

September 29, 2023

Manitoba Finance
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Re: Consultation Paper – Financial Planner Title Protection in Manitoba

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

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

A. Overview

We have written extensively on title protection and have routinely expressed concerns with the current approach adopted in Ontario. We are concerned it does not go far enough in terms of protecting consumers, creates an unlevel playing field within the industry, and is confusing and difficult to navigate and understand. A core concern is that by permitting the use of the same title by individuals with very different training, proficiencies, and legal obligations, it risks harming and misleading consumers who will not appreciate these differences.²

Since the Ontario model was introduced, other governments considering implementing similar title protection legislation have struggled with several critical questions, including:

¹ Visit www.faircanada.ca for more information.

² [FAIR Canada](#) (November 12, 2020); [FAIR Canada](#) (June 21, 2021); [FAIR Canada](#) (September 30, 2021); [FAIR Canada](#) (October 25, 2021); [FAIR Canada](#) (December 8, 2021); [FAIR Canada](#) (September 20, 2022); [FAIR Canada](#) (June 2, 2023), at 3-6.

- Whether to protect the financial planner title only versus protecting both titles?
- How should the framework deal with potentially confusing titles, including how to stop individuals from circumventing the framework simply by using another title like “financial consultant” or “investment counsellor”?
- What are the appropriate base-line competency requirements for financial advisors?
- How many credentialing bodies should we approve, and should only non-profit organizations with a public interest mandate be invited to apply?
- To what extent should all credentialing bodies demonstrate a consistent and equal standard when it comes to satisfying the mandatory approval criteria and duties?
- Who should ultimately oversee the conduct of financial planners and financial advisors, and what enforcement powers should regulators have over title holders?
- Should there be a common legal standard of care that applies to all financial planners and/or financial advisors, and what should that standard be?

Clear and commonly accepted responses to these critical investor protection questions have yet to emerge. We therefore recommend that Manitoba not proceed with title protection for financial planners and financial advisors until they do. Given that title protection is intended to be consumer protection legislation, we first need to ensure it can and will deliver effective consumer protection before rushing to implement a framework.

Similarly, it is premature to be concerned about harmonizing with Ontario’s title protection framework, as it is still too nascent and needs to evolve to fully deliver its intended outcomes. Rather, the focus should be on improving on the Ontario model and developing a common approach that is fit for purpose and meets consumers’ expectations across multiple jurisdictions.

Stated differently, prioritizing harmonization with other provinces is putting the cart before the horse. We first need to address the concerns that have come to light with the first iteration of the model adopted in Ontario, and ensure the next iteration is as robust as possible in protecting consumers.

The balance of our letter will focus on:

- What investors expect regarding financial industry titles, particularly the financial advisor title.
- Our concerns with the current iteration of title protection.
- Considerations for improving it.

B. What Investors Expect

In our view, a title protection framework should have consumer protection as its top priority, and it should reflect the reasonable expectations of financial consumers.

Based on new research conducted by FAIR Canada, when it comes to financial advisors:³

- 92% of investors agree that financial advisors should be proficient in estate planning, tax planning, retirement planning, investment planning and alternatives, finance management and insurance/ risk management (57% strongly agree).
- 95% of investors believe that it is important that individuals who use the financial advisor title all have the same level of training and set of skills (56% consider this very important).
- 77% of investors prefer a licensing approach that would require individuals to obtain a relevant degree or diploma in finance, accounting, economics, or a related field from a recognized educational institution, pass a comprehensive licensing exam, have a minimum number of years of work experience in the financial services industry, and be under the direct supervision of a financial sector regulator.
- Only 18% of investors prefer a licensing approach that would require individuals to take some basic courses from a government-approved credentialing body (CB) that tests their knowledge about a particular type of financial product and remain in good standing with that CB.
- 61% of investors agree that there should be one common standard and regulatory framework for everyone who uses the title financial advisor.

What is striking about the foregoing is how expectations regarding financial advisors line up with Quebec's title protection framework for financial planners. Among other features, Quebec's framework includes:

- University-level education requirements.
- The requirement to obtain a diploma from the Institut québécois de planification financière (IQPF), the sole CB for financial planners (which requires taking the IQPF's professional training course and passing the IQPF's exam).
- The requirement for financial planners to be licensed by the Autorité des marchés financiers.

³ FAIR Canada conducted a survey of 1,020 investors across Canada (other than in Quebec, which does not permit use of the title "financial adviser") between August 15 and August 28, 2023. We expect to publish a report with the full results this fall.

- Direct oversight by a single self-regulatory organization – the Chambre de la Sécurité Financière (which has the authority to impose fines and other disciplinary measures, including revoking an individual’s financial planning designation).
- A standard code of ethics set out in regulation that requires financial planners to subordinate their own interests to those of their clients.

We recognize the attraction for some governments to adopt the same model that now exists in Ontario, which attempts to impose minimum standards on a broad range of individuals engaged in the financial services industry. It also seeks to minimize any additional costs and creates multiple pathways to preserve choice for title users. However, harmonizing with Ontario’s model without improving on certain aspects will not, in our view, deliver the consumer protection that financial consumers expect.

Manitoba has a unique opportunity to help create a better model for consumers seeking the services of financial planners and advisors.

C. Our Concerns with Ontario’s Framework

We have previously shared our concerns with the Ontario title protection framework.⁴ One of our key concerns is that it focuses on regulating the use of two protected titles, as opposed to directly regulating the provision of financial related advice to the public.

Furthermore, it establishes a questionable “minimum standards” baseline for those wishing to use either title. This approach is justified on the basis it prevents wholly unqualified individuals from providing financial advice under the guise of being either a “financial planner” or a “financial advisor.” No data, however, has been provided to assess whether this is indeed a widespread problem. Furthermore, we note that wholly unqualified individuals can continue to provide financial advice to the unsuspecting public simply by using a different non-protected title (“financial consultant” for example).

In addition, this approach arguably achieves very little other than entrenching the status quo. This is because most individuals that use the financial advisor title today are already licensed and subject to some level of regulation. In fact, most, if not all, would be able to continue using the financial advisor title without any additional training, education, or effort on their part.

We also have concerns with the product-centric approach set out in the baseline competency profile (BCP) for financial advisors. Not only does this approach reinforce the status quo, it also conflicts with what most consumers would reasonably expect from a financial advisor. Briefly stated, they expect a financial advisor to provide comprehensive financial advice. In fact, many consumers would be surprised that some financial advisors are legally prohibited from giving advice other than in respect of a specific type of product.

⁴ Most recently in [FAIR Canada](#) (June 2, 2023), at 3-6.

Ontario's decision to approve multiple different CBs and credentials has unintentionally created a labyrinth of different levels of, and standards for, training, duties to clients, and oversight of individuals using the financial planner and advisor titles. The unfortunate result is that not all financial planners, nor financial advisors, are subject to the same standards or obligations in Ontario. These important differences in the level of consumer protection flow from where the financial advisor obtained their credential and to which regulatory regime that financial advisor is subject, all of which will be lost on the average consumer.

Creating a framework that encourages multiple CBs for financial planners and financial advisors also makes regulatory oversight more complex, costly, and challenging. It also creates real risks that some CBs may be too small to sustain a loss in revenue to continue operations. This exposes the entire framework to risks that would be challenging to manage, and that would be highly disruptive for individuals who obtained their credential from a failing CB.

We are concerned that there is no good way to manage the fallout of such an event. It could potentially affect thousands of title holders, leading industry to pressure regulators to allow affected title users to continue to use their protected titles even if they were no longer subject to a CB's oversight.

We have also raised concerns with the limited powers that have been provided to the Financial Services Regulatory Authority of Ontario (FSRA) to effectively protect the public should a CB fail to act. FSRA's current enforcement powers are essentially limited to either:

- issuing and publicizing compliance orders against individuals or entities that fail to comply with the legislation (including, for example, against individuals using a protected title without having first completed an approved credentialing program), or
- revoking the approvals of CBs or their credentials.

The former remedy is of limited utility and does not effectively protect the public. The latter would affect potentially thousands of financial advisors and their ability to carry on their business. Neither remedy produces a desirable outcome.

The limited powers granted to FSRA also means that it is unable to step in and act against a title holder whose misconduct has harmed the public. As a result, the responsibility for protecting the public has effectively been outsourced to a multitude of different CBs. Unfortunately, not all CBs are equally up to the task of protecting the public and taking enforcement action against their members that may cause harm. This is evident from the terms and conditions that were imposed on some approved CBs.⁵ Ensuring there are effective discipline and enforcement programs is critically important, particularly for those CBs that are for-profit and have an anemic track record for taking enforcement action against their members.

⁵ [Summary of Terms and Conditions Imposed on Credentialing Bodies](#) (FSRA: February 28, 2023).

At minimum, we favour an approach where regulators retain the ability to take direct action in cases involving misconduct and consumer harm should a CB fail to do so.

D. Considerations For a Better Framework

Should Manitoba decide to move forward with title protection before a broader consensus emerges on how to improve upon the existing Ontario model, we recommend that decision-makers consider the following:

1. BCPs and Regulatory Oversight

As noted above, Ontario has taken a product-centric approach with respect to the BCP for financial advisors. Saskatchewan, however, appears to be considering the merits of establishing a comprehensive BCP for financial advisors pursuant to which:

- Both planners and advisors would have to be knowledgeable and competent with respect to estate planning, tax planning, retirement planning, investment planning, finance management, and insurance and risk management.
- Financial advisors would have to have the knowledge and competence to provide their clients with suitable recommendations regarding broad-based financial and investment strategies.
- Financial planners would require the knowledge and competence to develop and present integrated financial plans for their clients.⁶

In our view, a comprehensive BCP for financial advisors would be preferable to a product-centric approach. This is because a product-centric approach effectively allows anyone licensed to sell a particular type of financial product to use the same title, irrespective of the difference between those products, or the differences in the regulatory regimes that back-stop these different products. A comprehensive BCP for financial advisors would better reflect what consumers reasonably expect from someone calling themselves a financial advisor.

When establishing a more appropriate BCP approach, we also encourage Manitoba to consider establishing requirements regarding post-secondary education and prior industry experience. Requirements such as these are actively being considered by CIRO, which potentially would impact financial advisors who are subject to CIRO's regulations.

Lastly, we strongly believe that all financial advisors should meet the same high standards regarding ethical training, putting their client's interests first, disclosing and managing conflicts of interest in the client's best interests, handling private and confidential client information, and understanding their client's financial situation, goals and risk tolerance and

⁶ [The Financial Planners and Financial Advisors Act: Notice of Proposed Regulations and Request for Further Comment](#) (Financial and Consumer Affairs Authority of Saskatchewan: July 2022), at 8.

appetite.⁷ Currently, the Ontario model does not adequately address these unlevel playing field issues, or the gaps in the consumer protection framework they create.

2. Limit the Number of CBs

We question the wisdom of creating a framework that allows multiple different types of organizations to become CBs, including for-profit organizations or those that may be better characterized as lobby groups.

In our view, CBs should be non-profit organizations with a strong mandate to serve and establish standards that serve the public interest. Lobby groups, industry associations or for-profit organizations have inherent conflicts of interest that expose consumers to real risks. It would be better if such organizations were prohibited from becoming approved CBs.

Limiting the number of approved CBs (ideally one for each protected title) would also help promote consistency in terms of education, training, and legal obligations. It would also facilitate regulatory oversight of these CBs and simplify the system from the perspective of the end users – the public.

3. There Should Be a Common Standard of Care

To ensure consumers are protected, financial planners and financial advisors should have a legal obligation to put their clients' interests before their own.

In Ontario, not all title holders are subject to the same obligations when it comes to putting their clients' interests first. For some, it may stem from a code of conduct established by the CB, which is expected to ensure that its members adhere to its conduct standards. For others, they are required by law to put their clients' interests first. A failure to do so can lead to prosecution and potentially serious sanctions imposed by a regulatory authority.

While some may argue that a code of conduct achieves the same outcome as an obligation in law, they are not the same and do not lead to the same consequences. We believe that all title holders should be held to the same standard.

4. Central And Public Database of Permitted Title Users

To the extent Manitoba proceeds with a framework, it will be important to create and maintain a central database that permits Manitobans to quickly and easily check whether a title holder is in good standing with an approved CB.

Currently, FSRA provides a table⁸ that includes a link to different registries maintained by each of the CBs approved in Ontario. This is helpful to some extent. However, we strongly recommend that each province that establishes a title protection framework create a

⁷ [FAIR Canada](#) (September 20, 2022), at 4-6.

⁸ [Approved Credentialing Bodies and Credentials](#) (FSRA).

central database that consolidates the registries maintained by different CBs. Such database should enable financial consumers to search for a financial planner or advisor irrespective of where they obtained their credential. Otherwise, financial consumers will have to check multiple databases that are all organized differently to find the information they want.

The centralized database portal should also provide an explanation, in plain language, of the differences between a financial planner and a financial advisor. It should also explain, again in plain language, the fact that different title holders obtained their credentials from different CBs that may have different standards and whose members may be subject to different legal obligations.

5. Restrictions On the Use of Other Titles

One general concern relates to how broadly or narrowly the framework deals with potentially confusing titles. This is an important consideration since many consumers do not understand the myriad of different titles used in the industry and are often confused by them. It is also important because if the right balance is not achieved, the framework can easily be circumvented by using a slightly different title. If so, one wonders what the framework really achieves.

We favour a broader approach to restricting the use of titles that are similar to the financial planner and financial advisor titles. In our view, a comprehensive approach to the issue of title confusion will better protect consumers. We suggest identifying potentially confusing titles as follows:



E. Other Comments

1. Approving CBs that are Approved in Other Canadian Jurisdictions

We do not support the simplified method for approving CBs previously approved in another Canadian jurisdiction, as set out in Saskatchewan's and New Brunswick's legislation. In our view, this would only be feasible with common national standards and a high degree of mutual confidence between provincial systems and users. Given that we still do not have a commonly accepted understanding of what a financial advisor is or does, streamlining the

approval of a CB in one province based on approvals made by another regulator in a different province is highly premature.

In our view, it would be better for Manitoba to focus on implementing title protection in a manner that addresses the concerns highlighted above and prioritizes the protection of Manitoban financial consumers over industry's concerns for quick access to another market.

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