

# CONSUMER ADVISORY PANEL

November 12, 2020

Financial Services Regulatory Authority of Ontario  
5160 Yonge Street, 16<sup>th</sup> Floor  
Toronto, Ontario  
M2N 6L9

**Re: Notice of Proposed Rule and Request for Comment – Proposed Rule [2020-001]  
Financial Professionals Title Protection**

## **I. Introduction**

The Financial Services Regulatory Authority of Ontario's Consumer Advisory Panel (the "CAP") welcomes this opportunity to comment on FSRA's Notice of Proposed Rule and Request for Comment - Proposed Rule [2020-001] Financial Professionals Title Protection (the "Proposed Rule" or the "Consultation"). The CAP is an initiative of FSRA to help inform FSRA's work and to ensure that consumer, member and beneficiary perspectives inform FSRA's direction and decisions. This is a key priority for FSRA and an important part of FSRA's stakeholder engagement process. The CAP also supports FSRA's Consumer Office to provide an effective challenge function within FSRA.

This submission is informed in part by briefings and dialogues that were jointly hosted by FSRA's Consumer Office and by the CAP. Those events provided opportunity for engagement with representatives from the broader consumer advocate, academic and public interest communities. The CAP acknowledges and appreciates the significant commitment to engagement and briefing related work undertaken by FSRA staff and Consumer Office staff.

Please note, regarding the contents of our submission, that we recognize that FSRA has been given, under the FPTPA as handed down to FSRA by the Ontario government, a *very* limited mandate in regulating financial services professionals. We aim to provide response to that very limited remit; however, it does not mean that we believe that this is the correct scope of the question or the correct mandate.

FSRA's mandate is to regulate titles specifically, and to do so in an industry that is already regulated by other regulators, such as the Canadian Securities Administrators (CSA) and securities Self-Regulatory Organizations (SROs).

Other legislation, regulations and associated rules (such as securities regulatory national instruments or multi-lateral instruments, and other rules and regulations) may govern and apply to many issues, including some issues addressed here. The landscape is complex, and it can itself be a challenge to consumers.

Given the complexity of the jurisdictional issues, and the limitations of FSRA's narrow and specific mandate in this area, our comments or suggestions herein may not always reflect issues that are properly within FSRA's mandate or control. Indeed, the role of the CAP is to support and advise FSRA on issues of consumer protection. Because of the very limited mandate provided, we have as a committee struggled with the frank reality that many of the committee members agreed, and indeed the broad consensus of key informants indicated, that the original remit of the mandate provided to FSRA was too limited.

Regardless of this complicating factor, this submission hopes to provide a summary on the issue before FSRA on Title Protection. It does not mean that the CAP agrees that this is the right mandate. Quite the contrary.

While the CAP intends to provide feedback that is useful for FSRA, the CAP does not adjudicate on jurisdiction. Accordingly, we might make recommendations or express concerns regarding issues which may be outside of FSRA's mandate within the context of the broader capital markets space and regulatory environment with respect to financial services professionals.

The entirety of this letter should be read within this context.

## **II. Executive Summary**

The CAP's key recommendations in response to FSRA's consultation questions are as follows:

- The FP competency profiles should reflect globally recognized financial planning profiles
- Credential criteria should require broad product knowledge, KYC and suitability education, robust education on financial alternatives and holistic cross-disciplinary knowledge for financial planners
- Disclosures required should include clear, comprehensible, plain language disclosure of a title user's credentials, a comparison of their credentials against others in the marketplace, credential limitations and related consumer impact, and fulsome discussion of competencies and competency limitations

- Exemptions should not be granted, although there may be specific qualifications that are already subject to other self-regulatory frameworks, such as the CFA, which may merit some review
- Fees paid by title holders should fund this regulatory regime with a view to minimizing cost considering potential for flow through of costs to the consumer
- Disclosure requirements, and future work of the Consumer Office, should support consumer education and awareness

The CAP's more general comments may in some cases be relevant to, and within the purview, of other bodies such as the Ontario government, or other regulatory or self-regulatory organizations. Key recommendations from the CAP's general comments include:

- A less fragmented approach should instead be pursued by the Ontario government
- A central database should be developed and mirrored by each credentialing body and should include disciplinary information
- Prescriptive rules or guidance should be developed to broaden the range of captured titles
- Credentialing body minimum criteria should be numerous, rigorous, professionalized and public interest oriented, with bans on lobbying activities that relate to this framework and related areas
- Credentialing bodies should be monitored and audited by FSRA
- Information sharing with other financial services professionals' regulators is important and merits separate review, including with respect to privacy issues
- Credentialing bodies should require from their members adherence to a best interest standard
- Regulators with the mandate to do so should ban conflicted financial incentives associated with limited product shelves
- There should be no grandfathering
- Any fines that credentialing bodies are able to levy should be enforceable in civil court
- From the release of the framework, use of protected and confusingly similar titles should be banned for persons without the appropriate credentials, except for a very short transition period for those actively in the process of credential obtainment

### **III. General Comments**

#### Fragmentation and Regulatory Burden

The Ontario legislature is effectively creating an additional layer of regulatory burden for industry (financial advisors and planners) through its introduction of the Financial Professionals

Title Protection Act, 2019 (the “FPTPA”), and associated framework. Although the legislature’s stated goal is efficient and effective regulation, the FPTPA shows that the government has opted for a patchwork system instead of a holistic, comprehensive system that minimizes regulatory burden and protects consumers. The legislation adds to financial services regulation new regulatory layers with limited scope, including the new credentialing body (“CB”) layer. We believe that creating more fragmentation is antiquated in approach.

We also believe that additional layers (including the FSRA layer and the CB layer) increase regulatory burden not only for industry but also for consumers, given that the regulatory environment will be challenging to navigate and there is ultimately one payor -- the consumer.

The CAP’s advice is organized thematically as follows:

### Registry

The CAP proposes the development of a central database for all Ontario title users. This supports consumers in avoiding charlatans. A central database is one way for FSRA to mitigate the burden imposed on consumers. A central database that is mirrored by each CB body is needed and should include notices of ongoing investigations, enforcement actions and disciplinary decisions about title users.

### Reasonably Confusing Titles

The Proposed Rule notes that consumer advocates have raised concerns regarding the wide array of titles in the financial marketplace which contribute to consumer confusion.

Titles that generate consumer confusion can be categorized as:

1. Organization or employment titles such as director, VP, manager etc. Such titles are often granted as a reward or recognition for sales results within the employment context.

2. Regulatory licensing titles in the securities industry, insurance and other industries.
3. Descriptive titles such as Financial Wealth Advisor, Retirement Advisor, Estate Planner, etc.

The FPTPA specifically addresses the third category.

In the first and third category, titles can be granted by companies without a nexus to registration, education, training or other credentials.

There are studies that have shown that Ontario consumers put trust in titles. But titles can be disconnected from the substance of a person's experience, qualifications or role. Given the consumer protection purpose of the FPTPA, we would be concerned with interpreting the "could reasonably be confused with" legislative language to only encompass abbreviations and translations. Legislative interpretation rules in Ontario provide that the legislature is deemed to have intended a meaning for legislative language. We note that there are numerous other consumer stakeholder commentators who have preferred a more prescriptive approach to the approach set out by the Ontario government in the FPTPA, such as the approach to financial planning titles adopted in Quebec which lists which titles should be considered reasonably confusing.

The CAP supports the efforts of the Ontario government and FSRA in taking this active step towards establishing a credible basis for consumer trust in title users. The legislation and framework attempts to fix the problem of misplaced trust, supporting consumer clarity and supporting assurance of quality financial services. But to appropriately protect consumers, in alignment with the legislative purpose here, the CAP urges publication of prescriptive guidance to broaden the scope of the framework to include analogous titles.

## Credentialing Bodies and Substantive Regulation of Title Users

Credentialing Bodies minimum standards represent a key aspect of protections afforded to Ontario consumers. Standards required of CBs should reflect that recognition as a CB is a privilege.

In recognition of comments made elsewhere in this letter regarding the fragmented nature of financial services regulation (for example, which already even prior to the FPTPA included the various members of the CSA, IIROC, MFDA, FSRA etc.), some of our hopes or recommendations for substantive regulation of financial advisors or financial planners may fall outside of FSRA's scope and within the scope of a different regulator or regulators (such as the securities regulators). Subject to that caveat, we recommend the following criteria for either the review of credentialing bodies or for the substantive regulation of title users, as appropriate:

- A public interest mandate
- A code of conduct consistent with protection of the public and clients
- A code of ethics barring acting in cases of conflicts of interest and requiring a best interests standard
- Development of robust education requirements for product and service knowledge, and general knowledge
- Development of a candidate qualification process to ensure specific and holistic knowledge
- Development of requirements for annual and ongoing professional development
- Errors and omissions insurance maintenance requirements for candidates
- Proven and robust enforcement program record: in the absence of such qualifications they should be considered with caution
- Ongoing systemic risk assessment and reporters to relevant regulators
- Adoption of an appropriate standard of care

- An accessible complaints handling process

We recommend that lobbying with respect to financial advice or planning activities should preclude entities from becoming an approved CB. CBs should be required to act in the best interests of Ontarians as quid pro quo for recognition as a CB. Any organization with a lobbying affiliation related directly or indirectly with FPTPA issues, or related to financial advisory or planning services, should be barred from recognition as a CB, except for some potential for specific and limited advance exemptions from such bar.

More generally, we strongly recommend that professional standards should be required of CBs. We also emphasize our recommendation that CBs should be required to prove a history of adequate standards and enforcement. Absent the foregoing, we recommend, at most, that a CB probationary period with annual reviews and opportunity for re-application be granted until their record is established.

#### Monitoring of Credentialing Bodies

We urge a focus by FSRA on how it will monitor and ensure compliance by CBs with their obligations under the Proposed Rule. We believe that the Proposed Rule needs to go further to develop the details of such monitoring. We further recommend that FSRA have the right to, and engage in, auditing of CBs, to evaluate CB performance and in order to improve FSRA's oversight of CBs (including their licensing, audit and enforcement processes) on an ongoing basis.

#### Information Sharing

With the addition of CBs as a new layer in regulatory oversight, information sharing will be important. We recommend considerable transparency with respect to information sharing between and amongst FSRA, CBs and SROs, in consideration of the premise that holding a title is a privilege and not a right. We believe that transparency is a minimal requirement, in light of, or as compared to, the broader consumer protection goals. A deeper dive is required into some

of the key aspects of privacy which are raised by this matter, and CAP would welcome the opportunity to provide a further subsequent set of input on issues of privacy.

### Standard of Care

CBs with diverse standards of care can cause confusion. Other commentators who we have heard from suggest a single consistent standard across CBs. We recommend that all CBs require title user adherence to a best interest standard to behave “fairly, honest, in good faith and in the best interest of the consumer”.

### Compensation

Although not clearly within FSRA’s mandate, we recommend that financial advisors and planners occupy a position of independence and we recommend a legal bar against any form of financial incentive associated with the provision of product recommendations when the financial services professional has a limited product shelf available. Bars should include tied selling.

### Grandfathering

We agree with FSRA’s current position on grandfathering. In other words, we do not recommend grandfathering and applaud FSRA in reaching the same conclusion as described in the Proposed Rule.

### Fines

If CBs are able to levy penalties against their members, any such financial penalties should be enforceable in civil court.

### Transition Periods

Title regulation has been a regulatory priority since at least 1988 and the Acting Chair of the Ontario Securities Commission’s seminal speech about *The Alphabet of Title Use*. Industry and

individual advisors and planners have been on notice. Evidence of confirmation of notice and evidence of action include the substantial increase in applicants for the CFP designation.

Without doubt, a transition period is required. But transition periods allow the continued use of these titles by unqualified users. Continued use undermines the FFTP Act and consumer trust -- the trust of Ontarians seeking financial advice and financial planning.

In our view the transitional stages are:

The first stage is from announcement of the final FFTP Framework until FSRA can reasonably receive applicants, and we propose 3 months. Given the years of advance notice that have preceded the FFTP Act and proposed framework, credible organizations have already prepared. FSRA informed the Panel that it has considered the educational, governance and enforcement requirements of organizations who may become potential applicants.

The second period commences when CBs are formally recognized. We propose a 2-month period to permit for holiday breaks.

The third period is a period for individual title users to take required steps. We propose a 2-month period to permit for holiday breaks. The third period could run consecutively with the second.

From the announcement of the framework, there should be a ban on the use of the protected titles and confusingly similar titles. However, there can be an exception for applicants who are actively engaged in obtaining credentials. For those individuals we recommend a transition time. While a 5-6-month aggregate time may be appropriate, this will have to be analysed within the context of time of commencement for this and ensure that this timing works smoothly for those in process of obtaining credentials.

#### **IV. Responses to FSRA's Consultation Questions on the Proposed Rule**

##### FP and FA Credentials and Competency Profiles

It is important for FSRA to establish credential criteria that support qualified financial advice and planning services for the benefit of Ontario consumers. The panel recommends that competency profiles be revised and that they should meet ISO standards. The financial planning profile should also reflect globally recognized financial planning competency profiles. We also recommend:

- Holistic and broad knowledge of strategies and products even if products actually sold reflect a limited shelf
- Standards that require disclosure when products available are not appropriate to the client
- Robust curriculum for understanding financial alternatives
- In-depth knowledge of all available products and services for financial planner credentials
- To maintain membership/ renewal, payment of fines levied by CBs should be a prerequisite

KYC training should be paramount.

##### Disclosure

We recommend disclosure requirements (including those related to engagement, compensation, conflicts, CB membership and complaints). In particular, CAP believes that there be clear, frank, understandable and required disclosure by FP and FA title users about: 1) the credentials they hold, 2) how these credentials compare to other title credentials, 3) any limitations the credentials place and the impacts that this has on the end consumer, 4) a fulsome and specific discussion of their competencies and what is out of their competency as governed by the regulatory title system. We further recommend that disclosure be clear, concisely written, understandable by an average person in “plain language” (Grade 9-10).

Additionally, we encourage use of easy-to-understand infographics, scenarios and other mechanisms to explain the compensation process.

Separately, we strongly urge detailed disclosure in writing of compensation, including illustrations of the impact of fees on compounding. We recognize that fee disclosures may fall within the scope of another regulator’s mandate, rather than FSRA’s. We recommend that disclosure be clear, concisely written, understandable by an average person in “plain language” (Grade 9-10). Additionally, we encourage use of easy-to-understand infographics, scenarios and other mechanisms to explain the compensation process.

### Exemptions

We do not recommend the granting of exemptions. We believe that for the FPTPA to be a consumer protection tool it must require reasonable standards of qualification, otherwise Ontarians could be put at risk through unearned trust in title users in inappropriate scenarios.

However, certain qualifications associated with other self-regulatory frameworks, such as the CFA, would merit review.

### Fees and Assessments

Fees paid by potential title holders should be sufficient to fund the regulatory regime. This being said, the CAP recognizes that in a service industry, such as financial advice and financial planning, there is one payor – the consumer. Subject to meeting the public interest protections which are at the heart of the FPTP Act and FPTP Framework, all reasonable efforts should be made to minimize the costs paid by the advisors and planners. The flow-through nature of the costs to Ontario’s consumers motivates this caution.

## Consumer Education

As noted above, we recommend that disclosure requirements (including those related to engagement, compensation, conflicts, CB membership and complaints) support consumer education.

We also recommend that FSRA's Consumer Office undertake to develop additional consumer education. The CAP welcomes any future opportunities to support and collaborate with FSRA and the Consumer Office in the development of consumer awareness and education outputs.

## Conclusion

By way of concluding remarks, we believe that the legislation that's been handed to FSRA by the legislature creates significant challenges for FSRA for some of the reasons outlined above, including with respect to FSRA's limited scope in a very complicated, and already regulated and fragmented space.

We support, and we are encouraged by, several of the policy positions or directions that FSRA has already communicated within the content of the Proposed Rule, including that it does not see any place for grandfathering. We encourage FSRA to do whatever it can to maximize its own powers particularly including in relation to interpreting what titles are captured, oversight of credentialing bodies and strength and breadth of enforcement powers.

Thank you for taking the time to review and consider this letter. We hope that these comments assist FSRA staff and lead to a stronger framework, from a consumer protection perspective.

Sincerely,

Consumer Advisory Panel