

## CONSUMER ADVISORY PANEL

June 21, 2021

Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West, Suite 100  
Toronto, ON  
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### **Re: Financial Professionals Title Protection Rule and Guidance Second Consultation**

The Financial Services Regulatory Authority of Ontario's Consumer Advisory Panel (the "CAP") is pleased to continue its engagement on the Title Protection Framework (the "Framework") by commenting on the Second Consultation for the Financial Professionals Title Protection Rule and Guidance (the "Second Consultation"). The CAP is an initiative of FSRA to help inform FSRA's work and to ensure that consumer, member and beneficiary perspectives inform FSRA's direction and decisions. This is a key priority for FSRA and an important part of FSRA's stakeholder engagement process. The CAP also supports FSRA's Consumer Office to provide an effective challenge function within FSRA.

This submission follows our prior submission to the first public consultation on the proposed Framework. The CAP was pleased to see that the Second Consultation was informed, in part, by the CAP's submission to the first consultation, as well as direct consumer research. We are pleased to see FSRA actively trying to address our comments, as well as making changes that are driven and backed by research evidence. We additionally continue to appreciate the ongoing briefings and direct engagement that the CAP receives from FSRA staff and support from the Consumer Office.

Our comments in this submission to the Second Consultation are organized thematically.

#### Reasonably Confusing Titles

The following comments are made in reference to Appendix 1 of the Supervisory Framework Approach Guidance. If FSRA pursues a prescriptive approach that lists excluded titles (titles that would likely be not reasonably confused with FP and FA and would therefore be unregulated by this regime), we support the use of prescriptive elements, as needed, within a regulatory regime that may be principles-based, in order to allow for continual evolution of captured titles. However, we urge FSRA to rethink this

enumerated list of excluded titles and to instead develop such a list using a framework for analysis that is driven and informed by anticipated consumer outcomes. Consumers are the basis and reason for the existence of regulators and financial services regulation. In the case of titles regulation, the consumer issue is the known historic proliferation of titles that commonly suggest a proficiency that the individual may not have, and which may be misleading to consumers. Accordingly, before making a decision on which titles to explicitly and prescriptively exclude from regulation FSRA should ask:

- “Could a retail consumer make assumptions or draw inferences about the title user’s education, proficiency or services offered based on use of this title?”
- “Does excluding this title from regulation and oversight help to achieve consumer awareness and consumer protection outcomes?”
- “How could this decision influence seniors or other vulnerable consumers? Could seniors or other vulnerable consumers be influenced by, and harmed by, the use of this title if it is unregulated?”

We are additionally concerned that individuals reading the current list could misconstrue this list to mean that the excluded titles listed are legally and ethically acceptable to use with or without adequate education and credentials. We reiterate our comment above that prescriptive lists can have legitimate value, but we urge FSRA to revisit the listed titles in light of these risks. Relatedly, we believe that some reference is warranted with respect to the potential that titles that are not subject to FSRA’s Framework could still be subject to other rules or regulations that may be found in other legal or regulatory jurisdictions/ regimes.

Although the CAP continues to hold the belief that the actual underlying problem is a too limited legislative mandate that was handed down to FSRA by the Ontario government, which is outside of FSRA’s control, a list of excluded titles that isn’t driven by anticipated consumer outcomes has the potential to make some of the existing challenges worse.

#### Administration of Applications Approach Guidance

We recommend that credentialing body approval criteria include fitness for registration, and that fitness for registration should take into account past oversight and disciplinary processes effectiveness. Applicant organizations with subpar records should be held to a rigorous standard to evidence what concrete actions they have undertaken to improve their supervisory and disciplinary processes in order to attain and evidence a standard of internal processes that will be sufficient to undertake credentialing body responsibilities and to warrant Credentialing Body registration.

## Transition Periods

The CAP acknowledges and appreciates FSRA's shortening of transition periods for applicants who are not yet credentialed in the Second Consultation to four years for financial planner title users and two years for financial advisor title users. We recommend an even more condensed transition period for both. Transition periods should be as short as possible because transition periods are essentially permitting continued use of professional titles by persons without appropriate qualifications, and because the industry has been on notice for years that preceded the Framework's upcoming implementation and FSRA's public consultations.

However, it needs to be considered and addressed there are two separate issues here:

1. the transition periods duration (commented on above and we also reiterate our comments from the first public consultation); and
2. transition periods disclosure to consumers

Individuals who are not qualified, by virtue of completion of adequate education and credentials, to use the Financial Advisor or Financial Planner titles should not be permitted to use them. If they are permitted to use such titles while working towards obtaining the necessary credentials, title users need to distinguish and disclose that they are not fully qualified. They are effectively students pursuing qualification. Their title disclosure should be mandated to make this clear and apparent to everyday consumers whenever they are holding out as Financial Advisors or Financial Planners. Some of the members of this Panel are lawyers. We were required to hold out as Students or Articling Students before we were fully credentialed/ qualified. Similar examples can be found across other industries and professions. A clear, consistently displayed and prominently displayed distinction, that is comparable to other industries, is necessary for individuals in transition and ought to be mandatorily disclosed.

## Registry

We recommend that the FSRA Registry direct consumers to actively check whether a licensed individual has been disciplined by their Credentialing Body(ies), which should include direct links and clear instructions for consumers to do so if it is the case that the registry may not include full disciplinary information that is also up to date (updated in real time). It should be clear, plain, and obvious to the consumer who is using the registry what information to expect, registry information limitations, and what other steps consumers ought to take to conduct adequate and full due diligence. These directions to consumers should be based on consumer disclosure effective practices, which should include, for example, that directions to consumers are accessible (and compliant with

accessibility laws and regulations), clear, concise, timely, prominent, meaningful, plain language and developed with consideration to the user/ user interface experience.

Also, although the following is a multi-jurisdictional issue to address and not just a FSRA issue, we believe that FSRA has an opportunity here to work with financial services regulatory authorities in other jurisdictions and to take leadership in the development of a single consolidated registry. That registry would maintain license and disciplinary information with accuracy and currency across financial services jurisdictions. It would simplify and make more accessible due diligence for consumers. It would also have the benefit of raising consumer awareness of FSRA.

### Conclusion

To conclude, we continue to appreciate FSRA's challenges in developing the Framework based on the limited scope legislation that has been handed to FSRA by the Ontario government. We are encouraged by FSRA's reflection of some of our earlier comments in changes made already. We continue to encourage FSRA to use all available avenues to maximize its consumer protection powers, including through standards setting for credentialing bodies (on various fronts). We continue to welcome opportunities to support and collaborate with FSRA staff and Consumer Office staff in the further development of the Framework and related consumer education and awareness policy products.

We appreciate the opportunity to comment and hope that our engagement continues to support FSRA staff in strengthening the Framework.

Sincerely,

Consumer Advisory Panel