



VIA the FSRA website

December 13, 2021

**Re: Proposed Revisions to FSRA Guidance – Supervision Guidance and Application Guidance**

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide input to the Financial Services Regulatory Authority of Ontario ("FSRA") on its second consultation related to its Supervision Guidance and Application Guidance.

The IIAC is the leading national association representing dealers who comprise the vast majority of the financial services provided to Canadian retail investors. Our members distribute a variety of securities such as mutual funds and other managed equity and fixed income funds and provide a diverse array of portfolio management, and advisory services. Several of our members also have dealers regulated by the Mutual Fund Dealers Association ("MFDA").

Summary: Through the extensive regulatory framework of the CSA, MFDA and IIROC, investors have the confidence that registrants with FA and FP titles hold credentials issued by a regulator, are qualified to provide financial advisory and planning services, meet minimum standards for use of their titles and have the appropriate educational requirements.

Recommendation: The IIAC continues to strongly encourage FSRA to exempt CSA, IIROC and MFDA registrants. Without exempting regulatory frameworks provided by the CSA and its SROs, FSRA's titling framework provides unnecessary duplication, confusion, and cost.

## **The Existing Regulatory Framework for Individuals Licensed to Provide Investment Advice is Fulsome**

The Canadian Securities Administrators (“CSA”) and its self-regulatory organizations (“SROs”), currently the Investment Industry Regulatory Organization of Canada (IIROC) and the MFDA, provide an extensive regulatory framework governing the use of titles across Canada by those licensed to provide financial and planning advice. As a term of registration and continued registration, these individuals are required to understand the retail investment products they recommend and how they should be considered in the context of financial planning and advice, which may also form part of their continuing education. Each of the CSA, IIROC and MFDA also encourage and promote investor education, protection, and advocacy. The CSA, IIROC and the MFDA have therefore provided investors the confidence that registrants with FA and FP titles hold credentials issued by a regulator, are qualified to provide financial advisory and planning services, meet minimum standards for use of their titles and have educational requirements.

On November 18, 2021, the CSA, SROs, and investor protection funds established a 2022 timeline for a new self regulatory framework. As stated in our previous submission, amongst its benefits, the new SRO will have a nuanced proficiency-based registration that would retain the high standards of professionalism in the industry. These are in addition to the enhancements to the titling requirements for CSA and SRO registrants imposed by National Instrument 31-103 and the Client Focused Reforms.

## **The FPTP Application Guidance and Supervision Guidance Continue to Add Unnecessary Duplication and Raise Public Interest Concerns**

FSRA states that financial advising and planning activities that are subject to regulation will continue to be overseen by relevant existing regulatory bodies in Ontario but that:

- a) Individuals wishing to use the FP or FA title must have a credential approved by FSRA and issued by an approved credentialing body (“CB”).
- b) FSRA’s intent is to include SROs as approved CBs under its framework without introducing new conduct standards for firms and individuals registered with IIROC or MFDA.
- c) FSRA would approve, supervise, and monitor the SROs as CBs including:
  - Reviewing an application for approval which includes various elements that should not apply to a regulator in turn including:
    - A detailed explanation of how the design and administration of the curriculum will satisfy the standards set out in clauses 5(1)a or 6(1)a of the FPTP Rule, and how students will be educated and tested on the standard of care.
    - A copy or description of a code of ethics and professional expectations for a credential holder that is consistent with the standard of care set out in clauses 5(1)a or 6(1)a, and how it would be communicated and enforced (a Codes of Ethics will be reviewed to confirm it has a requirement to ensure that credential holders will put the client’s interests first). We note that while the Second Consultation Summary Report indicates a client’s first obligation is “in relation to making a recommendation”, this

language is absent in the Application Guidance, which does not currently reflect Client Focused Reforms, as developed and approved by the CSA.

- Implementing a process for review and adjudication of complaints against them.
  - Requiring that SROs, as CBs, provide data reports with respect to complaints and enforcement activity as well as information on how they continue to carry out their ongoing responsibility as CBs
- d) Though FSRA states it does not intend to directly regulate the conduct of FPs or FAs, it would have the authority to take enforcement action against SROs as CBs.

The above items unintentionally either usurp or duplicate the role of the CSA and the current and new SROs, all of whom have clear national jurisdiction in respect of titling and address investor protection concerns. Provinces seeking to implement their title protection regimes without exempting regulatory frameworks provided by the CSA and its SROs provide unnecessary duplication, confusion, and cost.

### **Exemptions**

FSRA has been encouraged to exempt CSA, IIROC and MFDA registrants. FSRA has stated that if any exemptions are to be considered, the policy rationale must ensure that the interest of the public continues to be maintained. The IIAC continues to strongly encourage FSRA to exempt CSA, IIROC and MFDA registrants.

Providing an exemption for registrants would achieve the stated intention of consumer protection without introducing unnecessary regulatory burden.

### **Public Registry and Disclosure Requirements**

As part of the FP/FA title protection framework, FSRA plans to design and implement a public registry for individuals that hold an approved credential in Ontario. A public national registration search is provided by the CSA for those licensed to provide advice through its members and through an SRO. The CSA encourages investors to verify registration before investing and further encourages investors to contact their local securities regulator if they discover the person or company, they are dealing with is not registered.

We support FP and FA title users disclosing their credentials, but we do not believe any additional mandated disclosure requirements are necessary for securities registrants. FPs and FAs at firms regulated by the CSA and its SROs are prohibited from using misleading titles and are subject to oversight by both their firms and their regulators.

### **Transitional Matters**

While we understand that the January 1, 2020, date is intended to clarify who can benefit from the proposed transition periods, as we move further away from January 1, 2020, the Rule as currently drafted would exclude a number of registrants who would not be permitted to utilize the transition provision.

To address FSRA's concern that individuals would rush to begin using the FA or FP just in advance of the Rule coming into force, we suggest changing the date to December 31, 2021. This would balance FSRA's concerns against the numerous registrants who would be excluded with a January 1, 2020 date. While this date may have been appropriate when the Rule was first introduced, it now seems somewhat arbitrary and out of date.

Yours sincerely,

Investment Industry Association of Canada