FAIR Canada Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

June 2, 2023

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted via the FSRA website

Re: Notice of Changes and Request for Further Comment Proposed Rule 2022-001 Assessments and Fees

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation with respect to further amendments to the Proposed Rule 2022-001 regarding assessments and fees (Proposed Rule), specifically with respect to the title protection framework for financial planners and financial advisors (Framework).

FAIR Canada is a national, independent, non-profit organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.[1]

The Proposed Rule

We agree in principle that a credentialing body (CB) approved by the FSRA, but that is overseen by another regulator and already paying fees in connection with that regulator's oversight, should not have to pay twice. This is particularly important since approved CBs and their credential holders will simply flow the costs through to Ontarians wishing to use their services.

The principle against paying twice is especially apt when it comes to FSRA's year-to-year operating costs for the Framework. To the extent the Ontario Securities Commission (OSC) assumes full responsibility for overseeing the Canadian Investment Regulatory Organization's (CIRO) activities associated with the Framework, the Proposed Rule has merit. Stated differently, the CIRO should not be required to pay a portion of the operating costs to FSRA, given that those operating costs will presumably be borne by the OSC.

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

No information, however, is provided about whether the OSC's fees will need to increase to absorb the additional costs for overseeing a portion of the Framework. We expect this will depend on whether the Framework will simply be a rubber stamp for the existing use of the financial advisor title by CIRO registrants,[2] or, whether its objective is to address existing consumer concerns with the status quo. For example, will the CIRO create new proficiency requirements for registrants who want to continue using the financial advisor title? The latter will be important to promote "truth in advertising" and ensure consumers are dealing with someone that provides financial advice beyond just investment advice, or, even worse someone who is just a salesperson selling one type of security.

The lack of data published by the FSRA also makes it difficult to ascertain the Proposed Rule's impact on the operating fees to be paid by non-SRO CBs and their credential holders. Specifically, FSRA's budget does not break out or itemize what expenses are included in the direct and common costs, in what amounts, or the extent to which such costs are incurred with respect to financial advisors, financial planners or both.[3]

Without more transparency from FSRA, it is difficult to assess whether exempting an SRO CB from all operating costs of the Framework is appropriate. For example, are the costs for educating the public and raising awareness about the new financial planner and financial advisor titles captured by the proposed exemption, or will CIRO be expected to reimburse FSRA for its fair share of those costs? To the extent that CIRO registrants will benefit from these and other FSRA initiatives, it would make sense for them to pay a portion of those costs as well.

It is also difficult to assess the longer-term impact of the Proposed Rule, including whether it will become more expensive for investors to access important services, such as financial planning services. As we all know, one of the best ways to begin enhancing your financial well-being is to get a financial plan. We are concerned that the Proposed Rule could make it more expensive to do so.

Our concern is based on our understanding that a CIRO registrant holding an approved credential from another CB would be counted for purposes of that CB's share of operating costs. We would expect that CB would, in turn, seek to recover its operating costs from the CIRO registrant. This could have the effect of discouraging CIRO registrants from holding credentials with other approved CBs. The net effect might be that non-SRO CBs end up shouldering a larger portion of the operating costs, which would be passed on to consumers. This could make getting a financial plan more expensive.

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[2] For example, many mutual fund dealing representatives working in bank branches routinely hold themselves out as "financial advisors" to the public. And, to add to public confusion, some individuals use a different title on each side of their business cards.)

[3] FSRA FY2023-2024 Board-Approved Budget.

When it comes to capital costs, we agree that CIRO registrants should pay a share of the costs for establishing the Framework. This is because CIRO registrants will benefit from the Framework and their ability to legally hold themselves out as "financial advisors" to the public. We also assume that CIRO registrants will be, by far, the largest users and beneficiaries of the "financial advisor" title in Ontario. From this perspective, it is not unreasonable for them to pay the lion's share of the capital costs (which we understand to be around $3 million).

What Do Consumers Get in Return?

The Proposed Rule seeks to ensure the costs of establishing and operating the Framework are appropriately allocated and recovered from CBs, based on the relative benefit they derive from FSRA's set-up costs and ongoing operating costs. Seeking to achieve an appropriate and fair allocation of costs is always important. However, it is also important to remember that consumers will end up paying the bills for the Framework. As such, one also needs to ask what consumers get in return from the Proposed Rule and the Framework it will enable.

From our perspective, they get very little.

First, we must be clear on what the framework accomplishes in terms of consumer protection. Arguably, it enhances consumer protection by prohibiting a person from using the financial advisor or planner title unless they satisfy minimum standards. In practice, this means consumers can take comfort that any individual in Ontario calling themselves a financial planner, or a financial advisor, is not just an amateur without any qualifications.

Beyond prohibiting wholly unqualified individuals from calling themselves financial planners or financial advisors, the Framework fails to deliver any additional or meaningful consumer protection. Interestingly, the Framework does not actually prohibit a wholly unqualified amateur from giving such advice—it only prohibits them from using either of the two protected titles.

We had anticipated the Framework would address a more fundamental consumer protection problem, particularly when it comes to financial advisors. Specifically, that it would establish a high standard for who could call themselves a financial advisor, and ensure they are competent to provide holistic advice about their client's financial affairs. This would include advice that goes beyond just what securities (or insurance products) to buy.

Where the Framework landed, however, is that almost anyone working in the financial services sector, including a salesperson only able to sell one type of product, could call themselves a "financial advisor." They do not need to provide consumers with financial advice in the true sense of the term; they just need to "have technical knowledge of at least one common investment product."[4]

[4] See FSRA's Frequently Asked Questions.

Another way of looking at the Framework is what impact it has on the status quo. From our perspective, it changes little.

Those who were certified financial planners before the Framework came into force will be able to continue to hold themselves out as financial planners. The only real difference is that they will now pay more fees for the privilege of using that title. The same holds true for financial advisors. Many individuals working in the securities and insurance industry have been calling themselves financial advisors for years. The only real difference today is that some will have to pay more fees to do so, while CIRO registrants may not pay any more, although it is not entirely clear.

From our perspective, the Framework simply perpetuates the status quo under the guise of being consumer protection legislation. As currently implemented, it will not:

- Help consumers distinguish between financial advisors that may, in fact, have quite different qualifications and product knowledge, or
- Raise the proficiency standards and professionalism of those in the financial services industry that like to market themselves as "financial advisors" (even if they are just mutual fund salespersons or investment advisors).

To make matters worse, consumers will now have to deal with a Framework that:

- Is not easy to understand or navigate,
- Perpetuates confusing and potentially misleading titles,
- Provides diverse levels of regulatory protections and is out of step with enhanced consumer protections introduced by other regulators, and
- Includes no meaningful authority for the FSRA to protect consumers.

We elaborate our concerns below in the hope that the FSRA will take them into account as it tries to improve the Framework, while prudently managing the Framework's costs that are passed on to consumers.

Differences Between CBs Are Not Easy to Understand

To date, the FSRA has approved four CBs and nine credentials. The CBs all differ in terms of their purpose, function, and have different educational requirements, ways of testing proficiency, and impose diverse standards on their members. There are also significant differences in terms of each CB's disciplinary and enforcement capabilities, and track record when it comes to protecting harmed consumers.

And these differences will only increase when the CIRO becomes an approved CB. Simply put, not all CBs are created equal; some may be characterized as standard setters, others as educational service providers, another as an industry lobbyist, and one as a highly regulated and well resourced self-regulatory organization.

Even though the FSRA does publish information about the different CBs and their respective credentials, the average consumer will not be able to understand or appreciate the significant differences between CBs and their credential holders, and how these differences might affect them.[5]

Titles That Do Not Mean What You Think

The Framework protects the use of two titles, financial advisor, and financial planner. But what do these titles mean?

For the financial planner title, it appears to mean what most people would expect – a person that is able to develop an integrated plan for their client, based on a holistic analysis of the client's financial circumstances. But what about the financial advisor title? Most people would expect they would undertake a comprehensive review of your financial affairs and provide you with advice on how to better manage your affairs so you could improve your financial well-being.

Under the Framework, however, a financial advisor could be a person that is licensed to give you advice only in respect of buying or selling one type of investment product. For example, whether to buy or sell a particular mutual fund. Or it could mean someone that is licensed to give you advice about buying and selling stocks in publicly listed companies. Or someone that can manage a portfolio of securities. This is because the FSRA's product-centric approach for setting minimum standards captures individuals working in quite different spaces. The financial advisor title itself does not convey or clarify what specific financial products or services users of that title are licensed and permitted to provide.

Different Regulatory Protections Depending on the CB

As noted above, not all CBs are created equal. We expect differences among them to increase when the CIRO becomes an approved CB. When it does, any registrant choosing to use the financial advisor title will be subject to much stronger proficiency and regulatory requirements than financial advisors associated with some other CBs.

For example, a CIRO financial advisor will be required to know-their-client, know-their-product, provide advice that is suitable to their client, and disclose and discuss any material conflicts of interest with their clients. These standards do not apply in the context of some other CBs. And, as compared to some other CBs, the CIRO has a much better track record when it comes to taking enforcement action against registrants that harm consumers.

Interestingly, CIRO also prohibits the use of misleading titles. This raises other questions. For example, given that advice about buying or selling securities is a subset of what a reasonable consumer would expect from a financial advisor, would the use of the title misrepresent the scope of services provided by registrants to their clients?

[5] Approved Credentialing Bodies and Credentials.

Differences among the CBs makes it difficult for the consumers to really understand the extent to which they can expect to be protected by each CB.

No Meaningful Enforcement Powers for the FSRA

Under the *Financial Professionals Title Protection Act, 2019* (FPTPA), the FSRA was not granted the power to levy fines or administrative penalties against CBs, their title holders, or individuals using the protected titles without holding an approved credential. FSRA's enforcement powers are limited to:

- Revoking a CB's approval,
- Revoking an approved credential,
- Issuing compliance orders, and
- Publicizing compliance orders.[6]

In cases where a consumer or investor has been harmed, these enforcement powers will neither provide a remedy, nor act as a deterrent. Given the impact that revoking a CB's approval, or an approved credential, would have on potentially hundreds or thousands of individuals, we expect that these powers would rarely, if ever, be used.

In practical terms, the only real remedies FSRA will impose are limited to issuing and publicizing compliance orders. Oddly, both are extremely weak enforcement tools when it comes to addressing the core problem used to justify the Framework—prohibiting a wholly unqualified person from using a protected title.

Moreover, as reflected in the terms and conditions imposed by FSRA when it approved the existing CBs,[7] the CBs are not equally up to the task of taking enforcement action or providing consumers with remedies against their members.

Finally, it may not be clear to consumers how different enforcement mechanisms interact under the Framework. For example, if an investor is harmed by the act or omission of a CIRO registrant (such as a mutual fund salesperson), but who obtained the financial advisor credential from a CB other than the CIRO, where would they take their complaint or concerns? FSRA, the CB, CIRO or the OSC? We don't believe that this will be intuitive or easy for consumers to understand or navigate.

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Thank you for considering our comments on this critical issue. We welcome any further opportunities to advance efforts that improve outcomes for investors. We intend to post our submission on the FAIR Canada website and have no concerns with FSRA publishing it

[6] FPTPA, subsections 4(4) and 7(4) and sections 12-13.
[7] Summary of Terms and Conditions imposed on Credentialing Bodies.

on their websites. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Bruce McPherson, Policy Counsel, at bruce.mcpherson@faircanada.ca.

Sincerely,

Jean-Paul Bureaud
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FAIR Canada | Canadian Foundation for Advancement of Investor Rights