

April 10, 2024

Securities
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
secretary@fcnb.ca

Re: Title Protection – Proposed Rules TPA-001 *General* and TPA-002 *Fees*

We are writing to comment on the proposed rules regarding title protection and fees.

FAIR Canada is a national, independent, non-profit organization known for independent and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues¹

A. The General Rule Introduces Some Laudable Enhancements

We appreciate the opportunity to contribute to this Consultation. As a leading consumer voice on title protection, FAIR Canada has previously responded to numerous consultations in Ontario, Saskatchewan, Manitoba, and New Brunswick, consistently raising concerns and providing valuable consumer insights.

We commend the Financial and Consumer Services Commission of New Brunswick (FCNB) for its diligent efforts to address some of the concerns raised in previous consultations. The enhancements introduced in FCNB Rule TPA-001 (General Rule) are a positive step forward and reflect the feedback provided by various stakeholders. We appreciate the FCNB's commitment to improving the framework and addressing investor protection gaps.

These enhancements, which are lacking in the framework adopted by the Financial Services Regulatory Authority of Ontario (FSRA), reflect several being considered by the Financial and Consumer Affairs Authority of Saskatchewan (FCAA).

¹ Visit www.faircanada.ca for more information.

One is to require financial advisors to meet educational requirements related to providing suitable recommendations to a client regarding comprehensive financial and investment strategies.²

Another critical enhancement is to require approved credentialing bodies (CBs) to:

“...demonstrate that the credential is based on a program designed and administered to ensure that [credential holders] will be required to:

(a) Deal with the individual’s clients competently, professionally, fairly, honestly and in good faith;

(b) Address material conflicts of interest in the best interests of the client; and

(c) Put the clients’ interests first when making a suitability determination.”³

These enhancements signal a desire to alleviate the Ontario framework's more apparent weaknesses and narrow some of its identified investor protection gaps.

The latter enhancement would help address significant differences between the obligations imposed on title holders in the securities industry and those in the insurance, financial planning, or other industries. While laudable, we question the extent to which the FCNB could protect New Brunswickers from this type of misconduct based solely on provisions in the General Rule. We elaborate on these concerns in the next section.

Interestingly, the General Rule does not reflect every enhancement of educational requirements for financial advisors the FCAA proposed. The FCAA is considering educational requirements that go beyond just the products and services financial advisors offer. Namely, they are contemplating expanding the requirements to include “estate planning, tax planning, retirement planning, investment planning, finance management, and insurance and risk management.”⁴ We view the FCAA’s approach as an essential safeguard for consumer protection that should be included in the General Rule.⁵ At the very least, financial advisors should know enough about these topics to realize when a situation is beyond their expertise, and they need to direct their clients to someone with the proper technical knowledge and skills.

Based on our research of what consumers expect of job titles in financial services, and subject to our comments below, these enhancements might help move the framework closer to consumers’ reasonable expectations.⁶

² [General Rule](#), at subsection 8(h).

³ [General Rule](#), at section 7(1).

⁴ [Appendix: The Proposed Financial Planners and Financial Advisors Regulations](#) (FCAA: July 20, 2022), at section 7(1)(b); see also [The Financial Planners and Financial Advisors Act: Notice of Proposed Regulations and Request for Further Comment](#) (FCAA: July 20, 2022), at 6-9.

⁵ Based on our [FAIR Canada Job Title Survey](#) (November 2023), **92%** of investors agree financial advisors should be skilled in estate planning, tax planning, retirement planning, investment planning and alternatives, financial management and insurance/ risk management (**57%** strongly agree). See pages 26 and 30.

⁶ [FAIR Canada Job Title Survey](#) (November 2023).

B. There are Gaps that Still Need to be Addressed

Even if the FCNB implements all these enhancements, the framework may still not address critical gaps in what consumers expect from a framework that purports to regulate individuals acting as financial planners or advisors. For example, the framework still falls short in the following respects:

1. It does not address the fundamental conflict of interest when a person only licensed to sell, for example, mutual funds, holds themselves out as an independent and objective financial advisor. This is a critical issue that must be addressed to ensure investors are not misled.
2. It delegates the responsibility to protect New Brunswickers to different CBs, some of which have neither a public interest mandate nor a robust and active enforcement program. This could lead to the inconsistent application of standards and inadequate investor protection.
3. Instead of creating a commonly accepted standard for financial planners or advisors that meets consumer expectations, it enables individuals subject to very different educational, competency, and legal requirements to use the same title.⁷ This could confuse consumers and undermine the credibility of financial planning and advisory services.

We discuss each of these consumer protection issues in more detail below.

1. The Framework Hides a Fundamental Conflict from The Public's Eye

The framework focuses on and prioritizes the wrong thing, namely providing multiple pathways so those wishing to hold themselves out as financial planners or advisors to the public can do so without too much burden. Accordingly, they must only satisfy one of multiple diverse “minimum standards.”

This focus on only meeting minimum standards sets the bar too low. Consumers need an approach that focuses on the quality and reliability of the advice they receive.

The framework also assumes widespread harm is caused by wholly unqualified individuals pretending to be financial planners or advisors. However, it creates a more significant potential for consumer harm in addressing a relatively minor problem.⁸

⁷ It also creates an unlevel playing among competitors working in financial services based on “minimum standards.”

⁸ To our knowledge, no regulator has provided any empirical data supporting their justification that minimum standards were necessary to protect the public. Moreover, since adopting the title protection framework in Ontario, we are unaware of the FSRA bringing a single case action against an individual for holding themselves out as a financial advisor or planner without first satisfying the “minimum standard.” This suggests it was never a widespread problem to begin with.

The harm arises from the fact that most consumers reasonably expect a financial planner or advisor to provide “objective, comprehensive, integrated financial advice tailored to their present and future financial circumstances.”⁹ Unfortunately, many individuals who can use a protected title (particularly the financial advisor title) are salespeople who are not required to provide objective, comprehensive, integrated financial advice to their clients. Beyond that, they are typically compensated based on sales and are often legally restricted in terms of which financial products they can sell or recommend to their clients. In short, they do not provide what consumers expect from a financial advisor – independent and objective financial advice.

Allowing the use of the financial advisor title in such circumstances enables this fundamental conflict to hide in the shadows, thereby exposing consumers to the risk of being misled by a title protected by government regulation. This fundamental problem highlights how the framework does not protect consumers.

2. It Delegates the Responsibility to Protect the Public to Some who Cannot or May Not

Under the FCNB’s proposed General Rule, responsibility for protecting New Brunswickers is delegated to various CBs. Some are for-profit organizations, others are mainly educational service providers, some may be standard setters, and only one is considered a regulator that acts based on delegated authority from statutory regulators. There is also a tremendous range in the observable practice, ability, and expertise each CB brings to bear in setting conduct expectations for its members, policing them, or taking enforcement action to protect the public.

To our knowledge, only one CB enforces clear conduct requirements imposed by rules approved by a regulator. To the extent this CB does not act, the regulator retains jurisdiction to protect the public if needed. In contrast, other CBs may seek to enforce breaches in their organizations’ code of conduct or other terms set out in the contract between them and their members. Assuming they enforce these contractual arrangements against their members, unlike a regulator, removing their members’ credentials would be the most potent remedy in their enforcement toolkit. This is of small comfort to the client who was harmed.

Given these differences among CBs, we question whether reliance on some of these CBs is appropriate. Based on observable differences, our concern that some may not have the resources or the inclination to discipline their members is a legitimate and serious one. If we are proved correct, then what?

We also note that based on our research regarding investors:

⁹ Proposed [Multilateral Instrument 33-107 Proficiency Requirements for Registrants Holding Themselves Out as Providing Financial Planning Advice](#) (December 3, 1999), at 2; see also, Proposed [Multilateral Instrument 33-107 Proficiency Requirements for Registrants Holding Themselves Out as Providing Financial Planning and Similar Advice](#) (February 16, 2001), at 1108.

- **77%** prefer a regulatory model that requires financial advisors to meet high standards and be subject to the direct oversight of a financial sector regulator¹⁰
- **Only 18%** prefer a regulatory model that requires financial advisors to take basic courses from a government-approved CB and remain in good standing with that CB's requirements¹¹

One can understand why consumers prefer knowing that a regulatory authority with a public interest mandate and the resources to enforce it stands behind title protection.

We are also concerned that the following proposed critical enhancements are not imposed at law directly on all financial advisors and planners:

- Dealing with one's clients competently, professionally, fairly, honestly and in good faith
- Addressing material conflicts of interest in the best interests of the client
- Putting clients' interests first when making a suitability determination

Our concern is that the General Rule speaks to these with respect to the design of the credential program, which should ensure that individuals using the credential meet these conduct expectations. It does not impose them as legal obligations that the credential holder owes to their clients. Stated differently, it is unclear whether the FCNB would have the authority to protect the public when a title holder fails to meet the objectives of the credentialing program.

This is a fundamental weakness in the consumer protection framework. We believe New Brunswickers expect, and should be able, to rely on the FCNB to protect them against unfair conduct, material conflicts of interest, or not having their interests put first regarding suitability recommendations. In contrast, securities regulators have imposed these requirements directly on all registrants to remove ambiguity. Why should New Brunswickers be content with this legal uncertainty if other financial service providers want to use a protected title?

3. It Undermines the Credibility of Financial Planning and Advisory Services

If the FCNB were to approve all CBs and credentials the FSRA has approved to date, New Brunswickers would have to contend with eight standards for financial advisors and six for financial planners. They would also have to understand the differences between five different CBs and the different legal and oversight regimes (or lack thereof) that backstop each.

Most consumers will not understand or be able to navigate this complex universe of "minimum standards" as they attempt to find someone who best meets their needs. The framework creates an exceedingly complicated and confusing system for financial planners

¹⁰ [FAIR Canada Job Title Survey](#) (November 2023), at 29.

¹¹ [FAIR Canada Job Title Survey](#) (November 2023), at 29.

and advisors. Why not create a more straightforward system that produces better consumer outcomes and meets their reasonable expectations?

A better approach would be setting up a standard for each protected title based on a common exam and regulatory framework, each overseen by a single body. That way, consumers could have more confidence that all financial advisors or planners, as the case may be, have the same level of education, proficiency, and competency requirements. They could also take comfort in knowing every financial advisor or planner is subject to a consistent level of oversight and set of legal requirements designed to protect the public.

This would be consistent with our investor research:

- **95%** believe it is important for all financial advisors to have the same level of training and set of skills (**56%** consider this very important)¹²
- **61%** prefer that there be one common standard and regulatory framework for financial advisors¹³

The FCNB's title protection framework is based on a fundamental disconnect between how the regulator and the public understand what a financial advisor is. To the FCNB, under the General Rule, a financial advisor appears synonymous with a person who sells at least one kind of financial product. By that logic, it's okay if some financial advisors are insurance, mutual fund, or investment advisors.

However, the public does not see it that way. Ordinary consumers reasonably expect anyone using the financial advisor title to be subject to the same requirements. They would be hard-pressed to understand why a framework that is billed as an important consumer protection initiative would permit the following individuals to all call themselves financial advisors:

- A person with a high school diploma who has passed a multiple-choice exam and is licensed to sell only insurance or mutual funds
- A university graduate who obtained their CFA charter and is licensed as a portfolio manager to manage their clients' investments for them

If individuals with substantial material differences in education, knowledge, and skill can use identical titles, what does this say about the title?

Because of the potential for consumers to be harmed and confused, the FCNB should require that financial advisors' education be comprehensive, not just limited to the products they sell. This is also why the Canadian Securities Administrators previously recommended that title protection be based on a single common exam, establishing a common baseline for knowledge, competence, and skill among all title holders.¹⁴

¹² [FAIR Canada Job Title Survey](#) (November 2023), at 29.

¹³ [FAIR Canada Job Title Survey](#) (November 2023), at 28.

¹⁴ Proposed [Multilateral Instrument 33-107 Proficiency Requirements for Registrants Holding Themselves Out as Providing Financial Planning Advice](#) (December 3, 1999); see also, Proposed [Multilateral Instrument 33-107](#)

C. Conclusion

Unfortunately, the General Rule does not resolve these underlying consumer protection problems. Nor does it reflect what ordinary investors and consumers want and expect from someone calling themselves a financial advisor.

Given all this, we would recommend that the FCNB either:

- Work with other regulators¹⁵ that are actively considering how to improve title protection to protect consumers better, or
- Consider a new approach that delivers meaningful consumer protections and that focuses on the quality of the advice. This might include finding more common ground with Quebec’s title protection framework, which could involve only one CB each for financial planners and financial advisors, and standard courses, exams and so forth for each.

We also encourage the FCNB not to approve a CB in New Brunswick simply because it is approved in another province. This is partly because the few frameworks being considered are in flux and lack consistency. This includes material differences in the market conduct expectations sought to be imposed on all title users. As such, it is difficult to understand how the FCNB could conclude that approval in the other province was based on “substantially similar criteria” or why it would base its decision on another regulator's decision involving a different framework.

Considering Canadian regulators have so little experience with the credentialing system, it is unclear how the FCNB could already conclude it can rely on another regulator to protect New Brunswickers.

We urge the FCNB to consider these concerns when finalizing the framework.

Thank you for considering our comments. We welcome opportunities to improve outcomes for investors and financial consumers. We intend to post our submission on the FAIR Canada website and have no concerns with the FCNB publishing it on their website. We

[Proficiency Requirements for Registrants Holding Themselves Out as Providing Financial Planning and Similar Advice](#) (February 16, 2001).

¹⁵ The FSRA has committed to reviewing Ontario’s title protection framework and assessing opportunities for improving it. See [Enhancing Investor Protection in Ontario](#) (FSRA: January 23, 2024). The FCAA is also consulting on proposed enhancements to its framework. See [The Financial Planners and Financial Advisors Act: Notice of Proposed Regulations and Request for Further Comment](#) (FCAA: July 20, 2022); see also, [Appendix: The Proposed Financial Planners and Financial Advisors Regulations](#) (FCAA: July 20, 2022); see also [Insurance and Real Estate Consultation Papers](#) (FCAA).

would be pleased to discuss our submission with you. Please get in touch with Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Bruce McPherson, Policy Counsel, at bruce.mcpherson@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights