

September 30, 2023

Manitoba Finance
Fiscal Policy and Corporate Services
824-155 Carlton Street
Winnipeg, MB R3C 3H8

Sent via email: FINADM_CORPSERV@gov.mb.ca

Dear Minister Cliff Cullen,

Re: Consultation Paper – Financial Planner Title Protection in Manitoba

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regard to Manitoba’s Consultation Paper – Financial Planner Title Protection (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. OUR COMMENTS

We commend the Government of Manitoba for taking initiatives in regulating the titles of Financial Advisor (“FA”) and Financial Planner (“FP”). We strongly support the creation of a title protection framework (the “Framework”) that protects Manitobans. Below, we discuss our answers to the specific questions of the consultation.



Q.1 Should Manitoba Government proceed with legislation to prohibit individuals from calling themselves FA or FP unless they process appropriate qualifications?

We strongly believe that creating a title protection framework is not only essential but also long overdue. A properly implemented Framework enhances consumer protection. The Framework sets higher professional standards and removes uncertainty about the quality of financial professionals using those titles by restricting their use to those who have satisfied objective criteria. We believe that this initiative must fundamentally be about consumer protection. The FA and FP titles are consumer-facing and ubiquitous in their use.

Research studies show that the majority of consumers believe that FA and FP titles are already regulated, even when there are no regulations in place.¹ Research surveys of Manitoba residents, commissioned by Advocis in 2018, painted a similar picture.² Findings of these surveys demonstrate that most respondents mistakenly believe that FAs are already regulated and that 86% of Manitobans call for and support legislation regulating the financial professional titles.³

These findings highlight that consumers view FA and FP titles as indicative of professionalism. Consumers rely on these titles to find professionals who possess the skills and knowledge to assist them with reaching their financial goals. Lack of regulation in this space coupled with the significant amount of trust and reliance consumers put on these titles expose Manitobans to vulnerability and risks. This Consultation is a crucial move in resolving this gap in the industry and protecting consumers.

Q.2 If so, should the overall approach of the legislation follow the model adopted in Ontario and proposed in Saskatchewan and New Brunswick, where the regulator approves credentials and credentialing organizations that are considered to have appropriate proficiency, ethical, continuing educational and disciplinary requirements?

We invite Manitoba to follow the approaches undertaken by Ontario and the proposed frameworks in Saskatchewan and New Brunswick where provincial regulators review credentials and credentialing organizations. For example, the Financial Services Regulatory Authority (FSRA) of Ontario conducted a review of the resources, operational processes, and disciplinary structure of the credentialing bodies that it approved. We suggest that Manitoba leverage the work conducted by FSRA to allow for an expedited review of credentialing bodies. This would reduce regulatory costs that are passed on to industry participants and consumers. We recognize that the base line competency profiles (“BCP”) for FA and FP titles may vary

¹ Findings of FSRA-commissioned consumer research conducted by Forum Research Inc., between November 12 and December 3, 2020, show that 56% of survey respondents assumed that FP and FA titles are regulated by a government regulator. For more information, please see: www.fsrao.ca/industry/financial-planners-and-advisors-sector/notice-changes-and-request-further-comment-fotp-rule#appendixd.

² Advocis/Abacus Data, “Regulating Financial Advisors: A Survey of 800 Manitoba Residents” (October 26th – November 1st, 2018). At: imilegacy.advocis.ca/secure/govt-relations/2019-MNTBA-Advocis-Poll.pdf.

³ *Ibid.*



among provinces. In the event that the BCP substantially vary, Manitoba can conduct its own review of the credentials and credentialing bodies.

- Q.3** Assuming it should, how should some of the differences between the regulatory regimes implemented or proposed in those three provinces be resolved? In particular,
- Should the regulator in Manitoba be vested with the broad investigatory and enforcement powers given in the Saskatchewan and New Brunswick legislation? Alternatively, is it the more limited ability to issue compliance orders in Ontario more appropriate?
 - Should the more simplified method for approving credentialing bodies previously approved in another Canadian jurisdiction, set out in the Saskatchewan and New Brunswick legislation, be adopted in Manitoba?

We support a Framework that encompasses effective enforcement. Relying solely on a compliance order might not effectively prevent a malicious individual from harming Manitoban consumers. As a result, granting regulators the authority to levy fines and other sanctions against those who breach the Framework would serve as a valuable tool in upholding the integrity of the system.

The capacity to impose more severe penalties should be accompanied by heightened standards for administrative fairness and the principles of natural justice. As the severity of the penalties increases, the regulators must correspondingly undertake regulatory measures that uphold the rights of those involved, ensuring the preservation of administrative rights for respondents, and maintaining stakeholders' trust in the system.

Further, we support the creation of a simplified process for the approval of credentialing bodies and credentials that are already recognized by other Canadian jurisdictions. Streamlining the process will reduce unnecessary steps and regulatory complexities, leading to cost-effective operations. This will, in turn, enhance consumer experience by providing clarity about trustworthy credentialing bodies and certifications that serve as credible indicators of a professional FAs and FPs.

In the absence of a streamlined approval procedure, multiple provincial regulators will duplicate their efforts in approving the credentialing bodies that operate across multiple jurisdictions. This redundancy will add cost on the industry and impose additional pressure on the already limited resources of regulators. The expenses linked to this extra regulatory load will eventually be transferred to consumers, as industry members attempt to recover costs by implementing higher fees. Further, some credentialing bodies may opt out of operating in certain jurisdictions due to the disproportionate cost-to-benefit ratio. This in turn will reduce competition in the financial advice and planning industry in Manitoba.



A simplified approval process will address these issues. Such a process will lower the regulatory burden and benefit consumers, without a reduction in consumer protection. Therefore, we support a simplified, reciprocal approval process between Canadian jurisdictions with substantially similar title protection frameworks.

- Q. 4** How important is it that the legislative requirements in Manitoba be harmonized with the regulatory regimes adopted in Ontario and proposed in Saskatchewan and New Brunswick, particularly regarding:
- The definitions of FP and FA
 - The application process for recognized credentials and credentialing bodies and,
 - The ongoing compliance requirements for recognized credentialing bodies.

We generally support harmonization. However, this goal should not compromise consumer protection. On this note, provinces must strive for establishing a title protection regime that better protects consumers. We believe that the benefits of raising the professionalism standards for consumers within the financial advice sector outweigh any costs associated with decreased harmonization between provinces.

We believe Manitoba’s Framework should be underpinned by consumer protection and public benefit. Achieving this necessitates the protection of both FA and FP titles. While FAs and FPs are related, the latter is a specialization of the former. Hence, the educational training and consequent designations for both titles must be treated separately. Neglecting to regulate both titles would mean failing to understand how consumers access financial services professionals in the marketplace.

Further, it is important that both titles be upheld by high standards. Research surveys show that most consumers do not differentiate between the FA and FP titles and that they expect the same standards of professionalism from users of both titles.⁴ Regardless of whether a professional uses the FA or FP title, consumers rightly expect broad-based and comprehensive advice that prioritizes the client’s interests.

To establish a higher standard, it is crucial to ensure minimal to no substantive difference between the BCP for FAs and FPs. A qualifying credential for either FA or FP title should offer rigorous education regarding both technical knowledge and client relationship management. On the technical front, this means requiring that credential holders demonstrate proficiency in multiple substantive areas, so they will be prepared to provide holistic advice. On the client relationship front, this implies adopting a “client-first” mindset, focusing on understanding and

⁴ 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-andadvisors-sector/notice-changes-and-request-further-comment-fptp-rule>.



serving the client’s best interests rather than utilizing sales training to match a product with a consumer.

Raising the bar aligns 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. However, their roles have evolved, with the client relationship now taking centre stage. Both FAs and FPs should understand their clients’ financial priorities, needs and objectives. Any discussion and transaction involving suitable products should only form part of the strategy to achieve those priorities.

On this note, we wish to emphasize our strong objections concerning FSRA’s FA BCP. The FA BCP in Ontario bases its credential expectations for FAs on investment actions and expertise in investment products. Essentially, a sales license for investment products would be sufficient to qualify as an FA credential. This could lead to a considerably less favourable outcome for consumers compared to the impartial, and product-agnostic approach adopted in the FP curriculum.

A product-focused sales license should not qualify as a credential that makes its holder a professional deserving 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. Embedding product bias in the FA BCP would undermine Manitoba’s expectations that the credential holder act ethically in identifying or managing conflicts of interest. 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. Consumers seek qualified and professional financial advice that prioritizes their needs and interests while making product transactions ancillary to that advice. The Ontario’s FA BCP fails to recognize the centrality of this professional relationship.

Ontario will be reviewing its framework in the coming years, during which we will emphasize this gap within Ontario’s title protection framework. The Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”), the regulatory body in Saskatchewan, has also turned its attention to this issue and has sought input on an enhanced FA BCP, to which we have provided



our response.⁵ Manitoba is in a great position to advance this initiative by adopting a Framework where both titles are protected and backed by the high standards they deserve.

Q. 5 What degree of regulatory coordination is desirable among regulators in Canada that oversee FP title protection, now or in the future?

We believe that regulatory coordination is crucial for effective enforcement, adapting to changes, and achieving consumer protection goals. Ideally, there should be a reasonable level of coordination among provinces to ensure consistent standards and practices across the country. This coordination can help maintain the integrity of the financial services industry and protect consumers from unqualified or fraudulent individuals using FA or FP titles.

We acknowledge that different approaches to the title protection framework can impede regulatory coordination efforts. That said, we believe that the title protection framework across Canada will gradually harmonize in the years following initial implementation, as financial advice and planning increasingly become recognized professions.

In the future, a potential optimal resolution could involve establishing a quasi-national system, wherein provinces with title protection frameworks collaborate. Within this model, each credentialing body would be overseen by a primary provincial regulator, and other relevant provincial regulators could reciprocate the primary regulator's decisions regarding the credibility of that body and its credentials. This model draws parallels to the interprovincial passport system used for evaluating prospectuses, a system that nearly all provincial securities regulators have subscribed to.

A concern arises regarding the potential requirement for credentialing bodies to pay separate fees when operating across multiple jurisdictions, which could significantly impact the cost structure of these organizations. These fees can swiftly accumulate, particularly when dealing with a substantial number of credential holders. As credentialing bodies increase their fees to cover the expenses incurred in multiple jurisdictions, these costs are ultimately passed down to consumers seeking services from professionals holding these credentials.

The financial burden imposed by these fees may dissuade new credentialing bodies from entering the market, subsequently reducing competition. Smaller organizations and individuals striving to establish themselves in the industry may encounter financial challenges in navigating the intricate and expensive process of becoming a credentialing body in multiple jurisdictions. This, in turn, could result in a less competitive market, potentially constraining consumer choice and driving up prices due to diminished competition.

⁵ For further information please see: www.advocis.ca/wp-content/uploads/2022/09/2022-09-22-Saskatchewan-Second-Title-Protection-Consultation.pdf.



It is imperative that provincial governments and regulators address these challenges and contemplate policies that lead to the equitable distribution of fees, fostering a competitive marketplace.

Q.6 How broad should the title protection regime be in terms of the titles that are subject to it in addition to FA and FP given the relatively narrow approach taken in Ontario and the broader approaches taken in Quebec and under consideration in Saskatchewan and New Brunswick?

We support a principles-based approach to the prohibition of similar titles. We believe that the principle which should underpin Manitoba’s approach must be based on a consideration of whether the use of the title “advisor” or “planner”, 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 the connotations of financial services or financial specialties)
 - 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 specialty)
 - 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. 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, Manitoba should act to ensure these permutations are not permitted.

To assist industry, Manitoba 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. However, we do not agree with FSRA’s proposal to include “examples of titles that likely would not be 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.

Q. 6 What should be the process if the recognition of a credentialing body or one of its credentials is revoked?

We believe that consumer protection can be achieved while treating credential holders fairly in the event that a credentialing body loses its approval. In the short-term, supervisory responsibility over the credential holders of the credentialing body suffering such event "Default Event" (the "Defunct Credentialing Body") should be transferred to another credentialing body that is continuing to operate within the framework (each, a "Remaining Credentialing Body"). In the long run, the Remaining Credentialing Body would have an incentive to create transition plan(s) to bring credential holders of the Defunct Credentialing Body under their jurisdictions.

A. Short-term Supervision:

In the short-term, the focus must be ensuring that consumer protection is not compromised because of the Default Event. To achieve this, the government/regulator and the remaining credentialing bodies should meet expeditiously (within 30 days of the Default Event). The purpose of that meeting should be for the regulator to determine which of the Remaining Credentialing Bodies shall be appointed to oversee the credential holders of the Defunct Credentialing Body in the immediate term (the "Appointee Credentialing Body"). In making this determination, the government should be guided by a consideration of which Remaining Credentialing Body has the desire and capacity to be appointed to this role, and the government's views on the performance of the Remaining Credentialing Bodies as a quasi-regulator under the framework to that point.

For an interim period (up to one year), the Appointed Credentialing Body will oversee the credential holders of the Defunct Credentialing Body. The Remaining Credentialing Bodies and the government will communicate with credential holders and the broader public that complaints regarding credential holders of the Defunct Credentialing Body should be directed to the Appointed Credentialing Body. To support the additional obligations of the Appointed Credentialing Body during the interim period, Manitoba may wish to reallocate some funding from the fees paid by the Defunct Credentialing Body to the Appointed Credentialing Body. These resources can be used to retain temporary staff and other supports required for the increased investigative and other demands.

Provided that they maintain themselves in good standing, the credential holders of the Defunct Credentialing Body should be permitted to continue using the protected title(s) under the supervision of the Appointed Credentialing Body during the interim period (one year). During the interim period, these credential holders would continue to disclose the credential they



earned from the Defunct Credentialing Body, notwithstanding the fact that the conferring entity is defunct, until they earn a new credential that confers the right to a title.

This proposal will maintain consumer protection and credential holder supervision through the interim period.

b. *Long-term Solution:*

We proposed a fair long-term solution based on two key considerations. First, the Remaining Credentialing Bodies have an incentive to bring the credential holders of the Defunct Credentialing Body into their membership. Second, the credentials are fundamentally similar given that they each satisfy the applicable FA or FP BCPs.

Thus, within three months of the Default Event, the Remaining Credentialing Bodies may voluntarily develop and submit *ad hoc* transition plans (“Credential Transition Plan”) to grant their credential to the credential holders from the Defunct Credentialing Body. These Credential Transition Plans will explain what actions if any are required to transition to the Remaining Credentialing Body. Such transitional requirements should take no longer than six months to complete.

After those Credential Transition Plans are approved, the credential holder from the Defunct Credentialing Body would have six months to complete the requirements. Once all requirements are completed, the Remaining Credentialing Body would grant its credential to the credential holder, with that credential holder now becoming a full member of that Remaining Credentialing Body. From that point on, the credential holder’s *new* credentialing body will take over supervision from the Appointed Credentialing Body (assuming the appointed Credentialing Body is different from the credential holder’s new Credentialing Body). Regarding credential disclosure, the credential holder would immediately cease disclosing the credential of the Defunct Credentialing Body in favour of the new credential just earned.

We believe this approach will maintain consumer protection and credential holder supervision throughout. It also treats credential holders fairly, minimizes barriers to their continued



participation in the industry, and ensures that the transition from the Defunct Credentialing Body is orderly and transparent.

Q. 8 How important to the proposed regulatory regime is a single, central, public database, listing all individuals entitled to use these titles? The legislation in Ontario, Saskatchewan and New Brunswick all contemplate that the regulator will post lists of approved credentials and recognized credentialing organizations on their website, but do not call for a central database listing all approved individuals (although In Ontario each recognized credentialing organizations maintains a publicly accessible list of their respective members). FSRA has stated that intends to develop such a central database that the public can access but this is not yet in place.

We believe that individuals using the FA and FP titles should be obligated to disclose the credentials that qualify them for those titles. The establishment of a centralized public database that reveals the names of individuals entitled to those titles would enhance consumer protection. Such a database would empower consumers to verify their advisors’ credentials and access information about any disciplinary actions taken. If consumers need to file a complaint, they can readily confirm the credentialing body’s identity and engage in the body’s compliant, investigation, and disciplinary processes.

3. CONCLUSION

Financial advice is critical to modern consumers’ well-being and it is our collective responsibility to establish and enforce high standards that ensure the quality of that advice. Introducing a title protection framework would be a meaningful step forward in protecting Manitoba’s consumers. We would welcome the opportunity to further discuss this initiative with you.

Should you have any questions, please do not hesitate to contact the undersigned, or Paniz Ghazanfari, Associate Director – Legal & Regulatory Affairs at pghazanfari@advocis.ca.

Sincerely,

“original signed by”

Harris Jones, CPA, CA, CFP, CH.F.C., TEP
Interim President and CEO

“original signed by”

Eric Lidemark, CFP, CLU, CH.F.C., CHS
Chair, National Board of Directors