

 November 10, 2020



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# Financial Services Regulatory Authority of Ontario

5160 Yonge Street, 17th Floor

North York, ON M2N 6L9

# Dear Sirs/Mesdames:

#  Re: Consultation on Notice of Proposed Rule 2020-001

The Investor Protection Clinic at Osgoode Hall Law School (the “Osgoode IPC”), the first clinic of its kind in Canada, is dedicated to providing free legal advice and services to retail investors across the country.

Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses. From elderly couples whose advisor mismanaged their entire life savings on the cusp of their retirement, to the single parent who fell victim to a fraudster promising massive returns, we have worked with vulnerable retail investors who need assistance in seeking redress but cannot afford a lawyer. We are pleased to bring their voices to FSRA consultation process.

The Osgoode IPC gathers and analyses client data and demographic information. This allows us to identify trends in investor protection, determine key issues and test regulatory concepts.

We appreciate your consideration of our comments; in the spirit of brevity, we have focused on those matters where we think we can best offer a value add to the process, giving the voice of our clients and providing retail investor perspectives.

Sincerely,

Osgoode Investor Protection Clinic

cc: Poonam Puri & Brigitte Catellier, Academic Co-Directors

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| **Overall Comments** |

The Osgoode IPC welcomes a regulatory framework for the use of financial advisor (FA)/financial planner (FP) titles. As mentioned in our cover letter, the Osgoode IPC provides *pro bono* legal services to harmed retail investors who are unable to afford a lawyer. Our clients are often unaware that the current FA/FP titles are unregulated. Our observations are consistent with the 2018 survey by Advocis which found that only 24% of Ontarians are aware that the titles are unregulated. In designing the regime, the Osgoode IPC encourages FSRA to adopt a framework that provides consistency of competencies, clarity for investors and accountability for title users and their credentialing bodies.

Providing a strong regulatory structure creates trust. A 2020 study found that individuals who trust FAs are more likely to use them.[[1]](#footnote-1) A robust regulatory scheme that protects investors will build consumer trust, and when consumers trust FAs/FPs and the system that regulates them, they will be more likely to use financial advisory services.

FSRA has an opportunity to transform the retail investment landscape and enhance investor protection by addressing the extreme confusion created by so many misleading titles. The Osgoode IPC urges FSRA to adopt a regulatory framework that removes confusion and provides retail investors with the transparency and protection that they expect and deserve.

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| **Disclosure** |

As a minimum requirement, FA/FP title users should be required by FSRA to disclose to prospective and current clients their registration/license number, similar to other licensed professions. Such disclosure must be matched with user-friendly public databases at FSRA and credentialing bodies, allowing investors to cross-reference the title user’s credentials provided. Potential clients should be able to search a FA/FP titleholder’s name, registration type and/or license number online on the FSRA website and at user-friendly public databases at the credentialing bodies and obtain year of registration, services covered by the registration, and any disciplinary actions.

The Osgoode IPC is also of the view that FSRA should require all non-credentialed financial advisors and financial planners to warn potential and current clients that they are not registered with a licensing body. We also urge FSRA to mandate this consumer warning disclosure for individuals who are not credentialed but use the title “advisor” (either alone or in combination, for example with “investment”).

At the Osgoode IPC, we have seen many clients who have very low financial or investment knowledge. This places them in an imbalance of power with their planner/advisor when selecting which advisor to go with. Information is power, and the more information investors have about their potential advisor’s credentials, the more they are able to complete their own due diligence on which advisor to choose.

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| **Public Registry** |

Consistent with our comments in the Disclosure section above, we encourage FSRA to maintain, or require the maintenance of, a public registry of title users, easily accessible to retail investors, containing information about the title user, his or her credentials and any disciplinary action. This will provide choice to investors, who will be able to, if they wish, compare credentials when selecting an individual to assist them.

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| **Interpretation of titles that “could reasonably be confused with” FP and FA** |

To best protect retail investors, we encourage FSRA to adopt high standards. We encourage FSRA to look to the Québec regulatory regime, which prohibits titles such as “private wealth advisor,” “financial consultant,” “financial coordinator” and other titles similar to the FP title.[[2]](#footnote-2) FSRA should also allow only the FP and FA titles to be used, prohibiting all others.

Allowing unregulated titles such as “private wealth advisor” that are similar to regulated FA/FP titles defeats the purpose of the new regulatory framework by letting unregulated financial actors circumvent the new requirements. By limiting the titles used to FP and FA, consumer confusion will also be reduced.

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| **Exemptions** |

The Osgoode IPC understands the role that exemptions play in an efficient and nimble regulatory regime. However, we encourage FSRA to be sparing in the approval of exemptions to be credentialed as an FP or FA in situations where retail consumers could be harmed. If exemptions to the credentialing regime are created, exempted FAs and FPs should have a duty to disclose to prospective and current clients what exemption(s) they are operating under.

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| **Transition Period** |

While we understand the importance of transition periods for market partcipants, we echo some of the concerns raised during the public consultations about the length of those transitions, and in particular, the 5-year transition for FPs. Given that consumers have been exposed to unnecessary risk for many years due to the unregulated title system, vulnerable retail consumers cannot wait another half-decade before the reforms provide consistency, clarity and accountability.

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| **Consumer awareness regarding complaints process** |

Many of our clients are unaware of the complaints processes available against their advisors. We recommend that FSRA mandate that a brochure explaining the complaints processes of the credentialing body be provided by a title user to every new consumer upon opening an account and if and when a consumer makes a complaint to the title user about their services.

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|  **Consumer Education** |

FSRA should engage in robust consumer education around the use of titles, both with respect to the current unregulated regime and with respect to the upcoming changes.

Consumer education should focus on reducing the confusion around different titles by:

* informing consumers that they should not rely on titles because most titles are not regulated;
* providing an inventory of titles and clarifying what each title means and more importantly, the scope of services that each title covers;
* providing retail investors with specific questions they should ask when retaining an FA/FP; and
* encouraging retail investors to seek advice from a registered FA/FP under the new regime in light of the safeguards that will be provided.

The Osgoode IPC has participated in numerous investor education events, including in partnership with the Ontario Securities Commission and others, and we would be pleased to partner with FSRA for this purpose if desired.

1. <https://journals-scholarsportal-info.ezproxy.library.yorku.ca/pdf/09696989/v54icomplete/nfp_tfaptrchitac.xml> [↑](#footnote-ref-1)
2. <https://www.piac.ca/wp-content/uploads/2014/11/fp_report_final_website.pdf> [↑](#footnote-ref-2)