



Advancing Standards™

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**VIA E-MAIL:** [finplannerconsult@gov.sk.ca](mailto:finplannerconsult@gov.sk.ca)

Financial and Consumer Affairs Authority of Saskatchewan

## **Re: The Financial Planners and Financial Advisors Regulations**

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### **Overview**

The Portfolio Management Association of Canada<sup>1</sup> ("**PMAC**"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to respond to the request for comment from the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) on Proposed Regulations [2021-001] – *The Financial Planners and Financial Advisors Regulations* (the **Regulations**) under *The Financial Planners and Financial Advisors Act* (**FPFAA**) (the **Consultation**). Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Regulations.

We appreciate that the Regulations closely reflect Ontario's proposed Rule under its *Financial Professionals Title Protection Act*, and that you have reviewed responses to the consultations conducted by the Financial Services Regulatory Authority of Ontario (**FSRA**). PMAC provided responses to both consultations, and we believe our comments will be relevant to FCAA's Consultation on the Regulations. Rather than repeat them here, we refer you to our submissions to FSRA dated [November 12, 2020](#) and [July 5, 2021](#).

In these comment letters, PMAC raised serious concerns about certain details of FSRA's Rules and Guidance, including with respect to the regulation of the Financial Advisor (**FA**) title. We have set out our key recommendations below, which we believe are equally applicable to the Regulations.

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<sup>1</sup> PMAC was established in 1952 and currently represents over [300 investment management firms](#) that manage total assets in excess of \$2.8 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at [www.pmac.org](http://www.pmac.org).

## Key Recommendations

While we believe that the Regulations may serve as a preliminary step to closing the gap between the unregulated use of the Financial Planner (**FP**) title, to truly achieve FCAA'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 Saskatchewan 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 FCAA-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**), FCAA 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 FCAA'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 FCAA'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.

These recommendations are discussed in detail in [PMAC's submission to FSRA dated July 5, 2021](#).

We have responded to the specific questions raised in the Consultation below:

### FP and FA Credentials

1. *The FCAA is seeking feedback on the above approach and whether the Proposed Regulations and FP and FA baseline competency profile [as well as the best interest standard] adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body's education program to establish the minimum standard for FP and FA title users.*

As we noted in our letter to FSRA of November 2020, PMAC continues to believe that the competency profiles do not specify the intended scope of individuals that FCAA intends to capture as being "Financial Advisors". 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 Saskatchewan should pursue the regulation of the FP title while revisiting the costs and benefits of pursuing regulation of the FA title.

We are consistently supportive of measures that elevate standards and protect investors within the financial services industry. We agree that individuals using the FP title should be subject to regulated competencies and a best interest standard. In our response to the FSRA Consultations, we expressed our disappointment with FSRA's decision to deviate from the best interest standard. We also questioned the accuracy and completeness of the so-called "KYP" competencies for both the FP and FA titles.

#### Disclosure

- 2. The FCAA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use the FP or FA title. The FCAA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.*

PMAC agrees that simple factual disclosure can assist investors in understanding who they are dealing with. We believe that the use of the credential, such as CFP, after the individual's name on business cards, in marketing pieces and as part of client education setting out the standardized alphabetical list of credentials that may qualify an individual to use the FP/FA titles would also be effective.

#### Transition Date

- 3. The FCAA is seeking feedback on whether the proposed transition date of July 3, 2020 is appropriate or, if you wish to propose another date, the benefits of the proposed date.*

We have no comment with respect to the transition date, and agree that the Regulations should be effective at the earliest possible date.

#### Exemptions and Challenging Examinations

- 4. The FCAA is seeking comments on whether the framework should allow for any exemptions. In particular, the FCAA is requesting comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.*

As we noted in our November 12, 2020 letter to FSRA, we believe that otherwise regulated employees of CSA-registered firms (registered individuals) that hold a recognized FP credential from a CB be exempted from the proposals, including from the requirement to pay fees in connection with the Regulations. Advising Representatives regulated by the CSA are subject to the highest proficiency standards in the industry pursuant to the securities law framework for registrants set out in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Obligations* and owe a

fiduciary duty to their clients. PMAC believes that individuals that are regulated by the existing regulatory framework for securities should have any associated financial planning activities regulated by their existing regulator (instead of being subject to a separate FCAA regime). For that reason, these individuals should not be required to pay additional fees to FCAA. Failure to provide such an exemption will result in duplicative regulation, increase regulatory burden, cost and investor confusion without any corresponding investor protection benefit since the individual will have earned the requisite FP credentials and the FCAA (or other CSA regulator) already exercises rigorous oversight of their registered firms and their conduct.

While FSRA indicated that the Self-Regulatory Organizations (Investment Industry Regulatory Organization of Canada (IIROC) and Mutual Fund Dealers Association (MFDA)) could be credentialing bodies, there has been no indication from FSRA as to how CSA-regulated individuals would be included in the new regime. With respect to advising and associate advising representatives, the various members of the CSA – including the FCAA – have stringent regulatory conduct, proficiency and experience standards that far exceed the proposed baseline competency matrices for FPs and FAs in terms of education and ethical conduct. Since portfolio managers owe a fiduciary duty to their investors and are subject to ongoing and rigorous conduct oversight, we believe that exempting CSA-registered portfolio managers and their appropriately FP-credentialed employees will not give rise to any investor protection risk.

- 5. The FCAA is also seeking comments on whether the framework should allow for certain qualified individuals to challenge the required FP and FA examinations. Similar to the issue of exemptions, the FCAA is interested in comments on the principles governing when challenges should be permitted, the extent to which challenges may be required, to whom they should be made available (if at all) and the benefits and drawbacks of permitting exemptions.*

We believe that employees of portfolio managers that hold a recognized FP credential should not be subject to further examinations or re-qualification. Existing credential holders should be transitioned into the new regime with the least amount of burden and expense to regulated firms.

#### Titles

- 6. The FCAA is seeking suggestions as to examples of titles that could reasonably be confused with the FP or FA titles and comments regarding whether a guidance document or other regulatory approach is necessary at this time.*

FSRA has implicitly indicated 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 far more generic “investment advisor”. Additional clarity on this point would be helpful. A failure to do so would capture a slew of highly regulated registrants employed by CSA-registered portfolio management firms, increase costs, burden and exacerbate investor confusion without any benefit to investors or the capital markets.

We noted to FSRA our concern that its publication of the list of titles that could reasonably be confused with the FP or FA titles could assist bad actors wishing to avoid complying with the spirit of the legislation. We urge FCAA not to publish such a list.

### **Harmonization**

PMAC applauds Saskatchewan's goal of increasing investor confidence in our capital markets and its efforts to harmonize requirements with Ontario. PMAC believes that the implementation of the Regulations should benefit all Canadian consumers, and therefore we urge efforts to harmonize the appropriate regulation of FPs and FAs across all provinces and territories.

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**

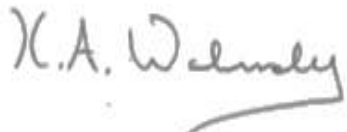
We support the regulation of the FP title, alongside a comprehensive registry of credential holders that is accessible and easy to understand for consumers. We also support FCAA establishing and overseeing a high standard for the CBs with respect to conflicts and complaints handling and encourage FCAA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

We strongly encourage Saskatchewan 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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