Stephen Frank

President and CEO

December 13, 2021

Mr. Mark White
Chief Executive Officer
Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON, M2N 6S6

Dear Mr. White,

Re: Financial professionals title protection rule and guidance third consultation

On behalf of the Canadian life and health insurance industry, thank you for the opportunity to give feedback throughout this process. As this series of consultations draws to a close, there are several final concerns to bring to your attention. Below, we highlight the risk of consumer confusion about what holding a Financial Advisor (FA) credential means. Also, the language used to describe a credential holder's standard of care is inconsistent with fair treatment of consumers (FTC) regulatory guidance. As written, the current wording potentially introduces new legal concepts. To prevent problems, we suggest that it be adjusted to align with the existing FTC regulatory guidance.

About the CLHIA

The CLHIA is a voluntary association whose member companies account for 99 per cent the life and health insurance business in Canada. These insurers are significant contributors to Ontario and its economy. They provide financial security to about 11 million Ontarians and make over $45 billion in benefit payments (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits with the remaining 10 per cent going to life insurance beneficiaries). In addition, life and health insurers have nearly $340 billion invested in Ontario's economy. A large majority of life and health insurance providers are licensed to operate in Ontario, with sixty-six headquartered in the province.

New credentials should signal enhanced knowledge

<u>Leverage licensing training programs</u>

Our understanding of the public policy objective of the proposed changes is that the FA and financial planner (FP) titles should certify a base level of knowledge and signal who is competent to provide financial advice. The underlying assumption is that someone with an FA credential has more training and experience than someone who holds a standalone life or mutual fund licence.

This implies that the training to qualify as an FA builds on the current training required to hold a licence. If it does not, a credentialing body must replicate it within a new program or it will not be a higher standard.

Our preferred approach is to incorporate the life licence training material into a credentialing program, otherwise:

- The FA title may send a false signal to consumers that they are more knowledgeable than a licencee;
- New training that covers the same topics may not be equally comprehensive because industry stakeholders and regulators would not have reviewed it;
- Recreating training would duplicative for credentialing bodies; and
- Licensees would be less likely to take the time or incur the cost of repeating the training they already have.

Unlicensed FAs should not be able to sell life products:

We are concerned that an FA without a life licence could advise on products such as life and health insurance relying on their FA credential alone. This puts consumers are risk and would also be a contravention of the *Insurance Act*.

Unlicensed practice by FAs pose a risk because they do not have the:

- ability to sell life and health insurance products;
- experience working with a client to identify their needs and advise them on specific products relative to a sale; or
- same product specific training as a licencee.

In short, consumers should look for advice about insurance products from licenced insurance advisors, and not someone with a broad FA credential alone. Similar risks occur where there is other licensable activity such as advising on the sale of mutual funds.

If the FA training does not build on the training of licensees, there is a risk of creating a second-class title, which may lead consumers away from qualified licenced practitioners.

Monitoring and Screening: Importance of avoiding credential shopping:

It will be important that credentialing bodies actively screen candidates. This should not become an avenue for those that lose their licences to continue to practice. For example, if a life insurance advisor loses their licence they should not be able to rebrand themselves as an FA and keep practicing. For consumers, this is confusing as FSRA has positioned the FA being superior to a licence.

Complaints should continue to be directed to insurers:

It is in the consumer's interest for complaints involving life and health insurance products to be directed to insurance companies. For most complaints, the insurance company can resolve them quickly and at no cost to the complainant. We would not want the layering of complaint processes across organizations to increase the time it takes to reach a resolution or to add costs for consumers.

Use of terminology should be amended to align with FTC requirements

As regulators adopt similar public policy initiatives across the country it is essential that they use consistent language. This helps with implementation and makes guidance understandable for

consumers and industry stakeholders alike. The use of new terminology can risk introducing new concepts.

The proposed Guidance says:

> "Strengthened language for CBs to include, as part of their code of ethics or professional expectations, a requirement for credential holders to put the client's interest first."

We agree with the principle that a credential holder, or anyone that is giving them advice, should place a client's interest ahead of their own.

The term, "client's interest first', is often used to refer to a fiduciary duty. Common law fiduciary duties exist in advisory relationships, where the advisor is in a position of trust, acting on behalf of another, with an element of discretion. This is not a normal relationship between an advisor and their clients. Introducing this concept through this Guidance may conflict with the common law definition and inappropriately broaden its application.

"Client's interests first" can also refer to a best interest duty. A best interest duty does not reflect a relationship with many forces beyond the control of each party. For example, with multiple market forces out of the control of an FA, a client may decide to buy a product that in the future does not have the outcome they expected. Clients also have the discretion to ignore the advice of an FA even if it is in their best interest.

If FSRA's intention is to introduce a best interest standard or fiduciary duty they should consult on this complex matter specifically.

Any description of a standard of care should align with FTC guidance. Such an approach will promote consistency and limit unintended consequences. We ask that you replace the 'client's interests first' language with a requirement that credential holder put their "client's interest ahead of their own". As well, this guidance should set an expectation that FAs implement FTC policies and procedures as set out in regulatory guidance, rules, and regulations.

Closing

Thank you for considering our feedback throughout this process. If you would like us to discuss any of the issues we have raised, we would be pleased to meet at your convenience.

Sincerely,

Stephen Frank