



November 12, 2020

Financial Services Regulatory Authority of Ontario (FSRA)
5160 Yonge Street, 16th Floor
Toronto ON M2N 6L9

Submitted via the FSRA website

Subject: Financial Professionals Proposed Title Protection Rule and Guidance

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on FSRA's proposed Rule and Guidance under the *Financial Professionals Title Protection Act, 2019* (FPTPA). We support the intent of the FPTPA. Consumers should feel confident that those they engage, when seeking financial or planning advice, are proficient and accountable for their advice.

IFB is a national, professional association with over 3,000 members who are provincially licensed financial advisors and planners. Most IFB members are life insurance licensees and/or mutual fund registrants. Many hold other financial licenses or accreditations so they can more fully address the needs of their individual and business clients, such as general (P&C) insurance, mortgages, securities products, estate/tax planning and deposit instruments.

IFB supports its members through advocacy, education, and access to professional tools such as compliance support and professional liability insurance. IFB is an active financial services stakeholder, and frequent respondent to issues facing financial services.

IFB does not represent career (captive) agents or employees of financial institutions. Our members tend to be small business owner-operators who provide financial advice to individuals, families, and businesses in their home communities. IFB members often choose to become independent after beginning their careers with proprietary firms. They make this choice because they see the value that having access to multiple providers brings to their clients.

Although the FPTPA legislation does not seek to distinguish between financial advisors who have broad access to a variety of products, and advisors who are restricted to selling proprietary products, some jurisdictions have moved to this as a more effective way to enhance consumer understanding of the advisory services they can expect. In Canada, under the CSA's client focused reforms (CFRs), securities registrants will be required to disclose this information to clients by December 2021¹. We believe this disclosure would be beneficial for any consumer seeking financial advisory/planning services.

General comments

IFB does not administer a designation program, nor does it intend to apply to be a credentialing body. In this regard, we believe our comments can be taken to be unconflicted in that our sole interest is to ensure that IFB members, and by extension their clients, are treated fairly under this legislation and accompanying regulations.

¹ <https://www.securities-administrators.ca/aboutcsa.aspx?id=1890>

Our comments focus on how the Proposed Rule and Guidance could affect our members and their clients, while meeting FSRA’s principles of improved consumer protection, without creating undue costs and regulatory burden for existing individuals and new entrants. Many advisors voluntarily increase their level of proficiency by earning additional credentials and designations, such as a CFP®. A number of existing credentials offer more in-depth knowledge in a specialized area, such as group benefits, estate and tax planning, etc. While it is clear how advisors who have attained a FP credential will be treated under the proposed framework, it is not clear whether advisors who have already invested in their professional skills by taking one or more of the other types of credentials will have them recognized under the proposed FA framework.

It is our understanding from the Proposed Rule and discussions with FSRA that this consultation is focused on identifying any gaps in the proposed competency standards for both the FA/FP credentials and credentialing bodies, and that the framework will apply to all intermediaries in Ontario’s financial services industry, including retail bank employees .

Understanding of the FP and FA landscape

In our view, FSRA has demonstrated a good understanding of the current landscape and stakeholder concerns gathered from previous consultations and meetings. However, we are not sure what FSRA means when it says that *“there are also several existing reputable designations and licenses available in the financial services marketplace that provide the necessary proficiencies for individuals to use the FA title”*. These have not been identified in the paper and we wonder which designations and licenses it is referring to.

IFB has long supported that those who hold out to the public as providing financial advice and/or planning should be proficient and licensed. Licensure sets a minimum and consistent regulatory standard, market conduct oversight, and mechanisms to address consumer complaints.

IFB has also advocated in past regulatory submissions for a national approach to reducing the array of titles being used in the financial services industry, and banning those that imply corporate responsibilities, such as vice-president, but are only linked to production or sales volume. The CSA’s CFRs, when implemented later in 2021, will restrict use of misleading corporate titles in the investment industry. However, without a consistent approach taken by securities and insurance regulators, opportunities for regulatory arbitrage will exist, to the detriment of consumers.

We found it difficult to understand, under the Proposed Rule, what titles other than the FP title, but especially the FA title, would be restricted. We would like further clarification on how broadly, or narrowly, these restrictions might apply to those in the industry now.

Below are our comments on FSRA’s specific questions.

FP and FA Credentials

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

There are existing, generally agreed upon, baseline competencies and standards for FPs in the marketplace. However, there are no existing equivalent competencies for a FA largely due to the broad use of the term “financial advisor” to-date. Although most financial advisors and planners are licensed and subject to oversight by their respective insurance and/or securities regulatory bodies, they first had to acquire the appropriate education set by these regulators to enter the industry.

We were surprised that FSRA does not anticipate that the LLQP would qualify for the FA title due to gaps in the current curriculum content. While it may be true that not all those who obtain a life insurance license want or need to use the title ‘Financial Advisor’, it seems counter-intuitive that the licensing standard developed by Canadian Life Insurance regulators would be deemed to be insufficient.

This gap in the LLQP could easily be addressed by adding a fifth module to the program that would lead to the Financial Advisor designation. By making this module optional, only those who wish to use the title would need to take it, and they could do so with the confidence that the mark meets the standard set by their primary regulator.

The baseline competencies set out by FSRA for a FP and FA are similar except that a FA is expected to provide suitable recommendations to clients, and the curriculum content is less comprehensive than the integrated nature of the FP curriculum. We recommend that a FA should have Technical Knowledge in more than one area, i.e., 2 or more areas, to reflect the often broader nature of a FA’s advice. It is not clear to us if those purchasing group insurance would be considered “retail clients”. Not all group insurance is sponsored by an employer, for example.

Is it the intent that “financial and investment recommendations” for FAs include life/health insurance? These purchases are often referred to as financial protection products.

We recommend adding “in writing” or “documented” to the Client Outcomes section.

Disclosure

- 2. 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 title. FSRA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.*

We agree that FP and FA title users should disclose their credential to clients, and would expect that most, if not all, would want to do so as a regular business practice. Many advisors use a letter of engagement or similar tool that identifies the license(s) they hold, services provided and how they will be compensated, potential conflicts of interest and complaint handling mechanisms. These disclosures (although not the format) are regulatory requirements.

Therefore, we do not think FSRA should mandate a specific disclosure form. Clients are often overwhelmed by the volume of disclosures on account opening and at other times during the advisory period. Provided the FP or FA properly discloses the accreditation that should be sufficient. The disclosure letter is also the appropriate place for an advisor to indicate whether they are independent or bound by a proprietary contract, and what that means to the client with respect to the products and services that advisor can offer.

We recommend that the disclosure also contain information on where the client can find the advisor's listing on the credentialing body's website and how to make a complaint. It should also inform clients as to the regulatory bodies that a complaint should be directed to.

Will the accrediting bodies have MOU's with the regulatory bodies such that complaints or disciplinary actions are shared? Since FSRA intends for the system to be complaints-based, steps must be taken to ensure CB's disclose such information publicly.

Exemptions

- 3. 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.*

Consistent with our previous comments to FSRA, IFB does not support exemptions for FPs. We believe strongly that anyone using the FP title should do so only after obtaining an appropriate credential.

Unlike the FP system, though, there is no pre-existing regime for FAs. The competency profile may mean that advisors who have completed the courses required for securities registration may support an exemption from the requirement to obtain a FA designation. IFB has always supported the recommendation made by the Expert Committee on Financial Advisory & Financial Planning Policy Alternatives that, advisors who are licensed and whose market conduct and proficiencies are overseen by a financial services regulator, should be exempt. This is important because it disallows any individual or firm not licensed from calling themselves a FA.

In our view, it is a significant consumer protection gap in this legislation that there is no requirement to be licensed or otherwise regulated. Some of the worst fraudsters hold no financial license at all. It should not be possible for someone to obtain a FA designation without being licensed, however, it appears that this will be possible under the proposed regime. This is a substantial gap and could readily be addressed by our suggestion of an enhanced LLQP that allows for a FA designation *obtained in addition to* a life insurance license.

IFB supports a FA exemption for advisors who are licensed by both life insurance and securities regulators. These individuals are already subject to oversight by multiple regulatory bodies and have completed more than one proficiency area as outlined in the baseline competency profile.

The CSA's client-focused reforms (CFRs) which come into effect in 2021 and apply to all securities registrants will create a more rigorous standard to dealing with conflicts of interest that puts the client's interest first. This standard is not reflected in the proposed FP or FA competency profiles, although it is our understanding that FPs are held to be best interest standard through their certification.

Subject to our FP comments above, there may be certain other exemptions considered for the FA title, however, it is important to note that, unlike the FP framework which has existed for many years, the FA framework is unformed and untested. However, we agree with FSRA's position that any such exemptions should be grounded in the key policy principles as noted.

Transitional matters

We agree with the January 1, 2020 transition date unless there are significant delays in the Act coming into force.

For FAs that will be required to obtain an approved credential, IFB supports a transition period of 3 years, subject to an immediate requirement that FAs must be licensed/registered by a financial services regulator. This will close the consumer protection gap that anyone can call themselves a FA without being subject to regulatory oversight.

Fees and Assessments

- 4. 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.*

We believe that fees should be remitted to FSRA, not to the credentialing body. This would provide a centralized repository such that FPs and FAs do not pay twice for use of their titles. How would different credentialing bodies know if the individual was registered with more than one?

We are cognizant that this Act was intended to be introduced with a minimum regulatory burden and cost to individuals such that it does not become a barrier. We note that these advisors, and many planners, already pay significant costs to become licensed and ongoing costs to maintain their license and run their business. Advisors will be discouraged from pursuing the FA title if the costs are perceived to be too high. More troubling is that these costs could be downloaded to clients, meaning that those unable to pay these fees, may lose their access to advice. This would be an unfortunate unintended consequence.

Consumer Education

- 5. 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 the FP and FA title use.*

We would like clarification on what FSRA contemplates in a consumer education campaign. First and foremost, we strongly believe that it is not the role of the regulator to disadvantage any one sector of the marketplace by promoting two categories of advisors/planners over the other licensees that it regulates. The message to consumers in this scenario would likely lead to additional confusion. Under the proposed Rule, organizations that become CBs will stand to profit by the sale of a course leading to an FA or FP designation. As such, promoting the designation, whether to potential enrollees in the programs or to the public, should fall to the CB, itself.

The industry's role in educating consumers on financial planning and financial advising services will depend on the degree to which each stakeholder has a consumer-facing role. In the case of IFB, our role would be to educate members on the regulatory regime and to provide information on how and where to obtain additional qualifications, including financial planning and financial advising designations.



The only appropriate role for the regulator, in our view, would be to promote the registry whereby a consumer can verify the licenses and credentials held by their intermediary, and any disciplinary history. This would also be an appropriate place for FSRA to provide consumers with definitions of what constitutes a FP or FA, but should be done in such a way so as not to prejudice the relationship of an intermediary and his/her client in a negative way.

Comments on the Guidance regarding Credentialing Bodies

We would like to see a set schedule for FSRA audits of the credentialing bodies, as well as the authority to investigate more frequently if there is a question of non-compliance.

We believe FSRA should undertake to obtain feedback directly from FPs and FAs on their satisfaction with the education and process they have undergone. This could take the form of an annual questionnaire. As well, FSRA should provide a mechanism for FPs and FAs to register a complaint about a credentialing body in the event they become aware of issues that should be brought to the regulator's attention. These avenues are anticipated for the public, but it is important to hear from FPs and FAs as well.

Thank you for the opportunity to comment. Please contact the undersigned, or Susan Allemang, IFB Director of Policy & Regulatory Affairs (sallemang@ifbc.ca), should you have questions or wish to discuss our comments further.

Yours truly,

A handwritten signature in black ink that reads 'Nancy Allan'.

Nancy Allan
Executive Director
905-279-2727
allan@ifbc.ca
www.ifbc.ca