

November 12, 2020

VIA EMAIL

Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, Ontario
M2N 6L9

Dear Sirs/Mesdames:

Re: *Financial Professionals Title Protection Rule (the “Draft Rule”) and Guidance (the “Draft Guidance”)*

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Draft Rule and the Draft Guidance.

We understand that the Draft Rule will set out the standards that credentialing bodies would have to meet as well as the requirements to obtain and maintain approval for a Financial Planner (“FP”) or Financial Advisor (“FA”) credential. The Draft Guidance will set out FSRA’s approach to the administration of applications from credentialing bodies and acceptable credentials themselves.

We agree with the sentiments expressed by many commentators to the effect that there is much confusion in the marketplace with respect to the use of titles and credentials by persons providing financial advice and financial planning services, along with a wide array of expertise and knowledge in the field. The importance of the design and enforcement of rigorous uniform minimum standards for the use of both the FP and FA titles in the context of a title protection framework cannot be overstated.

With respect to the scope of the legislative framework, we understand that the *Financial Professionals Title Protection Act, 2019* is intended to restrict the use of the titles FP and FA, as well as titles that could reasonably be confused with such titles (“confusing titles” or “reasonably similar titles”). We are concerned that there is not yet

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

enough guidance on examples of confusing titles to help industry identify those that would not be permissible, and to clarify the scope of application for consumer and investor advocates. As examples, one could call themselves a “financial coach” or “wealth manager” and currently be unsure as to whether the legislative and regulatory framework would capture such titles as confusing titles. While we understand that any specific list of confusing titles would never be exhaustive, additional illustrative examples would be beneficial for both industry and consumer/investor advocates, as would information on whether FSRA plans to make available consumer guidance on confusing titles. Such guidance ideally would be made available alongside a registry of title users and listing of acceptable or exempted credentials/credentialing bodies, as noted below.

Similarly, the background information preceding the text of the Draft Rule indicates that upon the coming into force of the Draft Rule, no individual will be permitted to use the FP or FA titles without an approved credential. We believe this note should be expanded to refer to the FP, FA or reasonably similar titles (or words to that effect).

We note that the framework requires a credential holder to meet the conduct requirements and professional standards set out by the applicable credentialing body. FSRA may only take enforcement action where an individual uses the FP or FA title without holding an approved credential. It would be helpful for investors/consumers to have additional information about the types of enforcement actions and remedies that could be expected from any such action by FSRA.

In the background information it is noted that FSRA will develop a plan in relation to the oversight of those using an FP or FA title without authority to do so. FSRA currently expects that its supervisory approach will consist of complaints-based enforcement. We believe that FSRA’s approach should be more proactive, as infractions of this nature might be easily observed through techniques such as automated social media or internet searches, and information exchange agreements with other regulatory bodies.

With respect to conduct requirements, the Draft Rule provides that the credentialing body must have the necessary expertise, resources, policies, procedures and administrative practices to effectively oversee the conduct of individuals holding approved credentials it has issued. We agree that this is a key responsibility for credentialing bodies, some of whom (as noted in the background information accompanying the Draft Rule) currently may not have a level of oversight, or investigative or disciplinary processes, appropriate for regulatory purposes. To avoid potential regulatory arbitrage, the minimum conduct requirements should be harmonized in the requirements for all credentialing bodies and acceptable credentials and should include a minimum acceptable duty of care to clients that is uniform across both titles and all users of credentials and credentialing bodies.

The Draft Rule would also require a credentialing body to maintain effective processes to adjudicate complaints from the public and enforce discipline, as well as

monitor and enforce the requirements of ss. 5(3) and 6(3) of the Draft Rule, which relate to ensuring FP and FA credential holders comply with a code of ethics and professional standards and continuing education requirements. To ensure fairness and consistent outcomes for the public, credentialing bodies should be expected to discharge these responsibilities to a level expected of a regulatory body.

In general, we agree with many of the stated FP and FA baseline competency profiles which establish benchmarks for technical knowledge, professional skills and competencies. We have the following suggested amendments relating to the profiles.

Under “Client Outcomes”, there is a reference to confirming a client’s risk profile, and it would be helpful to confirm that similar to the amended guidance provided in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a client’s risk profile includes *both* the client’s risk tolerance *and* their risk capacity. We are also unclear about the expectations for the methodology of “confirming” a client’s risk profile and would prefer a more comprehensive verb encompassing the generation, interpretation, and appropriate application of a client’s risk profile in dispensing advice. Given the centrality of this concept in provision of financial advice, both FPs and FAs should have vigorous conversations with their clients in order to fully understand and assess their risk profile. The expectations communicated to them should not suggest it would be acceptable to perform a “check-the-box” exercise for risk tolerance. Persons holding the FP and FA credentials should understand several factors, and in particular the client’s financial circumstances, to help assess their risk profile independent of any self-classification made by the client (assisted or otherwise).

In connection with the stated competencies for client outcomes, it would also be helpful to expand upon the expectation of gathering “sufficient” detailed personal and financial information about a client. If the intention is for FPs and FAs to collect *all relevant* information from their clients in order to determine that a financial plan or product is suitable for a client, that phrase may be better understood through the production of additional guidance and illustrative examples, ideally with reference to regulation and guidance from adjacent regulators in securities and insurance.

In addition, when providing either financial planning services or financial advice, an FP or FA, respectively, should be able to analyze and determine the appropriate asset allocation for their clients, as this is central to making almost any appropriate client recommendation. In general, the competencies outlined under client outcomes appear to be product-specific, and we believe those competencies should be broadened to be capable of application across relevant product lines such that all of a client’s financial circumstances are taken into consideration. We are conscious of the regulatory burden that could be placed on FPs and FAs by various credentialing bodies and any regulators to which they are subject, and thus to the extent similar definitions and expectations are harmonized with adjacent regulators it could provide additional operational certainty to the individuals providing these financial services.

The stated competencies for ethics refer to an understanding of ethical practices and professional conduct in the financial services market, including identifying and managing conflicts of interest. While we agree that identifying and managing conflicts are important skills, additional guidance and expectations may be required to be provided by FSRA to help ensure that all material conflicts of interest that have been identified are in fact addressed in the best interest of the client of the FP/FA.

Specifically with respect to the FA competencies, it is noted that in order to provide suitable recommendations, FAs must have the ability to develop and present suitable financial and investment recommendations to retail clients, and the technical knowledge requirements refer to know-your-product requirements. It will be important for FSRA (and credentialing bodies by extension) to consider whether they should generally prohibit individuals from providing advice in areas or products with which they are not familiar. As is the case with other professional bodies, it is widely understood that it is not in the public interest that a professional performs activities for which they do not have the education or experience needed to perform the activity in a competent manner.

With respect to disclosure, we believe FP and FA title users should be required to disclose to their clients the recognized credential(s) that they hold, and direct questions to a FSRA-operated website with an FAQ and a public registry of acceptable (and, if applicable, exempted) credentials, the corresponding credentialing bodies, and individuals who hold one or more of these credentials.

The Draft Rule will require a credentialing body to maintain on its website a list of individuals holding approved credentials (including the type of credential) as well as information with respect to disciplinary action. Although all credentialing bodies will be listed on FSRA's website, potential clients may not be inclined to check on their FP or FA in more than one place. It might be more client-friendly and less burdensome to both industry and credentialing bodies for FSRA to set up and operate a central registry with accompanying FAQs, like what is currently available through the CSA website for securities registrants, which confirms an individual's status and whether they are subject to any terms and conditions, or like that which is operated by FSRA for insurance license holders in Ontario under the *Licensing Link* platform.

Key to the success of the new framework will be robust industry and consumer education campaigns to ensure investors/consumers and financial advice and financial planning professionals understand the meaning and purpose of the regulation and credentialing process, the recognized credentials and credentialing bodies, and the in-scope and reasonably similar titles. We believe that FSRA should be responsible for any such educational initiatives to avoid potentially misleading, confusing, or inconsistent messaging if direct to consumer or direct to industry information were to be provided by the credentialing bodies themselves.

In addition, individuals who are subject to the transition periods prescribed in the Proposed Rule should be required to disclose to clients if their credential(s) or license(s) (as applicable) have not yet been accepted by FSRA as an approved credential.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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