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VIA EMAIL

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**Re: *Proposed Changes and Request for Further Comment - Proposed Regulations under The Financial Planners and Financial Advisors Act (the “Consultation”)***

The Canadian Advocacy Council of CFA Societies Canada<sup>1</sup> (the “**CAC**”) appreciates the opportunity to provide the following general comments on the Consultation and respond to the specific questions set out below.

#### General Comments

We are strongly supportive overall of a title protection framework in the Province to deal with the long-standing issues of unregulated titles and credentials used by individuals providing or purporting to provide financial services and advice. It is important that the FCAA implements strong criteria for both credentialing bodies and the financial planner and financial advisor credentials themselves in order to have strong, uniform minimum standards for title users. It is also critical that any title protection framework be harmonized with and supportive of related areas of proficiency and conduct regulation, such as securities and insurance regulation.

It is noted in the Consultation that some of the proposals contained in the Consultation will result in decreased harmonization with the Financial Services Regulatory Authority of Ontario’s (“**FSRA’s**”) financial professionals title protection legislation. While we are generally in favour of harmonization of regulation between different Canadian jurisdictions, we strongly believe that it should be an overriding priority in this instance to create a strong investor-centric framework with stringent minimum standards for expected knowledge and competencies. We believe that the FCAA should take this opportunity to create baseline competencies for both the financial planner and the financial advisor titles that best serve the public interest as its primary objective.

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<sup>1</sup> The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit [www.cfacanada.org](http://www.cfacanada.org) to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 180,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org) or follow us on [LinkedIn](https://www.linkedin.com/company/cfa-institute) and Twitter at [@CFAInstitute](https://twitter.com/CFAInstitute).

To that end, we urge the FCAA and other regulators responsible for title protection frameworks to consider the intersection of credentials needed for the use of the financial planner and financial advisor titles with the requirements already set out by securities regulators and self-regulatory organizations for persons registered to provide financial advice. We believe that title protection frameworks that merely duplicate the existing proficiency and credentialing requirements of securities or insurance regulation are inherently problematic and are likely to result in increased regulatory burden that does nothing for the public interest. It is our view that if title protection frameworks are to be valuable in their own right that they must be complementary and additive to existing regulatory licensing frameworks in proficiency and/or conduct expectations.

It is very important that investors / financial consumers understand the purpose and goals of the title protection framework and that they know what to expect from planners and advisers holding any approved credential. The FCAA should lead investor education campaigns to ensure that accurate and consistent information about the framework is provided, and prohibit credentialing bodies from misleading communications about their credentialing body, their approved credentials, and the title protection framework broadly. We fear that consumers will be vulnerable to being persuaded that the best and most trustworthy credential or credentialing body will be that with the most effective and well-resourced marketing campaigns.

We look forward to future guidance from the FCAA with respect to which titles will be deemed “confusing” with those of a financial planner or financial advisor. We appreciate and agree with the suggestion that any title that references an authorization to provide specific advice that has been granted by legislation will likely not be found to be confusing (e.g. Insurance Advisor for persons licensed under *The Insurance Act*).

#### Specific Consultation Questions:

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.*

We do not believe there will be many circumstances where it would be appropriate to allow an individual to continue to use a protected title in the absence of oversight by a credentialing body. A credentialing body may cease to operate or cease to be approved for any number of reasons, including financial circumstances, or due to a breach of approval conditions. We suspect that in the event a credentialing body completely ceased operations, there would be a number of reasons why a credential issued by that credentialing body could no longer be utilized (e.g., trademark considerations, lack of conduct/complaints monitoring, etc.).

We would support a short transition period to allow a credential holder time to obtain a different approved credential from an approved credentialing body that can

effectively administer a credentialing program, and that potentially creates a pathway for holders of the now un-approved credential to obtain new approved credentials. It will be particularly important to keep the transition period short in the event there is a complaint or other disciplinary matter respecting the individual title holder in progress that will require action from an approved credentialing body (or we presume, the FCAA in the absence of a credentialing body in this unique circumstance). In the event only the credential is no longer approved, but the credentialing body is still operational, we believe the same considerations apply; a short transition period should be granted to the credential holder in order to obtain a new approved credential from the same or a different credentialing body. Given the fast-paced nature of change in the financial industry, it is important that financial planners and financial advisors hold a current, active credential and are subject to continuous and robust conduct oversight. There must also be incentives for credentialing bodies to evolve the credential requirements as consumer, industry and proficiency needs evolve.

- 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.*

Commentators have noted that FSRA's Product-Focused Approach for financial advisors only requires education relating to the products and services provided by the individual, and have suggested that the competencies for financial technical areas should take a broader approach in order to indicate that the title holder can provide more holistic advice in the areas of financial and investment strategies. We would support amending the proposed knowledge and competencies for financial advisors as suggested in this Consultation.

While we appreciate that many financial advisors do have the educational and practical expertise to provide broad-based advisory services, not every approved credential holder will (despite any public perception to the contrary). As suggested by the questions in the Consultation, we believe any such investor/financial consumer expectations regarding an approved credential holder's expertise can be mitigated by requiring financial advisor title users to disclose their particular area of expertise (e.g.

Financial Advisor – Insurance; Financial Advisor – Securities), which we believe should be a requirement regardless of whether the final regulations adopt a Product-Focused Approach or the Comprehensive Approach. We believe this approach makes title protection more complementary to and supportive of existing securities and insurance regulation, which is a critical consideration for the overall cost-benefit analysis of the title protection framework.

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?*

While we are generally in favour of harmonization of regulation between Canadian jurisdictions, we believe that it is more important in this instance to create a strong investor-centric framework with stringent minimum standards for expected knowledge and competencies for financial advisors. We are hopeful that the FCAA can reverse some of the 'race-to-the-bottom' credential design and approvals that we have seen recently, and that instead act as a force that moves credential design and knowledge/proficiency standards higher (even potentially for already-approved credentials in other jurisdictions) such that the net effect is that of improving credential standards across jurisdictions to meet the most demanding regulatory standard.

Even though it may be difficult for some credentialing bodies to adapt their educational program to include the enhanced competencies, we do not believe the transition period for a financial advisor should be lengthened to match that of a financial planner title holder. Please see our reasoning under Question #5 below.

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.*

Mandatory disclosure of a title holder's credentials and an explanation of those credentials should be the minimum requirement, and can be similar to the requirements placed on securities registrants in their relationship disclosure documentation. As noted in our response to Question #2, we believe the proposed enhanced disclosure requirement is warranted to help alleviate the consumer confusion that currently exists with respect to the standards required to use the title of a financial advisor. All written correspondence, marketing documents and collateral materials that identify an individual by the title financial advisor should indicate for which products they are capable of dispensing advice and authorized to sell. Credential holders should also have to explain in plain language to their clients any limitation on the scope of their product knowledge or regulatory authorizations. These representations should of course be informed by the general proficiency principles outlined in section 3.4(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* which provides that "An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently."

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.*

We believe a short implementation period (no longer than three months) would be helpful, during which transition period we understand the FCAA would review applications and approve credentialing bodies. Given that the various title protection frameworks across Canada have been discussed for quite some time, industry participants should be expected to be generally familiar with the in-force or pending requirements to hold an approved credential even though the specific requirements are yet to be finalized. Given the proposed two year and four year transition period being afforded to title users to obtain the necessary credentials if they do not already possess one, an extended implementation period is unnecessary. As an important investor/financial consumer protection measure if properly designed and implemented, the title protection framework should be put into effect as soon as possible.

We are of the view that as a fundamental principle of fairness, the transition date should be adjusted to the date that the Act and the Regulations come into force. We believe it would be unduly prejudicial to exclude individuals from the benefit of the transition periods if they entered the industry subsequent to July 3, 2020 without a clear final understanding of all of the technical credentialing and educational requirements and provided with an opportunity to align themselves with those requirements.

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

The proposed fee structure and amounts appear to be reasonable at this time. However, we believe the annual fees should not be based on the number of credentials issued by a given credentialing body, but instead only by the number of approved credential holders who elect to use the protected title. There may be many credential holders that do not use one of the protected titles, and thus the fees should be based only on the number of individuals with the approved credential who elect to use either the protected financial advisor or financial planner title (as applicable).

### **Concluding Remarks**

We strongly support a regulatory framework for title usage that ensures the protection of financial consumers/investors while recognizing that unnecessary regulatory burden resulting from multiple and potentially duplicative regulatory frameworks must be addressed. We believe the proposed amendments to the baseline competencies for use of the financial advisor title are a step in the right direction and can be made to work alongside and be complementary to existing regulation and licensing rules. We remain disappointed that there has not been a greater attempt in other jurisdictions to-date to ensure that title protection frameworks are complementary and additive to existing securities and insurance regulation in raising proficiency and conduct standards, and applaud the FCAA for their consideration of these intersections in the pursuit of the public interest and efficient regulation.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at [cac@cfacanada.org](mailto:cac@cfacanada.org) on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of  
CFA Societies Canada*

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