



Submission on Notice of Updated Proposed Financial Professionals Title Protection Application Guidance and proposed Supervision Guidance [2021-018]

12/13/2021

Submission to the Financial
Services Regulatory Authority
of Ontario

The Canadian Bankers Association (**CBA**)¹ appreciates the opportunity to provide input on the Financial Services Regulatory Authority of Ontario's (**FSRA**) Notice [2021-018] – *Consultation on the updated proposed Financial Professionals Title Protection Application Guidance and proposed Supervision Guidance* (the **Consultation Paper**).

In line with our prior advocacy on this topic, the below list outlines our comments and considerations in relation to the Consultation Paper:

- We are concerned that some of the general expectations noted in the Consultation Paper may be interpreted differently by the various Credentialling Bodies (**CBs**), and ultimately lead to the implementation of policies and procedures by a CB with no consultation or feedback from stakeholders.
- The introduction of specific new conduct standards for FPs/FAs noted in the Consultation Paper are inconsistent with the Financial Professionals Title Protection Act, 2019, and may have the effect of imposing securities law requirements and standards on banking products and services which are federally regulated.
- Individuals who are registered as representatives or approved persons of the Investment Industry Regulatory Organization of Canada (**IIROC**), the Mutual Fund Dealers Association of Canada (**MFDA**) (together, **SROs**), and provincial securities commissions should be exempt from the Act. If this route is not chosen, FSRA should show deference to SROs and provincial securities commissions' existing, robust disciplinary, conduct and complaints processes.

Our comments are expanded on in the following submission.

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.

General Comment

Foundational elements of FSRA's Financial Professionals Title Protection Application Guidance and proposed Supervision Guidance (the **Guidance Documents**) are positioned generally and may be open to interpretation by CBs. Examples of this generality include, but are not limited to, the following underlined sections drawn from the Guidance Documents:

- “A FA education program should demonstrate it has content that reflects an understanding of common investment products, with in-depth knowledge and expertise in one or more of those products”.
- “[A CB’s policies and procedures should require] credential holders to disclose their approved credential(s) to consumers in a clear and timely manner”.
- “A FP education program should demonstrate it has sufficient content to provide a comprehensive understanding of [...] investment planning, including alternative investments (FSRA understands alternative investments to be investments that do not fit into the traditional investment categories of stocks, bonds or cash)”.
- “The submission for approval of a CB must include: explanation of any education exemptions / alternative pathways with respect to obtaining a credential that may be granted or considered by the CB”.

If CBs are left to interpret key elements of the regime without public consultation, divergent standards may develop across the marketplace. This concerns us in various ways. From a transparency perspective, it is important all stakeholders provide input to develop a regime that serves Ontario's consumers efficiently and effectively. Additionally, divergent CB standards may create customer confusion in relation to the accreditation their advisor or planner holds, undermining the policy intent of the proposed title protection framework.

To avoid these unintended consequences, we suggest FSRA should engage in further consultations on the Guidance Documents to clarify the expectations around foundational elements of the regime. We believe this will benefit Ontario consumers and assist in the implementation of the regime.

Specific Comments

Conduct Standards

We note that FSRA has included in the proposed Financial Professionals Title Protection Application Guidance (**Application Guidance**) an obligation for CBs to develop a code of ethics which must include “a requirement to ensure that credential holders will put the client’s interests first”. Consistent with our general comment, we are concerned that CBs may interpret this obligation in a manner that oversteps their mandate and encroaches on the regulatory authority of the securities regulator and/or the federal regulatory authority for financial consumer products and services - the Financial Consumer Agency of Canada (the **FCAC**).

To this point, we note that not all FP and FA title users are securities registered individuals. To the extent they are, individuals using these titles may be engaged in the business of banking (providing bank products and services such as chequing accounts, loans, lines of credit, credit cards, mortgages, safety deposit boxes, etc.). Introducing a conduct standard, avoidance of conflicts, and suitability determination on the sale of any product or service by a person using an FA or FP title would have the effect of requiring bank employees using these titles to meet the standards of provincial securities law when they are selling banking products and services. The sale of banking products and services is regulated federally under the *Bank Act* and overseen by the FCAC and, further, bank employees must comply with new Financial Consumer Protection Framework (**FCPF**) requirements coming into effect June 2022. The FCPF will impose multiple conduct obligations and prohibitions. For example, a bank must ensure that the products and services that it offers or sells to consumers are appropriate for a consumer having regard to their circumstances, including their financial needs. It is also worth noting that banks are prohibited from entering into arrangements with any of their representatives, agents or other intermediaries to sell or further the sale of a bank’s products or services unless these representatives etc., comply with these obligations and prohibitions (to the extent they apply to the representatives’ etc., activities). The conduct requirements in the Guidance Documents would effectively ‘override’ the FCPF and would require bank employees selling banking products and services to adhere to the different standards of provincial securities laws, as interpreted by CBs, applicable to registrants. Introducing different conduct obligations through titling regulation on the sale of banking products and services would have the effect of imposing securities law requirements and standards in an area that is already extensively regulated by the FCAC and empowering a CB to oversee the sale of banking products and services would create unnecessary duplication and be wholly confusing to a consumer.

The development of conduct requirements requires extensive dialogue and feedback from impacted stakeholders – for example CSA Notice of Amendments to National Instrument 31-103 *Reforms to Enhance*

*the Client-Registrant Relationship (The Client Focused Reforms)*². We do not agree that the interpretation of specific conduct requirements should be left to a CB.

It is our position that the language in the Application Guidance should reflect the language used in the Financial Professionals Title Protection Act, 2019 (the **Act**). More specifically, we propose the conduct requirement noted in the Guidance Document be amended to read: “CBs must develop a code of ethics which includes a requirement that credential holders deal with clients competently, professionally, fairly, honestly and in good faith”³.

Exemptions

As noted in our previous submissions, we continue to strongly support exemptions for SRO-registered individuals. This is because the vast majority of our members’ employees who carry the FP or FA title (numbering in the thousands) are registered as representatives or approved persons by IIROC or the MFDA. As registrants, these individuals are already subject to the rigorous oversight of the SROs and provincial securities commissions which includes strict proficiency, credentialing and conduct requirements. Based on the SROs’ and provincial securities commissions’ existing, comprehensive registration regimes, we request that FSRA provide an exemption for SRO-registered individuals pursuant to its regulation-making authority under paragraph 15(2)(e) of the Act. Appreciating that FP and FA title users are already subject to oversight under existing regulatory regimes, we suggest they should be exempted from sections 2 and 3 of the Act so as not to be subject to potentially duplicative, confusing and costly requirements and oversight, effectively assuming the jurisdiction of the provincial securities regulators (CSA) and the SROs (including any successor SRO), which have authority for titling and investor protection concerns, without providing additional benefit or protection for consumers.

Should FSRA decline the request for an exemption, which we understand other stakeholders have also

² See also: CSA Staff Notice 33-316 Status Report on Consultation under CSA Consultation Paper 33-403: *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*.

³ Section 5(1)(a) of the Act states: “Any financial planning credential offered by an approved credentialing body shall be: (a) based on a program designed and administered to ensure that an individual using the credential will be required to deal with the individual’s clients competently, professionally, fairly, honestly and in good faith”;

Section 6(1)(a) of the Act states: Any financial advising credential offered by an approved credentialing body shall be (a) based on a program designed and administered to ensure that an individual using the credential will be required to deal with the individual’s clients competently, professionally, fairly, honestly and in good faith”.

suggested, we believe deference should be given to the disciplinary, conduct and complaints oversight that already exists for the SROs and provincial securities commissions in this or other provinces, and which will be further strengthened with a successor SRO under CSA jurisdiction. We 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 securities commissions in this or other provinces. The SROs have established complaint resolution mechanisms for consumers which include investigative powers. In the case of a complaint, it would be problematic (e.g., potential consumer confusion) to have a parallel resolution process running alongside that of the SRO. To avoid problematic unintended consequences from regulatory overlap, 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 and robust complaint-handling processes. Their experience is that customers with concerns come directly to our members and not to the credentialing bodies.

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