to these investors is sufficiently comprehensive to meet their needs."*

[https://www.osc.ca/sites/default/files/2020-10/iap\\_20190729\\_survey-findings-on-how-much-advice-investors-receive.pdf](https://www.osc.ca/sites/default/files/2020-10/iap_20190729_survey-findings-on-how-much-advice-investors-receive.pdf)

### **New financial advisor title is 'giant whitewash rubber stamp' | Wealth Professional**

## Kenmar Associates

<https://www.wealthprofessional.ca/news/industry-news/new-financial-advisor-title-is-giant-whitewash-rubber-stamp/375260>

**STANDARDS OF PROFESSIONAL RESPONSIBILITY:** FP Canada (sample Code for financial planners)

[https://www.fpcanada.ca/docs/default-source/standards/standards-of-professional-responsibility.pdf?sfvrsn=b2781960\\_5](https://www.fpcanada.ca/docs/default-source/standards/standards-of-professional-responsibility.pdf?sfvrsn=b2781960_5)

**'I feel duped': Why bank employees with impressive but misleading titles could cost you big time:** CBC News

<https://www.cbc.ca/news/business/bank-s-deceptive-titles-put-investments-at-risk-1.4044702>

**Are You Working With a Trusted Advisor Or a Salesperson?**

<https://bautisfinancial.com/are-you-working-with-a-trusted-advisor-or-a-salesperson/>

**ADVISOR TITLE TRICKERY YOUR FINANCIAL ADVISOR IS A COMMISSION SALES PERSON:** SIPA

<http://www.sipa.ca/library/SIPASubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf>

**Understanding registration: CSA**

As one peruses this document it becomes clear that everything is centered around investment product transactions rather than personalized financial advice. There is little reference to financial planning, tax optimization, retirement planning, insurance or the use of govt. social benefits. Yet these components are what most Ontarians seek from their “financial advisor”. Unless the FSRA approved FA Baseline Competency Profile incorporates additional financial skills beyond investment product transactions, Ontarians will be deceived and disappointed.

[https://www.securities-administrators.ca/uploadedFiles/General/pdfs/UnderstandingRegistration\\_EN.pdf](https://www.securities-administrators.ca/uploadedFiles/General/pdfs/UnderstandingRegistration_EN.pdf)

**Changing roles of financial advisors:** Conversations with Commonwealth

As the financial services industry evolves, so do your clients’ needs and expectations. They’re looking for more than just asset management from their financial advisor—they want a financial coach to guide them . They expect professional conduct not just competency in dealing with challenging financial issues. That means estate planning, health insurance assistance, tax guidance, and more. <https://crmsf.commonwealth.com/conversations-with-commonwealth-mccoll>

The FA title should reflect basic competency in wealth management, estate planning, portfolio construction, tax optimization and insurance. People licensed as product sellers like mutual fund salespersons are NOT FA’s. More training likely required for advisors dealing with seniors/ retirees and de-accumulating accounts.