



# Submission on Proposed Rule [2021-003] Financial Professionals Title Protection – Second Consultation

06/21/2021

The Canadian Bankers Association (**CBA**)<sup>1</sup> appreciates the opportunity to provide input on the Financial Services Regulatory Authority of Ontario's (**FSRA**) second consultation on Proposed Rule [2021-003] – Financial Professionals Title Protection (the **Consultation Paper**) under the *Financial Professionals Title Protection Act, 2019* (the **Act**).

We support the goal of the Act to promote consumer confidence in professionals who hold themselves out as financial planners (**FPs**) or financial advisors (**FAs**) by ensuring they have appropriate credentials. We appreciate that one of FSRA's key objectives in establishing this new credentialing regime is to leverage the existing regulatory framework and minimize unnecessary overlap with parallel rules and standards. In line with this goal and our previous advocacy on this topic, the below list outlines our suggestions and considerations in relation to the rules and guidance set out in the Consultation Paper.

- Individuals who are registered as representatives or approved persons of the Investment Industry Regulatory Organization of Canada (**IIROC**), the Mutual Fund Dealers Association of Canada (**MFDA**) (together, **SROs**), and provincial securities commissions should be exempt from the Act. If this route is not chosen, FSRA should show deference to SROs and provincial securities commissions' existing, robust disciplinary, conduct and complaints processes.
- To help provide clarity on, and mitigate implementation challenges with, requirements related to reasonably confusing titles, FSRA should both outline a principle-based approach to determining what may be a reasonably confusing title and consider addressing titles commonly used in the financial services space (see examples in *Reasonably Confusing Titles* section of this submission).
- While we appreciate that a third consultation will be undertaken in relation to fees, FSRA should consider the significant flow-through effects the proposed fees charged to credentialing bodies will have on the consumers if it is not clear how these credentialing bodies are meant to recoup these significant new costs.

Our comments are expanded on in the following submission.

---

<sup>1</sup> The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in satisfying their financial goals while obtaining banking products and services through existing and evolving channels. [www.cba.ca](http://www.cba.ca).

## Exemptions

As noted in our previous submission, we continue to support exemptions for SRO-registered individuals. The vast majority of our members' employees who carry the FP or FA title (numbering in the thousands) are registered as representatives or approved persons by IIROC or the MFDA. As registrants, these individuals are already subject to the rigorous oversight of the SROs and provincial securities commissions which includes strict proficiency, credentialing and conduct requirements. Based on the SROs' and provincial securities commissions' existing, comprehensive registration regimes, we request that FSRA provide an exemption for SRO-registered individuals pursuant to its regulation-making authority under section 15(2)(e) of the Act. Appreciating that FP and FA title users are already subject to oversight under existing regulatory regimes, we suggest they should be exempted from sections 2 and 3 of the Act so as not to be subject to potentially duplicative requirements and oversight, with potentially little additional benefit or protection for consumers.

Should FSRA choose not to grant this exemption, which we understand other stakeholders have also suggested, we believe deference should be given to the disciplinary, conduct and complaints oversight that already exists for the SROs (which we understand may apply to be designated as credentialing bodies under the proposed framework) and provincial securities commissions in this or other provinces. We recognize that currently, an FP or FA may be overseen by more than one body (i.e., a credentialing body and an SRO). In our view, oversight by credentialing bodies should be limited to education, training and credentialing of professionals, but should not duplicate the disciplinary, conduct and complaints oversight that already exists with the SROs and provincial securities commissions in this or other provinces. The SROs have established complaint resolution mechanisms for consumers which include investigative powers. In the case of a complaint, it would be problematic (e.g., potential consumer confusion) to have a parallel resolution process running alongside that of the SRO. To avoid problematic unintended consequences from regulatory overlap, we believe that the credentialing bodies should defer to the SROs and securities commissions where conflict or duplication arises. Further, our members already have comprehensive and robust complaint-handling processes. Their experience is that customers with concerns come directly to our members and not to the credentialing bodies.

## Reasonably Confusing Titles

We appreciate the additional guidance FSRA has provided on the topic of “*Titles that could reasonably be confused with FP/FA*” in the newly proposed Supervisory Framework Guidance (**Guidance**). We understand that the list of title examples provided in the Guidance is non-exhaustive, and that whether a specific title could be reasonably confused with the title of FP/FA will be determined on a case-by-case basis. However, we are concerned that the list of examples in the guidance will continue to grow, posing an operational challenge for all employers, particularly if over time certain key, product specific titles (e.g., Mortgage Advisory, Loan Advisor) are captured, counter to FSRA’s current policy intent. As such, we recommend FSRA outline the principled approach it will take in determining whether any specific title could be reasonably confused with FP/FA. For example, we understand the following principles to be true based on the CBA’s June 11<sup>th</sup> meeting with FSRA officials, but we seek your confirmation via inclusion in the Guidance:

- The purpose of the proposed framework under Act is to capture only those who use the title FP, FA, or a title that can reasonably be confused with FP/FA. The use of all other occupational titles is beyond the scope of the Act.
- The intention of the “reasonably confusing titles” specific rule and guidance is to capture financial advisors whether spelled “advisor” or “adviser” and abbreviations of the term financial advisor / adviser.
- The framework is not intended to capture titles such as investment advisor, mortgage advisor, or any single-product specific advisor.
- An individual holding an approved credential would be permitted to use titles other than FA or FP that reflect their designation (similar to a CFA who holds another occupational title).

By outlining the specific principles FSRA will rely on in making its assessment of “reasonably confusing”, employers can proactively conduct their own assessment, preventing reactive changes to employee titles.

## Fees

We are pleased to see that FSRA will be holding a separate consultation later this summer on the fee structure proposed under the of the Financial Professional Title Protection Framework. We concur that the importance of this topics warrants a consultation on its own, and we look forward to providing you with a detailed submission at such time.

With respect to the additional detail provided on the topic of fees in this current consultation, we note that FSRA has proposed a \$5,000 fee for each application for approval of an FP/FA credential, to be paid to FSRA by the credentialing body which designates the credential. On the surface, this proposed fee structure suggests that it will be credentialing body that will bare the cost, though we are concerned that in practice this cost may be passed down to the FP/FA, their employer, and ultimately the consumer. This flow-down affect is also likely to occur for FSRA's proposed fees for credential bodies (including the proposed application fee, annual fee, and variable fee). We understand that FSRA has developed its proposed fee structure with cost recover in mind, however we are concerned that the amount of the proposed fees is significant and burdensome.

Additionally, consistent with our advocacy on the need for exemptions for SRO-registered individuals under the Act, we are concerned, that SRO-registered title users could be subject to duplicative fees. In addition to the existing fees that such individuals are required to pay to the SRO, they would be subject to fees that the SRO would charge as a result of its new status as a credentialing body. A duplicative fee structure for SRO-registered individuals would be unduly burdensome, and further highlights the need for exemptions for these individuals from the Act.

## **Disclosure and Public Registry**

We note that FSRA has stated that it intends to “establish a public registry as part of the FP/FA title protection framework”. While we appreciate the importance of transparency and instilling confidence and knowledge in consumers, we are concerned that disclosure of credentials could lead to client confusion, particularly if an individual holds multiple credentials and titles from different credentialing bodies. The abundance of information could be overwhelming and unhelpful to consumers. We encourage FSRA to weigh the benefits of disclosure against the potential for client confusion. We also encourage FSRA to conduct a separate consultation on the details of the contemplated public registry, to allow stakeholders the opportunity to provide specific input on the creation and operation of a public registry.

\*\*\*\*\*

Thank you for considering our comments on the Consultation Paper. We welcome any questions you may have.