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December 13, 2021

Via e-mail

Financial Services Regulatory Authority of Ontario

Dear Sirs and Mesdames:

Re: Consultation on the updated proposed Financial Professionals Title Protection Application Guidance and proposed Supervision Guidance

Overview

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to respond to the request for comment from the Financial Services Regulatory Authority of Ontario (**FSRA**) regarding its updated proposed Title Protection Framework for Financial Planners and Advisers, including the Application Guidance (the **Guidance**) and the Supervision Guidance (the **Supervision Guidance** and, collectively, the **Consultation**). Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Consultation.

PMAC represents over 300 asset management firms with more than \$2.9 trillion in assets under management. Members are all fiduciaries managing investments in the best interests of their clients, which include private individuals, foundations, universities, and pension plans. Well over 60% of our members are headquartered in Ontario and have the Ontario Securities Commission (**OSC**) as their principal regulator, with many others doing business in the province.

PMAC has been engaged in the wider consultative process on the issue of financial planner title regulation for several years. We made [submissions](#) on the Ontario government's 2018 and 2016 consultations on Financial Advisory and Financial Planning Policy Alternatives as well as [in respect of the Expert Committee Report](#).

PMAC was supportive of the recommendations in the [Expert Committee Report \(Final Report\)](#) and continues to call for many of the recommendations in that Final Report to be implemented by FSRA as the most efficient and effective way to meet the aims of the current Consultation.

[PMAC responded](#) to [FSRA's July 2021 Consultation](#) as well as to FSRA's August 2020 Consultation on the proposed FPTP Rule and Application Guidance (**2020 Consultation**).

Background

As noted in our July 5th submission to FSRA, PMAC believes that the proposed regulation of the Financial Planner (FP) title presents an opportunity to achieve two important goals: (i) level the playing field for those providing financial planning services, and (ii) elevate the standards required of individuals holding themselves out as financial planners. Both outcomes will benefit consumers. We also believe that with appropriate regulatory oversight, the regulation of the FP title will provide consumers with greater certainty with respect to the qualifications of the person providing them with financial planning services and ameliorate investor confusion. Together, these are key elements to protecting consumers and increasing confidence in Ontario's capital markets.

With respect to the Financial Planner (**FP**) title, we are supportive of progress made in this Consultation which we believe will assist FSRA in meeting its policy objectives on title reform. However, we reiterate our serious concerns with respect to the regulation of the Financial Advisor (**FA**) title which have not been addressed throughout the consultation process.

The regulation and protection of titles should increase investor protection, clarify existing confusion about the scope of services offered and the proficiency of individuals using the FP title, and professionalize the industry. While we note that the Consultation introduces some additional protections and mechanisms to address these issues, we remain concerned that the Consultation proposals in respect of the FA title will not achieve these goals. We have set out our key recommendations and more specific discussion in the body of this submission.

PMAC is supportive of measures that elevate standards for the benefit of investors, and we welcome the amendment that Credentialling Bodies (**CBs**) include a requirement for credential holders to put the interest of the client first when making a recommendation.

Key Recommendations

We believe that the Consultation has evolved positively from its initial stages and believe that it may serve as a preliminary step to closing the existing regulatory gap with respect to the use of titles. However, to truly achieve FSRA's stated objectives, we believe that the framework should:

- 1. Move forward with the regulation of the FP title while reconsidering FA regulation.** As we have noted in previous submissions, 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 reiterate this concern and question why there has not been a fulsome response to stakeholder feedback on this important issue. Regulating the FA title will not increase consumer protection or clarity. We believe that Ontario should reconsider the regulation of the FA title.
- 2. Continue to prioritize timely updates to the comprehensive public registry.** We are pleased to see the addition of the requirement for CBs to notify other CBs or regulatory bodies of disciplinary or enforcement action that the CB has taken against one of its credential holders. We also welcome the addition of the requirement to publish details of a disciplinary action, including the key facts and outcome of a complaint. The public registry should be integrated into a Canada-wide registry and should include timely updates by each CB on the standing of each credential holder and 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**), FSRA, and/or other regulatory bodies).

- 3. Continue the progress made on enhancing complaints handling and FSRA's oversight and dispute resolution programs.** PMAC notes with approval the additional details and procedures in place to strengthen the complaints handling process and FSRA's oversight of CBs. We believe additional clarity is needed regarding which complaints FSRA will adjudicate, including whether a complaint filed by a member of the public against a credential holder will be dealt with by FSRA and the CB or whether it will be directed to the CB to handle on its own.

In addition to the changes noted above, we also acknowledge the addition of identifying appropriate asset mix to the minimum standard credentials to the 2021 Consultation.

Discussion of Key Recommendations

1. Move forward with the regulation of the FP title while reconsidering FA regulation

We believe that Ontario should revisit the costs and benefits associated with FA title regulation. Consumers should be able to easily appreciate the difference between the two titles, as well as the services and competencies they can expect from their FP or FA. This clarity would serve consumers well and address the potential over-reliance which may be placed on an individual's title and resulting imbalance this may create between an FP/FA and his/her client.

The minor amendments to the competencies in the July Consultation do not clarify the intended scope of activity that FSRA means to capture under the title "Financial Advisor". Industry participants continue to grapple with the definition of an FA, and as such, we question what value regulating the FA title will have for consumers. As we noted in our initial submission as well as in our July submission, the title "Financial Advisor" is ubiquitous in the industry.

Moreover, we note that FSRA has not directly responded to stakeholder feedback and concerns around the regulation of the FA title.

2. Additional information to include in the public registry

We applaud the inclusion of detailed information in the public registry in the Consultation regarding disciplinary actions and the outcome of cases. We believe this is a material way to improve the usefulness of the public registry for the public and to hold credential holders accountable.

To further bolster the effectiveness of the public registry, we encourage FSRA to provide links to easily understandable, widely accessible, and perhaps even multi-lingual financial literacy and other investor-protection information on its website; this information should be easily searchable. We believe that public education should coincide with the introduction of the requirements so as not to confuse consumers about the current state of affairs.

To be of maximum benefit, the registry should be created and maintained at a national level so that consumers across Canada can avail themselves of this important information, no matter the jurisdiction in which they engage a financial planner or advisor. The establishment of a central registry dovetails with and is an essential part of the financial literacy and investor education policy recommendation from the Final Report, and we believe that this central registry can act as an effective tool through which key investor education and/or alerts can be disseminated.

We note that, with respect to the FA title, an individual in a province other than Ontario can still legitimately use the FA title without holding a credential from a FSRA-approved CB (for example, an IIROC or MFDA advisor in Alberta). In this case, the registry might only cause more confusion.

3. Complaints handling and FSRA's oversight and dispute resolution programs.

We note with approval the inclusion of additional measures and details regarding CBs' oversight of their credential holders, as well as the inclusion of the requirement that credential holders put clients' interests first. We believe these measures strengthen the Consultation.

We acknowledge that FSRA has provided additional details regarding conflicts management and complaints handling processes and around how FSRA will oversee adherence by the CBs. We believe the risk-ranking of CBs based on the factors articulated in the Supervisory Framework represents a logical focus for FSRA's examinations.

It is also helpful to understand that FSRA may issue warning or caution letters, remediation plans, or compliance orders against CBs that fail to comply with the rules or any terms or conditions associated with FSRA's approval of the CB. We believe that these are appropriate and important tools in FSRA's oversight of both CBs and individuals.

We thank FSRA for linking the complaints form through which the public may submit a complaint against a credential holder. However, it is not clear how complaints will be handled, for example whether a complaint lodged against an individual credential holder will be handled by FSRA or forwarded to the CB with whom that individual holds their credential, and whether FSRA will act as an intermediary for complaints filed through the complaints form process or whether a complaint will be solely dealt with by the CB pursuant to its own internal complaints handling process. Additional details would be welcome.

Members also query how a complaint against a CB would be lodged by the public with FRSA; we encourage FSRA to engage in a public education and awareness-raising campaign about the regulation of the FP and FA titles and how to report complaints.

Additional comments

Impact on FPs employed by CSA-registered firms

As noted in our July submission, we believe additional information is required about the anticipated impact of the proposed requirements on individuals using the FP title employed by firms registered with the CSA – both with respect to regulatory burden of registration, reporting and fees. We look forward to the opportunity to comment on FSRA's up-coming consultation on fees.

Harmonization

PMAC applauds Ontario's leadership in pursuing the goal of increasing investor confidence in our capital markets. Subject to our comments above, PMAC believes that the implementation of the Rule and Guidance 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.

CONCLUSION

We support the regulation of the FP title and welcome the changes introduced by this Consultation with respect to the FP title. We strongly encourage Ontario to explain the rationale for and 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,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

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