

INVESTOR ADVISORY PANEL

June 17, 2021

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West – Suite 100
Toronto, ON
M2N 6S6

RE: Financial Professionals Title Protection Rule and Guidance – Second Consultation ID: 2021-003

The Ontario Securities Commission’s Investor Advisory Panel (IAP) welcomes this opportunity to comment on the revised proposed Rule and Guidance issued in respect of the *Financial Professionals Title Protection Act, 2019*.

The IAP is an initiative by 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.

First consultation summary

In our comment letter dated November 12, 2020, we recognized the limited scope of the *Financial Professionals Title Protection Act, 2019* (the FPTPA). Nevertheless, we stressed the importance of functionally integrating the FPTPA’s framework with the Canadian Securities Administrators’ Client Focused Reforms. In that context we noted specific concerns about misleading titles that could be confused with the protected titles Financial Planner and Financial Advisor. In addition, we noted the potential hazards posed by uncredentialed use of the protected titles during a lengthy transition period, as well as the danger of granting lobbying groups the ability to act as credentialing bodies.

Those concerns were largely unaddressed by the proposed revisions to the FPTPA Rule and Guidance. Moreover, as set out below, some of the revisions have deepened and broadened our earlier apprehensions.

Confusing titles

An appendix to the revised Guidance outlines how FSRA plans to interpret and apply the FPTPA’s prohibition against uncredentialed use of title variants that could be confused with the protected titles. The appendix suggests this prohibition will be interpreted very narrowly – applying only to titles that, literally, include the words “Financial” and “Planner” or “Advisor”

plus some prefix or suffix or other word inserted in between. Thus, titles like Senior Financial Planner, Financial Wealth Planner or Financial Advising Manager are cited in the appendix as examples of titles that the FPTPA prohibits.

But the statute does not prescribe such a narrow, literal interpretation. On the contrary, by prohibiting any title that “could reasonably be confused with” Financial Planner or Financial Advisor, the FPTPA effectively prohibits uncredentialed use of all titles that might readily evoke the provision of planning services or advice on financial matters. Wealth Planner or Wealth Advisor would, in our view, clearly fall into that category. By the same token, titles like Financial Consultant, Portfolio Consultant, Wealth Consultant, Wealth Manager, Money Manager, Asset Manager and Retirement Counsellor easily could be confused with Financial Planner or Financial Advisor. Yet, the Guidance’s appendix cites these as examples of titles that would not reasonably be confused with them.

FSRA has provided no basis for allowing these potentially confusing titles to be used. No empirical testing appears to have been undertaken to determine what types of titles the public tends to confuse with Financial Planner or Financial Advisor. We believe this testing must be done to provide an objective basis for determining what “could reasonably” be confusing.

To ensure full span, all titles known to be in use should be examined along with possible permutations, and FSRA should maintain the ability to test new variants quickly. Also, as a transparency measure, the testing methodology and data should be published.

Lobbyists as credentialing bodies

The FPTPA framework and FSRA’s plan for implementing it necessitate a significant delegation of public interest stewardship to approved credentialing bodies (CBs). That requirement to act in the public interest is, in our view, unachievable by any organization whose primary function consists of advocating for private interests. The two roles conflict and are simply incompatible. Accordingly, any organization that engages in lobbying as one of its main activities should be precluded from acting as a CB. This should also disqualify organizations controlled by or closely affiliated with them.

Transparency during transition

While shortened, the transition periods remain quite long. It is concerning that uncredentialed individuals will be permitted to use the Financial Planner and Financial Advisor titles for several years during the transition, even if they have no intention of obtaining credentials. This poses a hazard that FSRA should address and mitigate.

We suggest that use of the protected titles by uncredentialed individuals during transition should be limited to those who are actively engaged in obtaining the credential, and only if they add “candidate” to the title during that period. This is a recognized practice in academia (e.g.,

Ph.D. candidate). It provides transparency without any diminution in status, and it treats all similarly situated individuals alike.

Misleading registry

Regrettably, Canada's fragmented financial regulatory system is awash with stand-alone registries that do not provide an individual's full regulatory picture (e.g., disciplinary history with other regulators). Creating another one will only add to the risk of consumers being inadvertently misled when they consult it – especially in dual-registration situations.

The difficulty of integrating regulators' legacy data systems is well-known, but we believe ingenuity can overcome the problem. For example, FSRA should consider designing its registry to operate as a search engine that scans other Canadian financial regulators' registries and flags all pertinent information available.

Policing uncredentialed title use

In recent briefings, FSRA has indicated it does not plan to proactively monitor for misuse of protected titles by uncredentialed individuals. Instead, FSRA will rely on complaints from the public. We think this is impractical. The absence of credentials isn't what would normally cause a consumer to complain. Typically, bad advice or financial misconduct by an advisor/planner will be what triggers a complaint – and that means the matter will be referred to the regulator, if any, with jurisdiction to enforce conduct standards applicable to that advisor/planner. Since the FPTPA conveys no such jurisdiction on FSRA, and since conduct regulators aren't concerned with credentialing, it's unlikely that client complaints will cause missing-credential issues to surface.

In our view, therefore, FSRA's intended approach to policing is too 'hands off' – particularly given the FPTPA's already limited architecture. The statute unfortunately provides FSRA with no power to stop unqualified people from engaging in financial planning or giving financial advice; but it does allow FSRA latitude to detect and stop those individuals from misrepresenting themselves as credentialed planners and advisors. To that extent, at least, FSRA should make every effort possible to prevent harm to the public by actively policing the misuse of titles instead of merely reacting when someone complains.

Consequences of CB approval revocation

If a CB fails to enforce its conduct standards, FSRA can revoke the CB's approval. FSRA has indicated that, in such a case, the CB's credential holders would lose the ability to use their titles. This seems unduly harsh, since many or most of the credential holders will have done nothing wrong.

We believe FSRA needs a better plan for dealing with this type of situation. Even if it's highly unlikely that a CB will deliberately fail to enforce its own standards, the possibility always exists

that a CB might cease business operations. Therefore, FSRA must be ready and able to administer a CB on an interim basis, and FSRA must be prepared to facilitate and manage the transition of large numbers of credential holders to another equivalent CB swiftly and efficiently.

We hope these comments will prove useful to FSRA as it finalizes the FPTPA framework. If you require any clarification or wish to discuss these matters, please feel free to contact us.

Sincerely,

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

Neil Gross, Chair
Investor Advisory Panel