

December 8, 2021

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted via FSRA Online Submission System

**Re: Consultation on the updated proposed Financial Professionals Title Protection Application
Guidance and proposed Supervision Guidance**

FAIR Canada is pleased to provide comments on the above-referenced Consultation.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investors' 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 government and regulators, and proactive identification of emerging issues.¹

General Comments

From a consumer protection perspective, we continue to view the proposed title protection framework as less than optimal and hindered by governing legislation too narrowly focused on protecting titles, as opposed to consumers.

We support, however the further proposed enhancements to the framework, particularly the new stipulation that CB Codes of Ethics require credential holders to “put the client’s interests first.” Also helpful is the added clarity concerning the complaints handling process.

We believe that, even within the constraints of the governing legislation, there is room to further enhance consumer protections. Our proposed enhancements are outlined below.

Clarify the Scope of the Best Interest Standard

While we would have preferred a statutory-based best interest standard directly enforceable by FSRA, requiring it to be included in a CB’s Code of Ethics is an improvement to what was first proposed.

To strengthen its impact, we urge FSRA to clarify that “putting the client first” is an overarching requirement in *all aspects of the client relationship*. In other words, the standard must not be limited to specific scenarios such as those only involving conflicts of interest or suitability

¹ Visit www.faircanada.ca for more information.

determinations.

The importance of adopting an overarching best interest expectation was recently re-affirmed by Ontario's Auditor General in its [review of the Ontario Securities Commission \(OSC\)](#). The resulting Auditor General's report notes that such a standard has been implemented in leading jurisdictions such as Australia, the United Kingdom and Europe, and recommends that a similar requirement be adopted in Ontario.

Enforcement and Conduct

Under the proposed framework, oversight and enforcement of the conduct of individual credential holders remains the responsibility of CBs. As such, it will be critical for FSRA to set a high bar in terms of what is expected from CB monitoring and enforcement practices.

This is somewhat addressed by new language in the Application Guidance requiring CBs to provide FSRA with a description of these monitoring and enforcement practices. In our view, the Guidance should be further enhanced by specifying that FSRA examinations of CBs will include a review of the CB's enforcement record.

We also note that the updated Supervisory Framework Guidance no longer refers to on-site reviews of CBs by FSRA. On-site reviews are an important component of any supervisory framework as they provide insight that cannot be gained from "desk reviews" alone. We therefore recommend that the updated Guidance be further amended to include periodic on-site reviews as part of FSRA's supervisory program.

Complaints Handling

We support the proposed new requirement that complainants be informed of their options when making a complaint against a credential holder that is dually licenced. This added requirement is important, given the well-established fact that the complaints process remains poorly understood by most financial industry consumers.

The complaints process should also include specific minimum requirements that must be met by CBs, such as:

- The CB's complaints process must be fair and transparent.
- The process must be easy to find and accessible (e.g., free to use, available in multiple languages, prominently posted on their website, etc.)
- The CB should also provide assistance if needed to help a complainant navigate the process.
- The complaints process must be timely and efficient.
- The process must produce final decisions that bring closure to the complaint.

Lastly, as part of its responsibility to oversee CBs, FSRA should also accept complaints directly

from consumers who are dissatisfied with the result achieved via the CB complaint process.

Reasonably Confusing Titles

As we have noted in our [previous comment letter](#), the study commissioned by FSRA in the fall of 2020 found that a large majority of consumers are unclear on the difference between Financial Planners (FPs) and Financial Advisors (FAs). This suggests that the scope of titles that could be reasonably confused with either the FP or FA title is very broad.

To try to address this, the Supervisory Framework Guidance includes a short list of titles that could be reasonably confused with the FP/FA titles. For example, “Senior Financial Planner” or “Financial Investment Advisor”. These titles would be protected by the proposed framework and require any individual using them to be credentialed by a recognized CB.

In our view, the list needs to be expanded to include any title that suggests some form of “advice/ planning/ management/ consulting” regarding an individual’s “finances/ money/ investments/ assets/ wealth”. Titles using these words should be deemed reasonably confusing and prohibited unless they were granted by a CB.

We also recommend that the final list of potentially confusing titles be tested and validated by focus groups of individual consumers.

Curriculum Requirements

The curriculum requirements detailed in the Application Guidance are, in almost all cases, described as topics that “should” rather than “must” be included in the curriculum. Given the fundamental importance of these competency requirements, more definite language (“must” rather than “should”) is needed here to clearly establish minimum curriculum standards.

Conclusion

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to discuss our submission with FSRA should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,



Jean-Paul Bureaud,
Executive Director

FAIR Canada | Canadian Foundation for Advancement of Investor Rights