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Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Submitted via the FSRA website

Subject: Proposed Financial Professionals Title Protection Framework – second consultation

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on FSRA's revised framework to protect the Financial Planner (FP) and Financial Advisor (FA) titles in Ontario.

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 financial services stakeholder.

Independent 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 chose to become independent after beginning their careers with proprietary firms or a larger financial institution and are typically small to medium-sized business owner/operators providing financial advice to clients in their home communities.

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

Although the *Financial Professionals Title Protection Act* (FPTPA) does not distinguish between financial advisors/planners who have broad access to a variety of products, and those who are restricted to selling proprietary products, some jurisdictions have moved to address 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 is beneficial for any consumer seeking financial advisory/planning services.

General comments

IFB appreciates FSRA's continued commitment to engaging with its stakeholders in an open and collaborative way. In our review of the consultation materials, it is clear to us that FSRA has considered the comments it received during the first consultation, and the revisions reflect many of the common observations and recommendations that were made. It is important, at this critical juncture, to develop a framework that will achieve the desired outcomes, given that this legislation will set a precedent in Ontario and may be adopted in other Canadian jurisdictions in the future.

We note, however, that under the FPTPA, FSRA is restricted to approving and regulating credentialing bodies and individuals who use the FP or FA titles without having earned an approved credential. In our view, 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. The success of this new framework will lie heavily in FSRA's ability to provide robust oversight of the accredited credentialing bodies, including consistent standards, to ensure consumers are, indeed, well-served, regardless of which CB has accredited their FP or FA.

Furthermore, 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. IFB has long advocated for a national approach to clarify titles used in the financial services industry. The limited approach of the PPFPA will introduce an additional layer of complexity for consumers, which is likely to be further compounded by the implementation of wider title restrictions, for all securities registrants by the end of 2021. Specifically, the amendments will introduce new restrictions on 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 and 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.

While we see the advantages for CBs in how the FPTPA was drafted, it is less clear how these title restrictions will make a meaningful difference for many consumers. Consumers will have to understand another set of credentials and distinctions: FPs and FAs who are only subject to oversight by a CB; FPs and FAs who are licensed and/or using a regulated title approved by their regulatory body, or an individual who is not licensed using a title, such as "advisor", or "wealth consultant".

¹ CSA Notice of Amendments to NI31-103 - Reforms to Enhance the Client Registrant Relationship (Client Focused Reforms). Nov. 2019.
<https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-103/csa-notice-amendments-ni-31-103-and-31-103cp-reforms-enhance-client-registrant-relationship-client>

² Ibid.

IFB appreciates that FSRA has provided a list of titles as examples of those that could reasonably be confused with the FA or FP titles, as requested by many commenters during the last consultation. However, we are less certain how consumers can be expected to understand these finer title distinctions.

Specific comments

Most advisors and planners are already subject to oversight by one or more provincial securities or insurance regulators, and by the firms they are contracted with. This legislation will require an additional shared, possibly duplicative, layer of oversight by a CB, for those wanting to use the FP/FA titles.

FA regime

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 hold 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 FSRA has not published which existing licenses, or combination of licenses and education, will qualify advisors to be a FA.

No requirement to have a financial services license to use the FP or FA title

IFB continues to see the ability for an individual to hold out as an accredited FP or FA, without any oversight outside of their CB, as a gap in consumer protection. While many advisors and planners are already regulated by at least one statutory financial services regulator, those who acquire an accredited credential under the FPTPA will be able to hold out to the public, irrespective of whether they are licensed. This is a concern because a CB is not likely to have the same level of regulatory robustness as an insurance regulator or securities SRO, for example. This gap may be particularly problematic for the FA title, as some of the largest, most egregious instances of consumer fraud have been committed by those who were unregulated yet held out as a financial advisor.

To help address the possible negative outcomes arising from this gap, IFB recommends there be a requirement for FAs and FPs to carry professional liability insurance. E&O insurance has been mandated for most professions, including financial licensees, to provide clients with a level of protection and recourse in the event of a claim. In our view, FPs and FAs should be required to have E&O insurance, if they are not already required to do so through another license. In other words, this should not be an additional burden for those already subject to a mandatory E&O requirement. IFB agrees with FSRA's proposal that CBs carry corporate liability insurance.

Similarly, most licensed financial advisors (and planners) in Canada must earn a requisite number of CE hours as a mandatory licensing condition. FSRA is proposing that a CB require those accredited to be

subject to CE requirements, but as per our E&O comment above, any additional burden on individuals already subject to a CE requirement should be minimized to avoid overlap and unnecessary cost.

Consumer disclosure

Since the legislation permits those not otherwise regulated 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. This information should also be accessible to the public on both the CB's website and on the centralized public registry that FSRA is proposing. Below, we provide a simple example to illustrate.

Example:

NAME	ACCREDITATION(S)	CREDENTIALING BODY	LICENSE(S)/REGULATOR(S)
John Doe	FA	XYZ CB	Life insurance (FSRA)
Tracy Smith	FP	FP Canada	Not applicable

As stated at the outset of our response, IFB recommends any FA/FP should 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 the advisor/planner can offer. To reduce the possible burden of such disclosure on 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).

IFB supports FSRA maintaining a centralized public registry, in addition to individual CBs providing a registry of their certificants. We also support the recommendation for CBs to share any disciplinary information relevant to an accredited FA or FP. These steps will help consumers access information in a more meaningful and convenient way.

Technical Knowledge for FAs and FPs

IFB supports the proposed technical knowledge requirements for FPs and FAs. In particular, we find the revisions to the FA category to be better aligned with the expectations of a FP, and more robust than as set out in the initial consultation.

Governance of CBs

IFB welcomes the strengthened language requiring CBs to have a public interest mandate that flows throughout the governance structure, oversight of credential holders, and credentialing decisions. As noted above, IFB supports harmonized standards for CBs whenever possible.

IFB supports an open and competitive marketplace for advisors and planners to earn a credential. Competition will help mitigate the cost of acquiring a FA or FP for advisors and planners, who already invest substantially in their careers, often at their own cost.

As mentioned in our previous submission, we recommend there be a process for those who have earned an accredited credential to initiate a complaint with FSRA. For example, those taking a particular



program may find course material to be outdated, inferior or overly expensive. Such insights could be valuable to FSRA in its oversight of CBs.

We note that FSRA has proposed a framework for various disciplinary actions if a CB fails to comply with the terms and conditions of their approval. As FSRA refines the framework, IFB suggests FSRA consider how current and prospective applicants will be made aware of such actions, which may well influence their decision to enroll in that CB's program. Also, how would such a circumstance affect those already accredited by that CB? The process should not penalize FAs and FPs who took the course(s) in good faith.

Transition Periods

IFB recommends that a more workable, practical solution would be to standardize the transition period for FPs and FAs, allowing for a 2-year transition period at most. A 4-year transition period for FPs, and a 2-year transition period for FAs suggests that the FP education standard is more arduous or rigorous than the FA standard. If this is the case, we question why this would be acceptable.

Second, a lengthy transition period permits continued use of a restricted title by those not accredited. Other regulated professions do not allow individuals who have not yet earned their designation to hold out to the public using a regulated title. In our view, financial services professionals should be held to this same standard. Doing otherwise represents risk to the public from advisors and planners who are not duly accredited and/or have no plan to become accredited after the transition period ends. There may be grounds for an exception for advisors and planners who are nearing completion of their accreditation program. If granted, such individuals could use the FP or FA title in conjunction with "candidate", for example, so their status is clear to consumers.

IFB had previously recommended that only those otherwise regulated by a financial services regulatory body be permitted to use the FA or FP title during the transition period, to reduce risk of misrepresentation to consumers. Many consumers are already confused by the titles used by those providing financial advice. This approach would provide an interim measure of more robust oversight and precludes those who have no formal accreditation from continuing to use the FP title or FA title for the next 2-4 years (as FSRA has proposed).

IFB appreciates the opportunity to comment, and we look forward to providing FSRA with any future assistance, as it moves toward finalizing the FA/FP framework.

Please contact the undersigned, or Susan Allemang, Director, Policy & Regulatory Affairs (email: sallemang@ifbc.ca) should you wish to discuss our comments or have any questions.

Yours truly,

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

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