Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, Ontario
M2N 6L9
Attention:

Harold Geller and MBC Law Corporation are pleased to offer comments in response to FSRA publication of a proposed framework for regulating Ontario's *Financial Professionals Title Protections Act*, 2019.

These submissions address the legislative and regulatory framework and are meant to provide comments and constructive recommendations relating to this new proposed framework. We have reviewed this proposed framework from a consumer protection perspective, we will address the following issues:

1. Regulation of financial advice and financial planning not directly addressed by FPTP 4
2. Title Confusion 5
3. Key Interpretative Issue of FPTP Act 7
4. Credentialing Bodies ("CBs") 7
5. Competency Profiles for credential holders 9
6. CBs to have a consistent standard for all Credential holders 10
7. Independence of Credentialing Bodies 11
8. Establishing approval criteria for credentials holders 12
9. Enforcement and Dispute Resolution 14
10. Transition Period 14
11. Governance 16
12. Additional Consumer Protections 16
13. Consumer Education and Disclosure 18
14. Self-funding 18

Prior to providing our view and recommendations, we review the applicable legislation, rules, framework, and key principals.

Background – The Act and The Proposed Framework

The Ontario government has passed legislation intended to protect titles for financial planners ("**FP**") and financial advisors ("**FA**") in Ontario. The Act is contained within Bill 100, Protecting What Matters Most Act (Budget Measures), 2019, Schedule 25, *Financial Professionals Title Protections Act*, 2019. ("**FPTP Act**"). The Act received Royal Assent in May 2019 but has not been proclaimed into force.

The proposed framework is being developed to require that individuals using the FP and FA titles or a title that could reasonably be confused with these have an appropriate credential.

Under the proposed Financial Professionals Title Protection Rule ("**FPTP Rule**") the legislature has opted to add an additional layer to the existing legislative and regulatory frameworks for licensing and designating financial professionals.

The Legislation

For the purpose of this submission, we identify the following as the key provisions of the enabling legislation:

- Section 2 of the Act prohibits any individual from using the title "Financial Planner" or "planificateur financier", an abbreviation of that title, an equivalent in another language or a title that could reasonably be confused with that title…" Bill 100, Protecting What Matters Most Act (Budget Measures), 2019, Schedule 25, *Financial Professionals Title Protections Act*, 2019 [emphasis added]

- Section 3 of the Act prohibits any individual from using the title "Financial Advisor" or "conseiller financier", an abbreviation of that title, an equivalent in another language **or a title that could reasonably be confused with that title**…" Bill 100, Protecting What Matters Most Act (Budget Measures), 2019**,** Schedule 25, *Financial Professionals Title Protections Act*, 2019 [emphasis added]

Overview of the FPTP Framework

The proposed FPTP Rule sets out:

1. the requirements and standards that entities will be required to meet in order to obtain FSRA approval as a credentialing body, and to obtain FSRA approval of a Financial Planner (FP) or Financial Advisor (FA) credential; and

2. ongoing requirements to maintain such approvals.

The Notice of Proposed Rule and Request for Comment:

1. provides background and rationale to help understand the Rule; and
2. sets out the process for public consultation.

The proposed Guidance:

1. sets out the proposed approach:
    a. to the administration of applications for credentialing bodies; and
    b. FP/FA credentials under the proposed Title Protection Framework.
2. is intended to help potential applicants understand:
    a. what is required to be approved, and maintain approval, as a credentialing body; and
    b. what is required to have an FP or FA credential approved under the *Financial Professionals Title Protection Act, 2019* (FPTPA).
3. includes an outline of the type of information FSRA would expect in an application for approval of a credentialing body, as well as approval of FP or FA credentials.

<u>FSRA within the Framework</u>

The FPTP Act grants FSRA rule-making authority including:

a. approval criteria for credentialing bodies and credentials.
b. applications by prospective credentialing bodies.
c. application fees; and
d. transition periods for existing FP/FA title users.

FSRA's FPTP Framework will operate within the existing licensing and professional designation regimes. It will accept and approve entities as credentialing bodies ("CB"). To qualify as a CB an applicant organization must meet criteria established by FSRA. The CBs' in turn will grant the right to use the **FP** and **FA** titles based on criteria they set, and which is indirectly approved by FSRA. The CBs will oversee the conduct of FP and FA title users.

FSRA has identified the primary objective of the framework as "creating minimum standards for title usage" and has identified the following key principles for the FPTP Framework:

- Protecting the public interest through the implementation of new minimum standards that credentialing bodies and individual title holders must meet.

- Protect the public interest through oversight of the credentialing bodies and will require compliance by individuals who use the FP or FA titles without an approved credential.
- Introduce new requirements for those using FP and FA titles.
- Work with existing regimes for granting and supervising financial planning and advising designations and licences.
- Avoid burden on market participants.
- Deliver a principles-based and outcomes focused regulatory regime, to appropriately respond to the dynamic nature of the financial services sector; and
- Accommodate the complex and diverse existing landscape of financial planners and advisors, their employers and their designation or licence granting bodies.

Effect on Consumers

The proposed framework adds a burden to industry participants in order to provide Ontarians with a minimal level of consumer protection with respect to a critical service. The legislature opted a patchwork approach rather than the more holistic, comprehensive burden reduction protections sought by Ontario's consumers.

The FPTP Act adds a layer of regulation to the titles and activities of title holders which is disconnected from the direct oversight of those regulatory bodies who already oversee many of the activities which many potential title holders offer to Ontarians.

The FSRA Framework is not what Ontario's consumers sought nor needed. Instead of updating the licensing and regulatory framework to regulate what Ontarians seek, the legislature has continued the antiquated and outdated model of licensing and regulating the sale of products, with an additional regulatory overlay of limited scope. The legislature has opted for a finger in the dyke response to the demands of Ontarians. This submission focuses on constructive recommendations rather than considering the root cause of the problem that the legislature has chosen to address in a piece meal fashion.

The Consumer's Perspective - Protecting Consumer Rights

1. Regulation of financial advice and financial planning not directly addressed by FPTP

The consumer's perspective is at odds with Ontario's present regulatory framework. Consumers seek regulation of advice, not product silos. Consumers seek advice that is in their

best interest and products that alight with these. They reject regulation of sales by product line. Ontario's regulator framework that regulate silos of different products is at odds with the consumer's experience. The result is that consumer protection regulatory objectives are undermined.

Prior to the enactment of the FPTP Act there was no regulatory framework in Ontario which regulated the provision of financial advice and financial planning nor the use of these titles by self-styled FPs and FAs. To the degree that Ontarians have received some minimal level of consumer protection, this has been through licensing and regulatory silos which divides authority for regulating the providing of financial services between the FCAC, OSC, IIROC, MFDA and FSRA. Through the passage of the FPTP Act the legislature has now added a meta-layer of consumer protection limited to financial advice and financial planning on top of the existing minimal level of consumer protections provided by the existing licensing and regulatory silos.

The proposed legislation does not directly regulate financial advice and financial planning. Rather the legislation requires credential holders to be subject to the approval and the continued licensing by credentialling. FSRA, in turn, licenses and has a degree of oversight of the CBs.

Regulation of financial advice and financial planning is a social good that benefits individual Ontarians. The theory of the FPTP Act layer of regulation is that this additional layer of credentialling will improve the alignment of Ontarians' interests with financial advisors and financial planners creating some very basic level of consistency. This is a step forward in consumer protection but does not fix a fragmented system.

2. Title Confusion

The problem to be addressed is clearly stated in the Notice of Proposed FPTP Rule and Request for Comment (at https://www.fsrao.ca/media/2051/download):

> "Concerns have been raised by consumer and investor advocates about the wide array of titles and credentials currently used by individuals operating in Ontario's financial services marketplace, and how it has contributed to confusion over title usage. The absence of a regulatory framework governing the use of titles has also led to questions about the expertise and knowledge of individuals providing financial planning and financial advisory services."

The wide array of titles used by industry has led to confusion among Ontario's consumers of financial advice and financial planning services. There are 3 types of titles which are the source of Ontarians confusion:

1. Organization titles to promote sales such as director, vice-president, manager, etc. These titles are used to aggrandize the user and may be rewards for reaching goals that conflict with the consumers' best interest. Many organizations grant their employees and contractors the use of these titles as rewards for sales. Ontario's legislature has chosen not to address this area of confusion and the resulting harm to Ontarians with the FPTP Act.

2. Regulatory licensing titles for regimes in banking, securities, mutual funds, exempt market dealers, scholarship fund dealers, life insurance and other regulated activities. When dealing with Ontarians, these titles are arcane, rarely used, outdated. Ontario's legislature has chosen not to address this area of confusion and the resulting harm to Ontarians with the FPTP Act.

3. Descriptive titles of the services provided. This includes the specific titles of financial advisor and financial planner but also include a wide array of titles including financial wealth advisor, retirement advisor, insurance advisor, financial advice planner, estate planner, retirement planner, etc. The FPTP Act's scope is limited to this group of titles and the resulting confusion to Ontarians.

The importance of these titles and their use to promote sales cannot be overstated. They may, and in many organizations do, reflect company recognition of volume of sales. There is a disconnect between industries focus on sales and titles versus the consumer's pursuit of competency and trust in titles.

Studies show that Ontarians repose trust in these titles. That trust is disconnected from the reality behind these titles. In most cases, the titles are not the result of special training, education, a minimum standard of qualifications, expertise or even experience.

The authors support the legislature first step toward a credible or trustworthy basis for Ontarians to trust the titles. The FPTP Act attempts to address the fact that Ontarians have misplaced trust in and reliance on the advice of self-styled FPs and FAs and titles that can be reasonably be confused with these. Ontarians need clarity and quality assurance.

3. Key Interpretative Issue of FPTP Act

The essential legislative protection for Ontarians is not the two specific titles protected but in the FPTP Act's words "**or a title that could reasonably be confused with that title".** Based on established interpretation rules for Ontario's legislative acts, the legislature is deemed to have intended meaning for these words. The only reasonable interpretation of these words is that the legislature recognized the risk of confusion by industry participants, attempting an end run around the protected titles, and provided FSRA with the necessary legislative grant of authority to protect Ontarians. There is a real and insidious risk of a worse outcomes for Ontarians if the ambit of the FPTP Framework does not capture titles that can be reasonably confused with the FA/FPs titles.

FSRA staff shared their concern that only the titles (in two languages) and abbreviations of these titles are protected by the Act. This concern is based on the most narrow interpretation of Act, minimizes the legislative significance of the words "or a title that could reasonably be confused with that title" and disregards the stated purpose of the FPTP Act and the mandate of FSRA. The unequivocal emphasis of the legislature in the FPTP Act is protecting Ontarians.

Recommendation:

- It is of paramount importance that the obligation to restrict titles that are reasonably confusing with FA/FP be interpreted broadly. FSRA is urged to publish a prescriptive guideline, such as the approach already adopted by Quebec which lists titles deemed to be reasonably confusing. The publication of these would facilitate the enforcement of analogous titles and would create a hybrid of prescriptive and principle-based regulatory guidance.

4. Credentialing Bodies ("CBs")

Although circuitous, the FPTP Act mandates that FSRA oversee titles holders, not directly, but through the recognition of CBs. Under the FPTP Act, only approved members, of approved CBs can use the protected titles or titles which could reasonably be confused with those titles.

Paragraph 15(2) of the FPTP Act provides FSRA with authority to set criteria for CBs governance structure and practices as well as disciplinary processes. Paragraph 15(1)(3) of the Act grants FSRA rule-making authority to establish criteria for licences and designations including: educational requirements; examination requirements; code of ethics and professional standards; and continuing education.

Thus, the criteria which set minimum standards for CBs is a key aspect of the protections afforded to title holders and, in turn, Ontarians.

CBs must have:

a) A public interest mandate;
b) A Code of Conduct consistent with public, investor and client protection;
c) A Code of Ethics with:
    1) a bar from acting in a conflict of interests; and
    2) a best interest standard.
d) A robust education requirement which required candidates to be knowledgeable about products and services both that they offered and were otherwise available to Ontarians;
e) A qualification process which ensured candidates knowledge of specific and holistic products, strategies, and options;
f) On going credible and independent required professional development on an annual basis;
g) Errors and Omission insurance to cover all risks to the consumer from negligence and malfeasance;
h) A proven and robust record of enforcement program with transparency to the public;
i) Ongoing systemic risk assessment and reporting to FSRA and any other regulator of products and licensees involved;
j) Adoption of a standard of care by each CB reflecting the practices in their qualifying programs (i.e., course work to obtain the title); and
k) An accessible complaint handling process.

FSRA will need to have adequate resources to review applications and competencies of both the potential CB and the competencies to be adopted by the CB for its members under the FPTP Act. We note this concern but lack the necessary information to evaluate the present and planned resources available for these purposes.

It is a matter of concern that the “how” and “what” of FSRA monitoring and ensuring compliance of CBs to their obligations is unclear. We express a note of concern that these key functions are not adequately developed in the proposed Framework. We recommend that for the foreseeable future FSRA should audit CBs to both ensure that these functions are being adequately preformed and to better learn with the CBs how to improve FSRA’s oversight.

A key element in the proposed overlay of the FPTP Act with the added level of CBs and existing regulatory and SRO is the need to share membership information, regulatory licensing, complaints, enforcement and membership/licensing decisions between the regulatory and quasi-regulatory organizations. While leaving the mechanics of the information sharing to these organization, there is a challenge resulting from privacy consideration. The authors recommend that CBs be required to have their title holders waive privacy between these organizations. This sharing is needed to ensure efficient, transparent, and effective regulation of title holders. Keeping in mind the privilege of being a title holder, the request waiver of privacy is minimal, reasonable, and necessary for the goals of consumer protection.

Recommendations:

- FSRA is urged to require professional standards for CBs. Applicants to be CBs who lack proven records of adequate standards and enforcement should be granted, at most, a probationary or temporary authority with annual reviews and reapplication for recognition until such a record is clearly established.

- We recommend that for the foreseeable future FSRA should audit CBs to both ensure that these functions are being adequately preformed and to better learn with the CBs how to improve FSRA's oversight.

- The authors recommend that CBs be required to have their title holders waive privacy between these organizations

5. Competency Profiles for credential holders

FSRA has specifically sought comments with respect to baseline competency profiles proposed in the FPTP Framework. The baseline competencies lack adequate details. As a result, the authors struggled to understand and respond to the broad outline of competencies listed therein.

While advice may focus on a silo of products, for an advisor to offer non-conflicted advice, advisory at a minimum must have a robust knowledge of alternative strategies and products. An advisor acting in fairly, honest, in good faith and in the best interest of the consumer must know and advise when the products on their shelf are not the most appropriate for the consumer. A financial planner offers a broader suite of strategies and potentially products. The financial planner must have reasonably in-depth knowledge of all available products and

strategies to fulfill her/his/its obligations. These requirements are similar to the KYP obligations of securities participants.

Recommendations:

- the profiles be rewritten with the goal of providing greater specificity.
- competency profiles should reflect international standards including existing ISO standards and globally recognized financial planning competency profiles.
- FSRA is urged to review curriculums of CB applicants to ensure that successful applicants have robust holistic knowledge of financial advisory and financial planning strategies and products.
- the curriculum for a financial advisory title holder must include a robust understanding of financial alternatives and planning.
- both financial advisors and financial planners should be required to meet at KYC and KYP standards which include the entire portfolio and all KYC circumstances of the consumer.

6. CBs to have a consistent standard for all Credential holders

The use of titles by title holders is a privilege not a right. Currently there is a hodge podge of standards for financial advisors and financial planners. So too, there is a likelihood of further confusion arising from multiple CBs having diverse standards. This is an Achilles heal in the legislation. A minimum standard must be required as a term of recognition of CBs.

The independence of FAs and FPs is paramount. FAs and FPs should be barred from receipt of incentive to provide and restricted from providing recommendations based on a limited shelf. For greater clarity, FPs/ FAs should not be incented to make recommendations for purchase of insurance or securities of an employer or contracting party including, but not limited to, tied selling.

FAs and FPs should be required to disclose in advance of any recommendation all compensation that they and/or their related companies may earn. If fees are charged based upon ongoing fees (for example based on the assets under administration) then the negative compounding impact of these fees should be disclosed in writing, in plain language and with an

illustration or example that clearly discloses the long term impact of the fees and resulting conflict of interest.

While it was recognized that some applicants for CBs might not have proven records for adequate standards and enforcement at the time of application, any applicants by potential CBs without such qualifications should be considered with caution.

The authors note that regulatory regimes in place, and instead proposes a variant of the existing wording in the *Ontario Securities Act*, to that of a "best interest" standard.

Recommendation:

- CB must require title holders to adhere to a "best interest standard" which would include "fairly, honestly, in good faith and in the best interest of the consumer."

7. Independence of Credentialing Bodies

CBs should be required to act in the best interest of Ontarians. The recognition as a CB is a privilege. The recognition confers a strategic advantage to the CB and increases the CB's value proposition. A requirement of the CB to act in the best interest of Ontarians is a reasonable quid pro quo for recognition as a CB.

There is an appearance of self-interest and conflict of interest by any CB with a directly or indirectly associated lobbying role. All lobbying connected with the FPTP Act and Framework is inconsistent with the goals and spirit of the FPTP Act. (The authors recognize that a potential or recognized CB might lobby on issues unrelated to the provision financial advice and financial planning. If such lobbying is unequivocally separate and apart from these activities, then a specific exemption might be warranted.)

For a regulatory regime to be effective of central importance is a robust, independent, and stringent enforcement process as essential to an effective and credible credential. The ongoing oversight of CBs by FSRA should conduct ongoing reviews of each CBs' licensing, audit, and enforcement processes.

Recommendations:

- An applicant for CB must be barred from lobbying with respect to the activities of financial advice or financial planning or activities which can reasonably be confused with the activities of providing financial advice or financial planning.

- Any organization with a lobbying affiliation related directly or indirectly from with the FPTP Act should be barred from recognition as a CB unless provided, in advance, a specific and limited exemption.

- FSRA should conduct ongoing reviews of each CBs' licensing, audit, and enforcement processes.

8. Establishing approval criteria for credentials holders

The proposed FP and FA Baseline Competency Profile propose standards for requisite competency for FPs/FAs. FSRA proposes these standards be required of CBs, who in turn, will be required to have their members comply with these standards.

This indirect form of regulation adds burden and confusion to Ontarians. Ontarians will be required to not only understand the existing regulatory silos but, in addition, the overlap of the FPTP Act requirements for CBs and, again in turn, the CBs requirements for their title holders. The line of regulation is circuitous and non-intuitive. The authors recognize that the legislature chose this route and placed this additional burden on Ontario's consumers. Given this choice, FSRA's options are limited. The comments herein are made with the goal of minimizing this additional burden and seeking the greatest clarity possible for Ontario's consumers.

The authors were unable to consider proposals for the monitoring, supervision, and enforcement of CBs. The FPTP Framework lacks necessary details with respect to these key parts of robust governance and oversight. FSRA should propose guidance for comment at the earliest opportunity to provide clarity to industry, CBs and investors/consumers alike.

Credentials must not be granted based on merely years of time spent within the financial industry. Survival is not a proxy for quality or qualifications. The term used by industry is "grandfathering." The authors state that grandfathering is foreseeably likely to result in dilution of the credibility of the title holders as a group and to undermine public trust in title holders and the FPTP Framework.

The authors are aware that regulatory or self-regulatory bodies or those licensed by those bodies have sought blanket exemptions from the standards. These requests effectively cover

most retail provision of financial advice in Ontario. In effect, industry and their representatives seek a way for their FAs and FPs to use the titles without the necessary minimum qualifications that FSRA proposes. These proposals are an end-run around the legislative first step of providing basic protection to Ontario's receiving financial advice and financial planning. To date, the organization representing Ontario's life insurance companies, mutual fund salesperson and securities salespeople have each argued for a blanket exemption. To grant such exemptions would render meaningless the consumer protections in the FPTP Act for all but a few Ontarians. In effect, the only participants who would subject to the standards and obligations of the FPTP Act and FPTP Framework would be a small fraction of those presently offering Ontarians financial advice and financial planning and activities that can reasonably be confused with these activities and are otherwise unlicensed by the FCAC, IIROC, MFDA, OSC, and FSRA.

These exemptions make no objective sense. Either the FPTP Act has a consumer protections which must provide reasonable standards of qualifications or the unintended result would be placing Ontarians at great risk by promoting unearned and unreasonable trust in the vast majority of title holders.

For greater clarity, the authors considered whether a life insurance salesperons, a mutual fund salesperson, a securities salesperson or a bank employee should be granted use of the title due to mere fact that they have a regulatory registration. The training materials to qualify for these licenses were reviewed. Objectively, these materials at present fail to meet the minimum standards proposed by FSRA through CBs for FA and FPs. While not excluding the possibility that future educations, qualification, continuing education and enforcement could meet minimum CB standards, there is no objective reason to conclude that licensees have been required to meet these standards based upon the studies required to obtain these registrations. To allow unqualified applicants to use the titles would foreseeably harm Ontarians. Nonetheless, the authors acknowledge that, for example, a life insurance salesperson who was also, for example, a CFA would likely be a member of an organization that would qualify as CB for financial planners. For greater clarity, this is not merely a hurdle to jump, but a basic requirement going to the credibility of the licensing regime.

There is a potential for financial advice and financial planning to be considered "trading" under the Ontario *Securities Act.* The authors urge FSRA and the OSC to jointly provide guidance to industry as to permitted and non-permitted activities by FAs and FPs pursuant to their consumer

mandates. This concern reflects the fundamental problem, outlined above, of regulation based on products not activities. No consumer benefits from the resulting confusion. By providing guidance to industry, potential breaches of the *Securities Act* can be identified and avoided.

Recommendations:

- FSRA should propose details with regards to monitoring, supervision, and enforcement of CBs, for comment at the earliest opportunity to provide clarity to industry, CBs and investors/consumers alike.
- No "Grandfathering" of title holders use of titles.
- Exemptions to regulatory licensees must not be permitted.
- FSRA and the OSC should jointly provide guidance to industry as to permitted and non-permitted activities by FAs and FPs pursuant to their consumer mandates. (This concern reflects the fundamental problem of regulation based on products - not activities).

9. Enforcement and Dispute Resolution

FSRA must actively monitor CB's enforcement of its standards to ensure timely, efficient, and fair complaint handling in the best interest of the consumer. The best interest of the consumer would include awards and penalties that are enforceable in civil courts thereby not necessitating consumers to duplicate their efforts in retrieving same.

Recommendation:

- FSRA must actively monitor CB's enforcement of its standards
- Payment of awards and penalties levied by complaint tribunals of a CB should be both enforceable in civil courts and a prerequisite for membership renewals with a CB.

10. Transition Period

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. The present legislative debate has been a priority since 2017. Industry and individual advisors and planners have been on notice for at least 3 years of the coming legislation. A seemingly related

confirmation of not just formal notice but action is the substantial increase in applicants for the CFP designation. Not only have advisors and planners received notice, but they have acted.

Without doubt, a transition period is required. Without doubt, transition periods allow the continued use of these titles by unqualified users. This continued use undermines the FPTP Act and Ontarian's trust in consumer protection for those seeking financial advice and financial planning. A trade off must be made that minimally undermines the faith of Ontarians in the FPTP Act and causes minimal harm to Ontarians.

There are 3 transitional stages:

1. The first is the period from announcement of the final FPTP Framework until FSRA can reasonably receive and evaluate applicants from potential CBs. Given the years of advance notice that have preceded the FPTP Act and the proposed FPTP Framework, credible organizations have already prepared for submission of their applications. FSRA has proactively prepared for this step and has already reviewed educational, governance and enforcement requirements of many potential applicants. Final review will be efficient and quick. The first period is estimated as taking 3 months.

2. The second period is from when CBs are formally recognized until they formally communicate the new regime to their title holders. We propose a 2-month period to allow for potential rollout during holiday breaks such as winter or summer holidays.

3. The third is a period for individual title holders to receive recognition and take required steps. Leading potential applicants to be CB like the CFA, FP Canada and IAFP can complete this process in an expedited time frame. We propose a 2-month period to allow for potential rollout during holiday breaks such as winter or summer holidays.

The third period could run consecutively with the second period.

Nonetheless, from the announcement of the framework forward, there should be a ban on the use of the protected titles and confusingly similar titles. At the end of the transition period, all use of the protected titles and confusingly similar titles must be banned except for recognized and fully qualified members of CBs.

One exception may be recognized. For applicants who are actively engaged in obtaining credentials, it may be reasonable to allow those applicants to use of FA (applicant) or FP (applicant).

Recommendations:

- From announcement of the framework forward, there should be a ban on the use of the protected titles and confusingly similar titles.
- At the end of the transition period, all use of the protected title and confusingly similar titles must be banned except for recognized and fully qualified members of CBs.
- in total a 5-month transition period.

11. Governance

For CBs to fulfill their public interest mandates, due concern must be paid to the governance structures and membership of CBs.

Diversity of governing councils and enforcement tribunals are recognized a pillar of modern compliance programs. So too, governance must be transparent to the CBs membership, to the overlapping regulators including FSRA, and to Ontarians.

Recommendation:

- All CBs should be required to have consumer representation at least equal to the governance representatives of industry.
- All CBs should be required have their governance structures to strive to include diverse representation of Ontarians.

12. Additional Consumer Protections

It is troubling that additional burden will be placed on Ontarians related to the potential of multiple CBs. Ontarians will have to investigate the indirect regulatory relationship of the FPTP Act and search out the responsible CB. This is an unfair and unnecessary burden. This appears to be an oversight by the legislative drafters. There is a simple and consumer-friendly tool to remove this burden; a central database.

Within the database, and connected with each title holder's name, should be a link to the CB which granted the title holder's designation and is responsible for oversight of that credential holders' licence. The database also should provide a link to a common complaint form which would be forwarded by FSRA to the CB for consideration. In addition to lessening potential confusion, this would provide FSRA with important empirical data for its policy consideration.

A different, but related concern, is the need to assist consumers to avoid charlatans. A central database mirrored by each CB body of FP and FA title holders is needed. The CB database could be limited to its credential holders only. The FSRA and CB database should include notices of ongoing investigations of a title holder by a regulatory and/or CB as well as all enforcement actions and disciplinary decisions about title holders.

At this time and in the absent of regulations, industry participants offering financial advice and financial planning may not have Errors and Omissions insurance to cover their advice. As a result, Ontarians are exposed to an unnecessary risk alike from charlatans and even some qualified advisors/planners. Other areas of professional advice in Ontario each require mandatory Errors and Omissions insurance as a term of their licensing.

All title holders should be required to maintain Errors and Omissions insurance sufficient to cover the associated risk. Furthermore, the risk from title holders who fail to maintain coverage not only during the period of advising/planning but for a period sufficient to cover the risks arising from intentional and accidental advising or planning failures. Mandatory tail end insurance should be required of all Errors and Omissions insurance suitable for use by title holders.

Banks and non-provincially licensed trust companies are not necessarily subject to Ontario's regulations unless Ontario occupies the space. FSRA should review the Alberta Bank Act constitutional reference and pass any necessary legislation to ensure that banks and trust companies cannot evade the FPTP Act.

Recommendations:

- central registry for all credential holders with links to responsible CB and common complaint form.
- central registry with all enforcement actions mirrored by each CB for its credential holders.

- mandatory Error and Omissions insurance for title holders with mandatory tail end coverage.
- Bank employees must be subject to the FPTP Act and the FSRA Framework.

13. Consumer Education and Disclosure

With the new regime and the enhanced protection of Ontarians, a robust public education program will be needed to be undertaken by FSRA and, perhaps by recognized CBs. FSRA's Consumer Office should continue to work with consumer advocates to further consider goals and opportunities for consumer education about the new protections.

All title holders should be required to provide at the commencement of an advisory or planning engagement in plain language a stand-alone description of their engagement, their compensation, disclosure of all conflicts, their membership in a CB and the consumer's right to complain to the CB. To be effective, the disclosure document cannot be merely another form to sign. This is a key advisory or planning step requiring unique treatment and explanation. Use of legal or financial terminology in such disclosure should be considered to run counter the goals of consumer protection and be a presumptive of breach of this requirement. To the extent that an engagement limits the advisor or planner's obligations to the engagement, this must be stated plainly and stated to be an exception to the normal services a consumer has a right to expect from her/his/its financial advisor or financial planner.

Recommendations:

- Consumer advocates and Consumers Office work together to develop education for Ontarians with respect to the FPTP Act enhanced protections.
- The use of a plainly stated disclosure document requiring unique treatment and explanation.

14. Self-funding

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.

Recommendation:

- Fees paid by potential title holders should be sufficient to fund the regulatory regime.

Concluding Comments

The proposed framework should be implemented immediately upon approval of the first credentialing body and without grandfathering the use of titles by people who have not met the framework's credentialing requirements. There should be no exemptions for either title or titles that can be reasonably confused with these titles.

Investors and consumers will require education on the proposed framework to avoid unscrupulous misuse of titles and to assist in the rehabilitation of industry's use of titles.

Without a central database for approved title holders with links to their CB and a common complaint form will ease the burden on Ontarians.

These comments are respectfully submitted by Harold Geller and MBC Law Professional Corporation