

INVESTOR ADVISORY PANEL

November 12, 2020

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

RE: Financial Professionals Title Protection Rule and Guidance
ID: 2020-008

The Ontario Securities Commission's Investor Advisory Panel (IAP) welcomes this opportunity to comment on the proposed Rule and Guidance issued by the Financial Services Regulatory Authority of Ontario (FSRA) in respect of the *Financial Professionals Title Protection Act, 2019*. The IAP is an initiative of the OSC to ensure investor concerns and voices are represented in the Commission's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

In submitting these brief, high level comments, we recognize that the ambit of the *Financial Professionals Title Protection Act, 2019* (FPTPA) is limited. It creates a regulatory framework to govern use of the titles Financial Planner and Financial Advisor, but it does not empower FSRA to stop unqualified people from engaging in the activity of financial planning or giving financial advice. Furthermore, the FPTPA provides FSRA with no authority to strip credential holders of their certification for failure to adhere to professional standards or codes of conduct. That is left entirely to the discretion of the credentialing bodies approved by FSRA.

Nonetheless, the FPTPA is a much needed and, potentially, useful measure to advance the protection of consumers of financial services in Ontario. Maximizing that utility, however, will require adoption of a consumer-centric approach to the FPTPA's implementation and application. We therefore recommend the measures set out here to accomplish that purpose.

1. Integration with the Client Focused Reforms

In the interests of consistency and effectiveness, the FPTPA should dovetail with the CSA's Client Focused Reforms (CFRs). Both aim to protect investors by ensuring that titles used in the financial services sector are accurate and informative. The CFRs do so by prohibiting use of misleading titles. The FPTPA adds a critical element of requiring actual certification from an approved credentialing body.

We strongly encourage the meaningful continuation of this integrated approach in the process of approving credentialing bodies (CBs) – by selecting only those organizations whose standards and codes of conduct require their credential holders to adhere to ‘best interest’ duties and practices, equivalent to the ones articulated in the CFRs.

Failing to select CBs on this basis risks triggering a new form of regulatory arbitrage exploiting differences in practice standards across various CBs. That outcome would substantially undermine the intent and utility of the FPTPA.

2. Evocative titles

Similarly, we urge FSRA to take a client-focused approach to interpreting sections 2 and 3 of the FPTPA. These key provisions, which safeguard the titles Financial Planner and Financial Advisor respectively, also apply to abbreviations of those titles, foreign language equivalents, and titles that “could reasonably be confused with” the protected titles.

It is important that these provisions be interpreted broadly to carry out the FPTPA’s intended legislative purpose. Specifically, the provisions in the Act aimed at stemming public confusion should capture all titles that are likely to evoke, in the minds of clients and prospective clients, a belief that the title holder is qualified to provide advice and services as a financial advisor or financial planner.

In practice, this should capture titles like “Investment Advisor”, “Wealth Planner”, “Senior Asset Specialist”, “Personal Finance Manager” and other similar ones that abound in the financial services sector. They are all designed to portray the title holder as being qualified to provide financial advice and guidance. Each one, effectively, is interchangeable with either Financial Advisor or Financial Planner. Each could reasonably be confused with one of those titles – and, therefore, the use of each one should be prohibited in the absence of a credential duly granted by an approved CB in accordance with the FPTPA.

3. Exclude lobbyists from approval as credentialing bodies

The FPTPA’s legislative objective is to harness credentialing as a public protection measure. Inherently, this will require CBs to act in the public interest.

We believe this requirement cannot be met by organizations that engage in political lobbying on behalf of investment industry interests. These organizations advocate for their members and pursue advantage for them – which is all perfectly legitimate – but it is incompatible with safeguarding the public interest.

Fundamentally, the public must be able to have confidence that credentials are being granted only when fully earned, and that practice standards and codes of conduct are being enforced in a rigorous manner, including through expulsion where necessary. Confidence of this sort will be impossible to achieve if the CB is an organization that benefits by expanding and maintaining its membership base, or one whose primary mission includes advocacy on behalf of that membership. This is especially problematic in the context of the FPTPA's legislative scheme, which leaves expulsion of errant credential holders up to CBs instead of FSRA.

Accordingly, we urge FSRA to exclude from consideration for approval as a credentialing body all member-funded organizations that engage in political lobbying activity on behalf of their members. We also recommend that this exclusion should apply to any affiliated organizations, as well.

4. Transition periods

We are concerned that the proposed 3-year and 5-year transition periods are far too long. Individuals should not be able to identify themselves as fully qualified financial planners and advisors for years while they seek to achieve certification. This would effectively perpetuate the current unregulated and confusing state of things. It will erode public confidence in Ontario's regulatory system, as well as the long-term value and credibility of the Financial Planner and Financial Advisor titles.

Therefore, we urge FSRA to develop mechanisms that will allow the transition to be completed much more swiftly. In the interim, FSRA should require use of an appropriate title modifier that clearly signals the advisor's or planner's incomplete qualification status – such as the insertion of “candidate” in their title until such time as they attain the requisite credential.

Conclusion

As we noted at the outset of this letter, the FPTPA's ambit is limited. It creates a regulatory framework to ensure the titles Financial Planner and Financial Advisor are not used by unqualified individuals. But it does not empower FSRA to stop unqualified people from engaging in the activity of financial planning or giving financial advice, and FSRA is not mandated to enforce the FPTPA's provisions by stripping errant credential holders of their certification.

In light of these limitations, it is all the more important that FSRA maximize what utility the FPTPA does offer to enhance consumer protection. As noted, we believe FSRA can accomplish this only by adopting a consumer-centric approach to the FPTPA's implementation, and by interpreting and applying its provisions to ensure that all those who purport to provide financial advice or financial planning services in Ontario will be obliged do so in accordance with 'best interest' principles.

We hope these comments will help ensure the success of the FPTPA as a consumer protection initiative. Please let us know if you wish to explore any of these matters further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil Gross".

Neil Gross
Chair, Investor Advisory Panel