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*Advancing Professional
Financial Planning*

FP CANADA RESPONSE TO FSRA CONSULTATION 2021-003 – *FINANCIAL PROFESSIONALS TITLE PROTECTION RULE AND GUIDANCE*

June 2021

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INTRODUCTION

FP Canada™ is pleased to respond to Financial Services Regulatory Authority of Ontario (FSRA) Consultation 2021-003 – *Financial Professionals Title Protection Rule and Guidance*.

A national professional body working in the public interest, FP Canada is dedicated to championing better financial wellness for all Canadians by certifying professional financial planners and leading the advancement of professional financial planning in Canada. There are approximately 21,000 professional financial planners in Canada, including more than 9,000 in Ontario who, through CERTIFIED FINANCIAL PLANNER® certification and QUALIFIED ASSOCIATE FINANCIAL PLANNER™ certification, meet FP Canada’s standards.

COMMENTS ON THE PROPOSED RULE AND GUIDANCE

FP Canada appreciates the significant work that FSRA and the Ontario government have put into the development and building out of the *Financial Professionals Title Protection Act, 2019* (the FPTPA) to date. We continue to believe that this legislation, once in effect, will provide critical clarity to consumers in need of professional financial planning and advice services, and will ultimately enhance consumer protection.

In reviewing these revised and new consultation proposals, we are generally supportive of the changes reflected in this version of the Proposed Rule and accompanying Guidance documents, which represent a positive step forward for consumer protection and the integrity of the framework.

With that said, we believe there is still room for further enhancements that will help ensure the new framework truly serves the best interests of consumers, and will support the seamless, efficient operation envisioned by FSRA.

We have organized our comments around the four key consultation areas, including:

- The revised Proposed Rule
- The new Supervision Guidance
- The revised Application Guidance
- The newly proposed fee structure

1. The Proposed Rule

Transition Periods

We are pleased that FSRA has shortened the transition periods for use of both the “financial planner” and “financial advisor” titles. This change serves the interests of consumers and is in keeping with the FPTPA’s consumer protection goals.

In our view, the transition period for use of the “financial planner” title should further be shortened to three years. For those individuals who do not currently hold a financial planning credential but intend to obtain one so as to continue using the “financial planner” title, three years is more than sufficient time to do so.

With that said, we are sensitive to the fact that such a change may necessitate another round of consultations on the Rule, which will only serve to slow down implementation of this much-needed framework. If this is the case, then in the interest of moving forward, we would prefer the Rule be left as is.

Exemptions

We are pleased FSRA has not included any exemptions from the FPTPA in this revised version of the Rule.

The FPTPA was developed to regulate title use for consistency, and to reduce consumer confusion and enhance consumer confidence. Granting exemptions, especially so early in the process, would only serve to contradict the fundamental purpose of the legislation.

Consumers will be best served by knowing anyone calling themselves a “financial planner” or “financial advisor,” using an abbreviation of either of those titles, an equivalent in another language or a title that could reasonably be confused with either of those titles is doing so based on obtaining a credential that has been thoroughly evaluated by FSRA against clear, public interest standards, consistent with the legislation, from a credentialing body (CB) that has undergone a rigorous approval and regular review process.

2. Supervisory Framework Guidance

Titles That Could Reasonably Be Confused with Financial Planner/Financial Advisor

In our response to the first consultation on the Proposed Rule, in keeping with the FPTPA, we recommended FSRA create a list of titles that it felt could be “reasonably confused with” the “financial planner” and “financial advisor” titles, and therefore subject to capture and enforcement. We appreciate that FSRA has now proposed such a list of captured titles as part of its Supervisory Guidance.

With that said, we have significant concerns with the approach FSRA has taken to identifying titles that it will *not* prohibit or enforce.

Specifically, the inclusion of the list of “examples of titles that likely would not reasonably be confused with FP and FA” only serves to provide individuals who do not want to obtain an approved credential with a sanctioned list of titles to use to circumvent the legislation. We understand one of FSRA’s goals, in identifying captured titles, was to enhance their value to consumers through regulatory recognition, creating appeal for regulated titles and drawing individuals toward their use. However, we do not believe this will be achieved given the list of titles FSRA has published and indicated it will *not* capture for enforcement.

In fact, we believe this list will have the opposite effect, providing individuals with a FSRA-sanctioned list of titles that they can use without any training or credentials. We see this as contradictory to the legislation's goals of creating consumer clarity and confidence. **We strongly recommend FSRA refrain from publicizing a list of titles it will not enforce against in the Rule and Guidance.**

It is much more likely that individuals who do not currently hold a credential will voluntarily shift to a regulated title over time if numerous, near-identical alternative titles are not implicitly endorsed by FSRA, which will ultimately provide clarity and benefit consumers. We urge FSRA to give the new framework an opportunity to succeed by not undermining it from the outset.

While our strong belief is that it is not in the public interest or to the benefit of consumers for the Guidance to include a list of titles that FSRA will not enforce against, if FSRA determines to ultimately to publish such a list in the interest of providing non-credentialed industry participants with clarity, then **we strongly recommend FSRA only do so at a later date, once it has completed a methodical, structured approach to determining which titles could not be considered “reasonably confusing” to consumers.** For example, in setting out such a list, FSRA could consider basing it off a set of well-founded guiding principles, using empirical research to determine what types of titles the public tends to confuse with “financial planner” or “financial advisor.” Data from qualitative and quantitative research with consumers would help provide an objective basis for identifying titles that could reasonably be viewed as confusing.

Finally, with respect to the examples of titles that FSRA considers reasonably confusing and will seek to enforce, **we recommend FSRA add the following titles (and their various permutations) to the proposed list. These titles are widely used by financial planning credential holders today, and they could reasonably and wrongly be construed by consumers to imply the individual has the broad-based, holistic knowledge and skills, or otherwise meets the legal criteria, to be a “financial planner.” We therefore urge FSRA to prohibit the following titles:**

- Wealth Planner
- Money Planner
- Retirement Planner
- Financial Manager
- Wealth Manager
- Money Manager
- Financial Consultant
- Wealth Consultant
- Money Consultant

Monitoring and Supervision

In the interest of consumer protection, FP Canada supports rigor when it comes to oversight of CBs by FSRA. Given FSRA's central oversight role, we also agree with the merits of requiring CBs to regularly report their oversight and enforcement activities to FSRA.

In considering the proposed approach however, we do have some concern about what “annual” compliance reviews of approved CBs will entail in practice. This is especially important to consider in

the context of Saskatchewan and eventually other provinces following Ontario's approach in developing their own title protection frameworks.

We would note that the approval process and criteria for CBs are robust, and will help ensure only well-established, experienced CBs are approved in the first place. As such, **we recommend, consistent with what was shared on FSRA's technical briefing, that FSRA adopt a risk-based approach to monitoring CBs. As Saskatchewan and other provinces develop their own frameworks, we also urge FSRA to work with other jurisdictions to develop a pan-Canadian perspective around harmonization of oversight.**

Under this approach, we would expect that FSRA would of course retain the power to conduct audits of CBs at any time for any reason (such as when there is a complaint).

Public Registry

FP Canada supports the consumer protection intent behind the plan for a consolidated public registry. FP Canada maintains a publicly searchable database of its own credential holders and has significant experience in this regard.

Given the proposed scope of the public registry, which is to inform consumers of current credential holders and the CBs which conferred them, it will be important that there be a dynamic link back to CB websites where consumers can get more detailed information on the credential holder, the CB, and the credential itself. As such, we support the language in the Supervisory Framework in which the public registry could "also include links to additional information on credential holders that will be maintained by approved credentialing bodies."

In contemplating what the public registry will look like, **we recommend that it be organized by the legal names of credential holders, but searchable by both legal names and preferred names, in the interest of providing consumers with options and clarity when using the registry.**

With the inherent complexity involved, we anticipate it will take time for the registry to be fully developed and operational. As we do not want the registry's creation to slow down implementation of the rest of the framework given its critical importance to consumers, if necessary, **we also recommend FSRA start the transition period by linking consumers directly to existing public CB registries of credential holders.**

Finally, while supportive, we would flag some potential issues FSRA will want to consider as it moves forward with its creation:

1. **Duplication** – Many "financial planner" and "financial advisor" title users who will presumably be on the public registry hold multiple credentials that are likely to be approved. It will be important for FSRA to address this duplication in a way that is easy for consumers to understand.
2. **Concurrent Disciplinary Processes** – Related to the issue of duplication, it will be important that the registry clearly communicate to consumers situations where an individual who holds multiple credentials has been disciplined by one CB, but not necessarily another (we appreciate that this issue – the differences in jurisdiction, specific standards, and enforcement processes between credentials – is bigger than the public registry and will need to be part of FSRA's consumer education plans for the new framework).

3. **Costs and Efficiency** – We would ask that IT costs and efficiency issues be carefully considered when developing the public registry. Ensuring measures or controls are in place to manage costs would help provide predictability and comfort to CBs. As well, to help ensure consumer protection, the information sharing process must be efficient and achievable to support the accurate, real-time transfer of information from CBs.

Given the complexity of these and other issues, we urge FSRA to bring CBs to the table as it begins to more concretely contemplate the public registry’s design and implementation.

3. Application Guidance

Client Interest First Ethical Standard

A strong standard of care, enforced by CBs through a code of ethics, should be first and foremost about acting in the public interest. A code of ethics should assure clients that they are working with a professional who at all times acts honestly, fairly, and in good faith and is committed to ethically, competently and diligently helping them achieve their goals.

A central tenet of ethics and professionalism for financial planning is the notion of **always placing the client’s interests first**. With respect to FP Canada, the FP Canada Standards Council Code of Ethics (the Code of Ethics) includes a Duty of Loyalty to the Client, which explicitly encompasses a duty to act in the client’s interest by placing the client’s interests first.

When looking across the landscape of potential CBs that may apply for approval to offer a financial planning credential, we see client interest first language already embedded in every CB’s code of ethics, ostensibly adhered to by all financial planning credential holders today.

We would therefore recommend that the Guidance include language clarifying that the expectations of a standard of care for financial planning credentials, as articulated in S. (5) (1) (a) of the Rule, is understood to include the notion of placing a client’s interests first.

Complaint Handling and Coordination Among CBs

At FP Canada, the complaint handling and resolution process is designed to be highly responsive and effective, balancing rigorous enforcement, consumer protection, and privacy considerations.

As proposed in the Application Guidance, a CB must demonstrate how it “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, as per applicable privacy legislation or information sharing arrangements.” Our concern with this is the timing of the information sharing; that is, the proposed requirement of sharing information at the point of the complaint.

In accordance with best practice, before FP Canada can publish and share complaint information involving a certificant publicly, its Conduct Review Panel¹ must determine that the matter warrants referral to a Hearing Panel.² Where such a referral is made by the Conduct Review Panel, FP Canada publishes a Statement of Allegations identifying the allegations of misconduct advanced by FP Canada. That Statement of Allegations, which follows a full investigation and review by the Conduct Review Panel, is the first public notice issued by FP Canada barring exceptional circumstances where there is a risk or evidence of ongoing public harm, in which case FP Canada (among other actions) can publicly disclose the investigation. Following the Discipline Hearing Panel's deliberation, FP Canada publishes the Hearing Panel's decision and findings. We understand other potential CBs have similar process stages which includes maintaining confidentiality at the complaint stage.

Our interpretation of the above Guidance implies that the complaint be shared at the intake phase which represents a privacy breach to us under our current process (and very likely other bodies as well). As such, if FSRA believes that complaint information must be shared between bodies at the complaint stage, then **we recommend that FSRA develop formal protocols or requirements for all participating bodies to adhere to and which can be transparently shared with CB credential holders.** In this case, FSRA's leadership will be necessary to ensure there is the level of consistency and reciprocity needed for consumer protection to be meaningfully advanced while respecting the privacy obligations of CBs.

If it is deemed to be outside of FSRA's scope to be able to introduce the above mentioned reciprocal complaint sharing protocols, **we would recommend instead that any mandated sharing of information be only following the commencement of a formal disciplinary action by a CB where such action may invoke the jurisdiction of another CB or SRO.**

To further support consumers and enhance public interest protection, **we recommend CBs be required to make publicly available information regarding other CBs and regulatory bodies that may be relevant to members of the public filing a complaint.** For example, FP Canada's complaints page provides information regarding other oversight bodies that may be relevant to the complainant.³ Additionally FP Canada's complaint intake form directly asks complainants to indicate whether they have contacted any other oversight bodies – information which can be used when complaints fall outside our jurisdiction to help guide them to other regulatory bodies who are in a position to address their concerns.⁴ FSRA should ensure other CBs provide similar information to the public (alternatively, FSRA may consider maintaining on its public registry a list of CBs and the jurisdiction of each CB so that the public has a single chart as a point of reference on one website).

Taken together, this process supports the goals of consumer clarity, confidence, and protection when implementing the FPTPA.

¹ The Conduct Review Panel – an independent Panel composed of CFP professionals and members of the public – determines the appropriate disposition of complaints, in the public interest.

² The Hearing Panel Roster for FP Canada is composed of CFP professionals and lawyer members. Following referral of a complaint to a discipline hearing, by the Conduct Review Panel, members of the Hearing Panel Roster serve as adjudicators on FP Canada Standards Council Hearing and Appeal Panels in support of the FP Canada Standards Council's professional-oversight function.

³ *Make a Complaint About a Financial Planner* – <https://www.fpcanada.ca/complaints>

⁴ *FP Canada Standards Council™ Complaint Form* – <https://www.fpcanada.ca/docs/default-source/enforcement/complaint-form.pdf>

Explaining the Role of the Financial Planner, the Financial Planning Process and Defining the Terms of the Engagement

In our response to FSRA’s first consultation last fall, we recommended FSRA adopt the *Canadian Financial Planning Definitions, Standards and Competencies* (known informally as “the Blue Book”) as the basis for its financial planning credential criteria, given more than 25,000 financial planners across Canada already adhere to the standards set out within it.⁵

In reviewing the revised Rule and Guidance, we continue to believe there are additional areas where greater alignment with the Blue Book would benefit consumers seeking out critical financial planning advice. We would reiterate two such areas, both of which we feel could be embedded in the Application Guidance:

1. **Explain the role of the Financial Planner and Value of the Financial Planning Process** – Ensure the client understands the role of a “financial planner” and the value of the process of financial planning in identifying and meeting the client’s personal goals, needs and priorities.
2. **Define the Terms of the Engagement** – Work with the client to define and agree on the scope of the financial planning engagement.

4. Fees

FP Canada is supportive of the amendment that was made to the FPTPA earlier this year to clarify that the fee relationship exists between FSRA and approved CBs, and not between FSRA and individual credential holders.

In looking at the proposed fee approach, we are supportive of the articulated principles which will guide the fee structure. With that said, we would flag a concern around the potential for costs to escalate in a way that could impact the efficiency and effectiveness of the new framework, contrary to the intent of the principles.

Specifically, some of the costs associated with the new framework have the potential to be highly variable, including the costs associated with enforcement against individuals using the FP or FA title without an approved credential, the costs for developing a public registry, and the costs for consumer education and marketing around the new framework. As such, in keeping with the principles of consistency and transparency, **we recommend that FSRA establish or make public existing measures to manage costs associated with the oversight of the title protection framework.** We see these as important measures to implement to avoid passing on fees that may cause unintended barriers for CBs or their certificants. It is critical that CBs clearly understand how fees are determined to ensure overall framework stability.

As well, in considering the proposed approach to recouping start-up costs, while we believe the five-year amortization period makes sense, given the significance of these costs, **we recommend requiring those CBs that enter the framework after the initial five-year period where those costs**

⁵ Response to Proposed Rule 2020-001 Financial Professionals Title Protection – <https://fpcanada.ca/docs/default-source/news/fp-canada-fsra-consultation-submission.pdf>

will be recovered by participating CBs to pay a higher application fee to help offset the costs CBs who have participated from the start have already paid.

Finally, we would reiterate two points made in our submission to FSRA's first consultation:

1. **Fee Harmonization** – Most, if not all CBs approved by FSRA will be national in scope. With Saskatchewan set to follow Ontario in operationalizing a title protection regime there, and other provinces potentially following suit in the future, we encourage FSRA to begin thinking about harmonization issues. Harmonization in terms of fees, formulas, timing, and oversight costs would be beneficial to all participants.
2. **Fee Timing** – Given the legal and governance constraints that can affect when and how CBs (particularly not-for-profit bodies) can set and collect fees, we ask FSRA to maintain open communication with prospective CBs as to when it thinks fees may start to be collected.

By way of example, FP Canada's fiscal year begins in April. FP Canada's Board of Directors sets certification fees for each fiscal year the previous December. This means to inform Board decision-making in December, FSRA would need to communicate its intention on fees in November at the latest.

We look forward to providing more detailed comments in response to the planned formal consultation on fees later this year.

CONCLUSION

FP Canada would like to thank FSRA for the opportunity to provide comment. We wish to reiterate our support for FSRA and the Ontario government's diligent work on this file.

We appreciate the changes FSRA has made since the first consultation, which will serve to enhance the strength of the framework. We are confident that with the additional modifications identified here, FSRA can truly ensure the framework serves the best interests of consumers by providing meaningful protection and clarity.