



December 13, 2021

Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard St. W., Suite 100
Toronto ON M2N 6S6

Submitted via the FSRA website

Subject: Proposed Approach Guidance Financial Professionals Title Protection – Administration of Applications (FPTP Application Guidance) and Supervisory Framework (FPTP Supervision Guidance)

Independent Financial Brokers of Canada (IFB) is pleased to comment on the above-referenced updated draft Guidance.

About IFB

IFB is a national, not for profit, professional association representing approximately 3,000 licensed advisors and planners. IFB is the only Canadian association which exclusively represents independent financial professionals, and has done so for over 35 years.

IFB members are members by choice. To qualify, 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 a single financial services company or institution.

IFB supports its members, and the financial services community more widely, by offering high quality accredited educational opportunities, a comprehensive professional liability insurance program for individuals and corporations, and access to professional business tools such as compliance support and regulatory updates. IFB advocates on behalf of its members and is an active stakeholder on 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 owners of small to medium-sized financial practices 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 that permit them to address the broader 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. Independent advisors acquire these additional licenses/accreditations at their own expense.

¹ [Independent Financial Brokers of Canada](#): Code of Ethics and Standards of Professional Conduct.



General comments

IFB has been a proponent for securities and insurance regulators to address the array of titles used in the financial services industry for many years and supported restricting use of the FP title to those who have attained this specialized proficiency. We have also supported the CSA's Client Focused Reforms which will apply controls by the end of December 2021 that prohibit securities registrants from using a title for which they do not have the appropriate proficiency. More specific title restrictions are anticipated to follow in 2022. IFB has also encouraged the CCIR/CISRO to develop similar controls, in alignment with the Fair Treatment of Customers guidance. In our view, it is important that any approach to titling be coordinated and applied on a national basis to address the consumer protection concerns that underlie the FP/FA restrictions being developed in Ontario.

IFB does not administer a credential, nor does it intend to apply to become a credentialing body. Our interest is to help ensure that consumers will benefit and the additional burden for licensees that will arise from restricting the Financial Planner (FP) and Financial Advisor (FA) titles achieves the public policy goals of the Act, and meets the provisions of the Rule.

Comments on the updated FPTP Application Guidance

As a general comment, IFB supports the strengthened requirements that credentialing bodies (CBs) will need to meet to apply for and be accredited by FSRA, and to obtain approval for their financial planner (FP) and/or financial advisor (FA) credential.

It is essential to the success of the framework that FSRA ensures that only duly qualified CBs will have the ability to confer the FA and FP titles. The educational process to earn these titles and the ongoing monitoring of those who hold out using these titles must be sufficiently robust to ensure the public and the advisors/planners who choose to use these titles see value in the changes.

Our comments on individual sections of the Guidance follow below.

Best interest duty: We note the updated guidance includes a new requirement for CBs to ensure their credential holders place their client's interests first, and that they adhere to the CB's code of ethics and CE requirements. While IFB supports putting the client's interest first, and, indeed, IFB's Code of Ethics requires as a first principle that the client's interest is paramount, we would like to better understand FSRA's intended parameters on the wording. For example, does the client first requirement go beyond making a recommendation? If a CB's code of ethics does not have a client first principle will this be required? Is it FSRA's intention that this be interpreted as a 'best interest duty'? *IFB recommends FSRA engage with stakeholders on a more fulsome discussion.*

CE & E&O requirements: As noted in previous responses to FSRA, IFB continues to advocate for a requirement that credential holders maintain professional liability insurance, in addition to meeting their CE requirements, if they are not already required to do so by regulation. We see E&O as being just as fundamental a requirement for a financial professional as continuing education.

In the *Conduct Oversight of Credential Holders* section of the Guidance, FSRA states: "where the credential holder is also a registrant/licensee with a regulatory body or holds an approved credential with another approved CB, informing complainants of alternative complaint handling options that may

be available. This should include providing the complainant with an outline of relevant potential benefits of having their complaint handled by another entity (e.g., access to third-party dispute resolution services and compensation schemes)". *We would certainly add that where a FP/FA does not carry E&O and is not licensed that there is no recourse in the event of a complaint, and that this should be made very clear to consumers.*

While many advisors and planners carry E&O as a mandatory requirement of their financial licence, those who do not pose a risk to consumers in the event of a complaint. It is concerning to IFB that FPs/FAs who are not licensed face no regulatory requirement under this framework to carry E&O insurance. Consumers who use the services of an unlicensed FP/FA will not have access to the compensatory recourses offered through E&O, nor will they have access to the regulatory consumer protection funds or alternative complaint handling options, referenced above, which may otherwise provide a recourse for compensation.

It is important to note, that 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 FSRA to permit FPs/FAs to operate without such coverage is, in our view, a gap in consumer protection and we would like to understand the rationale as to why it is not included or being considered.*

Course content: CBs will be required to demonstrate how they will keep their course content up to date. IFB recommends there be some parameters around the meaning of "up to date". New legislative and regulatory requirements usually have an effective or transition date associated with them. Would it be FSRA's expectation that the CB updates its course content on or before the effective date of the change?

In the Supervisory Approval guidance, FSRA says it expects CBs to report to FSRA, *as soon as practicable*, where the CB has determined that an individual is using the FP/FA title without an approved credential. FSRA could use similar wording in this section where the change does not relate to a legislative or regulatory requirement. An updated industry best practice would be an example.

As an additional comment, a CB's course content should make clear for FP/FA candidates the distinction between understanding retail investments and providing specific recommendations. In the Consultation Summary FSRA says "consumers expect an individual who uses the FA title to be well placed to provide investment advice". We caution that any unlicensed FA (or FP) should not be providing investment advice related to specific products. To do so would contravene legislative requirements in Ontario and leave the FP/FA at risk of disciplinary action.

Disciplinary history: IFB is pleased that FSRA will require 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. We agree that this should be shared with FSRA for its public registry and the information provided should be sufficient for consumers to understand the key facts and outcome.

Terms and Conditions on a CB: IFB agrees with FSRA's approach to impose terms and conditions and to publicly post the information. This will be helpful for existing and potential credential holders, as well as consumers.

We are concerned, however, that there seems to be an allowance for a CB to have a status of accredited 'light' – i.e., where the CB is permitted to offer the FP/FA credential while under various terms and conditions including “not having a sufficiently robust enforcement framework to meet its operational needs, requiring a compliance or governance review, implementation of a stronger control framework and/or restrictions or temporary prohibition on the issuance of credentials”.

IFB recommends CBs who do not meet the prescribed standards should not be awarded approval subject to certain terms and conditions, “to give effect to the Title Protection Framework”. In our view, if a suitable application is not received from a CB, FSRA should not accredit the CB. There may be a case for accrediting the CB if the variance is minor. However, the reasons for terms and conditions in the examples FSRA has noted above, we see a fundamental omissions. *This is particularly concerning given that a significant level of what might otherwise be regulatory responsibility for ensuring the public interest is being delegated to these CBs under the Act.*

Revocation of CB status: While we agree there must be a mechanism to revoke the accreditation of a CB, when necessary, we are not aware that the Guidance addresses how existing FPs/FAs, or candidates for the FP/FA, enrolled in that CB's program will be treated. As we've suggested in previous submissions, revoking the credentials of those individuals who earned it in good faith would be unfair. *IFB recommends FSRA's approach to such situations be set out as part of the Guidance.*

Comments on the proposed Supervisory Approach

Complaints: In past submissions, IFB supported a mechanism whereby credential holders can submit a complaint to FSRA regarding the educational standards being provided by the CB to its students. We are pleased to see that FSRA has included the ability for complaints against any of its regulated sectors, including the FP/FA regime, to be filed with FSRA.

Public registry: IFB is pleased FSRA is proceeding with setting out the terms of its public registry. As per our previous comments on E&O, IFB recommends the FP/FA disclosure to consumers include information on whether the individual is licensed by a financial regulator and which one(s), in addition to the CB accreditation. At a minimum, FSRA could provide a link to the public registries of securities and insurance regulators, although this would be much less convenient for consumers.

Enforcement: As per our comments above, we see no explanation of how the revocation of a CB's credential would affect existing credential holders or those who may be candidates for the FP/FA title. Withdrawal of the FP/FA title for existing individuals would be unfair. We'd like to see FSRA develop a position on this potential scenario.

Titles that could reasonably be confused with the FP/FA title: IFB agrees with the decision to withdraw the list of potential titles that may be permitted. We encourage FSRA to collaborate with other regulatory bodies, and the CSA in particular, to address the appropriate use of titles.



Other comments

In the Consultation Summary, FSRA states that “it is in the process of developing an industry and consumer education campaign to support the implementation of the financial professionals title protection framework”.

Consumers should be confident that the advice they receive from their advisor or planner is from a regulated, proficient professional, regardless of whether that professional has chosen to be an accredited FP/FA and use that title. Any FSRA consumer awareness campaign on the FP/FA titling should maintain a neutral stance, and not inadvertently promote the FP/FA regime to the disadvantage of existing, duly licensed/registered individuals who choose not to pursue use of the FP/FA titles. *IFB recommends that FSRA include input from stakeholders, such as IFB, early in the development of the consumer awareness campaign.*

IFB is pleased that FSRA has indicated that it will pursue discussions with the life insurance industry to address possible solutions to the shortcomings it has identified with the LLQP that would prevent life insurance licensees to use the FA title. IFB has previously suggested providing life insurance agents/brokers with the opportunity to take an additional, optional module as part of the LLQP, that would qualify them to use the FA title. IFB has also recommended that dual-licensed advisors should qualify to use the FA title as they have both securities and life/health insurance proficiencies.

In closing, it is our opinion that these revised Guidance documents set out a more rigorous and detailed approach to the FP/FA regime. However, we remain very concerned that allowing unlicensed individuals to be accredited will lead to situations that may well undermine the public’s confidence in these restricted titles, such as finding that there is little opportunity for restitution in the event of a complaint.

As always, IFB welcomes the opportunity to discuss our comments or provide assistance to FSRA at any time. Please contact the undersigned, or Susan Allemang, IFB’s Director Policy & Regulatory Affairs (E: sallemang@ifbc.ca).

Yours truly,

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

Nancy Allan

Executive Director

E: allan@ifbc.ca

T: 905.279.2727 X102