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Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

September 30, 2021

Financial and Consumer Affairs Authority of Saskatchewan (FCAA)
Insurance and Real Estate Division
Suite 601, 1919 Saskatchewan Drive
Regina, SK S4P 4H2
Submitted via email to: finplannerconsult@gov.sk.ca

Re: Proposed Regulations [2021-001] and Request for Comment: The Financial Planners and Financial Advisors Regulations

FAIR Canada is pleased to provide comments in response to the above-referenced proposed regulations.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to governments and regulators, and proactive identification of emerging issues.[1]

A. General Comments

From the perspective of financial consumers, we need a robust regulatory framework governing financial planning and financial advisory services across Canada. This is particularly important because, contrary to consumer expectations, most financial advisors are salespeople, not financial professionals. Most consumers are also confused by the different titles used in the industry. We are therefore broadly supportive of the objectives of these regulations.

We note that one of those objectives is to promote regulatory harmonization. In this regard, it is unfortunate that Ontario and other provincial and territorial governments did not seek to work together to create a single framework. We also find it disappointing that little effort appears to have been made to leverage existing consumer protection systems, such as the existing regulatory structure for insurance brokers and securities related advisers and dealers.

Instead, it appears we will end up with multiple credentialing bodies operating across different

[1] Visit www.faircanada.ca for more information.

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provinces, each of whom will be overseen by different provincial regulatory bodies based on different requirements and standards. This is deeply disappointing as it will simply create more confusion for consumers, increase regulatory fragmentation and regulatory arbitrage, as well as raise the costs for those engaged in this industry, which consumers will ultimately pay for.

To the extent, however, that the FCAA intends to follow Ontario's lead in developing its own provincial system, we believe harmonization is an important consideration. Nevertheless, we strongly encourage the FCAA to look beyond the Ontario title protection model, which in the view of many public commentators fails to deliver meaningful consumer protections. Instead, we would encourage the FCAA to harmonize with the Quebec model, which includes several important consumer protection elements not found in Ontario.

Finally, before addressing the FCAA's specific questions, we would like to highlight two fundamental components of a robust consumer protection framework:

- Ensuring that those providing financial advice act in the "best interests" of consumers; and
- Ensuring that regulators have consistent tools and adequate resources to effectively protect consumers when misconduct occurs.

1.) The Importance of a Statutory Best Interest Standard

When it comes to financial matters, only those who are required to give advice in their clients' best interests should be permitted to call themselves financial planners (FPs) or financial advisors (FAs).

In this respect, we applaud the FCAA for going further than its Ontario counterpart. Specifically, by requiring FPs and FAs to address material conflicts of interest in the client's best interest, and to require that they put clients' interest first when making a suitability determination.

While these requirements are aligned with the Canadian Securities Administrators' Client Focused Reforms, recent developments demonstrate the potential limits of this approach.[2] As such, we need to move beyond simply the issue of resolving conflicts and insist that FPs/FAs put their client's best interest at the centre of everything they do.

To accomplish this, the FCAA and the Saskatchewan government should work to create an overarching statutory duty for FPs/FAs to act in their clients' best interest. This would provide meaningful consumer protections. It would also be consistent with the recommendations made by an Expert Committee, which undertook extensive research and public consultations on how to regulate FPs/FAs and protect consumers.[3]

[2] "Banks halt sales of third-party mutual funds to prepare for rule change." Globe and Mail, September 7, 2021.
[3] See Final Report of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (November 1, 2016).

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A statutory standard would also help close a long-recognized expectation gap, where consumers assume (incorrectly) that the advisor is providing objective advice that meets their goals, financial situation and needs. Contrary to this expectation, what consumers often receive, especially in the case of advisors, is little more than product sales "advice".[4] And often, from someone that only sells one type of financial product.

2.) Protecting Consumers from Misconduct

The proposed Saskatchewan title protection framework assigns responsibility for overseeing the conduct of FPs/FAs to credentialling bodies (CBs). This is similar to the Ontario approach. We remain concerned that some CBs will not have the necessary skills, resources, or knowledge required to review FP and FA conduct, nor effectively discipline them when they fail to meet regulatory expectations or act contrary to the public interest.

We note, however, that unlike its Ontario counterpart, the FCAA will retain jurisdiction to pursue FPs/FAs whose conduct may be harming consumers.[5] This is an important difference in the Saskatchewan framework, and one that we highly recommend be enacted and emulated in other jurisdictions. Equally important is that the FCAA should be given the resources needed to use this authority to protect consumers in practice.

Finally, while the FCAA has been granted authority to issue fines and penalties, which is an improvement over the Ontario approach, a mechanism should also be included to compensate victims of misconduct by their FP or FA.

B. Comments on Specific FCAA Questions

Our recent recommendations made with respect to the Ontario title protection framework apply equally to the Saskatchewan model. At the risk of some repetition of these recommendations, below we set out our views with respect to the specific questions posed in the FCAA Notice.

1.) FP and FA Credentials. The FCAA is seeking feedback on whether the Proposed Regulations and FP and FA baseline competency profile adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body's education program to establish the minimum standard for FP and FA title users.

The term "financial" in an FA's title creates a reasonable expectation on the part of the client that they are receiving broad based advice that takes their overall financial situation into account. However, many so called "financial advisors" can legally only provide advice in connection with one or certain types of financial products. For example, a mutual fund dealer representative is

[4] The expectations gap has been recognized since at least 2012 – see for example, the CSA Consultation Paper - Exploring the Appropriateness of Introducing A Statutory Best Interest Duty When Advice is Provided to Retail Clients (October 25, 2012).
[5] Section 36, *The Financial Planners and Financial Advisors Act*, SS 2020, c 22.

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only providing advice on mutual funds, and perhaps only on funds manufactured by the firm they work at. The title "financial advisor" however, conveys a very different expectation.

This is the fundamental consumer protection issue that regulators and governments need to address. In our view, the proposed baseline of competencies for FAs has set the bar too low and does not address this fundamental problem. Creating a title protection framework without significantly higher proficiency requirements only exposes consumers to more risks and exacerbates investor confusion.

2.) Disclosure: The FCAA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use the FP or FA title. The FCAA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.

The objective of minimizing consumer confusion requires transparency and consumer awareness of titles, credentials, and what they mean. Disclosure of credentials to clients should therefore be mandatory.

Disclosure requirements should accommodate a variety of forms (e.g., letterhead, social media profiles, marketing material, business cards) sufficient to ensure clients are aware of credentials. FPs and FAs should also be required to take steps to ensure that clients understand the scope of services provided under each credential. This includes being clear about what services are, and what services are not, provided. Stated differently, what the client should or should not expect from the FP or FA.

Published FCAA guidance on what is expected of credential holders will facilitate compliance. Such guidance should address:

- acceptable forms of disclosure; and
- how credential holders can confirm to the relevant CB that their clients have received appropriate disclosure of credentials and what they mean.

The FCAA should also work to develop a central public registry, similar to what its Ontario counterpart has committed to developing. A registry will enable consumers to verify whether an individual they are dealing with meets the minimum standards established by the framework and review the individual's disciplinary and complaints record. The design of the Saskatchewan registry should accommodate the eventual development of a national registry.

3.) Transition Date: The FCAA is seeking feedback on whether the proposed transition date of July 3, 2020, is appropriate or, if you wish to propose another date, the benefits of the proposed date.

The proposed regulations indicate transition periods of 4 years for individuals already using the FP title, and 2 years for those using the FA title, during which these individuals can continue using

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the titles without obtaining credentials.

We believe these transition periods are too long, exposing consumers to unnecessary potential harm and ongoing confusion.

We urge the FCAA to eliminate or at least significantly reduce the transition periods. While this may cause some inconvenience for those already using the FP/FA titles who need time to obtain a credential, this could be addressed by allowing them to add a qualifier to their titles indicating their credential is pending.

4.) **Exemptions and Challenging Examinations: The FCAA is seeking comments on whether the framework should allow for any exemptions. In particular, the FCAA is requesting comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.**

We are strongly of the view that the FCAA should not adopt any exemptions to the framework, as doing so would weaken its effectiveness and be inconsistent with the Ontario model.

5.) **The FCAA is also seeking comments on whether the framework should allow for certain qualified individuals to challenge the required FP and FA examinations. Like the issue of exemptions, the FCAA is interested in comments on the principles governing when challenges should be permitted, the extent to which challenges may be required, to whom they should be made available (if at all) and the benefits and drawbacks of permitting exemptions.**

Examinations are an important element in establishing the credibility of the relevant educational requirements and should therefore, not be subject to challenge. As others have commented, we do not support grandfathering of individuals into the framework by exempting them from examinations simply based on attaining some arbitrary amount of experience in the field.

6.) **Titles: The FCAA is seeking suggestions as to examples of titles that could reasonably be confused with the FP or FA titles and comments regarding whether a guidance document or other regulatory approach is necessary at this time.**

In developing examples of titles that could reasonably be confused with the FP/FA titles, we suggest applying a standard that takes a broad approach, recognizing that most consumers do not understand the difference between these titles.[6] A standard along these lines should be applied:

[6] This lack of understanding was made clear in Ontario's consumer research on this question. See: Appendix C - Consumer research for the FP/FA Title Protection Framework.

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Using this standard, a list of potentially confusing titles should be developed, and their use prohibited, like the approach in Quebec. This is also the approach favoured by New Brunswick's Financial and Consumer Services Commission in its recently launched proposal to develop a title protection framework for that province.

We also recommend, as have other commenters, that the FCAA avoid the Ontario approach of producing a list of examples of titles that would not be reasonably confused with the FP/FA titles. As noted in our recommendations to the Financial Services Regulatory Authority of Ontario, such a list will have a significant unintended consequence of allowing individuals to circumvent the requirements of the title protection framework.

Conclusion

We thank you for the opportunity to provide our comments and views in this submission. We would be pleased to discuss our submission with the FCAA should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@fair-canada.ca.

Sincerely,

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