

December 13, 2021

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

SENT VIA ONLINE SUBMISSION SYSTEM

Dear Sirs/Mesdames,

**Re: Consultation [2021-018]  
Updated Proposed Financial Professionals Title Protection Application Guidance and  
Proposed Supervision Guidance**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial Services Regulatory Authority of Ontario (“FSRA”) in regard to consultation [2021-018], *Updated Proposed Financial Professionals Title Protection Application Guidance and Proposed Supervision Guidance* (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. REVISED PROPOSED APPLICATION GUIDANCE

### 3.1 Comments on Additions and Revisions

- a) Putting the client's interests first. We begin our comments on the Application Guidance by voicing our support for FSRA's inclusion of the expectation that a credentialing body's ("CB") code of conduct require its credential holders to put the client's interest first. This is something that Advocis has long prioritized in our own *Code of Professional Conduct*.<sup>1</sup>

The purpose of the title protection framework (the "Framework") is to establish standards that consumers can rely upon, and this all begins with an underlying commitment to have the client's interests drive the professional judgment and conduct of the financial advisor ("FA") or financial planner ("FP"). Like other professions with this commitment, we believe the disciplinary infrastructure that judges adherence to this standard must include representation by the professional's peers.

- b) Information sharing amongst CBs. The Application Guidance states that a CB's application for recognition should address how the CB would notify a regulatory body of complaints received about the conduct of a credential holder that is also a registrant and/or licensee with that regulatory body. The accompanying Financial Professionals Title Protection Framework Second Consultation Summary Report<sup>2</sup> (the "Summary Report") goes somewhat further and states "[a]s per the proposed Application Guidance, CBs should demonstrate that they have processes and procedures with respect to sharing information among approved CBs and regulatory bodies."

We seek clarification on FSRA's expectations. While we agree that information sharing between CBs is important for the integrity of the Framework and consumer protection, we are concerned that the commentary in the Summary Report suggests that potential CBs should have information sharing agreements in place with other prospective CBs as part of their CB application. Perhaps instead CBs could commit to the principles behind information sharing in their application, but the pursuit of actual agreements should only follow an entity's recognition as a CB by FSRA.

- c) Disclosure of credentials. We support the requirement for CBs to have a process in place to require their credential holders to disclose their approved credential(s) to consumers in a clear and timely manner. The need for credential disclosure is particularly important as it becomes evident that the minimum standards for the FA title may allow for credentials that are focused on product, not advice; we reiterate our position on this in

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<sup>1</sup> Advocis, *Code of Professional Conduct*. At: <https://www.advocis.ca/pdf/Advocis-CPC.pdf>.

<sup>2</sup> FSRA, *Financial Professionals Title Protection Framework Second Consultation Summary Report* (May 2021) at: <https://www.fsrao.ca/industry/financial-planners-and-advisors/financial-professionals-title-protection-framework-second-consultation-summary-report>.



Section 3.2(a) below. What is clear is that not all credentials are created equal – and particularly for the FA title, some could be materially more rigorous and client-centric than others.

As we stated in our November 2020 response to FSRA’s first consultation on the Framework, without disclosure of the specific credential granting the intermediary the right to use the title, the Framework could incent a race to the bottom: prospective title users, seeking the respect and consumer trust of a restricted title, would naturally seek the easiest/least rigorous way of achieving that access.

In contrast, by requiring the disclosure of the recognized credential (along with the fulsome consumer education campaign referenced in the Application Guidance), consumers would benefit from an understanding of the substantial differences amongst the credentials that grant a particular title. This would create consumer demand for those FAs and FPs who have earned higher-quality credentials, thus incenting prospective title users to pursue those quality credentials. Proper disclosure could promote a race to the top.

- d) Disclosure of alternate complaint handling options. Our understanding of the new disclosure requirement for CBs regarding alternate complaint handling options is that it is triggered *upon receipt of a complaint* regarding a credential holder. If so, we support this proposal as we believe in allowing consumers to make an informed choice as to how they wish to proceed. It is important this messaging is delivered in plain language and an abundance of information and options do not overwhelm or otherwise deter the consumer from acting. The development of the choice architecture, framing of the options and selection of the default will loom large here on consumer outcomes.

As FSRA is expecting that the consumer-facing disclosure include key points about the implications (pros and cons) of selecting a particular CB to pursue the complaint, we believe this messaging should be uniform and balanced across the CBs. The forthcoming FSRA Stakeholder Advisory Group on the FA/FP sector could be the appropriate forum to develop harmonized sector-wide consumer facing messaging.

- e) Publicly available disciplinary information. FSRA expects that CBs will make information available to the public regarding disciplinary action taken against current and former credential holders, with a level of detail sufficient to give consumers an understanding of the key facts and outcome of the case.

We would like to know if FSRA has an expectation of how far back into history that archive should be available. For example, if a credential holder had a disciplinary action taken against him x years ago (e.g., 10? 20?), would details of that action still need to be



available publicly today? Would it matter if that individual has ceased to be a member of the CB, and if so, how long ago that departure occurred?

- f) Consumer education campaigns. We are strongly supportive of FSRA's plans to develop consumer education campaigns to support the Framework, including the titles and the credentials that evidence FA and FP professionalism. We would simply like to restate our eagerness to work with FSRA and engage our 6,500 members in the province to help personally deliver the message to the thousands of families and small businesses they serve.

### 3.2 Comments on Further Requested Changes

- a) FA baseline competency profile. We recognize the FA baseline competency profile is not the focus of this current consultation, so we will limit our comments here. First, we support the addition of the requirement to "identify appropriate asset allocation based on the client's unique and personal financial circumstances" which applies to both the FA and FP baseline competency profiles.

We remain very concerned that the FA baseline competency profile continues to only require an understanding of common investment products (with in-depth knowledge and expertise in one or more of those products) with only an ancillary understanding of how an investment action might touch upon other technical areas. As proposed, we believe it is likely that an investment product sales license will qualify for the FA title, which would be an inferior outcome for consumers compared to the unbiased, product-agnostic approach taken in the FP curriculum.

A product-focused sales license should not qualify to make its holder a professional meriting public confidence and trust. Training that is fundamentally based on product sales handcuffs the client relationship 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. 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.

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. In fact, systematizing product bias at the FA level would undermine FSRA's own expectation that the credential holder prioritizes the client's interests. 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.



It is particularly difficult to accept a two-tiered approach to client-centricity when considering the primary objective of the Framework: to establish minimum standards for use of the FP and FA titles so that consumers and investors can have confidence that the persons using these titles conduct themselves appropriately when providing financial planning or financial advisory services.

Respecting that the baseline competency profiles are not the focus of this Consultation, we will leave this discussion on the table. Should FSRA wish, we would be interested in engaging further on this topic. In the meantime, we provide links to our previous submissions on this topic to FSRA and the Financial and Consumer Affairs Authority of Saskatchewan in the footnotes below.<sup>3</sup>

- b) Credentialing body not-for-profit status. We note that the Application Guidance does not require that a prospective CB be a not-for-profit entity. We believe that any entity that is delegated quasi-regulatory duties by FSRA should have, as its singular focus, the establishment and enforcement of rigorous standards for FAs and FPs. Faithfully fulfilling this mission requires a level of impartiality that cannot be achieved in a for-profit model.

Where directors and officers are bound to prioritize the interests of shareholders, moral hazards and conflicts of interest arise that make it challenging to maintain a steadfast focus on quality standards – especially where reducing those standards could generate economic rents. For example, a profit-motivated CB could make its credential easier to achieve to attract marginal students at the expense of advisor proficiency and consumer protection.

A for-profit motive is particularly problematic in a context where a product sales license can qualify as a credential. We can see an environment where for-profit product dealers act in lockstep with for-profit CBs: it would be in their mutual interests to maximize the number of salespersons completing the credential to take advantage of public trust in a restricted title, with secondary regard for the quality of the curriculum and the client-facing skills of the credential holders. We must avoid these systemic conflicts of interest.

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<sup>3</sup> Links to our responses as are follows:

- FSRA Consultation [2020-001] (November 12, 2020): [http://www.advocis.ca/regulatory-affairs/RA-submissions/2020/2020-11-12\\_Advocis\\_Response\\_to\\_FSRA\\_FAFP\\_Framework.pdf](http://www.advocis.ca/regulatory-affairs/RA-submissions/2020/2020-11-12_Advocis_Response_to_FSRA_FAFP_Framework.pdf).
- FSRA Consultation [2021-003] (June 21, 2021): [https://www.advocis.ca/regulatory-affairs/RA-submissions/2021/2021-06-21\\_Advocis\\_Response\\_to\\_FSRA\\_TP\\_Consultation\\_%5B2021-003%5D\\_v6.pdf](https://www.advocis.ca/regulatory-affairs/RA-submissions/2021/2021-06-21_Advocis_Response_to_FSRA_TP_Consultation_%5B2021-003%5D_v6.pdf).
- FCAA Consultation [2021-001] (September 1, 2021): [https://www.advocis.ca/regulatory-affairs/RA-submissions/2021/2021-09-01\\_Advocis-FCAA\\_reConsultation\\_on\\_TP\\_Framework\\_v3.pdf](https://www.advocis.ca/regulatory-affairs/RA-submissions/2021/2021-09-01_Advocis-FCAA_reConsultation_on_TP_Framework_v3.pdf).



One of the key principles of the Framework is to ensure consumer confidence through the oversight of CBs. To further this principle, a CB's work must be done in the public interest, with a clear mind and without distraction – which means without consideration of private financial gain.

- c) E&O insurance. The Application Guidance speaks to a requirement that CBs maintain liability insurance regarding their duties as CBs. We agree with this, and we continue to feel that individual credential holders should be required to maintain their own errors & 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 CBs should require their credential holders to maintain errors and omissions insurance in an amount of at least \$1 million in respect of any one occurrence with extended coverage for loss resulting from fraudulent acts. This requirement aligns with FSRA's expectations of its life licensees and is a fundamental safeguard for consumers accessing professional advisory and planning services.

### **3. REVISED PROPOSED SUPERVISORY GUIDANCE**

We appreciate that FSRA has considered stakeholder comments and revised Appendix 1, *Titles that could reasonably be confused with FP and FA*. We strongly support the removal of the “examples of titles that likely would not reasonably be confused with FP and FA” which appeared in the previous publication of this guidance. As we stated in our previous response, we believe the inclusion of a ‘green-light’ list only emboldens those who would seek to avert the spirit of the Framework.

Nonetheless, we believe FSRA's approach to reasonably confusing titles remains too narrow. The general syntax of titles presumptively running afoul of the restricted titles appears to be the same as in the previous publication:

x Financial Planner; Financial x Planner; Financial Planner/Planning x; and  
x Financial Advisor; Financial x Advisor; Financial Advisor/Advising x,

where x is any other term.

Based on the foregoing, it appears that titles such as Financial Wealth Planner or Financial Investment Advisor would be prohibited – but very similar titles such as Wealth Planner or Investment Advisor would not. We suspect the latter two titles would engage very similar impressions and expectations amongst consumers as the first two titles. With the approach to the restricted syntax set so narrowly, we believe this proposal will not achieve its policy



objective of making it easy for consumers to understand when they are working with a regulated title holder.

We reiterate the need to take the expansive approach we recommended in our response to FSRA's previous consultation: the use of the title "Advisor" or "Planner",<sup>4</sup> in conjunction with a financial concept, could reasonably confuse consumers into believing that they are dealing with an intermediary who is qualified under the Framework. To advance the spirit of this principle, we believe FSRA should take the following approach regarding prohibited permutations:

- y Advisor; y Planner (where y is any term that reasonably brings about connotations of financial services or financial specialities)
  - o 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)
  - o Examples:
    - Planner, ABC Bank
    - Advisor, DEF Investments

In the examples listed above, part of a restricted title is used in connection with financial services concepts or entities. This connection could reasonably confuse consumers about the qualifications of the intermediary using that title, placing those permutations within the ambit of the Framework.

More generally, before finalizing its approach to reasonably confusing titles, we urge FSRA to undertake consumer research on various permutations of the FA and FP titles including the recommendations we have made above. If the intended outcome of the Framework is to give the public confidence about the titles used by their financial service intermediaries, it is critical that this policy work be driven by current and relevant data on consumer perceptions of these titles. If we do not fully understand and address the consumer's perspective, the Framework is ultimately missing its mark.

#### **4. CONCLUSION**

We thank FSRA for this opportunity to comment on the updated proposed Application Guidance and Supervision Guidance. We believe the guidance has taken a meaningful step forward with the expectation that a CB's credential holders will prioritize the interests of their

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<sup>4</sup> And alternate spellings and translations thereof, as explained by FSRA in its draft Supervisory Guidance.



clients. The consumer-facing disclosure of credentials and complaint handling options will empower consumers and promote positive industry competition.

As we are reaching the end of the consultation process and the finalization of the Framework's rules, the focus will soon shift to the implementation phase and the fresh challenges that will bring about. We would like to take this opportunity to say it has been a pleasure working with the FSRA team over the past several years. The Framework is new to all of us and we may still disagree on some of the details. But we have always felt that FSRA acted professionally, pragmatically and in the public interest.

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](mailto:jryu@advocis.ca).

Sincerely,

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

Rob Eby, CFP, RRC  
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