November 16, 2023

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted via the FSRA website

Re: FSRA Proposed FY2024-2025 Statement of Priorities

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization. FAIR Canada champions the rights of individual investors in Canada. We advance our mission through public policy submissions to governments and regulators, proactive identification of emerging issues, and outreach through public conferences. We also conduct research to hear directly from investors and financial consumers about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful commentary on public policy issues, and repeatedly advancing the interests of retail investors and financial consumers.[1]

We support FSRA's commitment to promoting the rights and interests of consumers, particularly through its focus on:

- advancing the consumer interest,
- ensuring the effectiveness of the title protection framework for financial planners/advisors,
- protecting consumers who invest in segregated fund contracts, and
- enabling innovation.

Our comment letter focuses on these priorities.

A. Advance the Consumer Interest

We agree that FSRA's number one priority should be to advance the interests of consumers. We also support the key outcomes it seeks in this area.

1. The Limitations of The Title Protection Framework

However, we are concerned these outcomes have not been prioritized regarding FSRA's title protection framework, particularly as it relates to financial advisors. The initial design of the framework has been criticized for failing to:

[1] Visit www.faircanada.ca for more information.

- reflect the concerns raised by consumer advocates,
- incorporate the reasonable expectations of financial consumers,
- ensure meaningful improvement in consumer outcomes, and
- promote effective enforcement regardless of who engaged in the misconduct.

As we have expressed on numerous occasions,[2] the framework focuses on protecting credentials used in connection with two different titles commonly used in the financial services industry. The framework fails to focus directly on regulating the quality of the financial advice provided to the public. Beyond prohibiting wholly unqualified individuals from calling themselves financial planners or financial advisors, the framework fails to deliver any additional or meaningful consumer protection.

The framework also introduces significant new issues and problems. For example, it:

- creates an unlevel playing field for those wishing to use the title,
- masks the fact that title users may only be licensed to sell one type of financial product,
- establishes a patchwork of diverse credentialling bodies with different standards that are subject to dissimilar levels of oversight and regulatory requirements,
- facilitates the inconsistent application of compliance and enforcement programs, and
- creates added risks and consumer confusion.

For the consumers, trying to make sense of the framework or navigating it to protect their interests is immensely difficult and challenging.

The framework also fails to provide FSRA with the enforcement tools it needs to effectively protect the public in situations where a title holder's misconduct is not appropriately addressed by an approved credentialling body.

2. FSRA and FAIR Canada Investor Research

Research by FSRA and FAIR Canada supports these conclusions. For example, FSRA's recently released 2022 Consumer Research[3] noted:

- for those consumers working with a financial advisor, the most common reason cited was because the financial advisor had expertise the consumer lacked,[4] and
- most consumers surveyed preferred receiving personalized advice on a *range of financial products*, then choosing a product from these options.[5]

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[2] FAIR Canada (November 12, 2020); FAIR Canada (June 21, 2021); FAIR Canada (September 30, 2021); FAIR Canada (October 25, 2021); FAIR Canada (December 8, 2021); FAIR Canada (September 20, 2022); FAIR Canada (June 2, 2023), at 3-6; FAIR Canada (September 29, 2023).

[3] See Financial Services Regulatory Authority of Ontario 2022 Consumer Research: Financial Advice, May 2023 – Report published October 11, 2023 (FSRA 2022 Consumer Research).

[4] See FSRA Consumer Research on page 21 where the term "financial advisor" was used as it is generally understood by consumers to be an individual that provides financial services.

[5] Emphasis added. See FSRA Consumer Research on page 29.

FAIR Canada's own research shows that when it comes to financial advisors:[6]

- 92% of investors expect a financial advisor to be proficient with a broad range of products and services (57% strongly agree).
- 95% believe those individuals who use the financial advisor title should all have the same level of training and skill set (56% consider this very important).
- 61% agree there should be one common standard and regulatory framework for everyone who uses the title financial advisor.
- 77% prefer a framework that would require title holders to obtain a relevant degree or diploma in finance, accounting, economics, or a related field from a recognized educational institution, pass a comprehensive licensing exam, have a minimum number of years of work experience in the financial services industry, and be under the direct supervision of a financial sector regulator.

B. Title Protection for Financial Planners/Financial Advisors

FAIR Canada fully supports FSRA's aim to ensure the title protection framework is effective. As noted above, however, there are many shortcomings that must be addressed to before it delivers effective consumer protections.

1. Harmonize National Standards

We support the notion of creating a national set of harmonized standards and a robust oversight program that holds credentialing bodies and, by extension, title holders to a high standard of professionalism and accountability. Harmonization presents an opportunity for FSRA to enhance the title framework in the areas we identified above. Like FAIR Canada, regulators in some other jurisdictions have identified limitations to Ontario's title framework. These regulators are considering proposed enhancements to better protect consumers in their jurisdictions.

To achieve these outcomes, it will be important that FSRA and the Government of Ontario work collaboratively with their respective counterparts to establish a better and more consumer-centric framework. For example, Saskatchewan is considering imposing a higher proficiency standard for title holders and require they meet the client focused reforms imposed on those individuals registered under securities law, which establishes a consistent legal obligation to put their client's interest first. This approach would be a welcome improvement to the Ontario framework.

In this regard, we are encouraged that FSRA hopes to achieve this outcome by evaluating the current state of the framework with a view to introducing future enhancements to it. We believe these enhancements are essential and should be a high priority for FSRA.

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[6] FAIR Canada conducted a survey of 1,020 investors across Canada (other than in Quebec, which does not permit use of the title "financial adviser") between August 15 and August 28, 2023. We expect to publish a report with the full results later this year.

2. **Enhance FSRA's Enforcement Authority**

The responsibility for protecting the public from the misconduct of a financial advisor now resides with different credentialing bodies, not with FSRA. Not all credentialing bodies, however, are equally up to the task of protecting the public and taking enforcement action against their members that may cause harm. These differences will become more pronounced if and when CIRO becomes an approved credentialing body in respect of financial advisors.

FSRA's planned outcomes ought to focus on seeking expanded authority from the Government of Ontario to ensure title holders are directly accountable when they fail to meet high standards. Only with these increased enforcement powers can FSRA more effectively protect the public where the misconduct of a title holder harms the public. For example, regulators in Saskatchewan and New Brunswick have indicated that the statutory regulator should retain the ability to take direct enforcement action against those title holders that harm consumers and fall short of conduct standards. Again, we view this as an important improvement to the existing framework.

3. **Allocate Costs in Line with Priorities**

Finally, we are concerned FSRA's proposed cost allocation fails to reflect FSRA's priority of ensuring the effectiveness of the title protection framework. When compared to last year, FSRA has proposed increasing the direct costs allocated to all regulated sectors except the Financial Planners/Financial Advisors sector. To enhance the title framework as set out above and accomplish FSRA's goal of creating "awareness of the framework [to] provide consumers with the information they need to make informed decisions when choosing an FP or FA," we would expect the allocation of greater regulatory resources, not proportionately less compared to other sectors.

C. Protect Consumers Who Invest in Segregated Funds

With respect to the sale of segregated fund contracts, we agree that:

- insurers and agents must put costumer's interest first and manage conflicts of interest in the best interest of their clients,
- agents should also be subject to know-your-product requirements and be required to give advice that is suitable to the needs of their clients, and
- promoting suitable advice over the lifetime of the contracts is important.

In this respect, FSRA notes it will seek these outcomes by:

- Working with CCIR and CISRO to create a consolidated national guidance relating to the design, distribution, sale, and administration of segregated funds, and

- Developing rules and guidance, consistent with the CCIR and CISRO consolidated national guidance, to address related gaps in consumer protection.[7]

However, as we have advocated before,[8] we do not believe these proposed activities go far enough. More specifically, FAIR Canada urges the following:

- The government should consider granting FSRA stronger tools to protect consumers of insurance products, including rule-making authority. This way, FSRA could establish regulatory expectations for the standards of care and servicing of segregated fund contracts in enforceable rules rather than just guidance.
- FSRA should consider whether the ban on Deferred Sales Charges (DSCs) should be extended to other types of commissions, such as advisor chargebacks. Although structured differently than DSCs, advisor chargebacks raise similar consumer protection and conflict of interest concerns that can lead to poor consumer outcomes.

D. Enable Innovation

FSRA will need to balance the priority of enabling innovation with FRSA's commitment to act with a focus on consumer outcomes.[9] While enabling innovation in the regulated sectors forms a foundational part of FSRA's mandate, it ought not to come at the expense of consumer rights or expose them to potential harm.

To date, much of the effort by regulators to support innovation has been on supporting efforts to introduce novel products or business models promoted by the industry, or to find faster and cheaper ways for them to comply with existing requirements. While laudable, we are disappointed not to see more effort put into problem solving issues impacting consumers. For example, by finding ways to reduce the time it takes to transfer accounts from one financial institution to another or by improving a firm's internal complaint handling process.

In short, strengthening FSRA's brand as a "regulator that supports and enables innovations" should include promoting innovations that make a difference in the lives of consumers and provide them with more control in managing their financial well being.

E. The Environmental Assessment

Like FSRA, FAIR Canada recently identified in its 2023-2028 Strategic Plan[10] similar environmental issues that have a significant impact on consumers:

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[7] See Strategic Priority #6.2 on page 23 of the Proposed Statement of Priorities.
[8] FAIR Canada (June 20, 2023).
[9] See Strategic Priority #1 on page 12 of the Proposed Statement of Priorities.
[10] FAIR Canada 2023-2029 Strategic Plan.

- technological innovation, which represents tremendous opportunities for growth along with new challenges and risks,
- market changes that have resulted in increased consolidation, including a decline in overall numbers of credit unions and pension plans, and
- ESG factors influencing regulated entities' approach to risk and investing and investors prioritizing ESG factors in making investments.

FAIR Canada is pleased with FSRA's commitment to understanding these conditions to adequately protect consumers, deliver financial safety and fairness. We urge FSRA to specifically consider the following consumer concerns:

- Increased consolidation, including of pension plans, is consistent with FAIR Canada's observation of a decline in employer pension plans. This means more people are expected to plan and save for retirement. Financial advisors and financial planners are playing an increasingly prominent role in helping Canadians achieve their retirement goals, reinforcing the urgency and importance of an effective title protection framework.

- While regulated entities explore the use of ESG factors in how they assess their approach to risk and investing, FAIR Canada urges FSRA to consider the risk that consumers will be "greenwashed" when marketing materials intentionally or unintentionally mislead consumers about the ESG-related aspects of a business. In the absence of any globally implemented standards for ESG-related information, FSRA ought to be aware of the potential misuse of these factors by regulated entities in communicating with consumers.

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Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for consumers. We intend to post our submission on the FAIR Canada website and have no concerns with the FSRA publishing it on their websites. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Erica Young, Head of Policy, at erica.young@faircanada.ca.

Sincerely,

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights