

October 25, 2021

Mr. David Shore
Securities Division
Financial and Consumer Services Commission
300-85 Charlotte Street
Saint John, NB E2L 2J2

SENT VIA EMAIL: consultation@fcnb.ca

Dear Mr. Shore,

**Re: Consultation Notice – Title Protection 2021
Regulation of Financial Planner and Financial Advisor Titles**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial and Consumer Services Commission of New Brunswick (“FCNB”) in regard to Consultation Notice – Title Protection 2021, *Regulation of Financial Planner and Financial Advisor Titles* (the “Consultation”).

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis’ motto: *non solis nobis* – not for ourselves alone.

2. INTRODUCTION

Advocis strongly supports the establishment of a title protection framework (the “Framework”) in New Brunswick. We believe that this initiative is essential for consumer protection: the titles



of Financial Advisor (“FA”) and Financial Planner (“FP”) are consumer-facing and ubiquitous in their use. These are titles which consumers rely upon, so we must ensure that their use is restricted to those who demonstrate the proficiency and conduct expected of a professional.

We urge the FCNB to promote consumer protection by advancing the following in the development of its Framework:

- Raise the standards of professionalism by requiring that the credentials for both the FA and FP title reflect the wide-ranging technical knowledge and utmost in client-centricity expected by consumers of modern financial advice and planning.
- Implement effective enforcement tools for those who would evade the Framework.
- Create a simplified process for the approval of credentialing bodies and credentials that are recognized by other Canadian jurisdictions.
- Adopt a principled approach to similar titles based on preventing consumer confusion.
- Require errors and omissions insurance coverage as is required in other professions.
- Require that credentialing bodies operate in a manner that addresses conflicts of interest and permits decision-making solely in the public interest.
- Adopt an equitable fee structure.

We discuss each of these points in turn in this submission.

3. OUR COMMENTS

1. FCNB is considering recommending a regime similar to the approach recently taken in Ontario and Saskatchewan to protect “Financial Planner” and “Financial Advisor” as regulated titles in New Brunswick. Such an approach would leverage existing regimes for licensing and designating financial professionals, and maximize the extent to which New Brunswick’s regulation of these titles is harmonized with other jurisdictions.
 - 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?
 - b. Do you have any general comments about New Brunswick adopting such legislation? Please elaborate.

We support the introduction of legislation to protect the FA and FP titles in a manner similar to the approach being taken in Ontario and Saskatchewan. The regulation of these titles would represent an important step towards greater consumer protection and public confidence in the financial services industry. The FA and FP titles are widely used by consumer-facing financial intermediaries. Despite this, these titles are not regulated under the current regime.



Our own studies have shown that most consumers erroneously believe that these titles are already regulated,¹ signalling a level of professional skill and oversight that is not grounded in reality. This misplaced trust, combined with the fact that the titles are not regulated in New Brunswick, places the public at unacceptable risk. This Consultation marks an important step towards addressing this untenable situation.

Process

In developing its Framework, we encourage New Brunswick to follow the general approach taken by both Ontario and Saskatchewan: the Legislative Assembly of New Brunswick could introduce high-level legislation that sets out the aims of the Framework and its overall operational and accountability structure, but the key details of the Framework's operation would not be within the legislation itself.²

Responsibility for filling out the details of the Framework would be assigned to the FCNB which would use its rule-making authority under the *Financial and Consumer Services Commission Act*³ to issue public consultations and make rules concerning all key aspects, including: credentialing bodies; credentials; misleading titles; transition periods; disciplinary processes; and the fee structure.

Substance

Advocis believes that consumer protection and public benefit should underpin New Brunswick's Framework. To achieve this, we urge the FCNB to establish minimum standards for both the FA and FP titles which improve upon the standards that consumers face today. Frankly, we all know that the retail financial services sector contains many licensees who are fundamentally product salespeople, with little interest in developing long-term, client-centric professional relationships. There certainly is a role for sales-first licensees in the spectrum of financial services, but these intermediaries should not be afforded professional standing through the use

¹ In March 2019, Advocis asked 800 New Brunswickers about their thoughts on the regulation of Financial Advisors. The poll, carried out by Abacus Data, yielded eye-opening results:

- 55% of respondents believed the title "Financial Advisor" is already regulated;
- 85% believed that a professional code of conduct for Financial Advisors should be mandatory; and
- 90% supported legislation that regulates the title Financial Advisor.

Advocis conducted similar polls in other provinces, and the results were similar.

² For examples, please see Ontario's *Financial Professionals Title Protection Act, 2019*, S.O. 2019, c. 7, Sched. 25 at <https://www.ontario.ca/laws/statute/19f07b> and Saskatchewan's *The Financial Planners and Financial Advisors Act*, SS 2020, c 22 at <http://docs.legassembly.sk.ca/legdocs/Bills/28L4S/Bill28-203.pdf>.

³ SNB 2013, c 30.



of government and regulator-sanctioned titles.⁴ Consumers deserve better, and New Brunswick can lead by setting a higher bar.

This higher bar would align with modern consumers’ expectations of financial advice and planning professionals. There was a time when FAs and FPs were seen primarily as transactional conduits to purchasing product. But their role has evolved, with the client relationship now taking centre stage. Both FAs and FPs should understand their clients’ financial priorities, needs and objectives, and any discussion and transaction in suitable product should only form part of the strategy to achieve those priorities.

FA and FP Competency Profiles

In setting this higher bar, we would like to address the FA Baseline Competency Profiles (“FA BCP”) and FP Baseline Competency Profiles (“FP BCP”) proposed by the Financial Services Regulatory Authority of Ontario (“FSRA”) in its consultation,⁵ which were referenced and incorporated verbatim by the Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”) in its own consultation.⁶

The competency profiles set out what those regulators propose that the recognized credentials for each of the FA and FP titles should teach their credential holders in terms of professional conduct, general financial sector knowledge and specific technical proficiency. While we do not know whether the FCNB is planning to incorporate similar profiles into its own Framework, we would imagine that it is at least reviewing and considering whether these profiles are suitable for New Brunswick.

Therefore, we wish to make clear our view that:

We support the proposed FP BCP.

Namely, we believe that the FP BCP should require that recognized credentials provide training in the development of an integrated financial plan for clients, which includes a holistic analysis of a client’s financial circumstances and suitable financial planning and investment

⁴ We would emphasize that if New Brunswick follows substantially the same approach as Ontario and Saskatchewan, its Framework would not remove product-first salespeople from the industry, who could continue to work using an unregulated title. The Framework would allow consumers to understand, at a glance of a title, whether the advisor/planner they’re working with meets official, professional standards.

⁵ *Infra*, notes 7 and 8.

⁶ FCAA, *The Financial Planners and Financial Advisors Act - Notice of Proposed Regulations and Request for Comment* (July 28, 2021) at: https://fcaa.gov.sk.ca/public/CKeditorUpload/Securities/2021/Notice_and_Request_for_Comment_-_FPFA_Reg.pdf.



recommendations. An FP-qualifying credential should require technical knowledge in all of the following: estate planning; tax planning; retirement planning; investment planning and alternatives; finance management; and insurance/risk management, and provide an understanding of how these topics interconnect with each other.

Further, as in FSRA’s revised FP BCP, we believe that an FP “education program should demonstrate a product-agnostic approach to client discovery” and that “client discovery [is] the foundational process for engaging with clients in order to provide financial planning services, regardless of the product being sold or service being offered.”⁷ We strongly support this product-agnostic, client-centric approach for the FP level – and we believe this client-centricity equally belongs at the FA level as well (as we explore further below).

We do not support the proposed FA BCPs.

FSRA has released two versions of the FA BCP through its first two consultations, but we have serious reservations with both and we address them each below.

- *FSRA’s first FA BCP*

FSRA’s first FA BCP⁸ expected FA title users to be technically proficient in as little as one of the six named competencies: estate planning; tax planning; retirement planning; investment planning and alternatives; finance management; and insurance/risk management. In our view, someone so narrowly equipped is a one-dimensional technician who cannot reasonably be said to offer the holistic service that aligns with consumer expectations of a regulated profession.⁹ We believe that an FA credential should require technical education in at least four of the six categories, with a firm view to elevating this expectation to all six categories in the future.

More generally, we are concerned that the expression of such starkly different technical expectations of FAs relative to FPs indicates a misunderstanding of what these two groups of professionals actually do. We recognize that FAs can be more difficult to define than FPs: while the work of both FAs and FPs can touch upon the same technical areas, an FA’s work tends to be more discrete than an FP’s, with the FA’s mandate being more tailored to the client’s acute

⁷ FSRA, *Consultation [2021-003], Second Consultation on Financial Professionals Title Protection Rule and Guidance* (May 11, 2021) at: <https://fsrao.ca/engagement-and-consultations/financial-professionals-title-protection-rule-and-guidance-second-consultation>.

⁸ FSRA, *Consultation [2020-008], Notice of Proposed Rule and Request for Comment - Proposed Rule [2020-001] Financial Professionals Title Protection* (August 13, 2020), at: <https://fsrao.ca/engagement-and-consultations/financial-professionals-title-protection-rule-and-guidance>.

⁹ We discuss the unreasonableness of deeming a single-skilled technician as a “professional” in the section below regarding the intersection of the Framework with the Client-focused Reforms and Fair Treatment of Customers Guidance.



needs. An FA does not usually present a formal holistic financial plan that spans multiple topics over several years, which is the signature characteristic of the FP BCP. However, in our experience, very few clients actually seek a financial plan of this nature and it is uncommon for FP-qualified individuals to produce such financial plans.

An FA typically performs a deeper dive into fewer financial topics that are of immediate concern to the client, such as how to finance a large purchase or shelter loved ones from financial risk. Despite their discrete and immediate scope of work, many FAs do help their clients in a holistic manner: it is common for clients to return to their FAs seeking additional financial advice on other topics as their lives change and personal circumstances evolve. Responding to these life changes, FAs provide their clients with “modular” financial plans, built through relationships that last many years. FAs address their clients’ financial concerns at the time clients actually need the advice, arguably in greater depth and with more direct relevance than what is covered by a point-in-time integrated financial plan.

The scope of an FA’s immediate mandate may be narrower relative to an FP’s, but the FA’s work is often deeper and more impactful within that mandate. So an FA’s clients are deserving of no less when it comes to their advisor’s conduct and skill. We firmly believe the recognized credentials for both titles should reflect that professionalism and breadth of required skill, and the FCNB would be remiss to approach its Framework under any other impression.

- *FSRA’s second FA BCP*

FSRA released a revised FA BCP in its second consultation,¹⁰ but we still see this second iteration as fundamentally flawed. This FA BCP centres its expectations for FA technical knowledge on an investment action and expertise in an investment product – effectively, an investment product sales license would qualify, which would be a significantly lower professional standard for consumers compared to the unbiased, product-agnostic approach taken in the FP curriculum.

A product-focused sales license should not qualify as a credential that makes its holder a professional meriting public confidence and trust. Training that is fundamentally based on product sales handcuffs the client relationship from the outset and effectively predetermines that the client outcome will include a recommendation to purchase the licensed product. This is intuitive: if a salesperson has been narrowly trained on how to sell a particular product, that is what he or she will attempt to do in dealings with clients. This “cart before the horse” approach does not put consumers first.¹¹ The fact that some mutual fund sales courses can be completed in as little as a weekend only exemplifies the minimal focus on clients’ holistic needs.

¹⁰ *Supra*, note 7.

¹¹ We believe we are one of relatively few stakeholders that the FCNB will hear from that is in a position to opine on this subject fairly. We represent thousands of financial advisors and planners who meet with clients directly and



More generally, a product-centric approach is regressive and runs counter to the modern, professional vision of financial advice and planning that puts the client relationship at its core and makes ancillary any transaction in product. A credential curriculum that is, at its core, predicated on transacting in a product represents a source of conflict and bias that will necessarily harm the quality of client recommendations. We would strongly urge the FCNB to avoid systematizing this conflict of interest in establishing its Framework.

- *The Role of the CFRs and FTC Guidance in Setting Standards*

In considering the work done in Saskatchewan to date, we wish to point out that the FCAA had inquired whether the fact that securities and insurance regulators had developed the Client-focused Reforms (“CFRs”) and Conduct of Insurance Business and Fair Treatment of Customers Guidance (“FTC Guidance”), respectively, militated against a need to set higher standards for users of the FA title.¹² Our emphatic answer to this is ‘no’.

We see both the CFRs and the FTC Guidance as excellent initiatives. They both speak to enhancing the standard of conduct expected of their intermediaries and we have supported the development of these multi-year projects. In short, these two initiatives require intermediaries to use the skills that they have in the best interest of clients.

But neither the CFRs nor FTC Guidance do anything to enhance the technical proficiency of those subject to these rules; that is, they do nothing to expand the FA’s or FP’s actual skill set. As we stated earlier in this submission, someone who has earned a professional title must exemplify this professionalism in regard to both conduct and technical proficiency. But as currently set out in Ontario and Saskatchewan’s proposed FA BCPs, a recognized credential at the FA level would need only to provide education in as little as one technical area. This skill set is far too limited to be considered a professional who can offer holistic service.

This is akin to having a medical professional who adheres to high conduct standards but who is only trained in one technical skill, such as measuring blood pressure with an arm cuff; in this analogy, he or she would not need to be trained to listen for heart murmurs, look for ear

provide them with the financial advice and literacy they need. Nearly all of our members have successfully completed mutual funds and insurance product licensing. On the strength of their input, we are able to offer a unique product-agnostic and cross-sectoral view of the modern consumer.

Our members have resoundingly told us that neither insurance nor mutual fund licensing is sufficient to demonstrate the professionalism and client-centric thinking that modern consumers require. If the FCNB generally accepts that consumer needs have evolved into an advice-first mindset over a product-first mindset, we believe it would be impossible to justify a product-first credential as qualifying for a Framework that is designed to be about consumer protection.

¹² *Supra*, note 6.



infections, or test the patient’s reflexes. All patient interactions would be limited by this training: whatever the patient’s actual ailments, the practitioner would shepherd the patient towards a blood pressure test because that is the tool the practitioner knows how to use. The narrow scope of skill would be justified by saying that the practitioner adheres to the Hippocratic Oath.

Clearly, this is ridiculous and falls short of what we expect of professionals in the field. But that is analogous to what is being floated at the FA level for professionals dealing with the public’s financial health. Both high conduct standards and technical proficiency are expected and required of professionals. Neither are sufficient on their own. The CFRs and FTC Guidance help inform one part of the professional equation, but they alone do not address the need for higher standards. Leaving the major shortcoming in technical skill unaddressed is certainly not in the best interest of clients, so we urge the FCNB to be mindful of the limits of what the CFRs and FTC Guidance can actually do.

- *A note on the LLQP*

In our view, the Life License Qualification Program (“LLQP”) as it currently stands should not qualify for either the FA or FP title. As a program that is focused on teaching its students on how to transact in life insurance products, the LLQP should fail to qualify on two fronts: i) its students fail to learn the breadth of technical competencies needed to provide the holistic service expected of a professional; ii) as a “product-first” sales training program, it is not client-centric and the recommendations of its graduates will, by training, be biased towards the purchase of life and health products.

In Ontario, FSRA has recognized the shortcomings of the LLQP and has essentially ruled it out from consideration for its framework. It has stated that “the LLQP curriculum does not fully align with its minimum education standards for the FA credential, as it does not provide life insurance agents with a sufficient level of knowledge and competency for FA title use. In particular, FSRA has identified gaps in the LLQP curriculum with respect to the Canadian financial services marketplace, economics, and the fundamentals of dealing with retail clients.”¹³ We agree with this reasoning. To date, we are not aware of a public stance that Saskatchewan has taken towards the LLQP.

- *Our vision for the FA BCP*

The bottom line is that we do not believe there should be many (or any) substantive differences between the baseline competency profiles for FAs and FPs. Recall that from the client’s

¹³ FSRA, *Financial Planner/Financial Advisor (FP/FA) title protection framework consultation summary report*. At: <https://fsrao.ca/industry/financial-planners-and-advisors-sector/financial-plannerfinancial-advisor-fpfa-title-protection-framework-consultation-summary-report>.



perspective, both FAs and FPs are expected to offer essentially the same services and consumers are not readily able to differentiate between the two titles.¹⁴

As discussed above, the main difference between these two groups of professionals is that FPs are more likely to develop point-in-time integrated holistic plans for clients, whereas FAs tend to have more immediate but deeper mandates in fewer technical areas. FAs often develop modular financial plans for their clients over the years as clients return for additional advice on dealing with life's changes. But we do not expect clients to understand these nuances; nor should they have to.

The simple reason that the FCNB must protect both titles, FA and FP, is that both are widely-used and consumers put faith in both as being meaningful and regulated in some manner. Our mission is to make regulatory reality line up with consumer expectations. And when it comes to developing the baseline competency profiles, the recognition of credentials must be guided equally by two fundamental principles:

- 1) They must be client-centric and product-agnostic, to ensure the priority of the client's interest above all else; and
- 2) They must teach the skills needed to be proficient in multiple technical areas, to demonstrate the holistic breadth of skill expected of a professional.

These two principles must be at the core of both the FA and FP BCPs.

2. Under the Ontario Legislation, FSRA may impose compliance orders on individuals who use a protected title without an approved credential, but does not have the power to levy fines or provincial offences. The Saskatchewan Legislation enables the provincial regulator, the Saskatchewan Financial and Consumer Affairs Authority, to impose fines and other penalties on individuals who violate the Saskatchewan Legislation. FCNB is considering recommending similar enforcement powers to those in the Saskatchewan Legislation. Do you have any comments on New Brunswick adopting similar enforcement powers in any potential New Brunswick title protection legislation? Please elaborate.

Advocis supports strong consumer protection which requires effective enforcement. A compliance order alone may not stop a bad actor from preying on New Brunswick consumers. As a result, we believe that the power to impose fines and other penalties on those who violate

¹⁴ FSRA conducted consumer research in advance of its second consultation. It found that only 31% of consumers are confident that they can explain the difference between FPs and FAs, and only 6% are completely confident. The research also found that the type of services that FP clients and FA clients expect from their professionals is also very similar. See *Appendix C - Consumer research for the FP/FA Title Protection Framework of Notice of changes and request for further comment on FPTP Rule* (May 11, 2021) at: <http://fsrao.ca/industry/financial-planners-and-advisors-sector/notice-changes-and-request-further-comment-fptp-rule>.



the Framework – both in New Brunswick and Saskatchewan – would be a beneficial tool for their respective regulators that would help maintain the integrity of the regime.

Of course, the ability to enact stronger penalties must go hand-in-hand with higher expectations regarding administrative fairness and natural justice. As the nature of the penalties escalate, the FCNB must take proportionate regulatory action to ensure respondents' administrative rights are protected and all stakeholders can continue to have confidence in the operation of the Framework.

3. The Saskatchewan Legislation includes a simplified method for approving credentialing bodies that have already been approved in another Canadian jurisdiction. FCNB is considering recommending a similar provision. Do you have any comments on New Brunswick adopting a simplified approval process for credentialing bodies that have already been approved elsewhere in Canada? Please elaborate.

As the FCNB has pointed out, both Ontario and Saskatchewan have introduced rules to implement title protection frameworks. We are hopeful and optimistic that other jurisdictions will see the merits of this exercise and will implement their own frameworks that are substantially similar to those envisioned thus far.

With this in mind, Advocis supports a simplified method for approving credentialing bodies (and credentials) that have already been approved by other Canadian jurisdictions. A simplified process will reduce unnecessary duplication and regulatory burden, allow for cost efficiencies, and benefit consumers by making it easier to understand which credentialing bodies and credentials are reliable indicators of a professional FA or FP.

Perhaps the eventual way forward is a quasi-national system through which the provinces with title protection frameworks work together. For any given credentialing body, there could be a lead provincial regulator¹⁵ and other provincial regulators, as applicable, could reciprocate the lead's decisions regarding the fitness of that body and its credentials. This could work much like the interprovincial passport system for prospectus reviews to which almost all provincial securities regulators subscribe.

Without a simplified approval process, multiple provincial regulators will engage in duplicative work to approve the credentialing bodies that operate in multiple jurisdictions.¹⁶ This will impose an added cost on industry and further strain the regulator's limited resources. The costs associated with this additional regulatory burden will ultimately be passed onto consumers as

¹⁵ The lead regulator could be based on where the head office of a credentialing body is located.

¹⁶ In our estimation, almost all entities that could serve as credentialing bodies are already active in more than one province.



industry participants seek to recoup costs through higher fees. Additionally, some credentialing bodies and financial professionals may choose not to operate in certain jurisdictions because the cost exceeds the benefit. This may deprive New Brunswick consumers of choice and competition in the financial advice and planning marketplace.

In contrast, a simplified approval process will reduce the regulatory burden and benefit consumers, without a reduction in consumer protection. Therefore, Advocis supports a simplified, reciprocal approval process between Canadian jurisdictions with substantially similar title protection frameworks.

4. In Québec, financial professionals are prohibited from using a list of certain titles, set out in the *Regulation respecting titles similar to the title of financial planner*, including titles such as “financial consultant”, “personal financial co-ordinator” and “private wealth advisor”, which are deemed to be confusing to the regulated “Financial Planner” title. In Ontario, FSRA has proposed a different approach to prohibiting similar titles, which is set out at Appendix 1 to FSRA's Proposed Title Protection Supervisory Framework. To prevent consumer confusion, FCNB is considering adopting rules to prohibit the use of other similar titles, much like the approach taken in Québec. Do you have any comments on the approach New Brunswick should take to prohibiting similar titles to prevent confusion with regulated titles? Please elaborate.

Advocis supports a principles-based approach to the prohibition of similar titles. We believe that the principle which should underpin the FCNB approach should be based on a consideration of whether the use of the title “Advisor” or “Planner”,¹⁷ in conjunction with a financial concept, could reasonably confuse consumers into believing that they are dealing with an intermediary who is qualified under the title protection regime.

In our view, a consumer might be reasonably confused by the following permutations:

- x Advisor; x Planner (where x is any term that reasonably brings about connotations of financial services or financial specialities)
 - Examples:
 - Bank Advisor, Investment Advisor, Insurance Advisor
 - Wealth Planner, Retirement Planner
- Advisor; Planner (the word alone as a title, specifically when used in conjunction with a financial institution’s name, or a financial service or speciality)
 - Examples:
 - Planner, ABC Bank
 - Advisor, DEF Investments

¹⁷ Including alternate spellings and translations thereof.



In the examples listed above, part of a restricted title is used in connection with financial services concepts or entities. The result is to create a situation that could reasonably confuse consumers about the financial services qualifications of the intermediary using that title, placing this firmly within the ambit of the Framework. As such, FCNB should act to ensure these permutations are not permitted.

To assist industry, the FCNB could consider providing an example list of prohibited similar titles while making it clear that the list is non-exhaustive, much like FSRA did with its Appendix 1 to its Proposed Title Protection Supervisory Framework.¹⁸ However, we do not agree with FSRA’s proposal to include “examples of titles that likely would not reasonably be confused with FP and FA.” In our view, providing this type of “green-light” list only assists those seeking to circumvent the spirit of the Framework.

5. Please comment on any other matters in relation to a potential title protection regime for the “Financial Planner” and “Financial Advisor” titles.

Errors and Omissions Insurance

Advocis believes that the FCNB should consider including a requirement that FA- and FP-qualified professionals maintain errors and omissions (“E&O”) insurance. E&O insurance is a fundamental safeguard for consumers accessing professional financial advisory and planning services and mandatory E&O insurance is a hallmark of almost all other regulated professions.

We suggest that FA and FP credential holders in New Brunswick maintain E&O insurance in an amount of at least \$1 million coverage with respect to any one occurrence and a minimum aggregate limit of \$1 million with respect to all occurrences within a year, plus \$1 million in extended coverage for loss resulting from fraudulent acts.

Governance of Credentialing Bodies

We recommend that the FCNB include in its approval criteria for credentialing bodies a requirement that such bodies operate on a not-for-profit basis. We believe that the mission of a credentialing body is to establish and enforce rigorous standards for FAs and FPs in order to protect the clients they serve, rather than maximizing returns for shareholders. As we describe below, faithfully fulfilling this mission requires a level of impartiality that cannot be achieved in a for-profit model.

¹⁸ FSRA, *Proposed Financial Professionals Title Protection – Supervisory Framework* (May 11, 2021). At: <https://fsrao.ca/industry/financial-planners-and-advisors-sector/proposed-financial-professionals-title-protection-supervisory-framework>.



Where directors and officers are bound to prioritize the interests of shareholders, moral hazards and conflicts of interest arise that make it impossible to maintain a steadfast focus on quality standards — especially where reducing those standards could generate additional profits. For example, a profit-motivated credentialing body may be incented to make its credential easier to achieve to attract marginal students at the expense of advisor proficiency and consumer protection.

To improve consumer confidence, a credentialing body's work must be done in the public interest, with a clear mind and without distraction — which means without consideration of private financial gain.

Fees

We believe the fee structure should be developed on the principle that the costs associated with implementing and operating the Framework should be borne — directly or indirectly — by those who are subject to it, as they will ultimately benefit from higher public standing and trust.

We believe these fees should be allocated on a proportionate basis and capture only those FAs and FPs who have a retail public-facing presence in New Brunswick. The fee structure should not capture members of a national credential body that do not have a meaningful connection to New Brunswick.

Many FAs and FPs hold multiple credentials, each of which may qualify under the New Brunswick title protection regime. Consumers benefit from the increased expertise of these multiple credential holders. It is important that these financial professionals not face punitive fees because they have undertaken additional education.

We recognize that fees are not the focus of the current Consultation as the structure has yet to be determined. However, we would be pleased to engage with the FCNB further on this matter as work on its Framework continues.

Exemptions

It is likely that the FCNB will be approached about allowing exemptions from the Framework. We do not want the Framework to create unnecessary regulatory burden; however, consumer protection must not be compromised. In considering whether an exemption from the Framework should be available, we recommend the FCNB be guided by the following principles:

- Any exemption could be limited to members of a self-regulating profession that is recognized in a separate piece of legislation.



- That profession must carry out the fundamental duties of a credentialing body, including having a complaints, investigations and disciplinary function and must be accountable to the public in substantially the same manner as a credentialing body.
- The profession's members must be governed by a code of conduct that includes a commitment to prioritizing client interests.
- To enter that profession, one must complete a credential or degree that fully includes in its curriculum the client relationship and technical knowledge aspects expected at the FA or FP level, as applicable.

Guided by these principles, we are not aware of any profession that would qualify for an exemption – but we defer to the FCNB's expertise and perspective.

Should the FCNB consider granting an exemption to members of a recognized profession at the outset of the Framework, we recommend that this exemption be revisited periodically to ensure that the outcomes are as expected and consumer protection is not compromised. It is critical that, from the consumer's perspective, anyone who uses the FA or FP title is duly qualified in regard to both technical skills and standards of conduct.

Alternative Pathways/Challenge Exams

We first wish to make clear that we do not support grandfathering of individuals into the Framework: having years of experience alone does not necessarily mean those individuals are professionals worthy of a restricted title.

At the same time, we are mindful that there is a sizeable cohort of practitioners who have been working professionally and ethically for decades without having a credential and, due to the demands of their well-established practices, may not have sufficient time to enroll in and complete a full credentialing program before a Framework comes into force, even if a transition period is made available.

Therefore, we would support the idea of allowing credentialing bodies to develop alternative pathways to their approved credentials, such as through a condensed course and/or challenge exam. It would be incumbent on the credentialing body offering the alternative pathway to demonstrate to the FCNB that all aspects in the respective competency profiles are fully addressed and that consumer protection is in no way compromised.

The credentialing body could restrict access to the alternative pathway to specific candidates, such as those advisors and planners that have practiced for a certain number of years and have a clean disciplinary history, and the alternative pathway itself could be available for a limited time period after a Framework comes into effect. While these details are still to be sorted out, we believe that having an alternative pathway is important to accommodating the variety of seasoned FAs and FPs.



4. CONCLUSION

We thank the FCNB for this opportunity to comment on this important initiative. By implementing a robust title protection framework that aligns with consumer expectations, we can enhance consumer protection by promoting higher standards and eliminating uncertainty about the quality of their financial professionals.

We support the FCNB's work to obtain better outcomes for consumers. Bringing real meaning to the titles consumers trust today will markedly improve consumer outcomes – and with consumers front-of-mind, we are confident that our recommendations in this submission will resonate. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Rob Eby, CFP, RRC
Chair, National Board of Directors