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October 1, 2021

Financial and Consumer Affairs Authority (FCAA)
Insurance and Real Estate Division
Suite 601, 1919 Saskatchewan Drive
Regina, SK S4P 4H2

Submitted by email: finplannerconsult@gov.sk.ca

Dear Sirs/Mesdames:

Subject: Notice of Proposed Regulations and Request for Comment – The Financial Planners and Financial Advisors Regulations

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on Saskatchewan's Proposed Regulations under *The Financial Planners and Financial Advisors Act* (FPFAA).

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.

Independent financial advisors provide consumers with personalized advice and choice of products from various sources. They are 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 additional burden for licensees, that will arise from restricting the titles of Financial Planner and Financial Advisor, achieve the public policy goals of the Act and Proposed Regulations.

General comments

IFB has long supported the need for regulators to address the wide array of titles and credentials used in the financial services industry. Consumers should be confident that their advisor or planner is duly



licensed, properly qualified, and proficient in their area of expertise. IFB supports a national approach to clarify titles used in the financial services industry. We have urged both the CSA and the CCIR/CISRO to address the use of misleading titles to the public.

Recently, the CISRO/CCIR Fair Treatment of Customers¹ has provided guidance and the CSA's CFRs introduce a principles-based approach to restricting titles for registrants such that they cannot 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.²

These are positive changes that merit more widespread adoption for consumers of all financial products, and we are disappointed that Saskatchewan has chosen to follow the much more limited approach of the FP/FA title restriction regime in Ontario. It is very troubling to IFB, that while the legislation purports to mitigate consumer confusion regarding the wide array of titles and credentials used in the financial services industry, it only addresses use of the FP and FA titles. In past submissions, IFB has supported title restrictions for FPs who have earned an accredited designation. Regulated individuals are not permitted to use the title FP without that designation. However, the term FA is widely used in a generic way, and we think the CSA approach, for example, provides a more meaningful standard.

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 the proposed FA framework. Independent advisors attain credentials at their own cost and on their own time so they can provide a better quality of care to their clients.

While there are several well-known, internationally recognized FP designations, there is no corresponding equivalent for FAs. The impact of the FA restriction is likely to be greater given the large pool of advisors who use the financial advisor title, albeit often in a generic way, compared to the number of financial planners. At this point, however, it is difficult to judge as the FCAA has not determined if any existing licenses, or combination of licenses and education, will qualify advisors to be a FA.

The FCAA has indicated that these Proposed Regulations have been drafted to closely reflect the Proposed Rule in Ontario. While IFB generally supports harmonizing similar legislation across jurisdictions, Saskatchewan has the opportunity to learn from Ontario's experience to date, including the many criticisms that have been made by industry and consumer advocates. In this regard, IFB notes that the FPFAA has raised the bar by proposing a best interest standard and giving the FCAA the ability

¹ CCIR/CISRO Guidance: [Conduct of Insurance Business and Fair Treatment of Customers](#), September 2018

² CSA Notice of Amendments to NI31-103 - [Reforms to Enhance the Client Registrant Relationship \(Client Focused Reforms\)](#), November 2019.

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

In our view, the FPFAA, which permits anyone who earns an accredited designation to call themselves a financial planner or financial advisor, yet with no licence or regulatory oversight by a financial services regulatory body, is a major weakness in this legislation in Ontario and Saskatchewan. The existing financial regulators, such as the MFDA and IIROC, are best positioned to oversee a new framework because they are responsible for the market conduct of their registrants. This becomes an even more compelling argument given that the CSA intends to create a new national securities SRO, which will have both a public interest and investor protection mandate. We urge Saskatchewan to work with the CSA to develop a harmonized approach to titles. Consumers will be the beneficiaries if a consistent, harmonized standard is created for all financial professionals.

The FCAA, like FSRA in Ontario, is restricted to approving and regulating credentialing bodies and 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 achieving 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 limited approach of the FPFAA will introduce an additional layer of confusion for consumers. Once in force, the onus will be on consumers to understand yet another set of credentials and distinctions:

- FPs and FAs who are only subject to oversight by a credentialing body,
- FPs and FAs who are licensed by 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".

The success of this new framework will lie heavily in the FCAA'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. While we see the advantages for credentialing bodies in how the FPFAA was drafted, it is less clear how these title restrictions will make a meaningful difference for many consumers.

To help address such potential inconsistencies, IFB recommends that the FCAA set a schedule for audits of the credentialing bodies, as well as having the authority to investigate more frequently if there is a question of non-compliance. We further recommend that students or graduates of the credentialing bodies have a mechanism to provide feedback to the FCAA, so that the FCAA can measure their satisfaction with the program and is made aware of any practices or educational standards which do not meet the FCAA's requirements.

Consultation questions

1. *Competencies:* The FCAA is seeking feedback on the FP and FA credentials and whether the Proposed Regulations and FP and FA baseline competency profile adequately reflects the

technical knowledge, professional skills and competencies that should be included in a credentialing body's education program to establish the minimum standard.

IFB supports the addition of a best interest requirement. This is an important addition that is missing in the Ontario FP/FA framework and strengthens the competency profile that requires recommendations be suitable. It is also in line with recent regulatory expectations for life insurance licensees (Fair Treatment of Customers) and securities registrants (Client Focused Reforms).

In reviewing the FP and FA competencies, we note that the competency profile is based on FSRA's initial November 2020 draft. FSRA strengthened the profile for FAs in its second consultation (June 2021) and we suggest this as a more robust educational standard.

We note that while continuing education is a requirement for the FP and FA credential holders, there is no requirement to have professional liability insurance (E&O). This is particularly important because there is no requirement for the FP or FA to be licensed by a financial regulator. E&O 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.

2. *Disclosure:* The FCAA 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 the FP or FA title.

Since the legislation permits those not otherwise licensed to use the FA and FP titles, IFB recommends that it be mandatory for an FA or FP to disclose to potential or actual clients whether they are (or are not) otherwise regulated (i.e., by an insurance or securities regulator.)

This information should be posted on the individual's FA/FP websites and social media accounts, so it is available to the public when conducting an internet search for an accredited FA or FP. It should also be accessible to the public on both the credentialing body's website and on the centralized public registry that we suggest the FCAA develop (please see below).

Here is a simple example to illustrate.

NAME	ACCREDITATION	CREDENTIALING BODY	LICENSE(S)/REGULATOR(S)
John AAA	FA	XYZ CB	Life insurance (FSRA)
Tracy BBB	FP	FP Canada	Not applicable
Paul CCC	FA	XYZ CB	Securities registrant (MFDA)
Susan DDD	FP	FP Canada	Securities registrant (IIROC)
Joe EEE	FA	XYZ CB	Not applicable

IFB recommends that the FCAA create a centralized public registry, similar to that in Ontario, in addition to the registry of certificants maintained by individual credentialing bodies. We also

recommend that credentialing bodies should be required to share any disciplinary information relevant to an accredited FA or FP. These steps will help other regulators and consumers access information in a more meaningful and convenient way, as well as alerting others to individuals who present risk to the public.

IFB further recommends any FA/FP should disclose whether they are independent or bound by a proprietary contract. This disclosure should include what that means to the client with respect to the products and services the advisor/planner can offer. To reduce the possible burden of such disclosure for individuals, firms, and consumers, this should not be an additional requirement, if already required by regulation (for example, under life insurance rules or the CSA's CFRs effective December 31, 2021).

3. *Transition date:* The FCAA is seeking feedback on whether the proposed transition date of July 3, 2020 is appropriate, or the benefits of another date.

IFB has no particular objection to using July 3, 2020, as the transition date - although using a past date is likely to create some confusion as to who qualified on that date, and will add a compliance burden for FPs, FAs and firms and regulators. We suggest that the transition date be revisited if there are significant delays in the Act coming into force.

Transitional matters:

The Proposed Regulations contemplate a 4 year transition period for FPs and a 2 year transition period for FAs, for individuals already using these titles immediately prior to the transition date. IFB does not support lengthy transition periods. Permitting individuals to use a restricted title without having acquired the appropriate credential runs counter to the consumer protection principles which underpin the FPFAA.

It is also troubling, that the proposal to permit a 4 year transition date for FPs and a much shorter FA transition date of 2 years, implies that the FP credential is more rigorous and difficult to obtain. We question why the FCAA would consider setting a lower standard for the FA credential, especially when there is no requirement for FAs to be licensed by a financial services regulator. Consumers are likely to view the titles as interchangeable and subject to the same degree of rigour. If this is not the case, consumer protection will be undermined.

IFB does not support any transition period for FPs. The FP framework is well known, and recognized FP credentials have existed for many years in Canada and internationally.

There may be a case for individuals who are nearing completion of the FP or FA accreditation to hold out as a "student" or "candidate" provided there is a clear deadline for the accreditation to be successfully completed or to discontinue use of the title.

4. *Exemptions:* The FCAA is seeking comments on whether the framework should allow for any exemptions.

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.

Further to our comments above, IFB supports the recommendation made by Ontario's 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. We think it is appropriate to permit a FA exemption for advisors who are licensed, and certainly for those who are both life insurance and securities regulated. These individuals are already subject to oversight by multiple regulatory bodies and have completed more than one proficiency area, which is consistent with the baseline competency profile as set out in the Proposed Regulations.

5. *Challenging Examinations:* The FCAA is seeking comments on whether the framework should allow for certain qualified individuals to challenge the required FP and FA examinations.

If the FCAA intends to recognize the credentials or licenses of certain financial professionals, then we have no objection to these individuals challenging the exam without being required to register and enroll in a FA accreditation program. The situation may be different for FPs as this is a more specific area of expertise.

Develop a standardized provincial exam. IFB recommends that the FCAA set a standardized provincial exam, similar to the format of the LLQP. A major concern IFB has had with the proposed regulatory framework is that much of the accreditation process and oversight of FPs and FAs rests with individual credentialing bodies. These credentialing bodies will compete for students. We see this as particularly problematic for the FA regime as it is an entirely new and untested framework of accreditations and credentialing bodies. Leaving it to individual credentialing bodies may result in a varying degree of rigour. Under IFB's recommended approach, consumers can be assured that, regardless of the program their FA took, the FA title has only been conferred on those able to pass the standardized exam overseen by the provincial regulator.

We see other advantages, such as enabling the FCAA to have more proactive risk-based tools available to it to identify whether a CB program is substandard, such as assessing their students' pass rates. We suggest individual credentialing bodies should be required to publish their pass rates. If similar legislation is enacted in other jurisdictions, by adopting the standardized exam approach, it 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. Again, reducing the oversight burden on regulators, such as the FCAA.

6. *Titles:* The FCAA is seeking suggestions as to examples of titles that could reasonably be confused with the FP or FA titles and whether a guidance document or other regulatory approach is necessary at this time.

Further to our earlier comments, IFB supports a more principles-based approach to restricting titles which sets parameters around what is, or is not, acceptable. Trying to develop a specific



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list of titles becomes a regulatory exercise in cat and mouse where new titles will be created to circumvent banned titles. By contrast, a principles-based approach places the onus on whether the desired outcome is being met. However, this does not preclude the development of regulatory guidance to assist individuals, firms, and the public to better understand the acceptable parameters of determining whether a title is restricted.

IFB looks forward to working with the FCAA as it moves forward with finalizing the Proposed Regulations. Should you wish to discuss our comments, please contact the undersigned, or Susan Allemang, Director of Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,

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

Nancy Allan

Executive Director

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