IFIC | THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC Submission

Financial and Consumer Affairs Authority (Saskatchewan): The Financial Planners and Financial Advisors Act - Notice of Proposed Regulations and Request for Further Comment

September 20, 2022

THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

September 20, 2022

Delivered By Email: finplannerconsult@gov.sk.ca

Financial and Consumer Affairs Authority (Saskatchewan)

Dear Sirs and Mesdames:

RE: The Financial Planners and Financial Advisors Act - Notice of Proposed Regulations and Request for Further Comment

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on The Financial Planners and Financial Advisors Act - Notice of Proposed Regulations and Request for Further Comment (**Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

Summary

IFIC supports the appropriate use of titles that do not confuse investors, and that reflect competencies of the individuals using those titles. However, we believe that the Financial and Consumer Affairs Authority of Saskatchewan's (**FCAA**) proposed approach to base competency proficiency (**BCP**) for financial advisors (**FA**s) should not be pursued, for the reasons set forth in this letter.

This submission sets out the material elements of IFIC's concerns with aspects of the Consultation. In Appendix A we respond to the Consultation's six specific questions either by cross-references to applicable comments in this submission or directly in Appendix A.

Our feedback is focused on the following key points:

- BCP for FAs should not be expected to be the same as for financial planners (**FP**s). FAs and FPs provide very different services and engage in very different activities, for different client bases and needs, and the BCP for each should reflect these differences.
- Individual advisors who are registered with the Mutual Fund Dealers Association of Canada (**MFDA**) or the Investment Industry Regulatory Organization of Canada (**IIROC**) (MFDA and IIROC collectively, the **SROs**) are required to comply with proficiency requirements and comprehensive know-your-client, know-your-product and suitability requirements; are required to put the client's interests first; and must provide relationship disclosure information (**RDI**) at account opening that includes a description of the products and services they will offer to their clients. As a result, clients of such advisors, who are already regulated under a robust client protection regime with clear relationship disclosure requirements, do not require additional client protection requirements in Saskatchewan, particularly if those requirements are not harmonized with the SROs' proficiency and disclosure requirements and do not provide any additional benefits.

- The emphasis in the Consultation should be to achieve harmonization for individuals using the FA title, and who are not registered with an SRO, with those who are already subject to the SRO regulatory regime.

Activities And Services Provided by FAs Are Different Than Those Provided by FPs, And the BCPs Should Be Appropriate to The Different Activities

The Consultation proposes that the BCP for FAs should align with the BCP for FPs and would include "knowledge and competency in all of the same core financial technical areas as the FP BCP (i.e., *estate planning, tax planning, retirement planning, investment planning, finance management, and insurance and risk management*). The key difference between the FP BCP and the FA BCP would be that an FP will require knowledge and competency in respect of developing and presenting an integrated financial plan for the client; whereas an FA will require knowledge and competency in respect of providing suitable recommendations to a client with respect to broad-based financial and investment strategies." The Consultation proposes moving to a "Comprehensive Approach" for both FAs and FPs, as opposed to maintaining the distinction in the original consultation and adopted in Ontario by the Financial Services Regulatory Authority (**FSRA**), which adopted a "Product-Focused Approach" for FAs. The FCAA's proposed approach would create greater confusion, with no additional benefits, by taking a non-harmonized approach to regulating the FA title in Saskatchewan compared to FSRA or the SROs.

IFIC notes that individual mutual fund advisors (**Approved Persons**) registered with the MFDA are licensed to provide financial advice in relation to making investment decisions related to purchasing and redeeming investment funds. Estate planning, tax planning, retirement planning, and finance management are not part of the core services provided by Approved Persons, so an all-encompassing proficiency regime of the type contemplated is inappropriate for Approved Persons. According to its most recent annual report the "The Mutual Fund Dealers Association of Canada (the "MFDA") is a self-regulatory organization that oversees mutual fund dealers in Canada, which regulates the operations, standards of practice and business conduct of its Members and their over 77,000 Approved Persons with a focus on retail clients."[1] We submit that if the MFDA, which is overseen by the provincial and territorial securities regulators in Canada, believes it is appropriate to regulate financial advice that is product-specific, there is no reason to introduce a new regime in Saskatchewan that would take a different approach.

The BCPs for FPs, which the Consultation proposes to extend to FAs, is only appropriate to FPs. A financial plan, by definition, looks beyond current and proposed investments and considers them in a holistic analysis of a client's life cycle. Consequently, an understanding of estate and tax planning, insurance and risk management, in addition to understanding the client's current investments, is required to prepare a comprehensive financial plan for a client.

However, not every investor requires or desires a comprehensive financial plan and its attendant costs. Many retail investors only want advice in respect of investments. The current securities regulatory regime recognizes there is a continuum of investment advice needs, from basic advice for beginning investors with modest amounts to invest, to more sophisticated investors and households with larger investment portfolios requiring more diversified advice. This continuum is acknowledged by the difference between the registrations available to an Approved Person registered with the MFDA through their sponsor firms and the registrations available to dealing representative of an investment dealer registered with IIROC through their sponsor firms, who are permitted to advise on a broader range of investment options and products such as stocks and bonds.

[1] MFDA Annual Report 2021 page 12 https://mfda.ca/mfda-2021-annual-report/pdfs/MFDA_AR_2021_online.pdf

The SROs require their Approved Persons to meet a minimum standard of education, training, and experience before performing registerable activities. The fulsome education requirements include the following topics: legislation and regulations, ethics, conflicts of interest, compliance issues, know your client, know your product, suitability, strategic investment planning and issues relating to older and vulnerable clients. The minimum requirements to conduct registerable activities are substantially similar to the minimum standards for using the FA title under the FSRA rules. Similarly, the SROs have rules that prohibit individuals from holding themselves out in a manner that could be deceptive or misleading. This prohibition includes using a business title or financial designation without the required proficiency or qualifications prescribed by the SROs.

Further, it is important to acknowledge that in addition to day-to-day supervision of the advisor by the member firm, regular business conduct exams are conducted by the applicable SRO to help ensure a high standard of conduct by its members and Approved Persons. Furthermore, SROs are subject to oversight by the statutory regulators who ensure the SROs continue to develop and uphold acceptable standards to protect investors.

Given that the extensive securities regulatory regime which currently exists in a harmonized form across Canada contemplates and permits financial advisors who are MFDA or IIROC registrants to offer product-specific advice, the FCAA should not adopt a regime that is unique to the province of Saskatchewan and does not align with the current harmonized approach to the delivery of financial advice across Canada.

MFDA and IIROC Advisors Must Comply with Comprehensive Regulatory Requirements to Put the Interests of The Client First

Individual advisors who are registered with the MFDA or IIROC, including those that use the FA title, are already subject to comprehensive licensing, continuing education, and disciplinary requirements of their respective SRO.

Further, individual advisors who are registered with the MFDA or IIROC are required to: comply with recently updated, and comprehensive, know-your-client, know-your-product and suitability requirements; put the client's interests first; and provide RDI at account opening that includes a description of the products and services they will offer their clients.

The SROs have a comprehensive investor protection regime established, with appropriate disclosure to clients as to the products and services that the advisor is licensed to provide to their client. As a result, advisors registered with the MFDA or IIROC should not need to comply with any additional client protection or disclosure requirements in Saskatchewan.

The Consultation should be restricted to title users who are not securities registrants and who should be held to the same proficiency and transparency standards related to the products and services they offer, and the know-your-client, know-your-product, and suitability requirements that the Canadian securities regulators and the SROs have determined are required to provide appropriate investor protection when clients are receiving financial advice.

These are the more appropriate considerations for the proper delivery of financial advice, as they are tailored to what financial advice and the financial advisory relationship involves, which are different from the requirements in a financial planning relationship with a client.

Conclusion

As IFIC's CEO Paul Bourque has noted in a recent column in Investment Executive:

"When regulatory reform spans federal and provincial jurisdiction and involves provincial regulatory agencies as well as self-regulatory organizations, coordination and harmonization are critical if the objectives of the reform are to be achieved. Harmonizing the regulation of titles for financial planning and financial advising activities is key when the regulations cut across functional, geographic, and political boundaries."[2]

To conclude: IFIC recommends that the FCAA not pursue its proposed approach to base proficiency competency for financial advisors.

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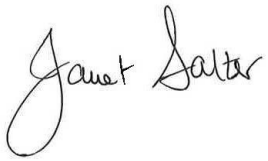
IFIC appreciates this opportunity to provide our input on the Consultation. Please feel free to contact me by email at jsalter@ific.ca. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Janet Salter
Senior Policy Advisor

[2] https://www.ific.ca/en/articles/the-importance-of-harmonizing-title-regulation/

APPENDIX A

CONSULTATION SPECIFIC QUESTIONS FOR CONSIDERATION AND COMMENT

Credentialing Bodies – Process when Approval Revoked or Operations Cease

1. *The FCAA is seeking feedback on how to transition credential holders from a credentialing body that is no longer active or approved for some reason, such as its approval was revoked or it is winding down operations. For title users that obtained a credential from an inactive or unapproved credentialing body, please provide feedback as to whether those individuals should be able to continue using the FP or FA title in the absence of oversight by a credentialing body for a period of time and, if yes, how long that period of time should be.*

   To minimize disruption to the provision of financial services to Saskatchewan investors by FA/FPs, credential holders who, through no fault of their own, end up with a credential from an inactive or unapproved credentialing body should be afforded the greatest flexibility in complying the credentialing rules going forward, with a reasonable transition period. Their used of the FP or FA title should be grandfathered until a new credentialing body, with substantially similar creditialing requirements, is approved by the FCAA and after the FCAA confirms how existing credetinal holders can transitition their existing creditials. Generally a credential holder should not be required to repeat proficiency requirements mandated by the alternated credentialing body in order to be granted new credentials.

Approval Criteria for FA Credentials

2. *We are seeking feedback as to whether the FA BCP should be revised to take a broader approach to proficiency in technical areas and bring it closer to that of an FP. The technical knowledge requirement will include knowledge and competency in all of the same core financial technical areas as the FP BCP (i.e. estate planning, tax planning, retirement planning, investment planning, finance management, and insurance and risk management). The key difference between the FP BCP and the FA BCP would be that an FP will require knowledge and competency in respect of developing and presenting an integrated financial plan for the client; whereas an FA will require knowledge and competency in respect of providing suitable recommendations to a client with respect to broad-based financial and investment strategies. In considering this approach, please comment on the potential advantages of the Comprehensive Approach identified above, namely better alignment with client expectations and better alignment with other existing financial sector regulatory frameworks. Also please comment on whether there are any other advantages the Comprehensive Approach has over the Product-Focused Approach not identified in this paper.*

   Please see our discussion in the body of our submission as to why we disagree with revising the FA BCP to make it, in effect, identical to the FP BCP.

Decrease in Harmonization

3. *Note that taking the above approach to require additional knowledge and competency for FAs would result in decreased harmonization between the FCAA framework and FSRA's framework. This may result in different standards to meet and may mean that credentialing bodies would need to develop different education programs. Furthermore, individuals who have a credential in Ontario may need additional qualifications to satisfy the criteria for Saskatchewan. While taking this alternate approach may decrease harmonization with Ontario's framework, it would also potentially improve the FA BCP alignment with client expectations and with other existing financial regulatory frameworks. As such, we ask that you also address in your comments whether the benefits of increasing the proficiency required to hold the FA credential outweighs the decreased harmonization. Also please*

provide comments regarding any other potential disadvantages of the Comprehensive Approach not identified in this paper. If an increase in qualifications required to obtain the FA credential results in a need for consequential amendments to other aspects of the Proposed Regulations, please identify those amendments. One potential revision we have identified and would like comments on concerns whether the transition period for an FA's compliance with the FPFAA set out in section 9(3) of the Proposed Regulations should be lengthened to match that of an FP?

We note that the FCAA states that the purpose of the proposed regulation of the use of the FA and FP titles is "to create minimum standards for title usage for the protection of consumers and investors, without creating unnecessary regulatory burden for title users." The FCAA has not undertaken a cost-benefit analysis of the costs associated with moving to a dramatically different approach to the use of the FA and FP titles in Saskatchewan. In the absence of such a rigorous analysis we believe that the costs of lack of regulatory harmonization far outweigh any potential/theoretical benefit.

Further, please refer to our comments in the body of our submission. We reiterate that we believe the BCP for FAs should not be the same as for FPs given the differences in services and activities conducted by FAs and FPs. FAs and FPs who are securities registrants are already subject to existing stringent and appropriate proficiency regulatory requirements and therefore should not have to comply with any additional proficiency or disclosure requirements in Saskatchewan.

We agree with the FCAA's own characterization of the problems that will arise if there is no harmonization of the titling process across the country and, in particular, with the FSRA approach: "An important advantage of the Product-Focused Approach is harmonization with the approach taken in Ontario. It is expected that most, if not all, approved credentialling bodies will be national or at least regional in scope. If the Comprehensive Approach is adopted here, it is possible that approved FA credentialling bodies in Ontario will not qualify to be an approved FA credentialling body in Saskatchewan without expanding their education requirements. *This might lead to fewer approved FA credentialling bodies in Saskatchewan and fewer options for consumers or investors to obtain financial advice* (emphasis added). It will also mean that FA credentialling bodies may need to incur additional regulatory burden to be approved in Saskatchewan." We do not believe an approach that would lead to fewer options for consumers or investors to obtain financial advice is in the best interest of consumers and investors.

<u>Mandatory Disclosure of Credentials</u>

4. *We are seeking further feedback specifically on an enhanced disclosure requirement for FAs that would require FAs to disclose the product, if any, that they are authorized to sell. Please comment on whether this additional disclosure requirement is preferred and the form that it should take. Also please comment on whether this additional disclosure is warranted if the Comprehensive Approach to the FA BCP, as described under the Approval criteria for credentials heading, is adopted.*

   We do not support an enhanced disclosure requirement for FAs to disclose the products, if any, that they are authorized to sell, in the case of FAs who are also licensed by one of the SROs. To provide valuable clarity to consumers, securities registrants currently provide their clients with required RDI that includes a description of the products and services they will offer their clients. The RDI provides clarity for clients of securities registrants. To ensure consumer clarity, it may be prudent to consider the extent to which title users who are not securities registrants should provide similar transparency to their clients.

We also note that IIROC has the following requirement for its dealer members: "When providing services to retail investors, include a link and visible reference to IIROC's online advisor check database, IIROC Advisor Report, on their website homepage and on any other Dealer Member webpage that includes a profile of an IIROC-regulated investment advisor." With one click on the dealer's website any client or potential client can search the advisor's profile. As IIROC and the MFDA will be consolidating their rule book after their proposed merger, it is reasonable to expect this requirement will be applicable to MFDA dealers as well. We also understand that a number of MFDA dealers currently voluntarily provide similar disclosure on their websites. Further, the Canadian Securities Administrators (**CSA**) maintains the National Registration Database that allows the public to search the registration details of a registered firm and/or a registered individual including mutual fund dealers and mutual fund dealing representatives. The search result sets out information such as the products in respect of which an individual is licensed to provide financial advice.

Finally, our members' representatives are often licensed in a number of jurisdictions, including Saskatchewan. Maintaining different titles or disclosures is not practicable and inhibits the ability of firms and their representatives to provide a seamless client experience. Further, use of similar titles in differing jurisdictions with differing proficiency requirements will result in client confusion.

Transition Date and Implementation Date

5. *We are seeking feedback on two items. Please advise: a) whether you support an implementation period and provide a suggested length of time for said period; and b) whether the transition date should be adjusted to a later date from July 3, 2020, such as the date that the Act and Regulations come into force. In addition, please include in your comments why you think the date you have chosen is the right approach for the framework and any positive or negative effects that an alternate date may have on the protections afforded by the legislation as well as the implementation process.*

   The transition date should be adjusted to the date that the Act and Regulations come into force; it will be too confusing to have multiple dates especially when one (July 3, 2020) no longer has any obvious relationship to the Act and Regulations.

   Further, and importantly, the transition period must extend to a reasonable period of time after all credentialing bodies have been approved by the FCAA to ensure that FPs and FAs are able to assess whether their credentials are sufficient and, if not, to upgrade them accordingly. We suggest a period of 24 months after the last credentialling body has been approved for FAs (assuming the new proposed BCP is not adopted) and 48 months for FPs.

Fees and Fee Structure

6. *Please provide your feedback regarding the proposed fee structure and amounts.*

   We note that the fee structure is similar to the FSRA fee structure. It is important for the FCAA to consider minimizing the cost attributed to the creditialing body based on the number of credential holders as such fee will be invoiced back to the firm. Such cost is an unnecessary burden, the impact of which will eventually be passed to clients in many instances.