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November 12, 2020

Financial Services Regulatory Authority (Ontario)

Submission through the submission system on FSRA's website at:

<https://www.fsrao.ca/engagement-and-consultations/financial-professionals-title-protection-rule-and-guidance>

Dear Sirs/Mesdames:

**Re: Financial Services Regulatory Authority (FSRA) of Ontario Notice of Proposed Rule and Request for Comment Proposed Rule [2020-001] Financial Professionals Title Protection**

Chartered Professional Accountants of Ontario (CPA Ontario) appreciates the opportunity to continue to provide feedback on the Financial Professionals Title Protection Act. We are pleased to provide input to the Proposed Rule [2020-001] Financial Professionals Title Protection (the Proposed Rule) released on August 13, 2020 under the Financial Professionals Title Protection Act, 2019 (FPTPA).

This is an important initiative for the Ontario public to improve consumer and investor protection and reduce confusion in the marketplace. We congratulate the Ontario government and FSRA on the progress made on achieving this milestone in the title protection framework. As outlined in our previous submissions and stakeholder conversations with the Ontario government, Expert Committee and FSRA, CPA Ontario supports the primary objective of the title protection framework to protect the public interest by creating minimum standards for title usage, without creating unnecessary regulatory burden for title holders.

The Proposed Rule leverages existing standards and regimes already in the marketplace to mitigate unnecessary burden on market participants and costs to consumers. This allows for existing standards, practices and licenses/designations to be recognized as meeting minimum standards for title usage, and to enable certain individuals to continue to conduct business using the Financial Planner (FP) and Financial Advisor (FA) titles without significant disruption or additional cost.

While we remain supportive of the principles guiding the Proposed Rule, we note that, if implemented, the Proposed Rule will create an overly broad approach and could have unintended consequences. Without exemptions in the Proposed Rule, FSRA risks compromising its objective of avoiding duplicative oversight and unnecessary regulatory burden. CPA Ontario is a self-regulatory organization (SRO), subject to government oversight. The legislative authority of CPA Ontario to regulate CPAs is overseen by the Ministry of the Attorney General. As an SRO with the mandate to protect the public interest, CPAs are required to complete a stringent certification program to achieve their designation and during their membership as CPAs they are subject to mandatory continuing education, practice inspections, and a robust and effective investigation and discipline process. Exempting CPAs from the Proposed Rule will allow FSRA to focus its resources on unregulated FAs and FPs or individuals who do not meet the minimum standards for title usage.



The layering on of additional rules and additional regulatory oversight of CPAs who are already subject to rigorous and focused regulation creates added cost, red tape and unnecessary regulatory burden that will not provide additional protection to consumers and investors.

The CPA designation is a globally recognized and respected designation. CPAs are financial professionals who focus on the short, medium - and long-term financial integrity of their client or employer. Among other things, CPAs are experts who are engaged in providing service in: finance, audit and assurance, strategy and governance, taxation, management accounting and financial reporting, many of which are essential components in financial planning.

We believe exempting CPAs and allowing them to continue providing financial planning services and identifying themselves as such, aligns with the Ontario Government's primary objective of creating minimum standards without creating unnecessary regulatory burden for title users.

### **Feedback on the Proposed Rule**

As the only established statutory regulatory body responsible for regulating professional accountants in Ontario, we believe that CPA Ontario and our members should be exempt from the Proposed Rule.

We appreciate that the subject of exemptions was singled out for focused comment from stakeholders, however, we respectfully request that the next draft of the Proposed Rule include an exemption provision as we submit that CPAs do not require additional regulatory oversight.

To that end, our submission will focus on the questions FSRA has raised on including exemptions as part of the Proposed Rule and address the following:

1. Principles Governing an Exemption Regime
2. The Extent and to Whom Exemptions Should be Made Available
3. The Benefits of Exempting Ontario's CPAs from the FPTPA

### **Exemptions**

#### **Principles Governing an Exemption Regime**

CPA Ontario continues to support the inclusion of an exemption provision in the Proposed Rule and believes that protecting the public interest should be the key principle for the exemption provision.

CPA Ontario is a regulatory body who is mandated to protect the public interest through statute. This statutory mandate is made clear through the objects set out in s.5 of the *Chartered Professional Accountants of Ontario Act, 2017* (CPA Act).

We support the key policy principles (*italics*) outlined by FSRA's position on exemptions.

***Exemptions should only be made available if the benefits outweigh any potential harm to the public. FSRA would need to be satisfied that the public interest would not be harmed because the exempt credentialing body already meets, and will continue to meet, the approval criteria for credentialing bodies and FP or FA credentials as prescribed in the Proposed Rule.***

CPA Ontario supports this principle on exemptions.

CPA Ontario meets the approval criteria for credentialing bodies in the Proposed Rule. CPAs meet, and exceed, the (i) educational requirements; (ii) examination requirements; (iii) code of ethics and professional standards; and (iv) continuing education requirements. CPA Ontario is an SRO, subject to oversight by the Ministry of the Attorney General by the Ontario Government, legislatively mandated to protect the public interest.

As such, granting an exemption to CPA Ontario would not present any potential harm to the public, and sets an example of the “gold standard” to which any credentialing body under the proposed regime should achieve.

***The title protection framework must ensure ongoing protection of the public interest and ensure, both now and in the future, that any class of individuals granted an exemption meet minimum standards to use the FP or FA titles. FSRA would need to be satisfied that the exempt credentialing body will meet the approval criteria for credentialing bodies and FP/FA credentials, on both an initial and ongoing basis, as prescribed in the Proposed Rule.***

CPA Ontario supports this principle on exemptions.

As noted earlier, CPA Ontario subjects its members to rigorous entry to practice and ongoing regulations. CPAs are financial professionals who focus on the short, medium, and long-term financial integrity of their clients or employer. Amongst other things, CPAs are experts who are engaged in providing service in: finance, audit and assurance, strategy and governance, taxation, management accounting and financial reporting, many of which are essential components in financial planning. The expertise of our members exceeds the minimum standards to use the FP or FA titles, as outlined by FSRA in the Proposed Rule.

Ontario’s CPAs engaged in financial planning/advising activities provide a financial plan, or financial advice to individual retail clients as part of their professional duties. The CPA Ontario education and pre-certification program ensures that they are properly qualified to do so. The CPA Competency Map addresses how CPA Ontario trains CPA candidates to provide financial plans and advice to individual clients and requires CPAs to demonstrate technical skills that meet or exceed FSRA’s baseline competencies for financial planners and financial advisors.

In addition, FSRA can have confidence that CPAs dealing with retail clients have a fiduciary standard that they are required to comply as defined in CPA Ontario's Code of Professional Conduct Rule (the CPA Code) 202.1 section 5. It is as follows:

*"Members and firms have duties to those to whom they provide professional services that arise from the nature of the relationships with the recipients of the services. Members and firms have a professional duty to act with integrity and due care and a contractual duty to provide services as defined by the terms of their engagement or employment. In certain cases, the relationship between a member or firm and those to whom they provide professional services could also be one that the courts describe as a fiduciary relationship that gives rise to fiduciary duties. Depending on the particular facts and circumstances, members who are employees may have a fiduciary relationship with their employers. The concepts of fiduciary relationship and fiduciary duty are derived from the law of trusts. The obligations of a fiduciary can be onerous and the implications of being in breach of a fiduciary duty can be significant."*

**FSRA would need to be satisfied that exempt title users would be subject to ongoing conduct oversight to protect the public interest.**

CPA Ontario supports this principle on exemptions.

As part of its mandate under the CPA Act, CPA Ontario reviews the conduct of members, firms, and students for compliance with the CPA Act and CPA Ontario Bylaws, including the CPA Code and Regulations.

CPA Ontario's primary purpose is to protect the public interest and we do this by enforcing the highest professional and ethical standards, providing guidance for Canada's business leaders and supporting the continuing development of our members and students.

Specifically, throughout their professional careers, Ontario CPAs are subject to ongoing regulatory processes that ensure the public trust in Ontario CPAs, including:

- practice inspection
- professional liability insurance requirements; and
- a robust complaints and discipline process

Furthermore, CPA Ontario regulations (the Regulations) require that every member undertake continuing professional development (CPD) that is relevant and appropriate to the work and professional responsibilities of the member. The Regulations set out the minimum requirements that must be met by members, including: the content of the member's professional development activity; the documentation necessary to support the member's annual declaration; the annual compliance audit process; and that the failure of the member to comply with any requirements in the Regulations will result in a breach of the member's obligations.

In addition, members can be subject to discipline action for breach of the CPA Code, which requires that members sustain professional competence by keeping informed of, and complying with, developments in professional standards in all functions in which the member provides professional services or is relied upon because of the member's calling. This would include any standards related to financial planning that the member may be providing.

If a CPA is providing a financial plan to an individual client, or providing them with financial advice, they are required to obtain CPD credits in that specific area of practice. CPA Ontario offers several CPD courses that align with FSRA's baseline competencies for financial planners and financial advisors. If additional learning is required specific to new investment products or emerging industry trends or best practices, CPAs may seek those learning opportunities from other providers.

### **The Extent and to Whom Exemptions Should be Made Available**

Our fundamental view is that regulated professions are what assures the public that they are getting competent, professional advice and service, and that the public has recourse to a regulator in the event of a breach of professional standards and ethics.

Exemption should be made for financial regulatory bodies who derive their regulatory authority from statute, who have a statutory obligation to protect the public interest, and who can demonstrate that they meet or exceed the minimum competency standards for title usage.

The qualification standards for CPAs in Ontario and across Canada are based on protecting the public interest through proficiency and high integrity. We believe these standards provide a gold standard for other regulators to emulate.

Accordingly, we believe that CPAs should be exempt from the Proposed Rule.

### **The Benefits of Exempting Ontario's CPAs from the Proposed Rule**

Ontario CPAs who engage in the distribution of financial products already comply with, in many cases, multiple regulatory regimes (i.e. CPA Ontario, MFDA, IIROC). Any additional regulatory oversight body, overseeing an existing regulatory body (in particular an SRO) would add unnecessary costs and unnecessary regulatory burden, with no additional benefit. Exempting CPAs re-affirms existing consumer confidence in CPAs in the marketplace.

Keeping CPAs engaged in financial advising and planning activities allows retail clients access to a high caliber group of financial professionals. It is in the public interest to have these services performed by CPAs.

CPAs are already subject to government oversight. Exempting CPAs allows FSRA to focus its resources on individuals holding themselves out as FAs and FPs but whom do not have the necessary proficiency requirements and appropriate regulatory oversight.



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The “objects” of the CPA Act directly overlap with the FSRA’s credential standards. We strongly believe CPA Ontario must continue to own the primary regulatory relationship with its members. By exempting CPAs, any potential conflicting regulatory requirements of multiple regulators that would lead to loss of public confidence and an inefficient regulatory process will be avoided.

We respectfully request that the Proposed Rule be amended to include exemptions and that CPA Ontario and CPAs be exempt. Our members holding themselves out as financial planners or financial advisers as part of their CPA services, should not be subject to another regulatory body and face duplicative or conflicting regulatory requirements.

Thank you for this opportunity to provide comments on this important matter. We hope these comments are helpful as FSRA continues to develop the Proposed Rule and its principles.

We would be pleased to further discuss our submission with FSRA.

Respectfully submitted,

**Chartered Professional Accountants of Ontario**

A handwritten signature in black ink, appearing to read "Carol Wilding".

Carol Wilding, FCPA, FCA  
President & Chief Executive Officer

CC:

Honorable Rod Phillips, Minister of Finance  
Honorable Doug Dowey – Attorney General

Other Relevant Link:

[CPA Ontario Annual Regulatory Report \(2020\)](#)