



Advancing Standards™

November 12, 2020

Via the FSRA Website Submission Portal

Financial Services Regulatory Authority of Ontario

Dear Sirs and Mesdames:

Re: Financial Professionals Title Protection Rule and Guidance

Overview

The Portfolio Management Association of Canada¹ ("**PMAC**"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to respond to the request for comment from the Financial Services Regulatory Authority of Ontario (**FSRA**) on Proposed Rule 2020-001 – Financial Professionals Title Protection (the **Rule**) and on proposed Approach Guidance – Financial Professionals Title Protection – Administration of Applications (the **Guidance**, together, the **Consultation**). Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Consultation.

We believe that the proposed regulation of the Financial Planner (**FP**) title presents an opportunity to create a level playing field for those providing financial planning while elevating the standards required of individuals holding themselves out as financial planners, for the benefit of investors. We also believe that the regulation of the FP title, if coupled with appropriate regulatory oversight, carve-outs for otherwise regulated individuals, and investor education and outreach, will provide investors with greater certainty about the qualifications of the person providing them with financial planning and address investor confusion. We believe that those are key elements to protecting investors and increasing confidence in Ontario's capital markets.

However, as set out below, PMAC members have raised serious concerns about certain details of the Consultation, including with respect to the regulation of the Financial Advisor (**FA**) title. We have set out our key recommendations and more specific discussion in the body of this submission.

¹ PMAC was established in 1952 and currently represents over [280 investment management firms](#) that manage total assets in excess of \$2.8 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.pmac.org.

Critical Background on PMAC / Portfolio Managers in Ontario

Collectively, PMAC's over 280 members manage in excess of \$2.8 trillion in assets for a wide variety of Canadian investors. Each of our members is registered with the various members of the Canadian Securities Administrators (**CSA**) to do business in Canada as a portfolio manager. Well over 60% of our members are registered with the Ontario Securities Commission (**OSC**) and headquartered in Ontario with many others doing business in the province.

PMAC members have discretionary authority over the investment portfolios they manage for private individuals, foundations, universities and pension plans. Portfolio managers have a duty to act in the best interests of their clients, also referred to as a "fiduciary duty". Our members employ individuals with a variety of skills and education to service their investors.

Under provincial securities regulation, individuals registered as advising representatives under the portfolio manager category are subject to the highest education and experience requirements in the investment industry: typically, a Chartered Financial Analyst (**CFA**) designation plus a specific period of relevant work experience. They are also subject to stringent oversight, including spot and in-depth audits, by securities regulators as well as oversight by a professional standard setting body: the CFA Institute. Portfolio manager advising representatives are highly trained professionals, working in a highly regulated industry. We note that some advising representatives may also have their Certified Financial Planner (**CFP**) designation. Financial planning services are offered in some portfolio management firms, and the firm may hire individuals with a CFP designation, or with an accounting or legal designation, to provide additional services to clients. In instances where these services are provided by unregistered individuals, the work product is still subject to all the regulatory obligations of the registered firm.

PMAC believes that we are aligned with FSRA in noting that the plurality and innovation of portfolio management firms' business models and client services contribute to the health of the Ontario capital markets and to investor confidence and choice. However, we believe that the Consultation, as currently written, threatens the ability of our members to provide quality financial planning services to clients and adds regulatory burden without any corresponding investor protection or market confidence benefit.

PMAC appreciates that the Consultation is directed at the proficiencies required to obtain and use the FP/FA titles by holding an approved credential. However, we are also raising questions about how and whether FSRA intends for the activities of an FP/FA to be regulated since we believe that is a critical component of achieving the Consultation's investor protection and market confidence goals. For this reason, even though the Consultation does not pose these questions, we have included PMAC's thoughts on the issue of oversight and regulation in the body of our submission.

We have also included in **Appendix A** to this submission certain comments about the baseline competencies associated with the FP/FA titles and have set out for your reference the competencies of individuals registered as advising and associate advising representatives with portfolio management firms.

History of FP title regulation efforts and PMAC's advocacy

As an impacted stakeholder, PMAC has been engaged in the wider consultative process on the issue of financial planner title regulation for a number of years. Most recently we made a [submission](#) on the Ontario government's 2018 and 2016 consultations on Financial Advisory and Financial Planning Policy Alternatives as well as [in respect of the Final Report](#) issued by the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (the **Final Report of the Expert Committee**).

PMAC was supportive of the recommendations in the Final Report and continues to call for many of the recommendations in that Final Report to be implemented by FSRA as the most efficient and effective way to meet the aims of the current Consultation.

Key Recommendations:

*Because the Consultation does not provide details of any proposed oversight of FP and FA activities by either the credentialing bodies (**CBs**) and/or FSRA, PMAC queries what the benefits would be to investors and the capital markets if individuals already overseen by the CSA are not provided with an exemption from the proposed Rule and Guidance.*

We recommend that:

- Employees of CSA-regulated firms that hold a recognized FP credential from a CB be exempted from the proposals, including from the requirement to pay fees in connection with the Rule. As was recommended in the Final Report of the Expert Committee, PMAC believes that individuals that are regulated by the existing regulatory framework for securities should have any associated financial planning activities regulated by their existing regulator (instead of being overseen by FSRA). For that reason, these individuals should not be required to pay fees to FSRA. Failure to provide such an exemption will result in duplicative regulation, increase regulatory burden, cost and investor confusion without any corresponding investor protection benefit since the individual will have earned the requisite FP credentials and the CSA already exercises rigorous oversight of their registered firms and their conduct.
- Clarify that the titles “Advising Representative”, “Associate Advising Representative” and “Adviser” – all of which are regulated terms used to refer to CSA-registered advising and associate advising representatives (discretionary asset managers) are not considered to be titles that could be reasonably confused by investors with the far more generic “investment advisor”. Failure to do so would capture a slew of highly regulated registrants employed by CSA-registered portfolio management firms, increase costs, burden and exacerbate investor confusion without any benefit to investors or the capital markets.
- Provide additional details with respect to FSRA’s oversight plan to monitor CBs to allow stakeholders to assess the scope of oversight by FSRA of the CBs. Without more information about how CBs and FSRA will oversee actual FP and FA activities, it is difficult to assess whether the Rule and Guidance will enhance investor protection and market confidence or whether they will simply create a fee-payment system for individuals that have already obtained a recognized credential;
- Provide additional details with respect to the proposed interaction between FSRA, the applicable CB and the securities regulatory bodies (OSC/other CSA regulators, IIROC and/or the MFDA (as applicable)), in the event that an individual’s approval to use the FP or FA designation is terminated or their registration with the CSA member or self-regulatory organization (**SRO**) is terminated;
- Publish fee details for public comment as soon as possible to ensure the proposed fee structure meets FSRA’s objectives of simplicity, consistency, fairness, effectiveness and efficiency. Though certainly not the only factor in this assessment, the cost of the regulation of the FP and FA titles to individuals and firms is material to whether the Consultation will result in additional regulatory burden; and
- Prioritize investor resources, education and tools to support the Consultation’s objectives of providing confidence to consumers and investors that the individuals with whom they

are dealing will meet minimum standards of expertise and knowledge when providing financial planning or advisory services.

Consultation Questions

1. FP and FA Credentials

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

"Financial Advisor" and titles that could reasonably be confused with FA

PMAC acknowledges that investor confusion around the use of titles is problematic and we applaud FSRA for seeking to regulate those using the FP and FA titles to reduce such confusion.

However, PMAC continues to believe that the competencies and services outlined in Table 2 of the Consultation do not clarify the intended scope of individuals that FSRA means to capture as being "Financial Advisors". If those within the industry continue to grapple with the definition of an FA, notwithstanding the publication of the Consultation and the attempt to define what an FA does, we query what value regulating the FA title will have for investors.

Additionally, since individuals registered with portfolio management firms are either "advising representatives" or "associate advising representatives" and one of the defined terms used in national instruments to refer to portfolio managers and their registered individuals is "investment adviser", we have concerns about FSRA's plan to restrict the use of the FA, as well as titles that could reasonably be confused with that title.

We refer FSRA to the following [article in Advisor.ca](#) which discusses the differences between "advisor" and "adviser" and draw your attention to the following quote:

"The CSA, the national group of provincial securities administrators, confirmed in an email that "adviser" is a legal term used in securities legislation and that it refers to "a category of registration for those that are in the business of advising in securities." Conversely, the term "advisor," says CSA, "is a colloquial term that captures a broad range of firms and individuals that would cover both advisers and dealers registered under securities legislation, but is also often used in the context of others that provide financial advice."

We ask FSRA to clarify that the titles "Advising Representative", "Associate Advising Representative" and "Adviser" – all of which are regulated terms used to refer to CSA-registered advising and associate advising representatives (discretionary asset managers) are not considered to be titles that could be reasonably confused by investors with the far more generic "investment advisor". Without such clarification, FSRA would be imposing an extensive and unnecessary burden on registrants while exacerbating investor confusion since advisers have far higher proficiency, conduct and regulatory requirements than an FA (Please also refer to the proficiency chart on page 7 below).

Supervision

Two of the primary goals of the Consultation are to establish greater confidence in the quality of financial planning and financial advising services investors receive from an FP and FA title user and to increase the consistency of the supervisory framework to oversee the conduct of FP/FAs. PMAC believes that in order to achieve these goals, supervision of not only the use of titles, but also of the activities of those using the titles, is required.

The way the Consultation reads, PMAC members note that FPs and FAs may or may not be registered with the CSA or SROs and that those that are not regulated by the CSA or the SROs may not be subject to any ongoing oversight, other than perhaps in the case of egregious conduct resulting in investor complaints.

The Consultation contemplates complaints-based enforcement that will be monitored and supervised by FSRA. PMAC queries how such complaints will be made and what the complaints submission and resolution process will be, and how this would work in conjunction with the Ombudsman for Banking Services and Investments (OBSI) process that CSA² registrants with non-permitted clients must participate in. If the investing public does not have access to a registration database (please see our comments under Question 5 below), it is hard to see how a retail investor would know whether an individual ought to be and is properly credentialed.

How will FSRA's rules establishing the CBs' disciplinary processes be put into practice? Will FSRA expect CBs to discipline their own credential holders or escalate investor complaints to FSRA? For example, if an otherwise unregulated individual holding an FP under a FSRA-approved CB were to suggest strategies or make recommendations to a client that are not suitable for the client, where would the investor recourse lie for such action? Would it be with the CB or with FSRA? Will FSRA conduct periodic audits of the CBs to ensure they are monitoring and enforcing their own standards?

We believe that additional detail and consideration around FSRA's oversight role of the CBs as well as of individuals holding accreditations is essential to protect market confidence and investor interests.

We also note that the Consultation does not go into detail with respect to the interface between FSRA and other regulators. For example, if an individual registered under the MFDA were to lose their registration for misconduct and seek to be credentialed under a FSRA-approved CB as an FP or FA, would there be oversight by FSRA or would FSRA expect the CB to oversee such issues? Additionally, once a CB is approved as such, is there a scenario contemplated where the CB may lose their approval as such if they fail to monitor and supervise the baseline competencies and ineffectively address complaints? If a CB were to lose its designation under FSRA, what would happen to the individuals holding those credentials?

Members also noted that most of the entities that we would expect to be FSRA-approved CBs operate nationally. Recognizing that Ontario is taking a leadership role on the regulation of FP and FA titles (alongside Saskatchewan), we do wonder what the impact will be for the many firms that operate across multiple Canadian and foreign jurisdictions. Adding a layer of complexity in Ontario without complementary national harmonization can add to regulatory burden and arbitrage – neither of which are desirable outcomes for our capital markets or investors.

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 tile. FSRA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.

PMAC agrees that simple factual disclosure can assist investors in understanding who they are dealing with. We believe that the use of the credential, such as CFP, after the individual's name on business cards, in marketing pieces and as part of client education setting out the

² Other than those who are principally regulated by Quebec.

standardized alphabetical list of credentials that may qualify an individual to use the FP/FA titles would also be effective.

3. Exemptions

FSRA is seeking comments on whether the framework should allow for any exemptions. In particular, FSRA is requesting 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.

We strongly believe that FSRA must include an exemption for individuals employed by firms that are registered with the CSA that hold a recognized financial planning credential from a recognized CB as well as for CSA-registered advising and associate advising representatives that may offer FP and FA-type services to their investors as part of their discretionary management. We believe these exemptions are both required in order to ensure an appropriate balance between regulatory burden and investor protection. We believe these exemptions are necessary to avoid duplicative or conflicting regulation that would not improve investor understanding or market integrity.

We note that FSRA has acknowledged in the Consultation that during its 2019 targeted consultation meetings, stakeholders expressed concerns over the introduction of measures that could lead to duplicative oversight and increased burden for FP and FA title users. PMAC was and remains one of these concerned stakeholders.

In the Consultation, FSRA notes that consumer/investor advocates did not support the concept of exemptions for either title. PMAC respectfully queries the possible policy reason for such a refusal when the comparative standard with the baseline competency profiles set out in the Consultation versus the securities law framework for registrants set out in National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Obligations, coupled with the fiduciary duty that portfolio managers owe their clients. While FSRA notes the possibility that there may be existing licenses or designations that do not meet the proposed minimum standards in the Consultation, this is not the case with employees of portfolio managers that hold a recognized credential, nor would it be the case with advising or associate advising representatives.

The benefit of exempting employees of portfolio managers that hold a recognized FP credential would clearly outweigh any potential harm to the public since, as noted above, the individual would have earned the recognized FP credential and be employed by a CSA-regulated firm. With respect to advising and associate advising representatives, the various members of the CSA – including the OSC – have stringent regulatory conduct, proficiency and experience standards that far exceed the proposed baseline competency matrices for FPs and FAs in terms of education and ethical conduct. Since portfolio managers owe a fiduciary duty to their investors and are subject to ongoing and rigorous conduct oversight, we believe that exempting CSA-registered portfolio managers and their appropriately FP-credentialed employees meets all of FSRA's stated considerations for including an exemption.

Members also raised questions about FSRA's expectations in the scenario where an individual holds a CFP credential and wishes to include this credential in their marketing materials and client correspondence, but does not use the FP (or FA) title. We read the Consultation to say that such an individual would be permitted to use their CFP designation on marketing materials because it is factually accurate while not triggering the Rule because that individual does not use the FP/FA title (or titles reasonably confused with such titles).

4. Fees and Assessments

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.

PMAC believes that the FSRA-related fees that will be charged through the CBs should be itemized so that FPs/FAs will know which portion of their designation cost and renewal fees are supporting FSRA. PMAC also believes that a proportion of the FSRA fee collected should be funded by penalties from those who are found to be in breach of the regulation to support a fair cost recovery model.

We look forward to the opportunity to comment on the consultation in respect of these fees.

5. Consumer Education

FSRA is seeking input on options for consumer education campaigns to support and follow implementation. As mentioned above, FSRA is also seeking feedback 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.

PMAC is pleased to see that FSRA is seeking input on this critical component of regulating the FP and FA titles. We see many opportunities to build on the investor education in existence and to explain the services provided by an FP and FA.

We note that the very nuanced differences in the competencies and services provided by an FA raise the question of whether investors will appreciate the difference.

As noted above, FSRA should provide a standardized list of credentials that qualify for each of the FP and FA titles in marketing material and as part of consumer education campaigns. This will allow consumers to reconcile the title used by the person they are dealing with, and help them to understand which services the person may provide. It will also assist in revealing abuse of those titles. Consumers should also be provided with information about what constitutes inappropriate activity, and the complaint mechanisms available to them.

PMAC supports the proposal to create a central, publicly-accessible database of financial planners to enable consumers to verify whether an individual holding herself out to be an FP or FA holds a credential from a FSRA-recognized CB.

With respect to the type of information to be included in the database, we encourage FSRA to consider leveraging the existing infrastructure of the [National Registration Search \(NRS\)](#) under the CSA and/or the "Find a planner or certificant" registry maintained by the FPSC.

The ease of searching under the "Find a planner or certificant" function could be augmented with additional information (especially in respect of any disciplinary action / warnings) and with consumer education verbiage as exists on the CSA NRS search. In particular, we encourage FSRA to consider providing links to easily understandable, widely accessible and, perhaps even multi-lingual, financial literacy and other investor-protection information on this search page and to engage in a public awareness campaign with respect to the new requirements for FPs and FAs and the public's ability to verify their credentials, including what disclosure investors should be looking for (please see our comments on Question 2 above).

Elements of NRS such as the following suggestion may assist consumers in understanding the importance of engaging with a properly credentialed FP or FA.

Registration helps protect you!

Verifying registration is the first step to take before engaging a financial planner or financial advisor.

If you discover the person you are dealing with does not hold a recognized financial planning credential (or is not registered with the Canadian Securities Administrators [NTD: include link to NRS search]), or is offering you something they don't seem permitted to, contact [NTD: insert appropriate contact at FSRA].

To be of maximum benefit, this registry should be created and maintained at a national level so that consumers across Canada can avail themselves of this important information, no matter the jurisdiction in which they engage a financial planner or advisor. The establishment of a central registry dovetails with and is an essential part of the financial literacy and investor education policy recommendation from the Final Report and we believe that this central registry can act as an effective tool through which key investor education and/or alerts can be disseminated.

We believe that the public education should coincide with the introduction of the requirements, so as not to confuse investors about the current state of affairs.

Additional Comments – Harmonization

PMAC would like to applaud the leadership of Finance in pursuing the goal of greater investor confidence in our capital markets. Subject to our comments above, PMAC believes that the implementation of the Rule and Guidance should serve all Canadian consumers, and therefore we urge efforts to harmonize the appropriate regulation of FPs and FAs across all provinces and territories. We see Ontario as a leader on this issue and understand that Saskatchewan is likely to follow suit.

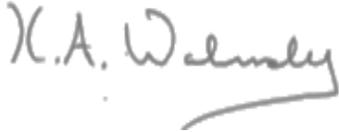
The Ontario government must continue to work collaboratively with its provincial and territorial partners and with provincial and territorial securities regulators, SROs (including with respect to insurance) and, as applicable, provincial and territorial partners, to adopt one set of harmonized standards for financial planners in Canada as well as to address the gap in regulatory oversight of certain FPs and FAs. We feel that a non-harmonized solution to regulate the FP and FA titles would be unduly onerous for firms operating nationally and would not be an optimal long-term solution or in the best interests of Canadian investors. Ultimately, all Canadian investors should receive a uniform level of competence and service when they engage the services of a financial planner or advisor. We understand that this process will be a logistically and, perhaps, politically challenging one but we believe that the value of a national solution cannot be underestimated.

Conclusion

PMAC applauds the work of FSRA in consulting widely with stakeholders and in showing leadership on this investor protection and industry regulation issue. We would be pleased to discuss any of our comments with you at your convenience.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President



Margaret Gunawan
Director
Chair of Industry, Regulation & Tax
Committee,

Managing Director – Head of
Canada Legal & Compliance
BlackRock Asset Management
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APPENDIX A
BASELINE FP/FA COMPETENCIES & COMPARISON TO PORTFOLIO MANAGER
COMPETENCIES

We have provided the following high-level comparative chart of the baseline competencies between FPs and FAs and individuals registered as portfolio managers for FSRA’s consideration.

Please note that PMAC members question the accuracy and completeness of the so-called “KYP” competencies for both the FP and FA titles.

We further note that the Final Report of the Expert Committee would have required FPs and FAs to abide by a statutory best interest standard that would have, amongst other things, required an FP or FA to “avoid or control conflicts of interest in a manner that prioritizes the client’s best interest” whereas the Consultation sets out far lower expectation that an FP or FA must “understand the ethical practices and professional conduct in the financial services market, including identifying and managing conflicts of interest.” Understanding ethical practices is not equivalent to having a duty to manage, disclose or avoid them. Merely understanding conflicts is a far lower – and insufficient – standard to protect investors and bolster market confidence.

Competencies	FP	FA	Portfolio Manager
Knowledge	Overview of financial services marketplace Overview of the Canadian regulatory environment related to the sector in which the individual operates Fundamentals of Economics	Overview of financial services marketplace Overview of the Canadian regulatory environment related to the sector in which the individual operates Fundamentals of Economics	<p>Associate Advising Representative: Either Level 1 of the CFA and 24 months of relevant investment management experience (as determined by the CSA on a case-by-case basis and set out in Staff Notice 31-332- Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives for Portfolio Managers); or CIM and 24 months of relevant industry management experience</p> <p>Advising Representative: Either full CFA Charter and 12 months of relevant investment management experience in the 36-month period before applying for registration; or CIM and 48 months of relevant investment management experience (12 months gained in the 36-month period before applying for registration)</p>
Ethics	Understanding of ethical practices and professional conduct in the financial services market, including	Understanding of ethical practices and professional conduct in the financial services market, including	Owe a fiduciary duty of care to their clients. Subject to stringent requirements with respect to conduct, disclosure and conflicts of interest set out in NI 31-103.

	identifying and managing conflicts of interest	identifying and managing conflicts of interest	Conflicts of interest provisions require registrants to identify, manage and avoid all conflicts of interest that cannot be dealt with in the best interest of the client. For material conflicts of interest that can be managed in the best interest of the client, disclosure, recording keeping and detailed policies and procedures setting out how the conflict is being managed and disclosed are required.
Client Outcomes	Gather sufficient detailed personal and financial information about the client, confirm risk profile, establish financial objectives and priorities and areas of need relevant to scope of services being provided Periodic review of client's ongoing objectives, priorities and areas of need. 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.	Gather sufficient detailed personal and financial information about the client, confirm risk profile, establish financial objectives and priorities and areas of need relevant to scope of services being provided Periodic review of client's ongoing objectives, priorities and areas of need. 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.	Detailed know your client rules and ongoing requirements set out in Section 13.2 of NI 31-103. Portfolio managers typically enter into an Investment Management Agreement and Investment Policy Statement with their clients which respectively set out the parameters of the discretionary relationship and the client's investment needs.
Technical Knowledge / "KYP"	Technical knowledge and competency in all of the following: estate planning, tax planning, retirement planning, investment planning and	Technical knowledge and competency in one or more of the following: estate planning, tax planning, retirement planning, investment	Knowledge gained from CFA or CIM and relevant investment management experience in addition to prescriptive requirements set out in new Section 13.2.1 of NI 31-103 with respect to knowing your product. These obligations include but are not limited to assessing the securities made available to clients

	<p>alternatives, finance management and insurance /risk management and how these topics interconnect with each other.</p>	<p>planning and alternatives, finance management and insurance /risk management and how these topics interconnect with each other.</p>	<p>with respect to their relevant aspects such as structure, features, risks, initial and ongoing costs and impact of those costs.</p>
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