Submission on Proposed Rule [2020-001] Financial Professionals Title Protection

11/12/2020

Submission to the Financial Services Regulatory Authority of Ontario

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

The Canadian Bankers Association (**CBA**)[1] appreciates the opportunity to provide input on the Financial Services Regulatory Authority of Ontario's (**FSRA**) consultation on Proposed Rule [2020-001] – Financial Professionals Title Protection (the **Consultation Paper**) under the *Financial Professionals Title Protection Act, 2019* (the **Act**).

We fully support the goal of the Act to promote consumer confidence in financial planning and financial advising professionals by ensuring that those individuals who are holding themselves out as financial planners (**FPs**) or financial advisors (**FAs**) have appropriate credentials. We appreciate that one of FSRA's key objectives is to leverage the existing regulatory framework and minimize unnecessary overlap. In line with this goal, we believe that individuals who are licensed as representatives or approved persons by the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (**MFDA**) (together, **SROs**) should be exempt from the Act because the SROs' proficiency and credentialing requirements meet the competencies needed for FA and FP title use. For individuals and entities offering financial planning or advice who are currently regulated, the rules and regulations should not introduce unnecessary regulatory burden by duplicating existing requirements or oversight. Our detailed comments on the Consultation Paper are set out below.

Exemptions

FSRA is seeking comments on whether the framework should allow for any exemptions. As indicated above, we support exemptions for SRO-registered individuals. The vast majority of our members' employees who carry the FP or FA title (numbering in the thousands) are licensed as representatives or approved persons by IIROC or the MFDA. As registrants, these individuals are already subject to the rigorous oversight of the SROs which includes strict proficiency, credentialing and conduct requirements. SRO-registered title users must meet minimum standards of education, training and experience before performing registerable activities, which standards are comparable to those that FSRA is proposing under the framework. Registrants must undergo regular business conduct examinations administered by the applicable SRO to help ensure a high standard of conduct. Further, the SROs have rules that prohibit individuals from holding themselves out in a manner that could be deceptive or misleading.

Based on the SROs' existing, comprehensive licensing and registration regimes, we request that FSRA provide an exemption for SRO-registered individuals pursuant to its regulation-making authority under

[1] The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in satisfying their financial goals while obtaining banking products and services through existing and evolving channels. www.cba.ca.

section 15(2)(e) of the Act. Because FP and FA title users are already subject to oversight under existing regulatory regimes, they should be exempted from sections 2 and 3 of the Act so as not to be subject to potentially duplicative requirements and oversight, with no additional benefit or protection for consumers. We believe that deference should be given to allowing the SROs, along with the provincial securities regulators who have rule-making authority, to continue overseeing registrants and to establish the requisite credentials for those using the FP and FA titles.

We acknowledge the role played by credentialing bodies in establishing the standards for individuals to become an FP or FA. We also recognize that currently, an FP or FA may be overseen by more than one body (i.e., a credentialing body and an SRO). In our view, oversight by credentialing bodies should be limited to education, training and credentialing of professionals, but should not duplicate the disciplinary, conduct and complaints oversight that already exists with the SROs and provincial commissions in this or other provinces. The SROs have established complaint resolution mechanisms for consumers which include investigative powers and the option of enlisting an ombudsperson to assist with resolving the complaint. In the case of a complaint, it would be problematic to have a parallel resolution process running alongside that of the SRO. We believe that the credentialing bodies should defer to the SROs and securities commissions where conflict or duplication arises. Further, our members already have comprehensive complaint-handling processes. Their experience is that customers with concerns come directly to our members and not to the credentialing bodies.

In support of our position, we note that Bill 100 (which introduced the Act) also amends the Ontario *Securities Act* and the *Commodity Futures Act* to provide the Ontario Securities Commission with clear rule-making authority to prescribe conditions of registration for registrants in connection with the use of specified titles. Further, the client-focused reforms[2] address concerns regarding the use of titles by prohibiting misleading communications. Section 13.18 provides that registrants must not hold themselves out in a manner that could reasonably be expected to deceive or mislead any person or company as to, among other things, their proficiency, experience, qualifications or category of registration of the registrant. As noted in the client-focused reforms, the SROs participated in the development of the reforms and are expected to amend their respective member rules, policies and guidance to be uniform with the reforms in all material respects. For individuals registered under an existing regulatory regime, it should be left to the SROs and the provincial securities regulators to determine acceptable credentials to support their activities as FPs or FAs and their corresponding title use. It is important that FSRA

[2] Client-focused reforms refers to amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its companion policy to enhance the client-registrant relationship. The Canadian Securities Administrators released the amendments in October 2019 and they came into force on December 31, 2019 subject to a two-year transition period.

coordinate with the provincial securities commissions and the SROs to ensure consistency in the approach to title protection.

We understand that FSRA hopes that the SROs will apply to become approved credentialing bodies under the framework. If this is the case, we are concerned that SRO-registered title users could be subject to increased fees. In addition to the existing fees that such individuals are required to pay to the SRO, they would be subject to fees that the SRO would charge as a result of its new status as a credentialing body. If the SROs do not apply to become credentialing bodies, there would still be unnecessary complexity, duplicative oversight and increased fees for SRO-registered title users as a result of the introduction of the new, overlapping regime. Given the existing SRO regulatory framework, any incremental requirements, oversight or costs to SRO-registered individuals would be duplicative and unduly burdensome.

Reasonably Confusing Titles

The Act prohibits the use of the FA and FP titles or a title that could reasonably be confused with such titles unless the individual holds an approved credential. We seek clarification on what FSRA would consider to be a reasonably confusing title. We understand that the intention is to capture financial advisors whether spelled “advisor” or “adviser” and abbreviations of the term financial advisor / adviser. Further, our understanding is that the framework is not meant to capture titles such as investment advisor, banking advisor, estate planner or mortgage advisor. We would appreciate confirmation from FSRA that this interpretation is correct. We also request clarification as to whether individuals holding an approved credential would be permitted to use titles other than FA or FP that reflect their designation. For example, would an individual with an approved FP credential be permitted to use the title Wealth Planner, or would he or she be required to use the FP title? We encourage FSRA to consult with stakeholders on reasonably confusing titles and set out its position on this matter in a guidance document.

We also believe that the framework should not prevent an individual who holds dual or multiple functions within an organization from using employment titles in addition to the FP or FA title. For instance, an individual who provides mortgage brokerage services should not be precluded from displaying such employment title in addition to their position as an FP.

Baseline Competency Profiles

The Consultation Paper sets out baseline competencies for FPs and FAs. As a general comment, we understand that the competency profiles are not meant to require any one individual to have all the competencies set out in the profile. Rather, the curriculum or syllabus of the credentialing body must include content that covers all the competencies. We would appreciate it if FSRA could confirm if this understanding is correct – i.e., is the expectation that a title user must possess all the competencies set out in the competency profile, or can an individual use the title if he/she possesses only one competency? For example, we query whether an individual who uses the FA title but is only competent in one area, such as estate planning, would be permitted to use the title.

There are two aspects of the competency profiles that we believe merit further consideration. The first is the following statement in the FP competency profile under the heading "Client Outcomes": "Periodic review of the client's ongoing objectives, priorities and areas of need, as required, relevant to the scope of services being provided." We are concerned that this requirement could be interpreted to require FPs to conduct a periodic review. While FPs generally provide advice that is holistic and longer-term in nature, it is possible for an FP to only be retained for a one-time engagement with the client. As such, the expectation of a periodic review is inconsistent with the way in which many FPs provide advice to clients. If FSRA's intention is simply to ensure that FPs understand that a periodic review may be appropriate based on the nature of the client-FP relationship rather than to require one, we recommend that FSRA clarify this point. If the intention is to mandate a periodic review, we request that FSRA remove this language for the reasons outlined above.

The second aspect is the reference to technical knowledge in tax planning and insurance / risk management, which appears in both the FP and FA competency profiles. In our members' experience, there is typically a distinction between the expertise expected of FPs and FAs in the areas of tax and insurance / risk management. FAs typically have a more general, high-level understanding of tax and insurance matters, whereas FPs may be able to provide more tailored advice on these topics. We seek clarification as to whether FSRA expects the curriculum of credentialing bodies to differ in the areas of tax planning and insurance / risk management for FAs and FPs.

Disclosure

FSRA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use the FP or FA title. While we appreciate

the importance of transparency and instilling confidence and knowledge in consumers, we are concerned that disclosure of credentials could lead to client confusion, particularly if an individual holds multiple credentials and titles from different credentialing bodies. The abundance of information could be overwhelming and unhelpful. We encourage FSRA to weigh the benefits of disclosure against the potential for client confusion.

Fees

The Act requires credentialing bodies to collect from approved credential holders any fees FSRA requires those individuals to pay, and to remit those fees to FSRA. FSRA has the authority to make rules regarding the collection, holding and remittance of such fees. FSRA is seeking comment on this fee structure. We reiterate our comments above under "Exemptions" that SRO-registered individuals could be subject to a duplicative and unduly burdensome fee structure. Individuals who have multiple credentials and designations should not have to pay multiple fees to various credentialing bodies and/or SROs. We are concerned that excessive fees could make it challenging for FPs and FAs to enter and remain in the industry and increase the cost of financial advice.

Transition

The Consultation Paper provides that individuals who used the FP title immediately prior to January 1, 2020 and up until the date the proposed rule comes into force can continue to use the title without obtaining an approved credential for 5 years after the proposed rule comes into force. For individuals using the FA title, the corresponding time period is 3 years. We request clarification regarding the status of FP and FA title users who use the title after January 1, 2020 and whether these individuals will be prohibited from using the title altogether. We are concerned that the 5 year transition period for FP title users may be too long, especially given that there are already widely recognized credentials associated with this title (i.e., Certified Financial Planner, Personal Financial Planner). Finally, we query how absences and leaves, such as maternity leave and sick leave, will impact both the transition period and continuing education requirements associated with the use of the title.

Grandfathering

We support FSRA's decision not to include a grandfathering provision that would allow individuals who

currently use the FP or FA titles without a licence or designation to continue to operate without having to obtain additional qualifications. We agree that this approach would be inconsistent with the intent of the title protection framework.

Regulatory Impact Analysis

Section 22(2) of the *Financial Services Regulatory Authority of Ontario Act, 2016* requires a qualitative and quantitative analysis of the anticipated costs and benefits of a proposed rule. We believe that this analysis is an important component of the rule-making process. We encourage FSRA to conduct a comprehensive regulatory impact analysis that includes a robust evaluation of the anticipated costs and benefits for various stakeholders, particularly because the proposed rule may overlap with existing regulation.

****

Thank you for considering our comments on the Consultation Paper. We welcome any questions you may have.