



October 25, 2021

Delivered By Email: [consultation@fcnb.ca](mailto:consultation@fcnb.ca)

Securities Division c/o David Shore  
Financial and Consumer Services Commission  
300-85 rue Charlotte Street  
Saint John, NB E2L 2J2

Dear Sirs and Mesdames:

**RE: Consultation Notice – Title Protection 2021**

The Investment Funds Institute of Canada (**IFIC**) is pleased to comment on the Financial and Consumer Services Commission of New Brunswick's (**FCNB**) consultation on the regulation of the financial planner (**FP**) and financial advisor (**FA**) titles in New Brunswick.

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 works collaboratively with industry representatives, regulators, governments and investor advocates to help cultivate a system that is fair, secure and efficient for all stakeholders.

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 committee for direction and approval. This process results in a submission that reflects the input and direction of IFIC members.

**FCNB's Consultation Questions**

IFIC supports the need for the FP and FA titles protection regulation. However, IFIC's view is that an overarching policy priority for such a regulatory regime is that it is harmonized across all jurisdictions and regulators in Canada. Therefore, IFIC strongly recommends that FCNB delay and not implement a separate titles protection regime or legislation at this time. Rather, IFIC requests that the FCNB work with the Canadian Securities Administrators (**CSA**) and the other provinces to establish a national approach to the regulation of titles that is harmonized across all jurisdictions.

In response to the FCNB's five questions for consideration and comment, we are responding generally to the first question (1. (a) and (b) copied below), rather than specifically to each of the other implementation-specific types of questions. This is consistent with IFIC's recommendation that FCNB not implement its own separate titles protection regime at this time.

1. *FCNB is considering recommending a regime similar to the approach recently taken in Ontario and Saskatchewan to protect "Financial Planner" and "Financial Advisor" as regulated titles in New Brunswick. Such an approach would leverage existing regimes for licensing and designating*

*financial professionals, and maximize the extent to which New Brunswick’s regulation of these titles is harmonized with other jurisdictions.*

- a. *Are you supportive of New Brunswick adopting legislation to protect “Financial Planner” and “Financial Advisor” as regulated titles in a legislative model similar to those of Ontario and Saskatchewan?*

As stated above, IFIC supports the need for a FP and FA titles protection regulation. However, a regime to regulate titles protection should be nationally harmonized. During the CSA’s consultation phases developing the Client Focused Reforms (CFRs), each of the provincial securities regulators comprising the CSA indicated that they would tackle regulation of titles at a detailed level in phase 2 of CFRs. The CSA has only completed phase 1 of CFRs. Further, under the new self-regulatory framework proposals recently announced, the rules of the existing self-regulatory organizations (i.e. Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**) (collectively the **SROs**)) will be consolidated, including revisiting the existing requirements for use of titles for individuals regulated by the SROs.

IFIC recommends that the FCNB should await phase 2 of the CFRs and work with the CSA, SROs, and the other provinces to develop a nationally harmonized titles protection regime. Doing so would also avert the potential negative impact of moving too early, resulting in lack of harmonization and more titles confusion for investors if there are a series of titling changes across various regulators. A series of title changes would also be contrary to the current initiatives to reduce regulatory burden and unnecessary costs. If the FCNB proceeds too early, it may also lead to incremental costs for the FCNB should it need to amend its titles protection legislation/regulations in the future to prevent conflicting requirements against what the CSA and the new SRO put in place.

- b. *Do you have any general comments about New Brunswick adopting such legislation? Please elaborate.*

IFIC provides its further general comments under the themes provided by each of the headings below.

### Regulation of Financial Planning

IFIC supports the regulation of financial planners to strengthen consumer protection. IFIC, in previous stakeholder consultations and in our submissions to the Government of Ontario’s consultations on financial planning, has consistently supported regulating the use of the “Financial Planner” title to those individuals who hold a recognized financial planning credential. Regulation of financial planning will require a clear definition of financial planning activity to avoid inadvertently including activities that are already well-regulated by securities and insurance regulators. A clear definition is also necessary to ensure similar titles are not used to mislead consumers into reasonably believing that an individual is a financial planner. Standardized proficiency and credential requirements for financial planners would improve consumer protection and result in greater harmonization between the services provided by financial planners regulated under existing regulatory regimes and those who are not currently regulated.

In regulating financial planning activity, it is important that there be harmonization given that many financial planners are already regulated within the securities industry. These financial planners should not be subject to duplicative regulation or regulatory oversight. A harmonized approach will alleviate any potential for added regulatory burden on individuals who hold themselves out as financial planners, have a recognized financial planning credential and are regulated under securities legislation.

### A National Approach to Regulation of Titles

In support of a national approach to title reform, in September 2018, IFIC submitted a proposal regarding securities registrants to members of the CSA. Our proposal is based on the following guiding principles:

1. Functional title: A title should reasonably reflect the functions of the person rendering the service.
2. The provision of advice is properly reflected: The concept of advice should be reflected in the title where appropriate.

3. The title is understandable by the average investor: Proposed titles must avoid technical jargon that may not be understandable by the average investor. Titles must also avoid using terms that are misleading or too vague.

### Exempt SRO Members

The creation of minimum standards for title usage should only be implemented without creating unnecessary burden for title users. IFIC recommends that any such regulatory proposals contain an explicit exemption for individuals who are already subject to a regulatory framework that meets or exceeds the proposed standards and expectations. A lack of an explicit exemption would create the possibility of duplicative and confusing rules. The MFDA and IIROC require their approved persons to meet a minimum standard of education, training and experience before performing registerable activities<sup>1</sup>. The minimum requirements to conduct registerable activities are substantially similar to the proposed minimum standards in other regimes for using the FA title. As such, all SRO registrants should be able to use the FA title without any additional costs or oversight from a credentialing body.

Similarly, the SROs have rules<sup>2</sup> 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. SRO members generally preclude individuals from using the FP title unless they have obtained a recognized financial planning designation.

It is worthwhile to note that, while the FCNB proposal seeks to regulate only the use of the FP and FA titles, the SRO<sup>3</sup> rules look beyond the title to address both how an individual holds themselves out as well as the activities being conducted. In evaluating appropriate business titles, SRO members are expected to consider a range of factors including:

- the role and function the individual is approved to undertake;
- the services and/or products that an individual is approved to sell and/or advise on;
- the qualification, education and experience of the individual; and
- the actual role, function and office held by the individual.

In addition, it is important to acknowledge that in addition to day-to-day supervision 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 the existing and proposed new SRO regulatory framework, we submit that any incremental requirements, oversight or costs to SRO members would be duplicative and unnecessary. As such, SRO members, approved persons and their staff should be exempt from an FCNB titles protection regulatory regime.

Lastly, if every province sets up a system like Ontario's and their proposed rules related to credentialing bodies, which do not have an exemption for SRO members, this will result in multiple sets of costs for each province regulating and operating its own title use system. These costs would then likely be passed on to SRO members, which would result in duplicative costs for regulating titles. This would be contrary to the current approach of securities regulators to reduce regulatory burden and unnecessary costs.

### Undertake a Regulatory Impact Analysis

IFIC recommends that for significant rule proposals, the proposing regulator should undertake a qualitative and quantitative analysis of the anticipated costs and benefits of a proposed rule. We believe this is an important step in the rule-making process. We encourage FCNB to adopt a fulsome regulatory impact

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<sup>1</sup> See IIROC Dealer Member Rules 18 and 2900, MFDA Rule 1.2

<sup>2</sup> See IIROC Dealer Member Rules 18.16 and 29.7, MFDA Rule 1.2.5

<sup>3</sup> As an example, refer to IIROC Notice 14-0073

analysis, in addition to a robust cost-benefit analysis process, should it decide to proceed with proposed regulation for the use of FP and FA titles. A robust cost-benefit analysis should take into consideration the anticipated costs and benefits for various stakeholders, particularly where a proposed rule may overlap with existing regulation.

### **Consult on Use of Similar or Equivalent Titles**

The FCNB proposal intends to restrict the use of the FP and FA titles, and seeks input about adopting rules to prohibit the use of other similar titles. Determining which titles are similar or equivalent or could be confused with an FP or FA title is a highly-subjective exercise. If the FCNB intends to consider a broader range of titles, it would be prudent to engage industry stakeholders in advance to consult on which titles are similar or equivalent to, or could be confused with, the FA and FP titles.

IFIC urges the FCNB to delay developing a titles protection regime in New Brunswick, and rather work in concert with the CSA and other provinces in reviewing the use of titles. The use of titles such as “Financial Advisor” in particular should be part of a broader discussion on title reform. A coordinated national approach would better achieve the objective of lessening consumer confusion and improving consumer protection. This would provide consumers with the same level of protection regardless of where they live.

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Thank you for the opportunity to provide comments on the regulation of financial planning and financial advisor titles in New Brunswick. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at [pegger@ific.ca](mailto:pegger@ific.ca) or, by phone 416-309-2324.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

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