

June 21, 2021

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

SENT VIA ONLINE SUBMISSION SYSTEM

Dear Sirs/Mesdames,

**Re: Consultation [2021-003]
Second Consultation on Financial Professionals Title Protection Rule and Guidance**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial Services Regulatory Authority of Ontario (“FSRA”) in regards to consultation [2021-003], the second consultation on the Financial Professionals Title Protection Rule and Guidance (the “Consultation”).

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 17,000 member-clients across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, and life, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence. No one spends more time working with consumers on financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need. In all that they do, our members are fundamentally driven by Advocis’ motto, *non solis nobis* – not for ourselves alone.



2. INTRODUCTION

We continue to support FSRA's leadership in developing the Title Protection Framework (the "Framework") as elements thereof become clearer and more refined. By restricting the use of the widely-used consumer facing titles of Financial Advisor ("FA") and Financial Planner ("FP") to qualified individuals, the Framework could bring about meaningful enhancements to consumer protection.

To achieve this potential, however, the standards that FSRA ultimately establishes should i) accord with consumer needs and expectations; and ii) not represent a simple endorsement of the status quo. As we discuss below, we have serious reservations about the divergent standards FSRA is proposing for the FP and FA titles – namely, the former would represent a true client-centric professional, whereas the latter could, at its minimum standard, essentially be a re-badged salesperson who is given the cover of an officially-sanctioned title. Consumers deserve better than this.

We are supportive of FSRA's approach to developing a central registry of title users, as this would enhance the public accessibility of the Framework and reduce frictions for its use. We also agree with FSRA's stance on the importance of good governance for Credentialing Bodies and their credentials. We have certain questions regarding the Supervisory Guidance and the proposed approach to misleading titles, and we seek clarification on the approach to fees that has been disclosed to date.

Overall, we recognize that FSRA is in a challenging position to address the concerns of a multitude of stakeholders and minimize the regulatory and financial footprint of the Framework, yet still deliver a Framework that achieves its central aim of enhancing consumer protection. As long as FSRA remains steadfast in its focus on the consumer and it is that perspective that drives the outcomes, we are confident the Framework will deliver on its promise.

3. GENERAL RULE [2020-001]

- **Transition Periods**

We support FSRA's proposal to reduce the transition periods for would-be FP and FA title users from five and three years, respectively, to four and two years. We believe this strikes an appropriate balance between the avoidance of business disruption for existing title users and the urgency to bring this consumer protection regime into full effect.

As part of the consumer education efforts, all stakeholders would have a role to play in informing consumers about when the Title Protection Framework will be in full effect – including the impact of transition periods; Advocis would be pleased to be part of that effort.



Our 6,500 Ontario-based members would be able to deliver key consumer education messages in local communities across the province.

- **Credential Criteria**

Regarding the criteria for FP and FA credentials, in sections 5 and 6 respectively, we believe FSRA should include a requirement that credentialing bodies require their members to maintain errors and omissions (“E&O”) insurance. E&O insurance is a fundamental safeguard for consumers accessing professional financial advisory and planning services and mandatory E&O insurance is a hallmark of almost all other regulated professions.¹

This change could be integrated into subsections 5(3) and 6(3), with the requirement added as a new paragraph (c).

4. APPLICATION GUIDANCE

- **FP Competency Profile**

We are supportive of the FP competency profile as presented in this draft. We are particularly heartened to see that FSRA is now explicitly requiring a product-agnostic approach to client discovery for FP-qualifying credentials. Client discovery is indeed “the foundational process for engaging with clients in order to provide service, regardless of the product being sold or service being offered.”² Client needs should always be front-and-centre, with the consideration of a wide variety of products only coming into play if they best further the client’s objectives.

However, as we discuss immediately below, we are disappointed and confused as to why this same product-agnostic approach to client discovery is not being required for FA-qualifying credentials. Left as is, FSRA risks creating a two-tiered structure wherein clients of FP professionals will enjoy a higher and unbiased level of service, whereas clients of FA title users may have their needs analysis contorted to fit within an investment product’s framework.

¹ We believe both FA and FP credentials should require their holders to maintain errors and omissions insurance in an amount of at least \$1 million in respect of any one occurrence with extended coverage for loss resulting from fraudulent acts. This requirement aligns with FSRA’s expectations of its life licensees and is a fundamental safeguard for consumers accessing professional advisory and planning services.

² Draft *Approach: Proposed Financial Professionals Title Protection – Administration of Applications* (May 11, 2021) at p.12.



- **FA Competency Profile**

We strongly disagree with the approach that FSRA is taking towards the FA competency profile. By centering the curriculum for FA-qualifying credentials on an investment action and expertise in an investment product, FSRA is taking a starkly different (and inferior) approach to the FA title compared to the unbiased, product-agnostic approach that it is charting for the FP title.

Deeming a product sales licensing course as sufficient to confer a professional title is not in the best interest of consumers. As we stated in our response to FSRA's initial consultation, "[a] credential or license based on product sales handcuffs the client relationship and effectively predetermines that the client outcome will include a recommendation to purchase the licensed product."³

This is intuitive: if a salesperson's purported professional training is based on how to sell a particular product, no one should be surprised when that salesperson's recommendations to clients are biased towards selling that product. It is what they have been trained to do. Fundamentally, a product-focused sales license is not a credential that makes its holder a professional. It is an entry point into the sector, akin to an apprenticeship into a trade. One only becomes a professional after additional training and certification.

A product-centric approach is regressive and runs counter to the modern, professional vision of financial advice and planning that puts the client relationship at its core and makes ancillary any transaction in product. In fact, systematizing product bias at the FA level undermines FSRA's own expectation in the revised draft General Rule that both FA and FP credential-holders "deal with conflicts of interest."⁴ A credential curriculum that is, at its core, predicated on transacting in a product represents a source of conflict and bias that will harm the quality of client recommendations.⁵

It is particularly difficult to accept FSRA's two-tiered approach to client-centricity when considering the underlying aims of the Title Protection Framework: to set minimum standards for FA and FP education, skill and professionalism upon which consumers can confidently rely. According to FSRA's own consumer outreach study, 86% agreed that there is a need for minimum standards for the use of FA and FP titles in Ontario.⁶

³ At: https://www.advocis.ca/regulatory-affairs/RA-submissions/2020/2020-11-12_Advocis_Response_to_FSRA_FAFP_Framework.pdf, p.3.

⁴ Draft *Financial Professionals Title Protection Act, 2019*, General Rule (May 11, 2021) at s. 5(1)(b)4 and s. 6(1)(b)4.

⁵ We are in full agreement with FSRA's approach to another product license: the LLQP. FSRA has made it clear that as a product-first license, the LLQP contains gaps that makes it unsuitable for qualification for the FA or FP title, including in regards to dealing with retail clients.



Particularly relevant to this discussion is the fact that only 31% of consumers are confident that they can explain the difference between FPs and FAs, and only 6% are completely confident. The type of service that FP clients and FA clients expect from their professional is also very similar. Given that consumers do not readily understand the difference between FAs and FPs yet expect similar services from both, it is unacceptable that the proposed standards for FPs and FAs are so starkly different when it comes to their client-centricity and inherent product bias. This bifurcation in standards puts consumers at risk.

The work of both FAs and FPs is incredibly important to their clients. As we stated in our previous response, “the scope of an FA’s immediate mandate may be narrower relative to an FP’s, but the FA’s work is often deeper and more impactful within that mandate. So an FA’s clients are deserving of no less when it comes to their advisor’s conduct, skill and knowledge. FAs and FPs are both professionals, and the qualifying credentials for both titles should reflect that professionalism. FSRA would be remiss to approach the framework under any other impression.”⁷

FSRA must develop the Title Protection Framework from the client’s perspective. Clients should not be put in peril because they do not understand that FA credentials can be based on a sales license, with the consequent biases, whereas FP credentials cannot. Instead, clients of both FAs and FPs deserve high-quality, product-agnostic service. To best serve the public interest, FSRA must de-couple credentials for the FA title from product licenses. Our collective expectations must be higher. It is the right thing to do.

- **Governance and Administration**

We note that FSRA has added discussion regarding the importance of credentialing bodies demonstrating their ability to manage conflicts of interest in their governance and administration. These are important guidelines that will further the ability of credentialing bodies to serve the public interest.

However, we feel that FSRA has missed an opportunity by not adopting a requirement that a credentialing body be established as a not-for-profit entity. We reiterate that recommendation here. We believe that the public is best served when the credentialing body is overseen by a board of trustees or directors that is committed to the mission of advancing professionalism and protecting the public, rather than maximizing returns for shareholders. It remains our

⁶ Financial Services Regulatory Authority of Ontario, *Notice of changes and request for further comment on FFTP Rule* (May 11, 2021). At: <http://fsrao.ca/industry/financial-planners-and-advisors-sector/notice-changes-and-request-further-comment-fftp-rule>, Appendix C - Consumer research for the FP/FA Title Protection Framework.

⁷ *Supra*, note 3 at p.6.



position that faithfully fulfilling this mission requires a level of impartiality that cannot be achieved in a for-profit model.

As we stated in our previous submission, “where directors and officers are bound to prioritize the interests of shareholders, moral hazards and conflicts of interest arise that make it impossible to maintain a steadfast focus on quality standards – especially where reducing those standards may generate greater profits. For example, a profit-motivated credentialing body may be incented to make its credential easier to achieve to attract marginal students at the expense of advisor proficiency and consumer protection.”⁸

A for-profit motive is particularly problematic in a context where a sales license can qualify for a restricted professional title. It is easy to foresee an environment where for-profit dealers exert pressure on for-profit credentialing bodies: it would be in their mutual interests to maximize the number of salespersons completing the credential, with minimal regard for the quality of the curriculum and the client-facing skills of the credential-holders.

Incentives matter – so FSRA should ensure that profit incentives do not derogate from the foundational principles of the Title Protection Framework. The credentialing bodies that FSRA entrusts with upholding high standards and delivering the day-to-day operation of the Title Protection Framework should not be encumbered by any consideration other than the public interest.

5. SUPERVISORY GUIDANCE

- **Misleading Titles**

We appreciate FSRA’s efforts to include a schedule of misleading titles in the new Supervisory Guidance as we understand that uncertainty around this area is a concern for industry stakeholders and consumers alike.

Based on the schedule provided, it appears that the general syntax of titles that will be found reasonably confusing with the restricted titles and therefore *not* permitted is:

x Financial Planner; Financial x Planner; Financial Planner/Planning x; and
x Financial Advisor; Financial x Advisor; Financial Advisor/Advising x,

where x is any other term.

Using this syntax as a guide, we understand that combinations of the two restricted titles would also be prohibited, such as Financial Planning Advisor and Financial Advice Planner, regardless

⁸ *Supra*, note 3 at p.10.



of whether the title user holds credentials that qualify for the FA or FP level (or both). We would ask FSRA to confirm our understanding of all the foregoing. We believe that FSRA should discourage permutations that could add to consumer confusion as to whether a title is restricted and the nature/condition of those restrictions.

More generally, we believe the underlying principle that animates FSRA's approach to reasonably confusing titles should be as follows: the use of the title "Advisor" or "Planner",⁹ in conjunction with a financial concept, can confuse reasonable consumers into believing that they are dealing with an intermediary who is qualified under the Title Protection Framework. To advance the spirit of this principle, we believe FSRA should further tighten up its approach regarding the following permutations:

- y Advisor; y Planner (where y is any term that reasonably brings about connotations of financial services or financial specialities)
 - o Examples:
 - Bank Advisor, Investment Advisor, Insurance Advisor
 - Wealth Planner, Retirement Planner
- Advisor; Planner (the word alone as a title, specifically when used in conjunction with a financial institution's name, or a financial service or speciality)
 - o Examples:
 - Planner, ABC Bank
 - Advisor, DEF Investments

In the examples listed above, part of a restricted title is used in connection with financial services concepts or entities. The result is to create a situation that could confuse reasonable consumers about the financial services qualifications of the intermediary using that title, placing this firmly within the ambit of the Title Protection Framework. As such, FSRA should act to ensure these permutations are not permitted.

Finally, we do not agree with FSRA's inclusion of "examples of titles that likely would not reasonably be confused with FP and FA." This is a list of titles that FSRA is effectively green-lighting for intermediaries to use to avoid scrutiny under the Title Protection Framework. Rather than providing an explicit green-light list, FSRA should simply state its principles for making a determination of whether a title is reasonably confusing. In our view, providing the green-light list only assists those who would seek to circumvent the spirit of the Framework.

⁹ And alternate spellings and translations thereof, as explained by FSRA in its draft Supervisory Guidance.



6. FEES

We support an underlying principle that the costs associated with implementing and operating the Title Protection Framework should be borne by credentialing bodies (and ultimately their constituent credential holders) as the benefits of increased professionalism and enhanced public standing and trust will accrue to the credentialing bodies and their FPs and FAs. We believe it is sensible that participation in the Framework be attached with a proportional “surcharge.” However, we have questions about some of the calculation assumptions presented in the consultation paper.

- **Basis of Calculations**

FSRA has included the calculations that will be used to compute a Credentialing Body’s annual operational assessment and start-up cost recovery assessments, which include both a fixed portion and a portion that varies based on the number of credential holders. We note that the example calculations included in Appendix B are based on:

- 7 approved Credentialing Bodies;
- 81,000 credential holders;
- \$1.1 million in annual operational costs; and
- \$3.1 million in start-up costs.

We are unclear as to how FSRA is arriving at a figure of 81,000 credential holders (more on this below), as well as its dollar estimates for annual operational and one-time start-up costs. The details behind these figures are not disclosed and we would appreciate more granularity regarding how FSRA arrived at these numbers. We recognize that FSRA will be issuing a focused consultation on fees after the conclusion of this consultation and perhaps the details will be included there; however, as FSRA is currently soliciting feedback on Appendix B, we raise our observations based on the information we have been provided to date.

Regarding the start-up costs, we are curious as to what has been earmarked for the public education campaign, which we see as critical to the successful implementation of the Framework. We would like to know more about the strategy to educate consumers about the title restrictions generally; the differences in titles and their credentials; and the availability of a central registry and database of disciplinary decisions.

Regarding the number of credential holders participating in the Framework and its implications for the variable portion of the fees: we wish to confirm that in calculating the 81,000 figure, FSRA is not including members of national credentialing bodies who do not operate in Ontario. (For example: Advocis has 13,000 members across the country, with about 6,500 of those in Ontario.) In our view, we cannot justify application of the Framework’s surcharge to a national credentialing body’s extra-provincial credential holders as they would not benefit from the



Framework. Further, if their home jurisdictions implement their own provincial title protection frameworks, the non-Ontario credential holders should rightly pay a surcharge to their applicable “home” regulator in order to support that province’s framework.

- **One Advisor, Multiple Credentials**

Another factor that could impact the size of the credential-holder base over which variable costs will be divided is the fact that one individual can hold multiple qualifying credentials. Indeed, we understand that FSRA fully expects this to describe some intermediaries who participate in the Title Protection Framework.

We are unclear as to whether such an intermediary (assuming he or she operates in Ontario) will be required to pay the Framework surcharge for each credential held. For example, if an individual holds two credentials, C1 and C2, and both qualify for the FP title, is FSRA expecting that individual to pay twice the surcharge as another FP-qualifying individual who only holds C1? If so, that would create an incentive for the former individual to drop C2 (or for the latter individual to not pursue C2).

This would not be a desirable outcome; there are several high-quality credentials that specialize in disparate subject matters. Both the intermediary and the consumer are better off when the intermediary pursues more education and has a wider breadth of knowledge. To avoid this “double taxation” and the associated disincentives, we suggest that an intermediary who holds more than one qualifying credential for a particular title (FP or FA) be able to elect which credential will grant him or herself the right to use the restricted title. The Framework surcharge would only be payable in respect of that elected credential.

To be clear, if an intermediary has credentials that qualify for both the FP and FA titles (say, credentials C1 and C3 respectively) and that intermediary wishes to use both titles as envisioned in the Framework, that intermediary would make two elections and pay two surcharges: one for each title. In that scenario, the intermediary receives two discrete benefits from the Framework which justifies two discrete fees. If that same intermediary wishes to only use the FA title, he or she would make an election in favour of C3 only and would only pay one Framework-associated surcharge.

In summary, we believe that only one surcharge per intermediary, per title should be collected, and that this consideration should be reflected in FSRA’s cost estimates. We discuss this further in the next section.

- **Dividing Variable Costs by Credential-holders or Credentials?**

We are curious as to how this “one intermediary, multiple credentials” scenario impacts FSRA’s estimated fee structure. Footnotes [2] and [3] of FSRA’s *Notice of changes and request for*



*further comment on FPTP Rule*¹⁰ states its calculations are based on 81,000 “credential-holders” – which presumably refers to discrete individuals, rather than referring to 81,000 “chargeable credentials”, or the total number of recognized credentials active in the marketplace. Thus, a plain reading of the footnotes suggests that the variable portion of regulatory costs are being divided by the number of credential-holders, irrespective of how many credentials any individual holds.

We wish to confirm that this is FSRA’s intention and understanding. We raise this in light of FSRA’s predecessor’s finding in a 2017-2018 report that about two-thirds of examined insurance licensees held more than one license, with 60% of those holding an MFDA or IIROC license.¹¹

7. CONCLUSION

In FSRA’s 2021-2024 Business Plan, it states that the goals of the Framework are to ensure that the standards for FAs and FPs are sufficiently high “so consumers can have confidence when relying on these financial professionals” and to “promote confidence and professionalism in the sector and avoid confusion for investors/consumers.”¹² These are worthy goals that we can all get behind.

Indeed, the drive to professionalism must be focused on how it benefits the public. We know that the public looks to the FA and FP titles as proxies for regulated professionals despite this not currently being the case. The Framework is a major step towards making this a reality. But we also know that the public does not readily differentiate between FAs and FPs, expecting similar services and professional standards equally from both. This is where the Framework, as currently envisioned, falls short.

A truly client-centric approach places the client relationship at its core. We are supportive of FSRA’s aligning of the FP competency profile with an explicit product-agnostic approach to achieve this objective. But the FA competency profile, which is fundamentally based on teaching its would-be title users on how to transact in an investment product, is not client-centric; it represents an antiquated product-first mindset that could harm the quality of advice consumers receive.

¹⁰ *Supra*, note 6.

¹¹ Financial Services Commission of Ontario, *Life Insurance Agents Compliance Report: 2017/18 Examination Results*. At: <https://www.fSCO.gov.on.ca/en/insurance/pages/2017-18-compliance-rpt.aspx>.

¹² Financial Services Regulatory Authority of Ontario, *Annual Business Plan 2021 – 2024* (February 26, 2021), page 39. At: <https://www.fSRAO.ca/media/4051/download>.



Given the importance of financial planning and financial advice on consumers' outcomes, and the lack of consumer differentiation between the two titles, it is not reasonable to take such starkly different approaches to client-centricity. To do so is to put consumers at unnecessary risk and to greatly diminish the potential of the Framework. Instead, the solution is clear: elevate standards by requiring both FA- and FP-qualifying credentials to be product agnostic and focused on the client relationship at their core.

We thank FSRA for all the hard work it has done thus far in developing the Framework. While there is still much to do – including in regard to the upcoming consultation on the Framework's fee structure – this is an exciting time as the Framework's final shape becomes clearer. Title protection can meaningfully improve the financial well-being of Ontarians, but we must first deliver on the professional standards Ontarians deserve and expect. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Legal and Regulatory Affairs at jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors