



Advancing Standards™

**VIA E-MAIL:** finplannerconsult@gov.sk.ca

September 9, 2019

Financial and Consumer Affairs Authority of Saskatchewan  
601, 1919 Saskatchewan Drive  
Regina, SK  
S4P 4H2

Attn: **Dean Murrison**, Director, Securities Division

Dear Mr. Murrison:

**Re: Consultation on the regulation of financial planners and financial advisors**

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## **Overview**

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to comment on the consultation with respect to the regulation of financial planners and financial advisors issued by the Financial and Consumer Affairs Authority of Saskatchewan (the **Authority**).

PMAC represents over 270 investment management firms registered to do business in Canada as portfolio managers. Collectively, PMAC's members manage over \$2.7 trillion in assets for private individuals, foundations, universities and pension plans.

PMAC is pleased that the Authority is taking steps that could result in elevated, harmonized standards for financial planners across Canada by considering whether Saskatchewan should leverage Ontario's *Financial Professionals Title Protection Act, 2019* (the **Ontario Act**). We are supportive of legislation aimed at regulating financial planners and the use of the title "financial planner" or a title that could reasonably be confused with that title, without the corresponding professional qualifications (**Title Regulation**). PMAC sees an opportunity for Title Regulation to help create a level playing field for those providing financial planning services while elevating the standards required of individuals holding themselves out as financial planners, for the benefit of investors. We also believe that Title Regulation, when coupled with appropriate regulatory oversight, investor education and outreach, can provide investors with

greater certainty about the qualifications of the person providing them with financial planning and address investor confusion.

PMAC believes that the regulations under the Ontario Act – which we understand are still being drafted – will be critical to understanding the specific approach, impact, and benefit of Title Regulation in Ontario. Until the regulations under the Ontario Act have been published for stakeholder feedback, PMAC’s comments regarding Title Regulation are at this point, by necessity, limited to the high-level framework for Title Regulation outlined in the Ontario Act.

As set out further below, we recommend that the Authority leverage the Ontario Act as the basis for its own Title Regulation while going a step further to add the registration of credentialed individuals with a governing body in the province as well as to create a public database of registrants. PMAC believes that these two additional components will strengthen the oversight and impact of Title Regulation for the benefit of investors.

### **Background regarding PMAC’s position**

Registered portfolio managers have discretionary authority over investments they manage for their clients and have a duty to act in the best interests of their clients, also referred to as a “fiduciary duty”.

Under provincial securities regulation, individuals working as portfolio managers are registered as either “advising representatives” or “associate advising representatives” and must meet specific proficiency requirements in order to be registered with members of the Canadian Securities Administrators (**CSA**). These are the highest education and experience levels in the investment industry; typically, a Chartered Financial Analyst (**CFA**) designation plus a set period of relevant experience. They are also subject to stringent oversight by securities regulators as well as oversight by a professional standard setting body, the CFA Institute. Advising representatives are highly trained professionals, working in a highly regulated industry. We note that some advising representatives may also have their Certified Financial Planner (**CFP**) designation. In some portfolio management firms, financial planning services are offered, and the firm may hire individuals with a CFP designation, or with an accounting or legal designation, to provide this additional service to clients.

We believe that efforts to professionalize financial planning and to institute sound credentialing and enforcement processes are positive.

PMAC was engaged in the consultative process on this topic in Ontario and made submissions on the [2016 consultation on Financial Advisory and Financial Planning Policy Alternatives](#), in respect of the [Final Report issued by the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives](#), and on [the consultation paper on the regulation of financial planners](#) issued by the Ontario Ministry of Finance in 2018 (links to each of these submissions can be found in the text above).

We refer you to PMAC's April 2018 response to the Ontario Ministry of Finance (the **PMAC 2018 Letter**, linked [here](#)), for a more fulsome discussion of our position and recommendations with respect to the regulation of titles. We will not repeat the content of PMAC's previous submissions here, but instead will:

- 1) highlight our key recommendations from the PMAC 2018 Letter;
- 2) explain the questions and concerns we have about the Ontario Act as we await the publication of draft regulations; and,
- 3) respond to the Authority's question regarding whether Saskatchewan should adopt the approach taken by Ontario.

### **1. Key Recommendations from PMAC's 2018 Letter**

PMAC's key comments in the PMAC 2018 Letter are summarized here as they provide useful background for the rest of our submission and inform many of our questions and concerns set out in section 2 of this letter. PMAC made the following comments in our 2018 Letter:

- We supported restricting the use of the title "financial planner" to only those who are properly credentialed, and recommended an express carve-out from the requirement to be credentialed as a financial planner for those whose financial planning activity is only incidental to their core business and who do not hold themselves out to be financial planners. For greater certainty, this comment extends to a carve-out for registered portfolio managers who provide financial planning as part of their offering to clients. PMAC notes that the Ontario Act is currently silent as to whether any registrants, lawyers or accountants will be carved out of the Title Regulation, and we see this as a significant gap to be addressed in the regulations;
- We recommended that the use of the terms "advisor" and "adviser" should be limited to individuals that are registered with the CSA, IIROC or the MFDA;
- We supported principles-based prohibitions on the use of such titles to preclude the use of misleading, inaccurate or inflated titles that could serve to confuse investors as to the credentials, experience and duty owed to them by a person providing financial planning services;
- We supported clear, accessible and wide-spread investor education to raise awareness among investors and address the policy concerns raised by current titling practices;
- We supported the creation of a national, publicly accessible, database of financial planners to enable consumers to verify whether an individual holding themselves out to be a financial planner holds a recognized credential;
- We supported a flexible and principles-based approach that is technology-agnostic and supportive of innovation; and,
- We supported the adoption of a single set of harmonized standards for financial planners in Canada and addressing regulatory gaps with respect to the oversight of certain financial planners.

## 2. Comments on Ontario Act

While the broad strokes of the Ontario Act are mostly in line with PMAC's position on Title Regulation, as the Ontario Act sets out prohibitions with respect to the use of "financial planner" and titles that could reasonably be confused with it without the appropriate credentials, there are important details yet to be clarified. Based on what we know of the Ontario Act, it provides for credentialing of such titles with an approved body designated by the Financial Services Regulatory Authority of Ontario (**FSRA**).

Importantly, however, the Ontario Act is silent on whether there will be a carve-out from the credentialing requirement for those whose financial planning activity is incidental to their core business, such as portfolio managers. PMAC believes that such a carve-out is required to prevent investor confusion, and to minimize regulatory burden. Without such a carve-out for otherwise regulated professionals, there may be duplication of registration and oversight of these professionals. For example, portfolio managers are already regulated by the CSA, adhere to the highest professional standards, and are required to evidence the highest levels of experience and proficiency. A requirement to register with a second regulatory body, and to meet different or additional proficiency requirements, would be superfluous. In addition, in the absence of a carve-out, investors may be confused as to what services a portfolio manager or other regulated professional is permitted to provide, and what standard of care applies to the advice being given. We firmly believe that both Ontario and Saskatchewan must ensure a proportional regulatory burden while maintaining high standards of investor protection.

PMAC's 2018 Letter and our previous submissions on Title Regulation were focused solely on comments regarding the regulation of financial planners. When published earlier this year, the Ontario Act included the regulation of the title "financial advisor" – a title that had not been the subject of previous expert reports, discussions or public [consultations](#). As a result, we are as-yet unclear about the parameters of the activity, proficiency and types of services that are meant to be captured by the regulation of the term "financial advisor" in Ontario or elsewhere.

PMAC does not understand the rationale behind Ontario's decision to include regulation of the title "financial advisor" in the Ontario Act; we view this as likely to cause confusion to the public and increase regulatory burden, without a corresponding investor protection benefit. During the Ontario consultation, PMAC recommended that the use of the terms "advisor" and "adviser" be restricted to individuals registered with the CSA, IIROC or the MFDA (which already regulate individuals registered as Advising Representatives of portfolio managers). Given that the term "financial advisor" is a widely-used generic description of multiple financial and investment professionals, including the term in the legislation will only cause additional confusion and uncertainty, and therefore we do not recommend its inclusion.

PMAC is also concerned that the Ontario Act does not provide for registration of credentialed individuals with a governing body such as FSRA. Reliance on the credentialing body to oversee registration and compliance risks that the process will be

less transparent and vulnerable to conflicts of interest, inconsistency between credentialing bodies and jurisdictions, and potential regulatory gaps. It would be preferable for the registration and oversight of individuals to rest directly with a central regulator. The Ontario Act provides for changes to the *Financial Services Regulatory Authority of Ontario Act, 2016* as well as to the registration powers under the *Securities Act*, the *Commodity Futures Act*, and the *Insurance Act* (Ontario statutes) but it remains to be seen how the registration process under these various statutes will work in practice. PMAC also notes that the Ontario Act does not contemplate the creation of a central, publicly-accessible database of financial planners, as had been [previously proposed](#). We believe this database is a critical way to ensure that the work done on Title Regulation results in the investing public being able to verify whether an individual holding him or herself out as a financial planner holds a recognized credential. PMAC suggests leverage the existing National Registration Database framework for this purpose.

Until the Ontario legislation comes into force and regulations are enacted, it is difficult for PMAC to opine on the effectiveness and potential impact of the proposed Ontario regulatory framework as a whole.

### **3. Comments on Saskatchewan Consultation**

We believe the Authority's Title Regulation effort is a laudable one. We encourage the Authority to carefully consider the need for: 1) clear carve-outs to avoid duplicative regulation, complexity, cost and confusion; 2) clarity as to regulatory oversight; and 3) additional investor education and information systems to complement Title Regulation in Saskatchewan.

Although we recommend that the title "financial advisor" not be included in the Saskatchewan legislation, if it is to be included, we encourage the Authority to carefully consider and define what it means to be a "financial advisor," whether the use of such a title has the potential to cause investor confusion and increased regulatory burden, and whether regulating the title would provide a significant benefit to investors and/or the capital markets in the province.

We believe that the anticipated regulations under the Ontario Act may provide additional helpful feedback on the direction Saskatchewan should take with respect to Title Regulation.

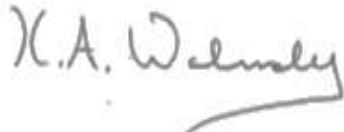
PMAC believes that investors and financial planners will both benefit from widespread public education about Title Regulation and what investors can expect of their financial planners. Without the appropriate carve-outs, education and verification systems, we fear that Title Regulation risks increasing regulatory burden without a corresponding increase in investor protection, choice and awareness.

## Conclusion

PMAC supports the Authority's inquiry into whether Saskatchewan should pursue Title Regulation. We would be pleased to discuss any of our comments with you at your convenience. Please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Melissa Ghislanzoni at (416) 504-1118.

Yours truly,

### **PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA**



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