



Advancing Standards™

October 25, 2021

VIA E-MAIL: consultation@fcnb.ca

Financial and Consumer Services Commission of New Brunswick
Attn: David Shore

Re: Consultation notice – Title Protection 2021

Overview

The Portfolio Management Association of Canada¹ (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to respond to the Financial and Consumer Services Commission of New Brunswick (**FCNB**)’s consultation notice – Title Protection 2021 (the Consultation). Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Consultation.

We appreciate that FCNB is looking at ways to create a nationally harmonized framework of standards for financial planners and that, as a result, New Brunswick is considering whether to closely reflect Ontario’s proposed legislation and regulations on this topic.

PMAC has made several submissions to the Financial Services Regulatory Authority of Ontario (**FSRA**) on the regulation of the Financial Planner (**FP**) and Financial Advisor (FA) titles, and we believe our comments will be relevant your own Consultation. Rather than repeat them here, we refer you to our submissions to FSRA dated [November 12, 2020](#) and [July 5, 2021](#). Additionally, we refer you to our submission dated [October 1, 2021](#) to the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) where we respond to the FCAA’s proposals to closely follow Ontario in regulating the FA and FP titles.

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 FCNB Consultation.

¹ 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.

Response to Consultation Questions

We have responded to certain of the Consultation Questions below

Consultation Question 1 a) *Are you supportive of New Brunswick adopting legislation to protect FP and FA as regulated titles in a legislative model like those of Ontario and Saskatchewan?*

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 FCNB's stated policy objectives, we believe that your framework should:

1. **Move forward with the regulation of the FP title but not with 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 FCNB 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 FCNB-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**), FCNB 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 FCNB'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 FCNB'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](#).

Consultation Question 1 b) *Do you have any general comments about New Brunswick adopting such legislation?*

PMAC applauds FCNB's goal of increasing investor confidence in our capital markets and its efforts to harmonize requirements with Ontario and Saskatchewan. PMAC believes that title protection 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.

Consultation Question 2 – Do you have any comments on New Brunswick adopting enforcement powers in any potential New Brunswick title protection legislation?

PMAC believes that FCNB should have the power to levy fines on individuals who use a protected title without an approved credential. However, we also believe that to protect the investing public and increase market confidence, that FCNB should have additional oversight abilities over the CBs and their credential holders.

Additionally, we encourage FCNB to establish robust conflicts management and complaints handling processes and oversee adherence by the CBs. FCNB 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 FCNB's annual compliance reviews of CBs (such as review of the CB's policies on conflicts of interest and complaint handling), and details of FCNB'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).

The Consultation is unclear as to which steps against a CB that FCNB could take in the case of non-compliance by that 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 the proposed Ontario version of complaints-based monitoring of CBs, if adopted by FCNB would 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 FSRA Consultation noted 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. We believe that clarity on this issue is important for all jurisdictions considering adopting the Ontario-model of title protection. Additionally, it is unclear whether posting a "compliance order" against a CB on FSRA's website would

meaningfully inform and protect consumers and whether it would do the same in New Brunswick.

Ontario 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 CSA 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 in each province that adopts this framework. The avenues for investor recourse are unclear in the Consultation.

We also ask that FCNB provide additional detail with respect to its expectations regarding CBs' processes for disciplining their credential holders and escalating consumer complaints to FCNB. For example, if an otherwise unregulated individual holding an FP title with an FCNB-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 (like the OBSI for CSA-registered firms)? We believe these are fundamental investor protection matters that warrant clarification.

We believe that FCNB's role should be much more clearly set out with respect to breaches and non-compliance – both for individual credential holders and for recognized CBs. Without this important aspect of the framework, we fear that the Consultation will result in regulatory burden without achieving its intended policy purpose of consumer protection and fostering confidence in the market.

Consultation Question 3) the Saskatchewan legislation includes a simplified method for approving CBs that have already been approved in another Canadian jurisdiction and FCNB is considering recommending a similar provision. Do you have any comments on FCNB adopting a simplified approval process?

PMAC believes that a simplified approval process is efficient and should be adopted. We do, however, reiterate our concerns about the interaction that FCNB would have with a CB that has, for example, failed to adequately oversee an individual credential-holder. We encourage FCNB to detail the ways in which it would be able to oversee and interact with already-approved CBs on an ongoing basis while leveraging the approval process of other Canadian jurisdictions.

Consultation Question 4) To prevent consumer confusion, FCNB is considering adopting rules to prohibit the use of similar titles to FP/FA, much like the approach taken in Quebec. Do you have any comments?

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 have heard a similar critique of the lists of titles in Quebec. We urge FCNB not to publish such a list, whether similar to that in

Ontario or that in Quebec but instead to focus on the principles underlying the use of confusing titles.

Additionally, FSRA 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". Clarity on this point from FCNB 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.

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. At this time, PMAC is not in favour of the regulation of the FA title given the ambiguities described above. We also support FCNB establishing and overseeing a high standard for the CBs with respect to conflicts and complaints handling and encourage FCNB to develop additional dispute-resolution mechanisms for consumers.

We strongly encourage New Brunswick 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,

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