

October 20, 2021

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

SENT VIA ONLINE SUBMISSION SYSTEM

Dear Sirs/Mesdames,

**Re: Consultation [2021-010]
Amendments to the FSRA Fee Rule to create the FP/FA fee structure**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial Services Regulatory Authority of Ontario (“FSRA”) in regard to consultation [2021-010], *Amendments to the FSRA Fee Rule to create the FP/FA fee structure* (the “Consultation”).

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis’ motto: *non solis nobis* – not for ourselves alone.

2. INTRODUCTION

We support FSRA in its work to resolve the key questions regarding how Ontario’s title protection framework (the “Framework”) will work. It is self-evident that the Framework’s aims of bolstering consumer protection and enhancing the professionalism of financial advisors



("FAs") and financial planners ("FPs") cannot be achieved if its operations are not adequately funded or if the cost burden is so high as to discourage widespread participation.

Our general impression from reviewing the Consultation is that FSRA is taking a sensible approach that keeps administration straightforward and costs reasonable and proportionate to the size and nature of a credentialing body ("CB"). However, the example calculations provided for consideration are based on assumptions for which we have very few particulars: FSRA has provided figures for start-up and ongoing costs and the number of CBs and credential holders expected to participate, but without more granular data to back up these estimates, we feel that we cannot properly opine on the methodology used or outcomes predicted.

We understand that setting up a new Framework from scratch is not an easy task. Ontario is leading the way for several provinces, and there are many unknowns regarding variables such as participation rates amongst potential CBs, their credentials and individual credential holders, and the degree of consumer interest in, and demand for, Framework participants. Outcomes will also be driven by the decisions FSRA makes regarding the Framework's rules, such as how high or low a bar it sets for each title, how strictly FSRA interprets the concept of "reasonably confusing" titles and whether cost or quality factors will drive intermediaries to "shop" competing CBs and credentials. All of these fluid factors will drive industry behaviour and the costs of the Framework, both in absolute terms and in terms of the cost attached to each individual participant.

With all this in mind, our responses below speak to the principles we ask FSRA to be mindful of in setting the fee structure. We believe that these principles are particularly relevant in the face of the unknowns and will serve to orient development of the Framework in a direction that is administratively straightforward, widely accessible to participants and centred on the consumer's perspective.

3. OUR COMMENTS

Fee calculation – credential holder variable

1. Prior to finalizing the proposed fee structure, FSRA is seeking feedback on how it should apply the "credential holder" variable. For example, the number of credential holders could be determined based on whether a person:

- resides in Ontario
- conducts business in Ontario
- holds an approved credential
- uses the FP or FA title
- a combination of the above factors



In our view, the “credential holder” variable should count any individual who satisfies both of the following conditions:

(i) The individual conducts business in Ontario – meaning that the individual holds him/herself out to the retail public as offering financial services in Ontario, regardless of where the individual is located.

Commentary: We are in favour of a “conducts business in Ontario” condition as opposed to a “resides in Ontario” condition because the Framework is intended to protect Ontario’s consumers and must be established from that perspective. With that in mind, it is not relevant where the individual title user actually resides – only that he or she is public-facing to retail consumers in the Province. Being licensed to sell product in Ontario would definitively signal this, but not having a product license would not be determinative of the opposite state. The concept of “offering financial services” should be interpreted broadly.

(ii) The individual holds an approved credential that would grant him or her the right to use a restricted title under the Framework, regardless of whether the individual actually uses a restricted title.

Commentary: To be clear, we do not believe it is relevant whether the individual actually uses a restricted title, only that the individual *can* use the title in accordance with the Framework. Attempting to base the credential holder variable on actual title use would be onerous to monitor and would create unnecessary administrative burden in contrast to the Framework’s objectives.

In contrast, each CB should have records readily available regarding the identity and number of its credential holders, which would make the count based on an objective and easily verifiable metric. The CB would be accountable to FSRA for ensuring the accuracy of this count.

2. It has been suggested that approved CBs should have the discretion to identify credential holders in a manner that best suits their business needs and operations. For example, a CB could create a sub-designation within its membership, which could be submitted for approval to FSRA as an FP/FA credential. In this scenario, use of the FP/FA titles would be limited to those individuals who hold the designation that has been approved by FSRA. FSRA is seeking feedback on this potential approach.

We seek clarification as to what FSRA is contemplating under this heading. If FSRA is considering a situation where entities that are recognized as CBs might also have members who do not hold recognized credentials for the purposes of the Framework, and consequently that



segment of the CB's membership could not use a restricted title, we agree with this proposition.

Any given CB may offer a variety of credentials. Some of these credentials qualify under the Framework, but others (such as more entry-level credentials, or credentials that are very specialized in a technical area) may not and the CB would not put forward credentials falling into this latter category for recognition.

In this scenario, the CB would have two general "classes" of members vis-à-vis the Framework: members who hold a recognized credential (and can consequently use a restricted title) and those who do not, and cannot use a restricted title. On principle, we should not disincentivize those who do not hold a recognized credential from otherwise participating in the CB and being subject to that body's code of conduct, investigations and disciplinary architecture or continuing education requirements.¹ Consumers would still benefit from this infrastructure.

In contrast, we are not in favour of subdividing, within a CB, holders of the same recognized credential. For example, if CB 'ABC' offers credential 'XYZ' and XYZ is recognized under the Framework, ABC should not be permitted to sub-divide holders of XYZ into groups which i) *can/will* use a restricted title and ii) *will not* use a restricted title despite XYZ being recognized for that title. All holders of a recognized credential should be treated as one 'class'.

Some CBs may wish to artificially sub-divide credential holders to reduce their fee assessment related to the variable count, but allowing these gymnastics would be a disservice to consumers. As part of the consumer education efforts for the Framework's roll out, it is our collective responsibility to communicate the details as clearly as possible. Part of this is making clear which credentials qualify. There is no compelling consumer-driven reason to muddy this effort by creating an unnecessary subclass solely to benefit a CB's finances.

We cannot support a direction where we would have to explain to consumers that: some (but not all) holders of credential XYZ are qualified to use the restricted title, so some (but not all) holders of XYZ are subject to important consumer safeguards, leaving it up to the consumer to conduct that investigation. This obfuscation is a completely unnecessary complication that can only harm the value of the Framework to consumers.

We implore FSRA to approach these types of decisions from the consumer's perspective and promote outcomes that will make clear to consumers what the Framework, its CBs and its credentials stand for, while minimizing complications, conditions and carve-outs. As an additional consideration, FSRA should also incentivize any individual who has a recognized

¹ We are making an assumption that the CB would demand high standards from all of its members and subject them to the same consumer protection mechanisms, regardless of whether the member holds a recognized credential under the Framework.



credential to use the restricted title – and be subject to the professional obligations that flow from it.

3. FSRA is seeking feedback on the potential impact of these potential approaches, including with respect to the collection of data regarding residency, title use, or business conduct of credential holders.

One of FSRA’s key aims in developing the Framework is to minimize the regulatory burden associated with it. The approach we have suggested above has many salutary benefits regarding the burden of data collection.

Under this approach, FSRA would not need to collect data regarding the residency of credential holders as residency itself would not be material to the credential holder variable. In terms of a credential holder’s retail-facing activities and the act of “doing business” in the Province, this data could be collected by annual attestation by the member to his or her CB, and the CB could confirm the veracity of this statement by auditing the member’s public-facing presence and status of provincially-held product sales licenses.

Regarding the individual’s maintenance of a recognized credential, the CB itself would have this information readily available. The CB would be accountable to FSRA for ensuring the accuracy of its records and the thoroughness of its member audits, which would minimize the burden on FSRA.

This approach does not require any entity to confirm whether any potential title user is actually using a restricted title, nor does it require any consumer, regulator or CB to consider the class of a credential holder and any special conditions related to that class. The approach we have set forth is straightforward, easy to understand and minimizes the burden on FSRA, the CBs and the consumers who will rely on the Framework.

Potential for multiple fees

4. FSRA is seeking feedback on how its proposed approach may impact individual credential holders.

We feel that this topic requires further exploration. As a general principle, it would be preferable to avoid having multiple fees levied on individuals who hold more than one credential which qualifies for a given title.² For example, if an individual holds FP-qualifying credential ‘GHI’ as well as FP-qualifying credential ‘JKL’ (whether GHI and JKL are issued by the

² We recognize that FSRA would be charging the CBs and not the individual credential holders directly, with the CBs choosing how to recoup those costs. At this point, it appears that the fairest and most efficient course for the CBs would be to add a “credentialing”-related surcharge to membership fees.



same or different CBs), it would be preferable if that individual did not attract two fees for the purposes of the Framework.³ Duplicative fees could incent that individual to surrender one of the credentials – and its associated continuing education requirements – which is not a positive outcome from the consumer’s perspective.

That said, we have questions about the underlying assumptions used by FSRA to compute approximately 81,000 individuals⁴ participating in the Framework and being (indirectly) assessed \$22 each.⁵ This is based on our rough “back of the envelope” calculations that find or assume that:

- (i) FSRA’s estimate of participants is already restricted to those individuals having a *bona fide* connection to Ontario per Question 1 of this Consultation and is not capturing all individuals who are members of national associations;
- (ii) FSRA will not recognize the LLQP as qualifying for the Framework;
- (iii) FSRA will recognize MFDA and IIROC registration as qualifying for the Framework;
- (iv) In Ontario, there are 33,000 MFDA Approved Persons, with about 30% also holding an insurance license;⁶
- (v) In Ontario, there are 15,000 IIROC Approved Persons, with about 50% also holding an insurance license;⁷ and
- (vi) In Ontario, there are about 60,000 life and health licensees,⁸ with a narrow percentage of these individuals holding a credential that, in our view, would qualify under the Framework but who are not already counted in categories (iv) and (v) above.⁹

While some additional life and health licensees who are not captured in (iv), (v) and (vi) above would likely pursue a recognized credential in response to the Framework’s implementation, we are unclear as to the magnitude of this impact. Both Advocis and FSRA are aware of large

³ To clarify, we believe it would be reasonable for an individual who holds both an FA-qualifying credential and a separate FP-qualifying credential to attract two fees for the purposes of the Framework, as those two fees provide distinct benefits: the ability to use two separate, restricted titles.

⁴ Consultation, footnote 4. FSRA states that this represents the “approximate number of *individuals in Ontario* who hold a license or designation with one of the entities that could apply for approval as CBs under the framework” (emphasis added). We interpret FSRA’s use of the word “individuals” to refer to natural persons.

⁵ *Ibid.*, footnote 6.

⁶ MFDA, Client Research Report 2020, at: https://mfda.ca/wp-content/uploads/2020_ClientResearchReport-1.pdf at page 22.

⁷ IIROC, 2020 Annual Report, at: https://annualreport.iroc.ca/2020/pdfs/IIROC_AR_2019-20_EN.pdf at page 12.

⁸ The “About FSRA” page at <https://www.fsrao.ca/about-fsra> states that it oversees nearly 64,000 insurance agents in the province. This number would include life and health agents, property and casualty agents and general insurance agents. In other conversations we have had with FSRA, we understand that “about 60,000” is a reasonable number to capture life and health licensees.

⁹ Internal Advocis analysis on the credentials and CBs that are likely to apply and qualify for the Framework. Individuals in this category would include those that have a recognized financial planning credential but who operate on a fee-only basis and do not transact in product.



companies which utilize their life insurance advisors primarily as a product salesforce and have no intention of pursuing the higher standards demanded by the Framework.

Based on all the foregoing, we struggle to reach FSRA's estimated 81,000 figure of individual (read: natural person) credential holders participating in the Framework. We wonder whether the 81,000 figure is based on a count of "credential-persons" rather than individual participants. For example, a hypothetical individual with FP-qualifying designations GHI and JKL, as well as a mutual funds registration with the MFDA, could count as three credential-persons in the Framework despite being one individual. In our rough calculations, we are able to reconcile the 81,000 estimate to a count on this basis.

The implication of a count based on credential-persons, if correct, is that the Framework's cost estimates may already envision some degree of multiple charging to arrive at the \$22 figure (effectively per credential), and the actual cost per individual may already be two, three or four times higher. None of this is necessarily problematic or something that brings the Framework's development to a halt, but we would appreciate much greater detail about the data FSRA is using to produce its estimates. Only then would we be better able to understand and comment on the impact on holders of multiple credentials.

In closing this section, we ask FSRA to ensure that the Framework is affordable to the CBs and credential holders within it. As FSRA is aware, other jurisdictions are contemplating their own title protection frameworks, including Saskatchewan and New Brunswick – with more provinces likely to join the effort. Each of these frameworks will require their own fees to operate. With many FAs and FPs serving clients in multiple jurisdictions, the fees can quickly start to multiply and become a material burden.

Perhaps the eventual way forward is a quasi-national system through which the provinces with title protection frameworks work together. For any given CB, there could be a lead provincial regulator¹⁰ and other provincial regulators, as applicable, could reciprocate the lead's decisions regarding the fitness of a CB or credential. This could work much like the interprovincial passport system for prospectus reviews to which almost all provincial securities regulators subscribe.

Potential disadvantage for smaller entities

5. FSRA is seeking feedback on the potential impact of the proposed fixed fee amount on smaller entities' ability to enter the framework as CBs.

We see the fixed fee amount of \$25,000 as reasonable. The fixed fee may indeed deter some smaller entities from applying to be CBs. In our view, this can be beneficial from a public policy

¹⁰ The lead regulator could be based on where the head office of a CB is located.



perspective as FSRA will be entrusting CBs with significant responsibilities toward protecting consumers and advancing the public interest.¹¹ CBs that do not have the resources to discharge these responsibilities at a high standard should not qualify for the Framework.

FSRA has noted the need for CBs to be adequately resourced, stating in its proposed *Approach No. FPFA001APP, Financial Professionals Title Protection – Administration of Applications*:

To demonstrate effective governance and administration that serves the public interest, a credentialing body's application should describe:

...

- its financial resources necessary to operate its credentialing program;¹²

and

Credentialing bodies must demonstrate in their application the necessary expertise and resources to effectively administer and maintain a credentialing program.¹³

We agree with FSRA's approach. We believe the proposed \$25,000 fixed fee is not unduly onerous, and an inability to afford the fixed fee raises legitimate concerns about that entity's ability to seriously and effectively fulfill the duties expected of them as regulatory partners in the Framework.

4. CONCLUSION

We thank FSRA for this opportunity to provide feedback on the proposed fee structure for the Framework. We support an expansive approach that captures all recognized credential holders who serve retail clients in the Province, regardless of whether those credential holders use a restricted title or are themselves resident in the Province. We also discourage any rule that would allow CBs to artificially divide holders of the same credential into smaller classes, as that would add administrative burden and needless confusion for consumers.

Regarding holders of multiple credentials, we seek additional information about the underlying data that FSRA is using in its calculations. On its face, a \$22 per credential holder "fee" seems reasonable, but we are left wondering whether these calculations are actually based on a credential-person concept, which would create knock-on effects on the Framework's affordability. With respect to the fixed fee, we support setting a reasonable amount that would

¹¹ These responsibilities include ongoing curriculum maintenance, investigations of misconduct, disciplinary proceedings and public reporting.

¹² FSRA, *Approach No. FPFA001APP: Proposed Financial Professionals Title Protection – Administration of Applications*, (May 11, 2021) at: <https://www.fsrao.ca/media/3966/download>, p. 7.

¹³ *Ibid.*



deter those that do not realistically have the resources to discharge the duties expected of a regulatory partner in the Framework.

We recognize that FSRA is shaping the fee structure in the face of many unknowns, as the Province is the first in Canada to implement this type of framework. We fully expect that some calculations and assumptions will need adjustments along the way. We will collectively learn from the experience, which will benefit FSRA's peer regulators across Canada. And looking beyond the Consultation, we ask FSRA to be mindful that, as those peers develop their own frameworks, there may be opportunities to harmonize interprovincial efforts. This type of collaboration could serve to enhance consumer protection across borders while creating opportunities to find efficiencies and reduce costs.

Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

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