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Manitoba Finance
Fiscal Policy and Corporate Services
824-155 Carlton Street
Winnipeg MB R3C 3H8

Submitted by Email: FINADM_CORPSERV@gov.mb.ca

Dear Sirs/Mesdames:

Subject: Consultation on Financial Planner Title Protection in Manitoba

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on the advisability of Manitoba introducing legislation to protect the titles of Financial Planner and Financial Advisor. As noted in the consultation paper, similar legislation is in place in Ontario and Quebec, and New Brunswick and Saskatchewan have enacted legislation which is not yet in force.

IFB, and its members, have long supported a regulatory approach to restrict titles which are misleading or are used to improperly hold out to the public as having credentials or an expertise that are not valid. The goal of any such legislation should be that consumers accessing financial advice or services can be confident that those they engage with have met the appropriate educational and professional standards expected of these trusted individuals and firms.

While at first glance, Ontario's approach to restricting the Financial Planner/Financial Advisor titles may seem to meet the threshold of better protecting consumers, a deeper look into this legislation makes it apparent that there are a number of deficiencies which not only do not address the wider issue of misleading titles but could create further confusion for consumers. For reasons we set out in our response, it is our view that Manitoba should not simply mirror the Ontario approach but enact a more meaningful standard.

About IFB
IFB is a national, not-for-profit professional association representing 3,000+ licensed financial advisors and planners. IFB supports its members, and the financial services community more generally, by offering high quality accredited educational opportunities, a comprehensive professional liability insurance program for individuals and corporations, and access to professional tools such as compliance support and regulatory updates. IFB advocates on behalf of its members and is an active stakeholder in issues related to the financial services sector, including the development of the Financial Planner (FP) and Financial Advisor (FA) title protection regimes in various provinces.

IFB only represents financial advisors who have chosen to operate in independent distribution. Our members feel strongly that their ability to provide consumers with personalized advice and choice of products from various sources, makes them an important alternative to the financial advisory services offered by proprietary or integrated financial firms, such as retail banks. IFB members often choose to

become independent after beginning their careers with proprietary firms or a larger financial institution. They are typically small to medium-sized owners of a financial practice in their home community.

The majority of IFB members are both life insurance licensees and mutual fund registrants. Many have other financial licenses or accreditations so they can more fully address the needs of the individuals, families, and businesses they advise. These other financial services may include general (P&C) insurance, mortgages, securities/investment products, estate/tax planning, financial planning, and access to deposit instruments.

IFB does not administer a credential, nor does it intend to apply to become a credentialing body. Our interest is to help ensure that the legislative framework restricting the titles of Financial Planner and Financial Advisor achieves its public policy goal of increasing consumer protection in a meaningful way.

General comments

The current approach to FP/FA title restriction legislation permits anyone who earns an accredited designation to call themselves a financial planner or financial advisor. There is no requirement for licensing or regulatory oversight by a financial services regulatory body. Oversight is provided by the credentialing body. This has been a major concern of IFB's, particularly since the financial advisor category is a new, untested framework. Many of the most egregious instances of consumer fraud have been perpetrated by those who call themselves financial advisors, with no license or regulatory oversight.

Unfortunately, this legislation introduces an additional layer of confusion for consumers because the onus will be on consumers to understand yet another set of credentials and distinctions:

- FPs and FAs who are not otherwise licensed and only subject to oversight by a credentialing body,
- FPs and FAs who are licensed and whose conduct is overseen by one or more provincial regulators and/or using a regulated title approved by their regulatory body, or
- an individual who is not licensed by any financial services regulator and using a title that is not restricted, such as "retirement advisor", or "wealth consultant".

As the new, national securities SRO, the Canadian Investment Regulatory Organization (CIRO), has both a public interest and investor protection mandate and intends to become a credentialing body, the market conduct and oversight of licensed FPs and FAs in the investment industry will be strengthened. However, it will have no impact on unlicensed FPs and FAs.

Consultation questions

1. Should the Manitoba government proceed with legislation to prohibit individuals from calling themselves "financial advisors" or "financial planners" unless they possess appropriate qualifications?

IFB has long supported the need for a comprehensive regulatory approach to address the wide array of titles and credentials used in the financial services industry, particularly those which may mislead consumers. Consumers should be confident that their advisor or planner is duly licensed, properly qualified, and proficient in their area of expertise. In this regard, IFB supports the underlying public protection goal of such legislation.

IFB has been critical of the current approach which has vested responsibility for accrediting FPs and FAs and their ongoing market conduct and oversight with credentialing bodies. It has been our view from the onset that this should be a regulatory responsibility. However, as several provinces are modeling their legislation on Ontario's, it has become clear that this is the preferred approach. The recent announcement that CIRO intends to become a credentialing body introduces a higher standard of oversight for FPs and FAs which are securities registrants. Life insurance licensees who become accredited FPs and FAs are subject to compliance with insurance laws and regulatory expectations of treating consumers fairly.

Since the legislation does not require FAs and FPs to be licensed by a financial regulator, individuals without a licence will be overseen only by the credentialing body. We continue to see this as a weakness in the legislative goal of improving consumer protection.

2. If so, should the overall approach of the legislation follow the models adopted in Ontario and proposed in Saskatchewan and New Brunswick, where the regulator approves credentials and credentialing organizations that are considered to have appropriate proficiency, ethical, continuing educational and disciplinary requirements?

As noted above, regulatory approval of the credentialing body and its credentials seems to have become the preferred model for overseeing the FP and FA title holders. If these credential holders are also licensed, they will be subject to additional oversight by their financial services regulatory body. However, oversight of unlicensed FPs and FAs will rest entirely with the credentialing body.

While there are several well-known, internationally recognized FP designations, with a demonstrated history of enforcement, there is no corresponding equivalent for FAs. We are concerned that this will lead to a lower standard for FAs than FPs. Therefore, the success of the credentialing body approach lies heavily in the province's ability to provide robust oversight of the accredited credentialing bodies, including ensuring consistent standards amongst credentialing bodies, so consumers are, indeed, well-served, regardless of which credentialing body has accredited their FP or FA.

Consumer redress: We find it a significant shortcoming that the legislation does not require a mechanism for consumer redress. This is particularly important for FPs and FAs who do not hold a financial licence, such as in life insurance or securities. Clients of licensed FPs and FAs have formal complaint mechanisms they can access. Clients of unlicensed FPs and FAs will not have this protection, nor will they have access to the consumer protection funds or alternative complaint handling options that are available to clients of licensees.

We find it perplexing that the existing legislation requires mandatory continuing education for the FP and FA credential holders, but no requirement for the FP or FA to carry E&O insurance. We see this as another gap in consumer protection. This gap will persist if Manitoba adopts legislation that permits accredited FPs and FAs to conduct business with the public and does not require E&O insurance.

At a minimum, legislation should require that these gaps be disclosed to clients so they can decide if they want to proceed with that FP/FA.

Furthermore, licensees with a mandatory E&O requirement must pay the annual cost of maintaining E&O insurance, which is not insignificant. Unlicensed FPs/FAs will not have to absorb this business cost and may simply choose not to.

Professional liability insurance is a common standard for professionals providing advice or services to the public. For FPs/FAs to operate without such coverage is, in our view, a gap in consumer protection that would be easy to address and ensure all FPs and FAs operate on a level field.

IFB recommends that title restriction legislation requires credential holders to be subject to both a mandatory CE and professional liability insurance (E&O) requirement.

3. Assuming it should, how should some of the differences between the regulatory regimes implemented or proposed in those three provinces be resolved?
In particular:
• Should the regulator in Manitoba be vested with the broad investigatory and enforcement powers given in the Saskatchewan and New Brunswick legislation? Alternatively, is the more limited ability to issue compliance orders in Ontario more appropriate?
IFB supports the broader investigatory and enforcement powers provided in the Saskatchewan and New Brunswick legislation. As Ontario's 5-year review of the *Financial Professionals Title Protection Act, 2019* is likely to be undertaken in 2024, FSRA may well recommend enhancements such as this to strengthen its powers.

• Should the more simplified method for approving credentialing bodies previously approved in another Canadian jurisdiction, set out in the Saskatchewan and New Brunswick legislation, be adopted in Manitoba?
In our view, Manitoba regulators should always conduct their own review prior to approving a credentialing body approved elsewhere to be satisfied that the CB meets its standards. However, in general we do not object to this approach.

4. How important is it that the legislative requirements in Manitoba be harmonized with the regulatory regimes adopted in Ontario and proposed in Saskatchewan and New Brunswick, particularly regarding:
• The definitions of "financial planner" and "financial advisor",
• The application process for recognized credentials and credentialing bodies, and
• The ongoing compliance requirements for recognized credentialing bodies.
IFB believes that the consumer protection goal intended by this legislation should be the driving force, not the convenience or cost issues CBs would face if legislative requirements differed. Having said that, where possible, the requirements should be aligned, or harmonized, for the benefit of those who will incur initial and ongoing costs to become accredited. Many advisors and planners have clients in various provincial jurisdictions. Inconsistent rules and regulations will create a burden for them and their clients.

While IFB generally supports harmonizing similar legislation across jurisdictions, Saskatchewan and New Brunswick have proposed regulations that would strengthen the FP/FA standard and give them the

ability to take greater enforcement action, such as impose fines, unlike in Ontario where FSRA is restricted to issuing a compliance order.

5. What degree of regulatory coordination is desirable among regulators in Canada that oversee financial planner title protection, now or in the future?
We encourage Manitoba to work with other jurisdictions that have, or are considering, a title protection framework with the goal of developing a national approach to harmonization of oversight of FP and FA titles and credentialling bodies. For example, codes of conduct could be harmonized amongst CBs.

6. How broad should the title protection regime be in terms of the titles that are subject to it in addition to "financial advisor" and "financial planner", given the relatively narrow approach taken in Ontario and the broader approaches taken in Québec and under consideration in Saskatchewan and New Brunswick?

As noted in our introductory remarks, IFB believes that a comprehensive, principles-based approach to titles is needed, and we support the steps that Canada's life/health insurance regulators, and securities regulators have adopted which sets out their expectations for dealing with customers in a fair and ethical manner throughout the business cycle.

The Canadian Insurance Services Regulatory Organizations (CISRO) and the Canadian Council of Insurance Regulators (CCIR) issued the Fair Treatment of Customers[1] document and Incentive Management Guidance[2] aimed at ensuring insurance intermediaries have a business culture which places customers' interests ahead of their own and resolves potential conflicts of interest in the interest of the consumer. The Canadian Securities Administrators (CSA), as part of the Client Focused Reforms (CFRs), has taken a principles-based approach to restricting titles for registrants by requiring that they not hold out to the public in a way that can deceive or mislead as to their proficiency, experience, qualifications, or category of registration. Furthermore, they are prevented from using a title, designation, award, or recognition based partly or entirely on the registrant's sales or revenue generation or a corporate title unless a corporate office is held.[3]

These are positive changes that merit more consideration than the much more limited approach adopted in the FP/FA title restriction regime in Ontario. Of course, these requirements will not apply to unlicensed FPs and FAs.

Simply adding more restricted titles encourages a regulatory game of cat and mouse, whereby those intent on circumventing the rules adopt titles which are not regulated, and the purpose of the legislation becomes questionable.

[1] CCIR/CISRO Guidance: Conduct of Insurance Business and Fair Treatment of Customers. September 2018
[2] CCIR/CISRO Incentive Management Guidance. November 2022
[3] CSA Notice of Amendments to NI31-103 - Reforms to Enhance the Client Registrant Relationship (Client Focused Reforms). November 2019.

7. What should be the process if the recognition of a credentialing body or one of its credentials is revoked?

This is an example of where a harmonized approach amongst regulatory regimes should be developed, as each jurisdiction will need to address the possibility that a credentialing body or its credential(s) may be revoked, or that it discontinues operating as a CB, and ensure the necessary processes are in place. FSRA, for example, can take action to revoke a CBs approval if it fails to meet its terms and conditions and will post decisions on its website. Since many CBs will be national in their operations, these decisions should be publicly posted on each regulator's website, or on a central website for the convenience of consumers.

There is also the possibility that a CB may discontinue business operations, or voluntarily wish to terminate its status as an approved CB. This may arise if the cost of accreditation becomes prohibitive, either from higher fees or little uptake from applicants to earn its FP or FA credential. We suggest this should also be disclosed on the regulator's website, with the appropriate explanation.

Importantly, there must be a process in place to address the effect on individual FPs/FAs who have earned the revoked or discontinued credential, and on candidates enrolled in that CB's program. Where a credential is revoked or discontinued, oversight of existing FPs and FAs and candidates could be transferred to another CB. Depending on the reasons for the revocation, these individuals could be permitted to continue using the title, or their credential could be subject to an upgrade. As we've said in submissions to other provinces, revoking the credential held by individuals who earned it in good faith, during the period when the CB was approved by the regulator, would be unfair.

8. How important to the proposed regulatory regime is a single, central, public database listing all individuals entitled to use these titles?

The legislation in Ontario, Saskatchewan and New Brunswick all contemplate that the regulator will post lists of approved credentials and recognized credentialing organizations on their website, but do not call for a central database listing all approved individuals (although in Ontario each recognized credentialing organization maintains a publicly accessible list of their respective members). FSRA has stated that it intends to develop such a central database that the public can access but this is not yet in place.

Many consumers likely do not know how to access the licensing status and qualifications of financial professionals today. Therefore, it will be important to undertake a consumer education campaign to raise awareness of any database and prominently post it on the regulator's website.

A single database of individuals permitted to use the FA and FP titles would help the public conduct their own due diligence, thereby contributing to the consumer protection objective of this legislation and to the development of a national harmonized framework. In the absence of a centralized database, consumers would have to check the FP/FA's name against each credentialing body's website. As an example, FSRA has approved 4 credentialing bodies, some of which offer multiple accreditation streams.

To simplify this process, consumers considering contracting with a FP or FA, should receive a disclosure document which includes the name, website, etc., of the CB that has accredited them. IFB also recommends that the FP/FA disclose whether they are licensed by a Canadian financial regulator and which one(s). At a minimum, we have suggested that the FP/FA regulatory body provide a link to the

public registries of securities and insurance regulators, so consumers can check the licence status and disciplinary history of the FP/FA. We note that FSRA requires CBs to publicly post a list of any current or former credential holders who have been subject to disciplinary action, as well as information regarding the action.

In closing, we trust that we have offered a balanced perspective and suggested opportunities to make a title protection regime in Manitoba more meaningful for consumers.

Thank you for the opportunity to comment on this important initiative. IFB welcomes the opportunity to work with Manitoba Finance going forward. Should you wish to discuss our comments further or have questions, please contact the undersigned, or Susan Allemang, Director of Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,

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