



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

November 12, 2020

Financial Services Regulatory Authority
5160 Yonge Street, 16th Floor
Toronto, Ontario
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Submitted via FSRA website: <https://www.fsrao.ca/engagement-and-consultations/financial-professionals-title-protection-rule-and-guidance>

To Whom It May Concern,

Re: FSRA Proposed Rule – Financial Professionals Title Protection Request for Comments

FAIR Canada is pleased to provide our comments and recommendations on the Financial Services Regulatory Authority of Ontario (FSRA) Proposed Rule – Financial Professionals Title Protection (Proposed Rule).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada advances its mission through outreach and education, public policy submissions to government and regulators, proactive identification of emerging issues and other initiatives.¹

Organization of Submission

This submission is organized as follows:

1. General comments
2. Titles that could reasonably be confused with Financial Advisor and Financial Planner
3. Best Interest Duty
4. Consumer Confusion
5. Financial Advisors
6. Title Users Credentials Minimum Standards
7. Alignment with Securities Regulatory Framework
8. Education Proficiency
9. Ethics Minimum Standard
10. Technical Knowledge of KYC, KYP and Suitability Duties of Care
11. Regulatory Burden
12. Criteria of Approval of Credentialing Body
13. Enforcement by Credentialing Body
14. FSRA Oversight of Credentialing Bodies

¹ Visit www.faircanada.ca for more information.

15. FSRA Enforcement
16. Transition Periods

Wherever possible we have provided specific recommendations and suggestions for consideration intended to address the concerns and issues we have highlighted in our comments.

General Comments

FAIR Canada supports the policy objective to regulate persons using the titles Financial Planner and Financial Advisor in the financial services industry in Ontario. Meaningful professional title restrictions should ensure that business titles used reflect the ability of the financial services industry representative to provide competent, objective, professional services for consumers.

We reiterate the findings of the Final Report to the Minister of Finance (Ontario) of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (Expert Committee)² ~ *the three most glaring contributors to harm are: the lack of specific, harmonized regulation of financial planning and financial advice; the confusing titles and credentials used by providers of financial planning and advisory services; and the lack of an explicit obligation to act in the client's best interest.*

The Financial Professionals Title Protection legislation introduced in 2019 and the Proposed Rule falls short of the policy recommendations by the Expert Committee. The limitations of the proposed title protection regulatory framework will leave a number of significant policy concerns unaddressed.

The Proposed Rule establishes minimum standards for approval criteria for individuals to be permitted to use the professional titles of Financial Planner or Financial Advisor. The Proposed Rule also establishes a regime for the standards that must be met by “approved credentialing bodies” permitted to grant and administer designations to use these titles.

Fundamentally, this initiative is about ensuring there is appropriate conduct and proficiency for those holding themselves out as Financial Planners and Financial Advisors. It will be critical for the FSRA to ensure only competent and qualified individuals who are required to follow best practices in market conduct are able to use the Financial Planner and Financial Advisor designations.

FAIR Canada recommends that the following issues should be squarely and transparently addressed by the FSRA to strengthen the Proposed Rule.

Titles that could reasonably be confused with Financial Advisor or Financial Planner

The proposed regulatory framework of the Proposed Rule protects titles only. It does not address the regulation of individuals or firms who hold themselves out as providing financial planning or financial advisory services but use business titles other than “Financial Planner” or “Financial Advisor”.

Given the wide use in the financial services industry of business titles using the word “advisor” (see Financial Advisor below), the narrow focus of the Proposed Rule will leave consumers unprotected and exposed to a continuing risk of lack of consistent proficiencies and professional

² See: <https://www.fin.gov.on.ca/en/consultations/fpfa/fpfa-final-report.pdf>

duties of care from these title user.

In order to address this issue, FAIR Canada urges the FSRA to widen the scope of the potential titles that are subject to this regulatory framework to include “an abbreviation of that title, an equivalent in another language, or a title that could reasonably be confused with the restricted title”, which is consistent with the wording of the governing legislation, the Financial Professionals Title Protection Act.

Best Interest Duty

The regulatory framework fails to incorporate a best interest duty of care owed to consumers by Financial Planners and Financial Advisors. The regulatory framework appears aimed more at protecting the credentialing bodies who will be authorized to grant use of the titles, Financial Planner and Financial Advisor, than on needed consumer protection.

FAIR Canada recommends there should be a minimum standard that a credentialed Financial Planner or Financial Advisor has a professional duty of care to act in the best interest of their client and is liable for damages suffered by a client for failure to comply with the minimum credentialing standards.

Consumer Confusion

The FSRA states one of the purposes of the Proposed Rule is to reduce consumer confusion over title usage in Ontario’s financial services marketplace. The FSRA regulatory approach of recognizing multiple credentialing bodies and reliance on those bodies to police the title users, introduces a significant additional degree of complexity and fragmentation into an already complicated regulatory system.

Consumers must be able to rely on the FSRA to establish and maintain a level playing field in the market by setting and enforcing the minimum credentialing standards and duties of care required for title users and credentialing bodies.

Financial Advisors

The Proposed Rule would establish one or more credentialing bodies to certify, monitor conduct of and discipline persons using the title Financial Advisor.

Securities legislation regulates individuals in the business of providing advice regarding securities. Under securities legislation, these individuals are required to be registered as an “Adviser”.

The FSRA notice states that the Proposed Rule is intended to run in parallel with the securities regulatory framework but provides no details on how these two regimes will work together without causing undue consumer confusion.

Someone registered as an Adviser under securities legislation owes a fiduciary duty of care to their clients. The FSRA regulatory framework does not impose a similar duty of care on individuals using the title Financial Advisor. Consumers are put at risk of significant differences in the duties of care and the legal obligations (including potential liability for damages suffered) of their financial service provider depending on whether they use the services of an Adviser or a Financial Advisor.

Moreover, Financial Advisor is a title used in the financial services industry by many individuals

and financial services firms for their sales representatives. They are usually incentivized through their compensation or other performance measures to sell products and services to consumers. In most cases, they are not required to recommend products and services that are in the best interests of the consumer. These sales representatives have a more limited regulatory obligation to make suitable recommendations.

The FSRA notice also states there is no definition or understanding of the business activities of persons using the Financial Advisor title, and the title is used inconsistently by life insurance agents, securities dealer representatives, bank employees and others.

In the securities industry, securities dealer representatives are commonly permitted to hold themselves out to their clients and the general public using business titles such as “financial advisor”, “securities advisor”, “wealth management advisor”, “investment advisor” or other similar business titles.

Business and compensation models in the financial services industry distort and frustrate the regulatory frameworks that are intended to provide consumer protections by establishing a system of minimum standards of proficiencies for individuals and firms holding themselves out as being competent to provide various types of financial services, and subject to legal and regulatory duties of care to consumers.

FAIR Canada recommends the FSRA align the duty of care of a Financial Advisor with an Adviser under securities legislation.

Title Users Credentials Minimum Standards

The minimum standards for education and competency requirements as set out in the credentialing criteria in sections 5(1) and 6(1) of the Proposed Rule should be made more extensive and set the bar higher.

The standards are insufficiently detailed and rigorous to reassure consumers that the proficiency of individuals using Financial Planner and Financial Advisor titles have acquired technical knowledge, and observe professional codes of ethics and business conduct necessary to provide services that consumers can rely on and trust.

We recommend the FSRA review as a model the more detailed competency profile proposed by the Investment Industry Regulatory Organization (IIROC) in its consultation and request for public comments notice 20-0174 issued on 2020-08-18³ applicable to individuals registered as dealer representatives under securities legislation, called registered representatives under IIROC rules.

The minimum standards for education and competency requirements for title users need to be set as high as possible. It is difficult to comment on them as drafted, as they are described in terms that are very high level and lacking in specific detail. We recommend the FSRA publish a more detailed description of the minimum standards for public comment.

Alignment with Securities Regulatory Framework

We strongly urge the FSRA to align the proficiencies and the duties of care for Financial Planners

³ See: https://www.iroc.ca/documents/2020/00155455-1cf6-487c-be85-70c563ce922f_en.pdf

and Financial Advisors, with similar requirements imposed on providers of financial services under the securities legislation regulatory framework. In particular, we urge the FSRA to align the minimum standards by adopting the similar requirements applicable to securities registrants of the Canadian Securities Administrators (CSA) Client Focused Reforms for KYP, KYC, suitability and handling of conflicts of interest requirements. Consumers should not be exposed to persons providing similar financial services under the FSRA regime who are permitted to do so with less rigorous professional competencies and duties of care than a securities industry registrant.

Education Proficiency

We are disappointed to find the minimum standards and competency profiles for credentialing criteria described in the FSRA notice and the Proposed Rule for Financial Planner and Financial Advisor title users, do not contain a specific minimum education requirement such as a university degree or high school diploma as is the case in other domestic and international jurisdictions. Rather there is a vague and unspecific reference to *“education requirements ... that provide the technical knowledge, professional skills and competencies that would reasonably be expected of an individual providing financial planning ... or financial advice”*.

Canada has lagged other leading jurisdictions in the area of education and proficiency standards for financial planners and financial advisors. We recommend that the FSRA impose a specific minimum education criteria that is as stringent as other domestic and international jurisdictions as part of the credential criteria under the Proposed Rule.

We urge you to reconsider the financial planner proficiency regime currently in place in Quebec in this regard. Quebec requires that anyone who provides financial planning services in the province must have a bachelor's degree from an accredited degree granting university. Education and proficiency requirements generally for financial planners and financial advisors should be raised by the Proposed Rule regulatory framework.

Ethics Minimum Standard

The credential criteria for title users should explicitly require a fulsome understanding of professional ethics that includes understanding how to manage conflicts by taking all reasonable steps to avoid them, and a professional obligation to resolve any conflicts of interest in the best interests of the client.

FAIR Canada recommends the FSRA adopt stringent requirements for credentialing bodies to impose professional codes of ethics for credentialed title users.

The real objective should be to protect consumers by ensuring the new regulatory framework provides high proficiency and ethical standards.

Technical knowledge of KYC, KYP and Suitability Duties of Care

The Financial Advisor competency profile described in the FSRA notice provides that technical knowledge for Financial Advisors is required in only one or more of the types of financial advice that a client might be given; tax planning, estate planning, investments, retirement, or insurance.

Given these specialized areas of potential technical competence in as little as one of these types of financial advice, FAIR Canada recommends the FSRA require that the credentialed title user be required to include a disclosure that accompanies their use of the Financial Advisor title that

corresponds to the actual area of technical expertise. E.g. Financial Advisor (Investments), Financial Advisor (Tax Planning) or Financial Advisor (Insurance).

Consumers should be able to rely on the regulatory framework to ensure they are dealing with a Financial Advisor qualified to provide advice to the extent and limitation of their technical expertise.

The minimum standards for the client outcomes competencies; KYP, KYC, suitability obligations and conflicts of interest management in the Proposed Rule notice, do not reflect the more rigorous standards of conduct of the CSA Client Focused Reforms applicable to registrants under securities regulation. We recommend that the proficiency profile minimum standards of the proposed rule be aligned with the CSA Client Focused Reforms requirements applicable to securities industry registrants.

Financial consumers should not be underserved by the FSRA regulatory framework that imposes lower standards on individuals providing financial planning and financial advisory services but are not registered under securities regulation.

Regulatory Burden

The FSRA's stated purposes of the Proposed Rule includes creating minimum standards for title usage, without creating unnecessary regulatory burden for title users by recognizing existing licensing and professional designation regimes administered by credentialing bodies. The FSRA notice focuses on industry stakeholder feedback cautioning against duplicative oversight and regulatory burden on the industry.

FAIR Canada submits that FSRA should prioritize consumer confusion and the potential for uneven standards of proficiencies, and supervision of conduct and activities of title users by the various credentialing bodies.

Prioritizing the interests of consumers over industry is consistent with the FSRA's statutory mandate to improve consumer confidence and reduce consumer confusion.

Criteria for Approval of Credentialing Body

The stated aim of the proposed FSRA framework is to ensure effective oversight of a credentialing program so that only individuals meeting the minimum standards of proficiency and conduct are able to obtain and maintain a credential to permit them to use a protected title.

The FSRA regulatory framework relies on credentialing bodies to administer the approval of individuals to use the protected titles, to oversee and monitor the business conduct of title users it has credentialed, to respond to and adjudicate complaints from the public and enforce discipline on title users who have engaged in misconduct or failed to maintain compliance with the requirements of being a title user.

FAIR Canada recommends the FSRA establish rigorous criteria for approval of credentialing bodies. Otherwise credentialing can quickly become a race to the bottom as individuals wishing to become title users seek the path of least resistance among the competing credentialing bodies.

The FSRA must ensure that the regulatory framework for Financial Planners and Financial Advisors establishes a system that the public can rely on to ensure that anyone holding

themselves out as a Financial Planner or Financial Advisor in Ontario is competent and conducts themselves in a professional and ethical manner. The regulatory framework must not leave fundamental gaps between the reasonable expectations of consumers and the requirements of the Proposed Rule.

The FSRA notice references the regime of international standard setting bodies for accrediting credentialing bodies, the International Organization for Standardization (ISO) and the National Commission for Certifying Agencies (NCCA). These organizations set standard minimum criteria for a credentialing body including governance, managing impartiality, safety and security of records and examination administration. FAIR Canada recommends the criteria for approval of credentialing bodies by FSRA should include a requirement to meet these international standards.

The FSRA notice states there are several existing organizations that currently provide designations for individuals using the titles Financial Planner or Financial Advisor. However, the only two organizations named by the FSRA in its notice are the securities industry self-regulatory organizations, the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

FAIR Canada has concerns about the ability of other title granting organizations to carry out the responsibilities of an approved credentialing body under the FSRA regulatory framework. Industry trade associations and lobby groups are inherently conflicted in their ability to regulate the use of the titles and act in the public interest. Trade associations and industry lobby groups are by design intended to promote the interests of their industry members, not to protect consumers. We do not believe it would be in the public interest to delegate the regulatory responsibilities of an approved credentialing body to such organizations.

Enforcement by Credentialing Body

The Proposed Rule framework delegates to the credentialing bodies the responsibility to police the conduct of credentialed title users. We are concerned with credentialing bodies having the resources and systems in place to effectively monitor and enforce compliance with its standards.

The capacity and commitment of a credentialing body to supervise the conduct of title users, respond to consumer complaints, conduct investigation and carry out discipline proceedings in a credible, timely and robust manner that protects the public interest must be assessed by the FSRA and be included in the criteria for approval of a credentialing body.

FSRA oversight of credentialing bodies must include an effective program to monitor and assess the performance of approved credentialing bodies, to ensure that they enforce the minimum standards in a manner consistent with the public interest and consumer protection.

Title users must be held accountable when they fail to meet the minimum standards for holding the title. This requires ongoing supervision and oversight of title users by the credentialing body and of the credentialing body by the FSRA.

The FSRA notice acknowledges that certain credentialing bodies that currently provide Financial Planner or Financial Advisor designations do not conduct oversight of title users in a manner as robust as securities industry self-regulatory organizations such as IIROC and MFDA.

To the extent that credentialing bodies are relied upon by the FSRA to monitor appropriate conduct and enforce standards akin to reliance on self-regulatory organizations (IIROC and

MFDA) by the OSC, they will need to have strong enforcement capabilities and practices to ensure the public is protected.

FSRA Oversight of Credentialing Bodies

The Proposed Rule notice states that consumer confidence will be addressed by the FSRA oversight of the credentialing bodies.

There are insufficient details provided of the FSRA oversight processes that explain how the FSRA oversight will be conducted. The notice states simply the FSRA will develop a monitoring and supervision plan. FSRA oversight is fundamentally important.

In the absence of disclosing the specifics for the FSRA oversight monitoring and supervision plan, it is impossible to determine if there are gaps in the regulatory framework of the Proposed Rule. The FSRA should consider the CSA oversight processes for self-regulatory organizations as a comparable.

FAIR Canada recommends FSRA disclose in sufficient detail to provide assurance to the public, the manner in which it intends to conduct oversight of the credentialing bodies for further public comment.

By creating a framework that relies upon the FSRA approval and oversight of third party credentialing bodies, there is a real danger of legitimizing the status quo rather than addressing the significant harms to consumers that have been acknowledged and are well documented in the Final Report of the Expert Committee To Consider Financial Advisory and Financial Planning Policy Alternatives⁴.

Consumers will rely on the FSRA imprimatur of the credentialing body and the title user and assume it is safe to trust these title users. Therefore, the standards for credentialing bodies and the FSRA's oversight need to be established as carefully as possible.

FSRA Enforcement

The FSRA notice states the FSRA may take enforcement action against individuals who use Financial Planner and Financial Advisor titles without having been credentialed by an FSRA approved credentialing body. The FSRA notice states that any title users who fail to comply with the Proposed Rule will be subject to FSRA enforcement action. The FSRA anticipates this will be based solely on complaints. The FSRA Guidance states that the FSRA CEO may revoke a credentialing body's approval if it is not in compliance with the terms and conditions of approval.

To the extent that FSRA enforcement action is based on consumer complaints or complaints from the financial services industry, there needs to be an effective, ongoing public education program to inform consumers that the use of the Financial Planner and Financial Advisor titles is restricted by law in Ontario and that anyone using the title without approval from an FSRA approved credentialing body is in violation and has not established that they meet minimum standards required to use those titles. Consumers should be informed of where and how to report any suspected violations.

Transition Periods

⁴ Ibid

Existing users of the titles prior to January 1, 2020 who have continued to use the title for business purposes up to the effective date of the Proposed Rule are to be permitted to continue to use the title during the transition period. By the end of the transition period all title users must be approved to use the title by a FSRA approved credentialing body.

Financial Planner title users have 5 years transition period. Financial Advisors title users have 3 years transition period. FSRA staff have explained that the transition periods as proposed are based upon the reasonable amount of time it would take someone seeking to become a title user to complete the required course of study and examination to receive certification by a potential credentialing body.

FAIR Canada submits that no-one should be permitted to use the Financial Planner or Financial Advisor titles, or an abbreviation of the titles, an equivalent in another language, or a title that could reasonably be confused with the restricted titles, until they have been credentialed by an approved credentialing body. The purpose of the legislation is consumer protection that is intended to prevent individuals from using the restricted titles unless they are properly credentialed. The industry has had many years to prepare for these regulations. The better approach is to not allow use of the restricted titles until individuals are properly credentialed. By preventing the use of the restricted titles until they have been credentialed by an approved credentialing body, FSRA will provide the necessary incentive to the industry to ensure users of the restricted titles are properly credentialed.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to discuss our submission with the FSRA should you have questions or require further explanation of our views on these matters. Please contact Douglas Walker, Deputy Director, at douglas.walker@faircanada.ca

Sincerely,



Douglas Walker
Deputy Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

c.c. Jean-Paul Bureaud
Executive Director
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