



Independent Financial Brokers of Canada

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October 25, 2021

Securities Division
Financial and Consumer Services Commission
300-85 rue Charlotte Street
Saint John, NB E2L 2J2

Attention: David Shore

Sent by email: consultation@fcnb.ca

Subject: Consultation Notice – Title Protection 2021

Independent Financial Brokers of Canada appreciates the opportunity to comment on the Financial and Consumer Services Commission's (FCNB) consultation "Regulation of Financial Planner and Financial Advisor Titles".

About IFB

Independent Financial Brokers of Canada (IFB) is a national, not for profit, professional association representing 3,000+ licensed advisors and planners. IFB is the only Canadian association that exclusively represents independent financial professionals and has done so for over 35 years.

IFB members are members by choice. They must be licensed by a Canadian financial regulator, agree to adhere to IFB's Code of Ethics and Standards of Professional Conduct¹, and not be restricted by an employment or other exclusive contract with one financial services company or institution.

IFB members are often self-employed individuals who own a small to medium-sized financial practice in their local community. They frequently establish long-term relationships with clients (whether individuals, families, or businesses) spanning many years – even generations. These local professionals offer an important, community-based alternative to the advisory services provided by larger retail financial institutions.

Most IFB members are life/health insurance licensees and mutual fund registrants. Many have earned additional licenses or accreditations which permit them to address the broader financial needs of today's client. These can include securities/investments (IIROC), mortgages, P&C insurance, deposit instruments, estate/tax services, and financial planning.

IFB serves the needs of its members, and the financial community more widely, by offering a comprehensive professional liability program, accredited educational events, compliance tools and regulatory updates. An important part of the work IFB does is to provide a collective voice for these individual advisors. IFB advocates on their behalf with legislators, regulators, industry stakeholders and others, to ensure any proposed regulatory change does not disadvantage independent distribution or reduce access to the tailored advice that these financial advisors and planners bring to clients.

¹ Independent Financial Brokers of Canada: <https://ifbc.ca/code-ethics/>

General comments

IFB does not administer a credential, nor does it intend to apply to become a credentialing body. IFB's interest in the titling regime is to help ensure the public policy goals of the legislation are achievable in a way that will make a meaningful difference for consumers who want to engage with a financial professional, while not imposing undue regulatory and cost burden on existing licensees, like our members.

Consumers can only be protected if Canadian regulators seek a national solution to titles.

We agree that the use of misleading or confusing titles is a problem that must be faced. IFB has long supported the need for regulators to address the wide array of titles and credentials used in the financial services industry. In past submissions, IFB has urged both the CSA and the CCIR/CISRO to address the use of misleading titles to the public.

Consumers should be confident that their advisor or planner is duly licensed, properly qualified, and proficient in their area of expertise. However, this responsibility is shared by financial firms. It is not unusual for financial firms to designate use of certain titles for their advisors with client-facing roles, or to award titles based on sales production. Therefore, any solution to address the appropriate use of titles must consider its application to individuals and firms.

IFB, as a national association, supports a national, harmonized approach to regulating the financial services industry. In our view, the current approach of introducing title legislation on a province-by-province basis, is counter-intuitive to the consumer protection goal underpinning this legislation. Consumers in any jurisdiction should know that the advisor or planner they engage with is held to a consistent standard. Similarly, advisors and planners operating in any jurisdiction should know that they will be held to the same standard, regardless of where they practice or advise clients. To do otherwise, introduces increased confusion at best, and regulatory arbitrage at worst.

In recent years, national initiatives to improve consumer protection have been taken by CISRO/CCIR, through its Fair Treatment of Insurance Customers² guidance and the CSA, through its Client Focused Reforms (CFRs). Both of these have adopted a principles-based approach to enhance better consumer outcomes, while providing more specific guidance to industry on how to meet these expectations. Licensees and registrants cannot hold out to the public in a way that can deceive or mislead as to their proficiency, experience, qualifications, or category of registration. More explicitly, the CFRs include guidance that will prevent a registrant 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 widespread adoption for consumers of all financial products.

² CCIR/CISRO Guidance: [Conduct of Insurance Business and Fair Treatment of Customers](#). September 2018

³ CSA Notice of Amendments to NI31-103 - [Reforms to Enhance the Client Registrant Relationship \(Client Focused Reforms\)](#). November 2019.

For these reasons, and others as set out below, IFB recommends that New Brunswick not follow the limited approach of restricting the FP/FA titles underway in Ontario and Saskatchewan, and instead, champion an enduring, national solution to titles and enhanced proficiency standards, in combination with proactive consumer education.

In our view, while the legislation purports to mitigate consumer confusion regarding the wide array of titles and credentials used in the financial services industry, in actuality, it will introduce another layer of confusion because it only addresses use of the FP and FA titles. We provide more explanation below.

Financial Planner versus Financial Advisor

IFB, along with most industry stakeholders, has supported rules that would limit use of the Financial Planner title to those who have earned an accredited designation, specific to financial planning. This recognizes the specialized area of expertise and well recognized international standards that exist in financial planning today. Most accredited FPs in Canada are accredited exclusively by IQPF in Quebec, or one of only a few dedicated financial planning organizations. Most financial planners are also licensed by a financial regulator. This provides robust market conduct oversight, supplemented by their professional body.

This is very different from the situation which exists for financial advisors, where there is no existing framework, or recognized credential. The financial advisor title is widely used, often in a generic way, as a descriptor because it is often easier for consumers to understand than the individual's or firm's license or registration category. It's possible, the impact of the FA restriction could be substantial given the potential pool of advisors who use the financial advisor title, albeit often in a general way, compared to the number of financial planners. At this point, however, it is difficult to judge as no province has yet determined if any existing licenses, or combination of licenses and education, will qualify existing advisors to be a FA, and many advisors may simply choose not to use the FA title.

Independent advisors attain credentials at their own cost and on their own time so that they can provide a better quality of care to their clients. Some may find the additional time and cost to attain a FA credential prohibitive. For example, many independent advisors voluntarily invest in their careers by advancing their professional skills and acquiring additional industry-based credentials, such as in tax, trust, estate planning, advising senior clients, and/or another financial license(s). It is unclear if the additional credentials that these advisors have earned will be recognized under a proposed FA framework.

Credentialing Bodies versus a Financial Regulator

A far simpler solution is to restrict the Financial Advisor title to those who are licensed and regulated by one or more financial services regulators in Canada. Regulators could then adopt similar provisions to those in the CSA's CFRs for other titles which, in combination, would establish a more meaningful, comprehensive standard than the more limited FA restriction being developed in Ontario and Saskatchewan.

IFB understands the call for a higher standard of proficiency for those who want to use the title Financial Advisor, similar to that of Financial Planners. To address this, we suggest the existing insurance regulators and securities regulators introduce additional proficiency requirements which would be

supplementary to the current entry level licensee/registrant requirements. For example, the LLQP would then include an optional, additional module and exam for those wishing to pursue the FA title.

This solution has clear advantages:

The message to consumers is clear. They will know that anyone using the FA title, or a firm holding out as a Financial Advisory firm, must be licensed. They can feel confident the appropriate consumer protections and complaint mechanisms are available to them. It would also mean there would be a standardized exam which would reduce inter-provincial barriers for individuals who wish to have a FP or FA designation recognized in a jurisdiction other than the one in which it was conferred.

The FP/FA title restrictions permit anyone who earns an accredited designation to call themselves a financial planner or financial advisor, yet with no requirement for licensing or regulatory oversight by a financial services regulatory body. This is a major weakness in this legislation in Ontario and Saskatchewan. This weakness is amplified for the financial advisor category because it is a new, untested framework, with no recognized credential, and many of the most egregious instances of consumer fraud have been perpetrated by those who call themselves a financial advisor, with no license or regulatory oversight.

It substantially reduces the burden on the FCNB. The FCNB will not have to create a new regulatory regime, with the associated costs and oversight that will be needed to accredit credentialing bodies and monitor their level of rigour, as well as pursue uncredentialed individuals using the FP/FA titles. In our view, this approach not only reduces confusion for consumers but, in fact, is far simpler for consumers to understand and have confidence that their FA is held to a consistent standard.

Under the proposed title protection model, the onus will be on consumers to understand another set of credentials and be able to distinguish what each means, and where to take a complaint:

- FPs and FAs who are not licensed, and only subject to oversight by a credentialing body, or perhaps more than one credentialing body;
- FPs and FAs who are licensed by provincial regulators and 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”.

It allows for efficient oversight. In our view, it makes sense to leverage existing financial regulators, such as the insurance regulators, MFDA and IIROC, as they are already well positioned to oversee the market conduct of their registrants, including how they hold out to the public. Most FAs and FPs are regulated by a provincial regulator now.

This becomes an even more compelling argument given that the CSA intends to create a new, national securities SRO with an enhanced public interest and investor protection mandate. This presents New Brunswick with the opportunity to work with the CSA and the CCIR to develop a harmonized approach to titles. Consumers will be the beneficiaries if a consistent, harmonized standard is created for all financial professionals.

IFB also suggests the FCNB has the opportunity to learn from Ontario's experience to date, including the many valid criticisms of the legislation that have been raised by industry and consumer advocates, and build a better legislative framework.

The Saskatchewan FCAA, like FSRA in Ontario, is restricted to approving and regulating credentialing bodies and pursuing individuals who use the FP or FA titles without having earned an approved credential. The legislative decision to rely on credentialing bodies to monitor and adjudicate the market conduct of the individuals they accredit, rather than rely on an existing financial regulatory body, creates a weaker standard of accountability, and risks missing the goal of strengthened consumer confidence. This is an opinion that has been shared by many others when responding to Ontario's consultations, including consumer advocates.

The success of this new framework will lie heavily in the FCNB's ability to provide robust oversight of the accredited credentialing bodies, including ensuring consistent standards among credentialing bodies, so that consumers are, indeed, well-served, regardless of which credentialing body has accredited their FP or FA. Overall, while we see the advantages for potential credentialing bodies in Ontario's and Saskatchewan's legislative approach, it is less clear how these title restrictions will make a meaningful difference for many consumers.

Consultation questions

Question 1:

a) Are you supportive of New Brunswick adopting legislation to protect "Financial Planner" and "Financial Advisor" as regulated titles in a legislative model similar to those of Ontario and Saskatchewan?

As per our preceding comments, IFB does not support introducing legislation similar to that in Ontario or Saskatchewan. While we agree with the legislative goals of these title protection acts, we believe there are better ways to achieve them.

Having said that, the Saskatchewan legislation includes positive improvements to Ontario's, such as a best interest duty and the ability to enforce fines. However, there is no mechanism for consumer redress, particularly for FPs and FAs who are not regulated. As we outline in (b) below, IFB encourages regulators to require FPs and FAs to have E&O insurance.

An argument made in favour of the Ontario/Saskatchewan approach to regulating FP and FA titles is it can do so while minimizing any additional regulatory burden. However, we believe it will create an increased regulatory burden on regulators, industry, and individual licensees/registrants. More troubling, we do not see that consumers will be better protected in any substantial way, or that it will reduce consumer confusion, for the reasons set out above. We are concerned that such legislation could, in fact, deepen the divide if it misses the intended goal and gives consumers a false sense of confidence.

b) Do you have any general comments about New Brunswick adopting such legislation?

IFB recommends that any such legislation require credential holders to have both a CE and professional liability insurance (E&O) requirement. While Ontario and Saskatchewan have proposed a continuing education requirement for the FP and FA credential holders, there is no requirement under either for

the FP or FA to carry E&O insurance. We see this as particularly gap if New Brunswick (like Ontario and Saskatchewan) decides not to require the FP or FA to be licensed by a financial regulator. E&O insurance is a mandatory requirement for most licensed advisors and planners. It provides clients with an accessible, affordable means of recompense in the event of a complaint. Clients of unlicensed FPs and FAs will not have this protection. Of course, this should be disclosed to clients so they can decide if they want to proceed with using the services of that FP/FA.

IFB further recommends any FA/FP should disclose whether they operate on an independent or restricted basis or are bound by a proprietary contract. This disclosure should define what that means to the client with respect to number or types of products and services the advisor/planner can offer.

To reduce the possible burden of these two recommendations for individuals and firms, they should not be additional requirements if already required by regulation (for example, under life insurance rules or the CSA's CFRs effective December 31, 2021).

Question 2: Do you have any comments on New Brunswick adopting similar enforcement powers <to those in Saskatchewan> in any potential New Brunswick title protection legislation?

The Ontario/Saskatchewan regimes envision FSRA and the FCAA pursuing uncredentialed individuals using the FA and FP titles on a complaint basis. Otherwise, their role will be limited to accrediting and auditing credentialing bodies. IFB agrees that the enforcement powers Saskatchewan has proposed are more meaningful than the limited enforcement available to FSRA.

Question 3: The FCNB is considering adopting rules to prohibit the use of other similar titles, much like the approach taken in Quebec. Do you have any comments on the approach New Brunswick should take to prohibiting similar titles to prevent confusion with regulated titles?

There are advantages to the Quebec model. It is clear as it prohibits the use of any title but "Financial Planner" and disallows use of Financial Advisor (or other similar titles). Ontario has attempted to identify acceptable and unacceptable titles; however, it has garnered much criticism.

The Quebec model requires all Financial Planners to attain their accreditation from the IQPF. IFB is cautious about adopting a single credentialing body approach. We are concerned that by limiting competition, it will increase costs for participants, which they have no control over. We see awarding a single credentialing body the ability to confer the FA title is particularly problematic given there is no existing structure.

In general, IFB supports a more principles-based approach to restricting titles, one which sets parameters around what is, or is not, acceptable. In our view, the approach in Ontario and Saskatchewan in developing a specific list of titles will become a regulatory game of cat-and-mouse and lead to the creation of new titles intended to circumvent the ban on others. By contrast, a principles-based approach places the onus on meeting the desired outcome regardless of the title. However, this does not preclude the development of regulatory guidance to assist individuals, firms, and the public to the acceptable parameters for acceptable (and unacceptable) titles.

Question 4: Please comment on any other matters in relation to a potential title protection regime for the "Financial Planner" and "Financial Advisor" titles.



In Canada, retail banks own the majority of wealth management firms and have made large investments in developing insurance arms. It must be clear that any FP/FA legislation is applicable to all distribution channels. To do otherwise, would create an unlevel playing field with negative effects for independent distribution and leave consumers with fewer choices to access advice. The recent decision by Canadian retail banks to limit the products available to customers to the bank's proprietary products in response to the CSA CFRs highlights this risk.

In closing, and as mentioned previously, the merger of the two existing securities SROs into a new SRO will result in very significant changes that will have broad impact on the investment industry. The CSA has indicated it plans to have Phase 1 of the new SRO in place by mid-2022. We question whether the timing is right to introduce title restrictions when this merger will draw on so many industry resources, and the final set of CFRs become effective December 2021 which include titles.

Thank you for the opportunity to provide comment on this important initiative. It deserves careful consideration on next steps. As an organization that does not aspire to be a credentialing body, IFB has offered, what we think is, a balanced perspective. We urge the FCNB, as it considers the input received, to remain focused on the goal of making a real difference to consumers so they can be confident in the financial advisory framework in New Brunswick and elsewhere in Canada.

IFB welcomes the opportunity to work with the FCNB as it considers its next steps. Should you wish to discuss our comments further, please contact the undersigned, or Susan Allemang, Director of Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,

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

Nancy Allan

Executive Director

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