



Advancing Standards™

July 5, 2021

Via e-mail

Financial Services Regulatory Authority of Ontario

Dear Sirs and Mesdames:

Re: Financial Professionals Title Protection (FPTP) Rule, Application Guidance and Supervision Guidance

Overview

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to respond to the request for comment from the Financial Services Regulatory Authority of Ontario (**FSRA**) regarding its updated Proposed Title Protection Framework for Financial Planners and Advisers, including on the FPTP Rule (the **Rule**), the FPTP Application Guidance (the **Guidance**) and the FPTP Supervision Guidance (the **Supervision Guidance** and, collectively, the **Consultation**). We thank you for giving us an extension of the deadline for providing this response. Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Consultation.

Background

PMAC believes that the proposed regulation of the Financial Planner (**FP**) title presents an opportunity to achieve two important goals: (i) level the playing field for those providing financial planning services, and (ii) elevate the standards required of individuals holding themselves out as financial planners. Both outcomes will benefit consumers. We also believe that with appropriate regulatory oversight, the regulation of the FP title will provide consumers with greater certainty with respect to the qualifications of the person providing them with financial planning, and ameliorate investor confusion. Together, these are key elements to protecting consumers and increasing confidence in Ontario's capital markets.

Despite our general support of the Consultation's policy goals, as set out below, PMAC members have raised serious concerns, especially with respect to the regulation of the Financial Advisor (**FA**) title. We have set out our key recommendations and more specific discussion in the body of this submission.

[PMAC responded](#) to FSRA's August 2020 Consultation on the proposed FPTP Rule and Application Guidance (**2020 Consultation**). We have reviewed the Consultation Summary Report, which we found to be a helpful overview of the themes and concerns raised during the 2020 Consultation. However, several of PMAC's key recommendations, concerns and questions on the 2020 Consultation remain unresolved.

The regulation and protection of titles should increase investor protection, clarify existing confusion about the scope of services offered and the proficiency of individuals using the FP title and professionalize the industry. We are concerned that the Consultation proposals will not achieve these goals - especially with respect to investor confusion around the FA title.

Key Recommendations

While we believe that the Consultation may serve as a preliminary step to closing the gap between the unregulated use of the FP title, to truly achieve FSRA's stated objectives, we believe that the framework should:

1. **Move forward with the regulation of the FP title while reconsidering FA regulation.** PMAC believes that regulating the FP title can help level the playing field for those providing financial planning services and elevate the standards required of individuals holding themselves out as financial planners. However, we do not see the benefit of regulating the FA title. As currently drafted, industry stakeholders cannot articulate the rationale for regulating the FA title in the absence of a clearly recognized sphere of activities. We are concerned that regulating the FA title will not increase consumer protection or clarity. We believe Ontario should pursue the regulation of the FP title while revisiting the costs and benefits of pursuing regulation of the FA title.
2. **Create and maintain a comprehensive public registry.** To improve its usefulness to consumers, the public registry should include timely updates by each FSRA-approved credentialing body (**CB**) on the standing of each credential holder, information about any disciplinary actions (whether in the FP/ FA context or as a result of disciplinary action taken by any of the Self-Regulatory Organizations (**SROs**), the Canadian Securities Administrators (**CSA**), FSRA and/or other regulatory bodies). The ability to simply confirm that an individual holds a credential is not sufficient for consumers to make an informed decision.
3. **Ensure a high standard for CB conflicts management and complaints handling and enhance FSRA's oversight and dispute resolution programs.** Ensure that a high standard is required of all CBs with respect to the management of conflicts of interest and complaints handling to achieve the policy objectives of the framework. Additional details with respect to FSRA's complaints-based approach and CB oversight plan would allow stakeholders to assess the scope and sufficiency of such oversight and its impact on investor protection and market confidence.

Comments on changes to the 2020 Consultation

We acknowledge the following important changes made to the 2020 Consultation:

- the creation of the public registry of approved credential holders
- the addition of the requirement for CBs to identify, manage and address conflicts of interest, which we believe will help guard against the inherent risks of conflicts of interest and self-dealing that can arise for credentialing bodies
- guidance for CBs regarding suitability assessments of prospective credential holders in the event of disciplinary actions by another CB or regulatory body
- guidance around information sharing and monitoring of conduct and suitability of credential holders in the event of a disciplinary or enforcement action

- the list of titles that could be reasonably confused with FP and FA¹ and
- shortening the transition period for current title users.

Critical Background on PMAC / Portfolio Managers in Ontario

PMAC represents over 295 asset management firms with more than \$2.8 trillion in assets under management. Members are all fiduciaries managing investments in the best interests of their clients, which include private individuals, foundations, universities, and pension plans. Well over 60% of our members are headquartered in Ontario and have the Ontario Securities Commission (**OSC**) as their principal regulator, with many others doing business in the province.

Our members employ individuals with a variety of skills and education to service their clients. Under provincial securities regulation, individuals registered as advising representatives under the portfolio manager category are subject to the highest education and experience requirements in the investment industry: typically, a Chartered Financial Analyst (**CFA**) designation plus a specific period of relevant work experience. They are also subject to stringent oversight, including spot and in-depth audits by securities regulators, as well as oversight by a professional standard setting body: the CFA Institute. Portfolio manager 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. Financial planning services are offered in some portfolio management firms, and the firm may hire individuals with a CFP designation, or with an accounting or legal designation, to provide additional services to clients.

The plurality and innovation of portfolio managements firms' business models and client services contribute to the health of the Ontario capital markets and to investor confidence and choice. We value FSRA's principles-based approach to title regulation and the aim of protecting titles without imposing undue regulatory burden. However, we believe that the Consultation, as currently written, adds costs and regulatory burden, compromising our members' ability to provide financial planning services to clients, without corresponding investor protection or market confidence benefits.

As an impacted stakeholder, PMAC has been engaged in the wider consultative process on the issue of financial planner title regulation for several years. We made [submissions](#) on the Ontario government's 2018 and 2016 consultations on Financial Advisory and Financial Planning Policy Alternatives as well as [in respect of the Expert Committee Report](#).

PMAC was supportive of the recommendations in the [Expert Committee Report](#) (**Final Report**) and continues to call for many of the recommendations in that Final Report to be implemented by FSRA as the most efficient and effective way to meet the aims of the current Consultation.

¹ We note the implicit confirmation that the titles "Advising Representative", "Associate Advising Representative" and "Adviser" – all of which are regulated terms used to refer to CSA-registered advising and associate advising representatives (discretionary asset managers) are not considered to be titles that could be reasonably confused by investors with the "investment advisor" title. However, PMAC is concerned that the publication of the list of titles could assist bad actors wishing to avoid complying with the spirit of the legislation.

Discussion of Key Recommendations

1. Move forward with the regulation of the FP title while reconsidering FA regulation

PMAC supports FSRA's efforts to regulate the use of the FP title as a starting point for increasing proficiency, leveling the playing field and enhancing consumer understanding and protection.

With respect to the FA title, however, we believe that Ontario should revisit the costs and benefits associated with its regulation. Consumers should be able to easily appreciate the difference between the two titles, as well as the services and competencies they can expect from their FP or FA.

The minor amendments to the competencies in this Consultation do not clarify the intended scope of activity that FSRA means to capture under the title "Financial Advisor". Industry participants continue to grapple with the definition of an FA, notwithstanding the re-publication of the Consultation and its enhanced FA scope of activity; we question what value regulating the FA title will have for consumers. As we noted in our initial submission, the title "Financial Advisor" is ubiquitous in the industry.

2. Additional information to include in the public registry

We applaud the inclusion of the public registry in this Consultation. However, we believe that FSRA should require the inclusion of additional information beyond whether an individual holds a recognized credential in order to improve its usefulness to clients.

The registry should include the requirement for timely updates by each CB on the standing of each credential holder, information about any disciplinary actions (whether in the FP/ FA context or as a result of disciplinary action taken by any of the SROs, the CSA, FSRA and/or other regulatory bodies). Without this additional information, consumers will only have the ability to confirm a current credential and will not have access to material information about the individual necessary to make an informed decision.

With respect to the type of information to be included in the database, we reiterate our suggestion that FSRA leverage the existing infrastructure of the CSA [National Registration Search \(NRS\)](#) and/or the [Find a Planner](#) registry maintained by the FP Canada. The ease of searching under the Find a Planner function could be augmented with additional information (especially in respect of any disciplinary action / warnings) and with consumer education verbiage as exists on the CSA NRS.

In particular, we encourage FSRA to provide links to easily understandable, widely accessible and perhaps even multi-lingual financial literacy and other investor-protection information on this search page. FSRA should also engage in a public awareness campaign with respect to the new requirements for FPs and FAs, and the public's ability to verify their credentials. The campaign should only be launched at the end of the transition period, or highlight that those who are not "designated" can continue to use their titles for the duration of the transition period to reduce investor confusion.

Elements of NRS such as the following text may assist consumers in understanding the importance of engaging with a properly credentialed FP or FA:

Registration helps protect you!

Verifying registration is the first step to take before engaging a financial planner or financial advisor.

If you discover the person you are dealing with does not hold a recognized financial planning credential (or is not registered with the [Canadian Securities Administrators](#)), or is offering you something they don't seem permitted to, contact [insert appropriate contact at FSRA].

To be of maximum benefit, the registry should be created and maintained at a national level so that consumers across Canada can avail themselves of this important information, no matter the jurisdiction in which they engage a financial planner or advisor. The establishment of a central registry dovetails with and is an essential part of the financial literacy and investor education policy recommendation from the Final Report, and we believe that this central registry can act as an effective tool through which key investor education and/or alerts can be disseminated.

We do however note that, especially with respect to the FA title, an individual in a province other than Ontario can still legitimately use the FA title without holding a credential from a FSRA-approved CB (for example, an IIROC or MFDA advisor in Alberta). In this case, the registry might only cause more confusion.

We believe that the public education should coincide with the introduction of the requirements, so as not to confuse consumers about the current state of affairs.

3. Ensure a high standard for CB conflicts management and complaints handling and enhance FSRA's oversight and dispute resolution programs.

We encourage FSRA to establish robust conflicts management and complaints handling processes and oversee adherence by the CBs. FSRA should provide additional details of its plan to monitor CBs and complaints against CBs, to allow stakeholders to assess the scope and sufficiency of such oversight and the investor protection and market confidence implications. This would include information about FSRA's annual compliance reviews of CBs (such as review of the CB's policies on conflicts of interest and complaint handling), and details of FSRA's enforcement powers over the CBs (short of removing a body from the list of recognized CBs, which would impact all individuals registered with that CB). Although the Consultation provides a very high-level list of CB audit items, it is unclear what action(s) FSRA could take in the case of non-compliance by a CB. As we know from experience with the CSA, compliance concerns and deficiencies vary in severity, and not all of them require de-registration (suspension or termination), though some certainly warrant prompt corrective action and/or disciplinary measures and assistance. We believe that FSRA's complaints-based monitoring of CBs could leave a sizable gap in investor protection as these complaints would likely come from consumers who may or may not understand the complaints process and oversight structure for the CBs. The Consultation notes that FSRA has authority to take enforcement action against a CB if it fails to comply with the FPTPA or the FPTP Rule. However, it is unclear what would constitute a breach. Additionally, it is unclear whether posting a "compliance order" against a CB on FSRA's website would meaningfully inform and protect consumers.

The Consultation contemplates a complaints-based enforcement regime that will be monitored and supervised by FSRA. It is not clear how complaints will be received, what the resolution process will be, and whether the regime will be coordinated with the mandatory Ombudsman for Banking Services and Investments (**OBSI**) process for CSA² registrants with non-permitted clients. We believe that consumers would be best served with a centralized dispute resolution mechanism or oversight body that will apply harmonized standards of review across all CBs and credential holders.

The avenues for investor recourse are unclear in the Consultation. FSRA should provide additional detail with respect to its expectations regarding CBs' processes for disciplining their credential holders and escalating consumer complaints to FSRA. For example, if an otherwise unregulated individual holding an FP title with a FSRA-approved CB were to suggest strategies or make recommendations to a client that are not suitable for the client, what recourse would the consumer have? Would the consumer know through which CB an individual holds a credential, and how to contact the CB to complain about the conduct of that credential holder? Will the CB be required to have internal complaint resolution resources and does the investor have an avenue for appeal (similar to the OBSI for CSA-registered firms)? We believe these are fundamental investor protection matters that warrant clarification.

Additional comments

Impact on FPs employed by CSA-registered firms

We believe additional information is required about the anticipated impact of the proposed requirements on individuals using the FP title employed by firms registered with the CSA – both with respect to regulatory burden of registration, reporting and fees. We look forward to the opportunity to comment on FSRA's up-coming consultation on fees.

Interaction & information-sharing between FSRA, the CBs and other regulatory bodies

It is not clear how FSRA, the CBs and the securities regulatory bodies (OSC/other CSA regulators, IIROC and/or the MFDA) will cooperate or share information if an individual's approval to use the FP or FA designation is terminated or their registration with the CSA member or SRO is suspended, terminated or subject to terms and conditions. CBs should be required to share information with FSRA upon the occurrence of certain prescribed events to ensure that FSRA and other regulatory bodies are aware of any credential holder that may pose a risk to consumers. The public registry should be updated in real time to reflect any loss of credentials and/or disciplinary action by a CB or other applicable regulatory body against an individual. Without coordination and cooperation among regulators, there is a risk that a disciplined or terminated individual could engage in regulatory arbitrage by moving to another firm, registration category or jurisdiction, and present a risk to consumers.

Harmonization

PMAC applauds Ontario's leadership in pursuing the goal of increasing investor confidence in our capital markets. Subject to our comments above, PMAC believes that the implementation of the Rule and Guidance should benefit all Canadian consumers, and therefore we urge efforts to harmonize the appropriate regulation of FPs and FAs across all provinces and territories. We see Ontario as a leader on this issue and understand that Saskatchewan is likely to follow suit.

² Other than those who are principally regulated in Quebec.

A non-harmonized solution to regulate the FP title would be unduly onerous for firms operating nationally and would not be an optimal long-term solution or in the best interests of Canadian consumers. Ultimately, all Canadians should receive a uniform level of competence and service when they engage the services of a financial planner. We understand that this process will be a logistically and, perhaps, politically challenging one but we believe that the value of a national solution cannot be underestimated.

CONCLUSION

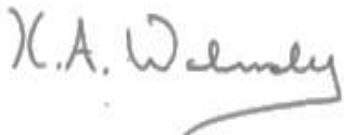
We support the regulation of the FP title, alongside a comprehensive registry of credential holders that is accessible and easy to understand for consumers. We also support FSRA establishing and overseeing a high standard for the CBs with respect to conflicts and complaints handling and encourage FSRA to develop additional dispute-resolution mechanisms for consumers.

We strongly encourage Ontario to revisit the regulation of the FA title; as currently proposed, we do not believe that it will bolster consumer protection or market confidence.

We would be pleased to discuss any of our comments with you at your convenience.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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President



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Chair of Industry, Regulation & Tax
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