

Jason Watt
Chief Executive Officer
Business Career College (Edmonton) Corp
10130 103 St NW 18th Floor
Edmonton AB T5J 3N9

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RE: FINANCIAL PROFESSIONALS TITLE PROTECTION RULE AND GUIDANCE ID: 2020-008

EXECUTIVE SUMMARY

Our comments will focus on education requirements concerning the Financial Advisor title. We believe that FSRA should focus on credentialing bodies' process and outcomes with respect to education, rather than the specific competencies of FP and FA title users.

INTRODUCTION

Thank you for the opportunity to comment on Proposed Rule 2020-001 – Financial Professionals Title Protection and the proposed Approach Guidance. We welcome this opportunity and commend your efforts to implement better consumer protections.

We would like to preface this letter by indicating that we wholly support efforts to create standards around the uses of the titles Financial Planner and Financial Advisor. Any criticism implied in our response is not meant to deter from our overall support of this initiative.

CONFLICT OF INTEREST DISCLOSURE

We are a for-profit education provider in the financial services sector. We provide training leading to CFP® certification and QAFP™ certification. We are also an approved LLQP provider. We do not have any courses or education directly in support of registrants under National Instrument 31-103. We have contributed volunteer efforts to both the development of the current FP Canada Body of Knowledge and the CISRO/OCRA LLQP Curriculum.

FINANCIAL PLANNER TITLE

We believe that the Proposed Rule does a good job of dealing with the Financial Planner title. Our hope is that ultimately, FSRA determines that FP Canada and the Institute of Advanced Financial Planners are recognized as the sole credentialing bodies with respect to the Financial Planner title.

FINANCIAL ADVISOR TITLE

We believe the Financial Advisor title is likely to lead to more controversy than the Financial Planner title. The comments on page 9 of the Notice of Proposed Rule and Request for Comment are likely to fuel this fire. We are specifically referring to this section:

“For example, based on its review of existing licenses and designations in the marketplace, FSRA does not anticipate that the Life License Qualification Program would meet the minimum standards for technical knowledge, professional skills and competencies for FP or FA title use because the curriculum does not fully align with the FP/FA baseline competency profile – in particular, content relating to client outcomes. Therefore, under the new

framework, those individuals that only hold this qualification would not be able to use the FP or FA title.”

The CLHIA has already highlighted this in their 2020 Provincial Budget Submission (see item 4 on page 6 of

[https://www.clhia.ca/web/CLHIA_LP4W_LND_Webstation.nsf/page/C52EF08862741D6E85258603006E7B21/\\$file/CLHIA%20Fall%202020%20Ontario%20Budget%20Submission.pdf](https://www.clhia.ca/web/CLHIA_LP4W_LND_Webstation.nsf/page/C52EF08862741D6E85258603006E7B21/$file/CLHIA%20Fall%202020%20Ontario%20Budget%20Submission.pdf))

We do not intend to lobby for the inclusion of the LLQP as a qualification for the FA title. Instead, we intend to demonstrate that this discussion does not achieve the intent of the Legislation and that there is an alternate, less confrontational path for FSRA to pursue.

MUTUAL FUNDS PROFICIENCY VS LIFE LICENSE QUALIFICATION PROGRAM

What is not stated in the Proposed Rule is how FSRA views the two mutual funds curricula that are presently available under NI 31-103. We hope that this does not mean that FSRA is contemplating that those who are registered as Mutual Fund Dealing Representatives are being considered as potential candidates for the FA title. We do not hold the position that the two Investment Funds courses described at NI 31-103 produce any greater level of competency than the LLQP does, and we will highlight several deficiencies in those two courses in the sections that follow.

Using the 6th edition of the LLQP material and the 2019 printing of the Canadian Securities Institute’s Investment Funds in Canada course, we compared the competencies. The following is a chart comparing the competencies taught in each course.

Competency	LLQP	IFC (CSI)	Competency	LLQP	IFC (CSI)
Canadian Tax System			Product Knowledge		
Income Tax	Yes	Yes	Disability Insurance	Yes	No
Year of Death	Yes	No	Group Disability Insurance	Yes	No
Investment Income	Yes	Yes	Critical Illness Insurance	Yes	No
Taxation of Insurance Products	Yes	No	Long-Term Care Insurance	Yes	No
			Health and Dental Insurance	Yes	No
Professional Practice			Travel Insurance	Yes	No
Overview of Legal System	Yes	No	Health and Dental Coverage for Business Owners	Yes	No
Insurance Contracts	Yes	No	Selling and Servicing Insurance Contracts	Yes	No
Privacy and Confidentiality	Yes	Yes	Life Insurance Products	Yes	No
Anti-Money Laundering	Yes	Yes	Segregated Fund Contracts	Yes	No
Insurance Claims	Yes	No	Annuities	Yes	No
Rules Pertaining to Insurance Agents	Yes	No	Different Types of Mutual Funds	No	Yes
Conflicts of Interest	Yes	No	Alternative Investments	No	Yes
Unfair or Deceptive Sales Practices	Yes	Yes			
Complaints Handling	Yes	Yes	Investment Planning		
Powers of Attorney	Yes	No	Investment Basics	Yes	Yes
Making Recommendations	Yes	Yes	Types of Investments	Yes	Yes
Introductory Economics	No	Yes	Group Retirement Plans	Yes	No
Mutual Fund Regulation	No	Yes	Investment Risk	Yes	Yes
Mutual Fund Distribution	No	Yes	Financial Market	No	Yes
National Registration Database	No	Yes	Stocks	No	Yes
Mutual Fund Account Opening	No	Yes	Bonds	No	Yes
			T-Bills	No	Yes
Financial Planning			Investment Funds	Yes	Yes
Determine Objectives	Yes	Yes	Derivatives	No	Yes
Risk Assessment	Yes	Yes	Portfolio Construction	No	Yes
Types of Businesses	Yes	No	Business Financial Statements	No	Yes
Planning for Business Owners	Yes	No	Segregated Funds	Yes	Yes
Insurance Needs Analysis	Yes	No	Asset Allocation	No	Yes
Know Your Client	Yes	Yes	Investment Performance Assessment	No	Yes
Client's Financial Situation	Yes	Yes	Investment Fees and Costs	No	Yes
Charitable Giving	Yes	No			
CPP and OAS	Yes	Yes			
RRSP, RRIF, TFSA, DPSP	Yes	Yes			
Pension Plans	Yes	Yes			
RESP	Yes	Yes			
RDSP	Yes	No			
Financial Planning Process	No	Yes			
Behavioural Finance	No	Yes			
Time Value of Money Calculations	No	Yes			
Mutual Fund Selection	No	Yes			
Systematic Investment Plans	No	Yes			
Systematic Withdrawal Plans	No	Yes			
Buy-Sell Agreements	Yes	No			

As the chart indicates, neither of the entry-level licensing courses provides a comprehensive skill set with respect to financial advisory. The LLQP includes a needs analysis for both life and disability insurance, and a robust section dealing with risk management for individuals, families, and business owners. The IFC only deals with risk in the context of investment risk, but it does teach students Time Value of Money calculations and has a cursory overview of the financial planning process. We are suggesting that neither course has a clear advantage over the other with respect to the content delivered to students.

There are several other possible bases on which to compare those who are registered as Mutual Fund Dealing Representatives with those who carry a Life Insurance license. If it is FSRA's intent that one of these other distinctions is material, then we believe FSRA should be explicit. From the discussion above, the education standards are not appreciably different. Some of these differences may include:

- **Continuing Education Requirements.** As of the time of this writing, the MFDA has announced its intention to implement a Continuing Education (CE) regime. However, there currently is no

requirement for Mutual Fund Dealing Representatives to obtain any CE. In Ontario and Saskatchewan, the two provinces contemplating title restrictions, life insurance and accident & sickness agents are mandated to obtain CE, including an explicit Ethics requirement for agents holding a Saskatchewan license.

- **MFDA or Provincial Insurance Regulators.** The MFDA (and IIROC, for that matter) comprises a national regulatory presence (excepting Quebec). The provincial insurance regulators operate in a much more fragmented format, and the guidance for insurance agents is inconsistent as a result. Even national efforts, such as the CLHIA requirement for a Reasons Why letter, have been applied inconsistently. The result is that those with securities licenses (other than Exempt Dealing Representatives) operate with a clearer set of rules that are more likely to be enforced. This may lead to a perception of increased professionalism for those with securities licenses.
- **Part-Time Licensees.** The Rule and Guidance document doesn't express any reasons for its comments concerning LLQP. As such, it's hard to know what the intent of including this phrasing is. One area that we have heard some regulators and others with a securities background comment on is the allowance for part-time licensing for those with an insurance license. We hope that if FSRA takes the position that part-time licensing should not be permitted, that FSRA should publicly state its position.
- **Supervision Requirements.** No explicit reference is made to supervision requirements. Once again, if the goal is to impose some sort of restriction due to a lack of supervision requirements, we believe that should be publicly stated.

PROPOSED EDUCATION STANDARDS

We commend FSRA for a robust list of requirements to be included in the application for a credentialing body. As detailed at <https://www.fsrao.ca/industry/financial-planners-and-advisors-sector/financial-professionals-title-protection-administration-applications>, applications to be considered must include (not a comprehensive list):

- an overview of the applicant's experience as a credentialing body and/or offering a financial services licences/designations;
- a self-assessment against the credentialing body requirements in the FFTP Rule (in particular subsection 4(1)); [FFTP Rule 4(1) is further discussed below]
- a summary of, and a copy of, policies and procedures relating to the administration and operation of its proposed credentialing program;
- a summary of, and a copy of, policies and procedures relating to the granting of credentials, including an outline of the processes for acceptance into the credentialing program and granting / recertification of credentials;
- explanation of any exemptions / advanced standing that may be granted by the credentialing body;

The FFTP Rule at 4(1) currently includes requirements (not a comprehensive list) for:

- the necessary expertise, resources, policies, procedures and administrative practices to effectively administer and maintain a credentialing program,

Subsection 4(2) of the proposed FPTP Rule requires that “An approved credentialing body shall regularly review its educational curriculum to ensure that it is up to date having regard to issues such as industry best practices, legal requirements and developments in the economy and the financial services sector.”

We believe that this standard should be substantially expanded to avoid the issues financial consumers currently face, which will be detailed in the next section.

DEFICIENCIES RELATED TO EDUCATION STANDARDS

As an example of what goes wrong when a potential credentialing body does not meet the standards implied by proposed Subsection 4(2), we will point to the 2019 version of the Investment Funds in Canada course, which is one of two options for the primary education requirement to obtain licensing as a Mutual Fund Dealing Representative.

Chapter 15 of this course is titled “Selecting a Mutual Fund” and Section 15-6 in particular deals with the “Steps in Selecting a Mutual Fund”. The steps suggested are:

1. Refer to sources of published mutual fund performance data.
2. Identify funds with appropriate investment objectives.
3. Look for funds with the best long-term performance.
4. Among the best long-term performers, look for best performance from year-to-year.
5. Among best year-to-year performers, find those with lower volatility.
6. Among the funds with low volatility, find ones where the current investment manager was responsible for the good performance.
7. Compare fund facts documents and compare prospectuses.
8. Examine fees and charges.
9. Analyze the size of the mutual fund.
10. Make the decision.

We expect that anybody who has read the academic literature concerning fund performance is already aware of what we are about to point out, but we will make the argument regardless.

First, there is overwhelming evidence that fund managers do not repeat past performance. The course makes no reference to this literature. Examples of academic research in this area are easy to come by, but one example that was 7 years old when this text was last updated is “Does Past Performance Matter? S&P Persistence Scorecard”.¹ The authors of this paper come to damning conclusions concerning expected performance based on prior years’ performance data:

- Very few funds manage to repeat top-half or top-quartile performance consistently. Given the volatility in the domestic equity markets over the last five years, it is unsurprising that data for the period ending March 2012 show that the percentage of top-performing managers remaining

¹ Soe, Aye M. and Luo, Frank, Does Past Performance Matter? S&P Persistence Scorecard (June 7, 2012). Available at SSRN: <https://ssrn.com/abstract=2079822> or <http://dx.doi.org/10.2139/ssrn.2079822>

in the top-half or top-quartile declined considerably in several categories.

- For the five years ending March 2012, only 5.23% of large-cap funds, 5.46% of mid-cap funds and 5.14% of small-cap funds maintained a top-half ranking over five consecutive 12-month periods. Random expectations would suggest a rate of 6.25%.
- Looking at longer-term performance, 5.97% of large-cap funds with a top-quartile ranking over the five years ending March 2007 maintained a top-quartile ranking over the next five years. Only 4.35% of mid-cap funds and 15.56% of small-cap funds maintained a top-quartile performance over the same period. Random expectations would suggest a repeat rate of 25%.
- While top-quartile and top-half repeat rates have been at or below the levels one expects based on chance, there is consistency in the death rate of bottom-quartile funds. Across all market cap categories and all periods studied, fourth-quartile funds had a much higher rate of being merged and liquidated.

The second area we will address is an even older academic literature that gets no mention at all in either mutual funds licensing course, and that is Nobel Laureate William Sharpe's 1991 paper "The Arithmetic of Active Management."² This paper makes the case that the fees for active management simply cannot be justified based on the results. Whether you agree with this proposition or not, the idea that it's not even discussed, despite being an idea nearly 3 decades old, puts mutual fund dealing representatives and their clients at a significant disadvantage. This is even more curious by the fact that Sharpe's other well-known work, the Sharpe Ratio, features prominently in both courses.

It is not our intention to pick on the course content. Rather, we intend to demonstrate that a robust approach is required to establish and maintain suitable education standards for financial advisors and financial planners. This gives Canadians the best possible opportunity to obtain good financial advice.

ROBUST EDUCATION STANDARDS

We propose that 4(2) of the rules be expanded to require the following:

- **Design Document or Body of Knowledge.** Any course leading to either the Financial Advisor or Financial Planner title should have a design document or body of knowledge that is publicly available and subject to regular review. This allows a member of the buying public to determine the expected level of competency of their financial advisor or financial planner. This also ensures that complaints about advisor performance can be held against a standard that is widely agreed on. For advisors who may not meet the standard, this gives them the opportunity to develop proficiency in areas that may be lacking.

Examples of such documents include:

<https://www.cisro-ocra.com/Documents/View/161> and
<https://www.fpcanada.ca/bok>

² William F. Sharpe (1991) The Arithmetic of Active Management, Financial Analysts Journal, 47:1, 7-9, DOI: 10.2469/faj.v47.n1.7

Notably, the FP Canada Body of Knowledge document is subject to regular review. We believe any credentialing body must demonstrate that it is using a design document or body of knowledge that is updated at least every second year.

- **Regular Course Updates.** Course material must be updated regularly to reflect current standards. The financial services sector is rapidly changing and the body of academic research informing best practices grows at an impressive pace.

We believe that credentialing bodies must demonstrate that either they, or their course providers, provide regular updates to course material.

- **Public Consultation.** When a homogeneous group is involved in the generation of course material, they will fail to recognize their own biases and oversights. To arrive at course material that is reflective of best practices, it is necessary to involve a diverse group. We believe that any course material leading to an FA or FP credential should be subject to a regular public consultation process, to include:
 - FAs or FPs
 - Head Office staff
 - Specialists such as underwriters, estate lawyers, or financial analysts, relevant to the material in question
 - Members of the public
 - Regulators
 - Consumer advocacy groups such as FAIR Canada or CARP
- **Psychometric Evaluation.** Any testing leading to an approved credential should be subject to regular psychometric evaluation. This evaluation should be contracted out. As there are no common standards for a psychometrician, FSRA could require an advanced degree in a relevant field plus 5 years of experience in examination, as an example.
- **Publicly Available Sample of Course Material.** The general public should have some reasonable ability to assess the competency of their FA or FP. Making a small sample of course material, including past exam questions, available, will give the general public the ability to assess the difficulty of obtaining the approved credential.

We believe the implementation of these standards would reduce the likelihood of deficiencies such as those addressed in the previous section.

RECOMMENDATIONS

We would like to see FSRA only entertain applications that are based on current practice. That is, if an organization applies to be a credentialing body, it must demonstrate that it currently meets the standards. It is not sufficient to promise that the organization will meet those standards one day. We believe the transitional measures described at Section 7 of the proposed Rule reduce any unintended consequences of this proposed measure.

Our specific recommendations are that the following rules are updated:

4(2) An approved credentialing body shall demonstrate that the education curriculum that leads to obtaining the qualifying credential include the following elements:

- (a) A design document or body of knowledge that establishes the curriculum to obtain the credential in question. This document must be available to the general public. The design document or body of knowledge should be subject to regular review and update by a diverse group, to include
 - i. FAs or FPs
 - ii. Subject matter experts
 - iii. Regulators
 - iv. Consumer advocates
 - v. Public members
 - vi. Head office staff
- (b) A psychometrician with at least a graduate degree in a relevant field and at least 5 years of experience in exam assessment to conduct a comprehensive review of all exam processes at least annually. The psychometrician's report will be provided to FSRA or its successor organizations
- (c) Course material shall be updated as required. The credentialing body must have a process to ensure this.
- (d) The credentialing body shall host a web page where the general public can review a recent sample of course and exam material.
- (e) A process for a comprehensive review of all items described under 4(2) at least every second year.

4(3) An approved credentialing body shall maintain and make public on its website:

- 1. A current list of individuals holding approved credentials it has issued, including the type of credential issued to each individual.
- 2. Information with respect to any disciplinary action taken by any Canadian financial services regulator or credentialing body against individuals who currently hold or previously held approved credentials it has issued.

In summary, we believe that credentialing bodies should be required to implement best practices in educating those who obtain approved credentials. This will provide better protection to the public, which is the express intent of this legislation.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Jason R. Watt', with a long horizontal line extending to the right.

Jason R. Watt CD CLU