

IIROC Response to the Financial Services
Regulatory Authority of Ontario Request for
Comment on:

Proposed Rule [2020 – 001]

Financial Professionals Title Protection

November 12, 2020

Introduction

As a pan-Canadian self-regulatory organization (SRO), the Investment Industry Regulatory Organization of Canada (IIROC) mission is to protect investors and support healthy capital markets.

IIROC supports the objective of the *Financial Professionals Title Protection Act, 2019 (FPTPA)* to create minimum standards for the use of the Financial Advisor (FA) and Financial Planner (FP) titles¹ in Ontario, and the key principles of consumer confidence and regulatory effectiveness and efficiency.

As with any other regulatory framework enhancement, in order to avoid unnecessary or duplicative regulation, or other unintended consequences, new minimum title usage standards should consider:

- the existing differences in services provided amongst the various financial services sectors and in the conduct and proficiency standards that apply in those sectors
- the likelihood that the FPTPA or similar standards may be adopted by other provinces
- that many dealers operate nationally and would benefit from harmonized provincial standards

To understand the practical implications for investors, IIROC dealers, registrants, IIROC itself, and the larger financial framework in Canada, additional information is required regarding the proposed rule.

We are committed to our high proficiency standards at IIROC and believe that they help support investor protection and confidence in investment dealers and those registered individuals who provide financial advice and solutions to investors across Canada.²

We look forward to continued discussions with FSRA in support of this important initiative, and we encourage the involvement of all stakeholders in the process.

1. FP and FA credentials

FSRA is seeking feedback on the above approach and whether the Proposed Rule, FP, and FA baseline competency profile adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body's educational program, to establish the minimum standard for FP and FA title users.

General comments

Determining a baseline for the FA credential could be challenging due to the broad and varied scope of financial advisory activities across all financial service sectors. Within the securities sector alone there is a broad and varied scope of FA activities.

Further, existing proficiency and conduct standards imposed by conduct regulators (such as IIROC, the MFDA and the OSC) are generally higher than those contemplated under the FSRA titling regime. We do not plan to lower our existing proficiency and conduct standards.

¹ Throughout this document, wherever we refer to FA or FP titles, these would include similar titles, to be confirmed by FSRA.

² Proposed changes to IIROC proficiency standards are currently out for public comment - refer to IIROC Notice 20-0174 [Consultation Paper - Competency Profiles for Registered Representatives and Investment Representatives, Retail and Institutional](#).

Finally, to alleviate investor confusion, it is important to more clearly delineate between financial planning and financial advisory activities.

Use of the FA title in the securities sector

On the IIROC platform, client-facing individuals must meet specific proficiency and conduct standards that differ based on the nature of services they provide the client (order-execution-only services, advisory services, discretionary management services) and the products they offer (i.e., securities, mutual funds-only, option contracts, futures contracts). Because of this broad scope of activities, the titles that are used need to provide clarity as to:

- which client-facing individuals are permitted to provide advice and can use the FA or similar title
- the services and products on which these individuals can advise.

Specific to the proposed baseline competency profile for the FA title, the technical knowledge section reads as follows:

“The curriculum should provide the technical knowledge and competencies in one or more of the following: estate planning, tax planning, retirement planning, investment planning and alternatives, finance management and insurance/risk management.”

As it applies to the securities sector, we are concerned that this section confuses financial planning activities with financial advisory activities, in that it does not refer to investment portfolio construction technical knowledge and competencies and only refers to the more general activity of “investment planning and alternatives”.

To address these concerns, we suggest that this section of the FA baseline competency profile be revised to more clearly detail the advisory activities that would be performed under the FA title; see suggested revisions below:

“The curriculum should provide the technical knowledge and competencies in one or more of the following: estate advice and/or planning, tax advice and/or planning, retirement advice and/or planning, investment advice and/or planning and alternatives, finance management and insurance/risk management.”

Use of the FP title in the securities sector

Specific to the proposed baseline competency profile for the FP title, one of the proposed client outcomes reads as follows:

“Integrated financial planning

- *Ability to develop and present an integrated financial plan to clients, which includes a holistic analysis of a client’s financial circumstances and suitable financial planning and investment recommendations.”*

We are concerned that this section:

- uses the term “suitable” in relation to financial planning. Within the securities sector, the term “suitable” and the suitability determination obligation is only triggered where an account offering is being proposed or an investment portfolio is being constructed for the client
- suggests that individuals who prepare financial plans that do not include specific investment recommendations would not be able to use the FP title

To address these concerns, we suggest that this section of the FP title baseline competency profile be revised to more clearly detail the core planning activities that would be performed under the FP title

~~“Integrated~~ Financial planning

- *Ability to develop and present a ~~an~~ ~~Integrated~~ financial plan to clients, which includes a holistic analysis of a client’s financial circumstances and ~~suitable~~ financial planning and may include suitable investment recommendations.”*

Regulatory burden and costs

In general, IIROC would not allow an individual who is employed by an IIROC Dealer Member to use an FA or similar title where they are not approved by IIROC as a “Registered Representative”, “Associate Portfolio Manager” or “Portfolio Manager”, irrespective of the fact that they may hold one of the FSRA approved credentials.

We request additional detail regarding the fees associated with the FSRA title usage program. IIROC already has implemented a very detailed registration and approval regime for various financial advisory activities conducted by individual IIROC registrants. Greater clarity is required regarding the extent that the FSRA title usage program will impose additional costs on individual IIROC registrants who are already paying for the costs associated with the IIROC process.

Issues specific to credentialing bodies

We are concerned that the creation of multiple new CBs/self-regulatory organizations, with a wide range of established capabilities with respect to compliance and enforcement, could create an un-level playing field, compromising investor protection and transparency. As such, we recommend that FSRA:

- implement high minimum standards for CBs, to ensure appropriate and consistent levels of supervision and enforcement
- avoid allowing terms and conditions for non-qualifying CBs

Alternatively, FSRA could consider allowing CBs who do not have appropriate established capabilities with respect to compliance and enforcement to rely on (i.e. delegate to) existing regulatory compliance and enforcement regimes, where practical/appropriate.

We also recommend that FSRA avoid creating a scenario where an individual is subject to duplicative title protection oversight from multiple CBs.

With respect to oversight, statutory regulators, including the OSC, already oversee all of IIROC’s activities. Additional oversight from FSRA of IIROC CB activities would add duplicative costs and regulatory burden. It would be helpful to understand FSRA’s proposed oversight model for CBs.

Similarly, we recommend that existing conduct regulators be exempt from the CB application process, to avoid adding duplicative costs and burden.

Finally, to understand the investor protection implications of the FPTPA, we request more information from FSRA regarding the implications of an enforcement action against an individual using one of the FA or FP titles. Specifically, how would:

- the enforcement action be communicated with other CBs?
- other CBs be required to recognize the enforcement action?

FSRA should avoid any situations where an individual using one of the FA or FP titles could avoid enforcement sanctions by moving to another financial sector/CB.

2. Disclosure

FSRA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use an FP or FA title. FSRA is seeking comments on the form that this disclosure could take and the overall consumer benefits it could achieve.

If FSRA creates and maintains a centralized list of individuals who have been approved to use the FA and/or FP title, we do not believe it is necessary for FP, FA and similar title users to provide additional disclosure to their clients of the relevant credential they hold.

A preferred approach to requiring credential disclosure would be to require the use of financial sector-specific titles. This would provide clients with sufficient information to determine whether they are dealing with an individual with credentials relevant to their specific financial needs.

3. Exemptions

FSRA is seeking comments on whether the framework should allow for any exemptions. In particular FSRA is seeking comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.

As a general principle, we believe that regulators should avoid introducing any new regulatory requirements that are duplicative to existing requirements and that do not add any incremental benefit to investor protection or market integrity. As such, we would encourage FSRA to consider the following types of exemptions:

- Credentialing Body application requirements - IIROC, and other regulators as appropriate, should be exempted from having to participate in a detailed application process to demonstrate capabilities that have already been recognized by statutory regulators across the country, including the OSC.
- Existing Approval Categories with higher proficiency standards - IIROC proposes, in respect to “financial advisors”, that an exemption be granted to those individuals who are approved as “registered representatives” on the IIROC platform, as well as to those who may in the future be approved by IIROC as “financial planners”, should IIROC create such an approval category.

4. Fees

The FPTPA requires credentialing bodies to collect, from approved credential holders any fees FSRA requires those individuals to pay, and to remit those fees to FSRA. FSRA has the authority to make rules regarding the collection, holding and remittance of such fees. FSRA is seeking comment on this fee structure, including whether it allows for fair cost recovery, or if there are any operational challenges that credentialing bodies may experience with such a fee structure.

There is limited information provided with respect to the financial implications of the proposed rule for:

- individuals seeking to use the approved FA and/or FP titles
- CBs
- FSRA

Greater clarity is required on the design of any cost-recovery model, how fees will be determined for both title seekers and CBs, as well as any potential cost-sharing model between CBs.

In particular, the relationship between possible exemptions and fees needs to be clarified. If an individual is exempt from the FSRA titling regime, based on their existing registration and approval status with a conduct regulator, will additional fees still be assessed for the use of the FP, FA or similar titles?

5. Consumer Education

FSRA is seeking input on options for consumer education campaigns to support and follow implementation. FSRA is also seeking input from stakeholders on how government, regulators, credentialing bodies and industry can educate consumers on financial planning and financial advising services in Ontario and on FP and FA title use.

IIROC fully 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.