

The Financial Planners and Financial Advisors Act

Notice of Proposed Regulations and Request for Comment

July, 2021

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Financial and Consumer Affairs Authority of Saskatchewan

Notice of Proposed Regulations and Request for Comment Proposed Regulations [2021-001]

The Financial Planners and Financial Advisors Regulations

Introduction

The Financial and Consumer Affairs Authority of Saskatchewan (**FCAA** or the **Authority**) is publishing for comment Proposed Regulations [2021-001] – *The Financial Planners and Financial Advisors Regulations* (the **Proposed Regulations**) under *The Financial Planners and Financial Advisors Act* (FPFAA).

The text of the Proposed Regulations is set out in Appendix A to this Notice. The FCAA understands the importance of harmonizing our legislation with that of other jurisdictions in order to reduce regulatory burden and enhance understanding and compliance. Accordingly, the text of the Proposed Regulations has been drafted to closely reflect Ontario's proposed Rule under its *Financial Professionals Title Protection Act*. Note that there are some differences between the two drafts that address provincial distinctions. We have also reviewed the responses to the initial consultation conducted by the Financial Services Regulatory Authority of Ontario ("FSRA") in 2020 and the second consultation in 2021 in respect of its proposed Rule and we are aware of the concerns that were raised. While harmonization is an important objective, we are mindful that the approach should be appropriate for the Saskatchewan perspective and we are open to further comments and suggestions as to how we might address those concerns in our Proposed Regulations.

Interested persons are invited to make written representations to the FCAA with respect to the Proposed Regulations on or before **October 1, 2021**. We have included throughout this Notice questions for consideration and comment. These questions have been summarized at the end of this Notice.

Substance and Purpose of the Proposed Regulations

Concerns have been raised by consumer and investor advocates about the wide array of titles and credentials currently used by individuals operating in Saskatchewan's financial services

marketplace, and how it has contributed to confusion over title usage. The absence of a regulatory framework governing the use of titles has also led to questions about the expertise and knowledge of individuals providing financial planning and financial advisory services. The requirements included in these Regulations aim to establish minimum standards for use of the Financial Planner and Financial Advisor titles so that consumers and investors can have confidence that the persons using these titles hold appropriate credentials and are overseen by a credentialing body to ensure they conduct themselves appropriately when providing financial planning or financial advisory services.

The FPFAA received Royal Assent in 2020. Once proclaimed in force, the FPFAA will, subject to the transition periods described below, restrict the use of the titles “financial planner” (FP) and “financial advisor” (FA) (as well as equivalents in another language or titles that could reasonably be confused with such titles) to individuals who have obtained a FCAA-approved credential issued by a FCAA-approved credentialing body.

The substance and purpose of the Proposed Regulations is to establish:

- approval criteria for credentialing bodies that intend to offer a credential in order to ensure the effective administration of a credentialing program and that only qualified individuals are issued a credential;
- approval criteria for FP and FA credentials in order to establish a consistent, minimum standard for title users;
- the application process to obtain approvals; and
- a transition period for individuals already using the FP and FA titles.

The FCAA may develop and release related Guidelines and Bulletins where it would be helpful to provide additional detail on how the FCAA will approach the administration of applications under the FPFAA and provisions of the Proposed Regulations.

Principles for oversight of the title protection framework

The primary objective of the framework is to create minimum standards for title usage for the protection of consumers and investors, without creating unnecessary regulatory burden for title users. Individual title users will be required to hold an approved credential from a FCAA-approved credentialing body, and will be required to meet conduct requirements and professional standards as set out by their respective credentialing body. The FCAA may take enforcement action where it is identified that an individual uses an FP or FA title without the authority to do so (i.e., the individual does not have an approved credential).

Activities carried out by FP or FA credential holders that are otherwise subject to regulation pursuant to existing regulatory frameworks, regardless if they are part of the financial planning or financial advisory services offered by the credential holder, will continue to be overseen and

regulated by the relevant regulatory bodies in Saskatchewan. Where those activities are part of the financial planning or financial advisory services offered, they will also be overseen by the credentialing body who issued the credential holder's credential. The FPFAA and the Proposed Regulations are intended to be complementary of, and compatible with, all existing overlapping regulatory frameworks and to avoid duplication of regulation.

The FPFAA title protection framework is designed to align with the FCAA's statutory objects under *The Financial and Consumer Affairs Authority Act of Saskatchewan* (the "FCAA Act") and the following key principles:

Consumer Confidence

The proposed approach protects consumers and investors through the implementation of new minimum standards that credentialing bodies and individual title holders must meet.

The FCAA will also protect the public through oversight of the credentialing bodies, and will enforce compliance by individuals who use the FP or FA titles without an approved credential.

Regulatory Effectiveness and Efficiency

The title protection framework introduces new requirements for those using FP and FA titles. The FCAA seeks to efficiently and effectively implement an appropriate and flexible framework by leveraging existing regimes for granting and supervising financial planning and financial advising designations and licences, to ensure that individuals using the FP or FA titles meet minimum standards.

Development of the Proposed Regulations

Establishing approval criteria for credentialing bodies

A key element of the implementation of the title protection framework is the establishment of approval criteria for credentialing bodies, to ensure effective oversight of a credentialing program so that only individuals meeting minimum standards are able to obtain and continue to hold a credential.

Paragraph 52(1)(d) of the FPFAA provides authority to the FCAA to make regulations establishing criteria for credentialing bodies to be approved by the FCAA under section 6 of the FPFAA, including without limitation, criteria relating to:

- i. the applicant's governance structure and practices; and

- ii. disciplinary processes the applicant must have in place for individuals holding approved credentials it has issued.

Establishing approval criteria for credentials

Another key element of the implementation of the title protection framework is the establishment of approval criteria for a credentialing body to permit the use of FP and FA credentials, to ensure that only individuals meeting minimum standards use the FP or FA title.

In order to do so, the FCAA is required to approve specific licences and designations granted by such credentialing bodies and to confer them with the right to FP and FA title use while the individual is a licence or designation holder in good standing.

Paragraph 52(1)(f) of the FPFSA grants the FCAA regulation-making authority to establish criteria for licences and designations to be approved under section 12 of the FPFSA as granting the right to use an FP or FA title, including, without limitation, criteria relating to:

- i. Educational requirements;
- ii. Examination requirements;
- iii. Code of ethics and professional standards; and
- iv. Continuing education requirements.

We have reviewed the FSRA table and we believe it to be appropriate for the Saskatchewan marketplace as well. While this has not yet been finalized, an example of the baseline competency profiles developed by FSRA are set out in the tables below.

Table 1: FSRA - Financial Planner Baseline Competency Profile

General Financial Services Knowledge
Overview of financial services marketplace
Overview of the Canadian regulatory environment related to the sector in which the individual operates
Fundamentals of Economics
Ethics
Ethics – Understanding of ethical practices and professional conduct in the financial services market, including identifying and managing conflicts of interest
Client Outcomes
Dealing with retail clients <ul style="list-style-type: none"> • Gather sufficient detailed personal and financial information about the client • Confirm a client’s risk profile • Establish financial objectives, priorities and areas of need relevant to the scope of services being provided • Periodic review of the client’s ongoing objectives, priorities and areas of need, as required, relevant to the scope of services being provided

Integrated financial planning
Ability to develop and present an integrated financial plan to clients, which includes a holistic analysis of a client’s financial circumstances and suitable financial planning and investment recommendations
Technical Knowledge (KYP)
Technical knowledge and competencies in all of the following: estate planning, tax planning, retirement planning, investment planning and alternatives, finance management and insurance/risk management and how these topics interconnect with each other.

Table 2: FSRA - Financial Advisor Baseline Competency Profile

General Financial Services Knowledge
Overview of financial services marketplace
Overview of the Canadian regulatory environment related to the sector in which the individual operates
Fundamentals of Economics
Ethics
Ethics – Understanding of ethical practices and professional conduct in the financial services market, including identifying and managing conflicts of interest
Client Outcomes
Dealing with retail clients
Gather sufficient detailed personal and financial information about the client
Confirm a client’s risk profile
Establish financial objectives, priorities and areas of need relevant to the scope of services being provided
Periodic review of the client’s ongoing objectives, priorities and areas of need, as required, relevant to the scope of services being provided
Providing suitable recommendations
Ability to develop and present suitable financial and investment recommendations to retail clients, relevant to the scope of services being provided
Technical Knowledge (KYP)
The curriculum should provide the technical knowledge and competencies in one or more of the following: estate planning, tax planning, retirement planning, investment planning and alternatives, finance management and insurance/risk management

The FCAA is aware that some parties have indicated a preference for a higher minimum standard to apply to individuals who are using the FP or FA titles. The Client Focused Reforms project carried out by securities regulators and the Conduct of Insurance Business and Fair Treatment of Customers Guidance adopted by insurance regulators contemplate standards for the investment and insurance industry that require that investors’ and consumers’ interests not be subservient

or subordinate to the interests of others, including the regulated service provider. The FCAA is of the view that the standard owed by FP and FA title users should be consistent with these principles adopted in the broader investment and insurance industry. This standard has been incorporated into paragraphs 6(1)(a) and 7(1)(a) of the Proposed Regulations. It is our view that incorporating this standard into the Proposed Regulations will advance the overall objective of the FPFSA to establish and regulate credentials that consumers can look to with confidence when seeking out financial planning and financial advisory services to assist them with the very important task of managing their financial future.

Credentialing bodies will be required to demonstrate in their application to the FCAA how their licence or designation aligns with the education requirements in the Proposed Regulations. The FCAA will assess the education program component of their credentialing programs in line with the Proposed Regulations.

The FCAA recognizes that there are a large number of highly qualified individuals already operating within the financial services sector who hold industry-recognized licences or designations. However, holding a financial services licence or designation may not automatically qualify an individual to use an FP or FA title. Under the title protection framework, a licence or designation must meet the approval criteria in the Proposed Regulations in order to be considered for approval as a credential that grants the right to use the FP or FA titles. As a result, some existing licences or designations may not meet the new minimum standards.

We are seeking feedback on whether the current draft of the Proposed Regulations and FP and FA baseline competency profile as well as the “best interest” standard adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body’s education program to establish the minimum standard for FP and FA title users.

Mandatory Disclosure of Credentials

The FCAA is also seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use an FP or FA title. The FCAA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.

Implementing the framework

Proclamation of the FPFSA and Ministerial approval of the Proposed Regulations will provide the FCAA with authority to approve credentialing bodies and their licences or designations that will permit holders to use the FP and FA titles.

At a high level, the FCAA anticipates the approval process and supervisory framework for credentialing bodies to operate as follows:

1. Upon the coming into force of the FPFAA and the Proposed Regulations, organizations that currently offer a designation or licence that they wish to submit for approval as a credential entitling FP or FA title use must apply to the FCAA in order to obtain approval as a credentialing body, and must seek FCAA approval of the designation/licence as a credential granting the right to FP or FA title use.
2. The application process is outlined in the Proposed Regulations. There will be a fee associated with the application process. Although fees have not yet been determined under the title protection framework, fees will be finalized prior to the FCAA accepting applications.
3. The FCAA will review the submission against the approval criteria in the Proposed Regulation.
4. The FCAA will post the list of approved credentialing bodies and approved credentials on its website. The list will be updated as credentialing bodies and their relevant credentials are approved.
5. The FCAA will develop a monitoring and supervision plan for its oversight of credentialing bodies. This will include ensuring that credentialing bodies remain in compliance with the terms and conditions of their approval and that they maintain effective oversight of their credentialing program to ensure that only qualified individuals are granted a FP or FA credential.

Additional details relating to the operational framework for approval of credentialing bodies and credentials will be provided at a later date.

Upon the coming into force of the FPFAA and the Proposed Regulations:

1. No individual will be permitted to use the FP or FA titles unless they have an approved credential from an FCAA-approved credentialing body and are in good standing with that credentialing body.
2. An individual who used the FP or FA title in Saskatchewan immediately prior to July 3, 2020, and up to the date the Regulations come into force, will be permitted to continue using the relevant title during the transition period prescribed in the Proposed Regulations. The FCAA interprets this to apply to any individual who used the FP or FA title while actively engaged in the business of providing services related to financial planning or advising at least the day before July 3, 2020 (e.g., July 2, 2020) and continued to conduct such business until the date the Proposed Regulations come into force. Once the transition periods prescribed in the Proposed Regulations have lapsed, individuals will be subject to the provision outlined in paragraph 1 above.
3. Individuals to whom the transition provisions in the Proposed Regulations apply should monitor the list of approved credentials on the FCAA website. If their current licence/designation is accepted by the FCAA as an approved credential, such individuals will not be required to obtain any additional qualifications. Such individuals will be

subject to the ongoing requirements of the title protection framework set out in the entire FPFAA and of the relevant approved credentialing body going forward.

4. Individuals using the FP or FA titles before the FPFAA comes into force, and who do not qualify for the transition provisions prescribed in the Proposed Regulations (i.e., not using the FP or FA title prior to July 3, 2020 and continuing to use it until the Regulation comes into force), will not be permitted to use the FP or FA titles once the FPFAA comes into force. Such individuals must obtain an approved credential from an approved credentialing body before they can use an FP or FA title.
5. Individuals who did not previously use an FP or FA title are prohibited from doing so until they obtain an approved credential from an approved credentialing body.
6. The FCAA may take enforcement action where it is identified that an individual uses the FP or FA title without the authority to do so (i.e., the individual does not have an approved credential).

We are seeking feedback on whether the proposed transition date of July 3, 2020 is appropriate or, if you wish to propose another date, the benefits of the proposed date.

Authority for the Proposed Regulations

The following statutory provisions of the FPFAA give the FCAA authority to make the Proposed Regulations:

- Subsection 52(2) authorizes the FCAA to make regulations in respect of any matter or thing with respect to which the FCAA is authorized pursuant to clause 52(1)(q) of the FPFAA.
- Paragraph 52(1)(b) authorizes the FCAA to make regulations respecting the meaning of “good standing” for the purposes of sections 4 and 5 of the FPFAA.
- Paragraph 52(1)(c) authorizes the FCAA, for the purposes of sections 4 and 5 of the FPFAA, to make regulations prescribing other titles that the regulation maker is satisfied are consistent with the purposes of the FPFAA.
- Paragraph 52(1)(d) provides authority to the FCAA to make regulations establishing criteria for credentialing bodies to be approved by the FCAA. under subsection 6 of the FPFAA, including without limitation, criteria relating to:
 - (i) the applicant’s governance structure and practices; and
 - (ii) disciplinary processes the applicant must have in place for individuals holding approved credentials it has issued.
- Paragraph 52(1)(e) authorizes the FCAA to make regulations prescribing partners, officers, representatives, employees and other related persons of a credentialing body who are required to comply with the terms and conditions applicable to the approval of the credentialing body.
- Paragraph 52(1)(f) provides authority to the FCAA to make regulations establishing criteria for licences and designations to be approved under section 12 of the FPFAA as

granting the right to use an FP or FA title., including, without limitation, criteria relating to:

- (i) Educational requirements;
 - (ii) Examination requirements;
 - (iii) Code of ethics and professional standards; and
 - (iv) Continuing education requirements.
- Paragraph 52(1)(g) authorizes the FCAA to make regulations governing applications for approval.
 - Paragraph 52(1)(h) authorizes the FCAA to make regulations respecting credentialing bodies.
 - Paragraph 52(1)(i) authorizes the FCAA to make regulations prescribing criteria and requirements.
 - Paragraph 52(1)(j) authorizes the FCAA to make regulations respecting credentials.
 - Paragraph 52(1)(k) authorizes the FCAA to make regulations establishing requirements for and procedures with respect to the use of an electronic or computer-based system for the delivery or deposit of documents or information, including requirements for paying charges or fees in connection with the use of the system.
 - Paragraph 52(1)(l) authorizes the FCAA to make regulations prescribing the circumstances in which persons are deemed to have signed or certified documents on an electronic or computer-based system for any purpose of this Act.
 - Paragraph 52(1)(m) authorizes the FCAA to make regulations prescribing information, documents, records or other materials that are required to be delivered, including requirements relating to the following:
 - (i) The method by which they are to be delivered;
 - (ii) The timing of the delivery;
 - (iii) The costs related to the delivery;
 - (iv) When they are deemed to have been delivered or received.
 - Paragraph 52(1)(o) authorizes the FCAA to make regulations respecting any additional disclosure required with respect to credentialing bodies and credentialed individuals.
 - Paragraph 52(1)(p) authorizes the FCAA to make regulations respecting the service of documents.
 - Paragraph 52(1)(s) authorizes the FCAA to make regulations respecting any additional matter or thing that the regulation maker considers necessary to facilitate the implementation of the Act, including the treatment of credentials and other qualifications possessed by persons before the Act comes into force.
 - Paragraph 52(1)(t) authorizes the FCAA to make regulations governing the use of titles in circumstances where a credentialing body's approval is revoked or where a credentialing body ceases to operate.
 - Paragraph 52(1)(w) authorizes the FCAA to make regulations prescribing any matter or thing that is required or authorized by the Act to be prescribed in the regulations.

Section 4 of *The Financial Planners and Financial Advisors (Fees and Regulation Procedures) Regulations* (the "Fees and Procedures Regulations") states that the Authority may make

regulations respecting any matter or thing set out in subsection 52(1) except those set out in clauses 52(1)(a), (n), (q), and (r).

Exemptions and Challenging Examinations

The issue of exemptions has been raised by numerous individuals and groups throughout the development of this legislation. The FCAA has considered including exemptions as part of the overall framework but is concerned that granting exemptions will undermine the objective of the FPFSA, namely that consumers and investors should have confidence that persons who use the FP or FA title have met the requirements and standards set out in the FPFSA and by a FCAA-approved credentialing body to provide financial planning or financial advisory services. The consumer or investor should not have to research the credential or designation held by the person and assess what areas of knowledge this person possesses and whether that knowledge is sufficient for the person to be able to competently provide financial planning or financial advisory services. The consumer or investor should not have to research what standards of conduct and care the person providing the financial planning or financial advisory services is subject to as a result of holding their credential or designation in order to determine if their interests are adequately protected,

The FCAA is seeking comments on whether the framework should allow for any exemptions. In particular, the FCAA is requesting comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.

The FCAA is also seeking comments on whether the framework should allow for certain individuals to challenge the required FP and FA examinations. Similar to the issue of exemptions, the FCAA is also interested in comments on the principles governing when challenges should be permitted, the extent to which challenges may be required, to whom they should be made available (if at all) and the benefits and drawbacks of permitting challenges.

Titles

The FPFSA specifies that the title restrictions extend to the use of the FP and FA titles in another language, an abbreviation, a title that “could reasonably be confused with” the FP or FA title or any other prescribed title. The FCAA is seeking suggestions as to examples of titles that could reasonably be confused with the FP or FA titles and comments regarding whether a guidance document or other regulatory approach is necessary at this time.

Fees and assessments

The FCAA will incur additional costs as a result of regulating this new sector. Costs will be incurred with respect to reviewing applications, monitoring and compliance of credentialing bodies, compliance and enforcement efforts relating to individuals who use the FP or FA titles without authority, and ongoing corporate support from other areas of the FCAA such as finance, policy and legal services.

The Proposed Regulations does not include provisions relating to fees, as those have yet to be determined. The fees will be established by the Lieutenant Governor in Council.

Summary of questions for consideration and comment

FP and FA Credentials

1. The FCAA is seeking feedback on the above approach and whether the Proposed Regulations and FP and FA baseline competency profile adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body's education program to establish the minimum standard for FP and FA title users.

Disclosure

2. The FCAA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use the FP or FA title. The FCAA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.

Transition Date

3. The FCAA is seeking feedback on whether the proposed transition date of July 3, 2020 is appropriate or, if you wish to propose another date, the benefits of the proposed date.

Exemptions and Challenging Examinations

4. The FCAA is seeking comments on whether the framework should allow for any exemptions. In particular, the FCAA is requesting comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.

5. The FCAA is also seeking comments on whether the framework should allow for certain qualified individuals to challenge the required FP and FA examinations. Similar to the issue of exemptions, the FCAA is interested in comments on the principles governing when challenges should be permitted, the extent to which challenges may be required, to whom they should be made available (if at all) and the benefits and drawbacks of permitting exemptions.

Titles

6. The FCAA is seeking suggestions as to examples of titles that could reasonably be confused with the FP or FA titles and comments regarding whether a guidance document or other regulatory approach is necessary at this time.

Comment

Interested parties are invited to make written representations with respect to the Proposed Regulations. Submissions received by **October 1, 2021** will be considered.

Submissions should be submitted to finplannerconsult@gov.sk.ca

Publication

PLEASE NOTE: *The Freedom of Information and Protection of Privacy Act* (“FOIP Act”) applies to any submissions made in response to this Consultation. As such, the information, including personal information, you provide in response to this Consultation is being collected for purposes related to the development of regulations for *The Financial Planners and Financial Advisors Act* and will be used or/and disclosed in accordance with the provisions of the FOIP Act. For greater clarity, your personal information (such as name, email address, mailing address) will not be disclosed unless there is an exemption under the FOIP Act that allows for its disclosure.

Contact Information

Insurance and Real Estate Division
Suite 601, 1919 Saskatchewan Drive,
Regina, SK S4P 4H2
Email: finplannerconsult@gov.sk.ca

Appendix

Proposed Regulations: The Financial Planners and Financial Advisors Regulations