FP CANADA RESPONSE TO PROPOSED FSRA FEE RULE

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EXECUTIVE SUMMARY

FP Canada™ appreciates the opportunity to formally respond to the Financial Services Regulatory Authority of Ontario's (FSRA) Proposed Rule 2022-001 – *Assessments and Fees* (the proposed Fee Rule).

Our comments on the proposed Fee Rule are grounded in a strong belief in the importance of a robust Title Protection Framework in Ontario. We firmly believe that the Framework can play a critical role in protecting consumers and enhancing clarity and confidence in Ontario's financial services sector. We are committed to working to ensure the efficacy and sustainability of the Title Protection Framework, both now and in the future.

With that said, FP Canada is deeply concerned by the proposed Fee Rule which, if approved, would exempt the New Self-Regulatory Organization of Canada (i.e., the Canadian Investment Regulatory Organization, or CIRO), and any of its representatives who are approved for use of the "Financial Advisor" title, from paying their fair share of fees required to fund the Financial Planner/Financial Advisor (FP/FA) Sector; fees all other credentialing bodies (CBs) and their credential holders pay.

While we understand the goals underpinning the proposed Fee Rule, including minimizing regulatory duplication and ensuring cost efficiency, we nonetheless cannot support this proposal. Simply put, the proposed Fee Rule is short-sighted and does not serve the interests of consumers in Ontario nor the Title Protection Framework itself.

Our concerns can be summarized as follows:

- The proposed Fee Rule itself contravenes FSRA's own guiding principles, including the fundamental principles of fairness and transparency.
- The proposed Fee Rule was developed without appropriate engagement or communication with key sector stakeholders.
- The proposed Fee Rule would create fee exemptions that are completely disproportionate to Framework cost realities, and there has been no transparent disclosure by FSRA as to why it has set CIRO's annual costs at $25,000 per year.
- The proposed Fee Rule was negotiated without opportunity for input from existing CBs. Based on a narrow 30-day consultation period, FSRA is proposing to reverse longstanding, fundamental Framework policy; policy developed through years of rigorous, transparent, and broad-based consultations.
- Above all, the proposal risks unintended consequences for consumers in Ontario, including the undermining of the accessibility of financial planning advice and entrenching "Financial Advisor" proficiency at the level of product licensure.

In response to these concerns, we call on the Minister to reject the proposed Rule.

Despite our concerns, we believe it is possible to find a better way forward. We would encourage FSRA to work with the Stakeholder Advisory Committee for the FP/FA Sector, existing CBs and other provincial regulators and key sector stakeholders to determine an appropriate, measured, and sustainable way to address the concerns underpinning this proposal. By working together, we can advance a solution that is well-founded, transparent, consistent with other jurisdictions, and – above all – serves the interests of Ontarians.

INTRODUCTION

Established in 1995, FP Canada is a national not-for-profit education, certification, and professional oversight organization working in the public interest. FP Canada is dedicated to championing better financial wellness for all Canadians by leading the advancement of professional financial planning across the country. There are about 17,000 CERTIFIED FINANCIAL PLANNER® professionals and about 1,900 QUALIFIED ASSOCIATE FINANCIAL PLANNER™ professionals, as of December 31, 2022, who are held to FP Canada's rigorous professional and ethical standards.

As a Credentialing Body (CB) approved by the Financial Services Regulatory Authority of Ontario (FSRA), FP Canada currently oversees more than 9,000 "Financial Planner" title users in Ontario. This accounts for 57% of all credential holders in the Financial Planner/Financial Advisor (FP/FA) Sector, making it the largest approved CB under the Title Protection Framework according to FSRA's sector analysis.

FP Canada is disappointed and concerned by FSRA's proposed amendments to the Fee Rule (the proposed Fee Rule). We do not believe the proposed Fee Rule serves the best interest of consumers or the Title Protection Framework itself, and should not move forward in its current form.

CONCERNS WITH THE PROPOSED FEE RULE

1. Abandonment of Established Policy Positions and FSRA's Guiding Principles

As an organization that has actively participated in each of FSRA's FP/FA Sector consultations and policy development opportunities going back several years, FP Canada has taken seriously FSRA's public positions and commitments. Other CBs similarly made business and policy decisions to support and participate in the Title Protection Framework on the basis of FSRA's public declarations. With respect to exemptions specifically, we have been supportive of FSRA's public declarations against exemptions and in favour of equal treatment among CBs within the sector.

In reviewing the proposed Fee Rule, we believe FSRA has abandoned its own long-established policy positions and principles, and we are troubled FSRA would so significantly abandon a core tenet of its Framework so quickly after the launch of the Framework.

The following are samples of FSRA's past public statements in this regard:

- *"FSRA is also not considering fee exemptions for prospective CBs, who may also be subject to other fees as a result of regulatory oversight in a different financial services sector."*[1]

[1] https://www.fsrao.ca/financial-professionals-title-protection-framework-fees-consultation-summary-report

- *"In keeping with its principle of fairness, FSRA has not distinguished between CBs, and the framework does not allow for a separate fee schedule for the SROs or their registrants. FSRA does not have a factual basis for assessing how each CB will drive costs differently, other than by the number of credential holders."*[2]

- *"FSRA is proposing that…direct and common costs be allocated based on the benefit received by the CB under the title protection framework. The number of credential holders is a suitable proxy to establish the benefit received from an effective title protection framework, as it accrues equally to all credential holders."*[3]

As well, we fundamentally disagree with FSRA's assessment that the proposed Fee Rule is consistent with its espoused key principles. In fact, we would argue the proposed Fee Rule is clearly *inconsistent* with numerous FSRA principles, including the following:

- **Fairness** – Under the proposed Fee Rule, costs are not fairly or reasonably allocated to participants within the FP/FA Sector. The proposed Fee Rule would see CIRO contribute $25,000 annually for all direct and common costs (excluding those related to oversight). Given the FP/FA Sector common costs alone were budgeted at $500,000 for FY2023-24[4], we do not see how this will result in a fair or reasonable allocation of costs, in keeping with this principle.

- **Transparency** – FSRA has not provided the level of detailed information necessary for CBs to understand the calculations driving sector assessments and fees. FSRA has not provided the necessary transparency to articulate its rationale used to determine how a $25,000 fixed fee would be sufficient to cover all non-oversight related costs. This is also discussed further below.

- **Consistency** – Rather than treating all CBs in a consistent manner, FSRA is proposing to give CIRO special treatment with respect to fees. FSRA is in effect creating a two-tiered system for treatment of CBs under the framework and a cost advantage for CIRO's future "Financial Advisor" title users, subsidized by "Financial Planner" title users.

- **Future Focus** – By only requiring CIRO to pay a static fixed fee, regardless of whether FP/FA Sector costs continue to increase over time, the proposed Fee Rule cannot be considered to have an appropriate "future focus." When CIRO pays proportionately less in the future, all other CBs will pay proportionately more.

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[2] https://www.fsrao.ca/financial-professionals-title-protection-framework-fees-consultation-summary-report
[3] https://www.fsrao.ca/industry/financial-planners-and-advisors/notice-rule-and-request-comment-fpfa-fees-consultation
[4] https://www.fsrao.ca/media/17451/download

2. Lack of Communication and Engagement with Key FP/FA Sector Stakeholders

From our perspective, the proposed Fee Rule was negotiated behind closed doors, without appropriate communication and engagement with key sector stakeholders, including the FP/FA Sector Stakeholder Advisory Committee (FP/FA SAC), existing CBs, and others.

Prior to the announcement of this consultation, the only public indication given by FSRA that it was engaged in discussions with CIRO and the Ontario Securities Commission came in December 2022, where in a news release FSRA said the following:

> *"[FSRA is] also pleased to confirm that we are in discussions with the new Self-Regulatory Organization (being formed by the combination of Investment Industry Regulatory Organization of Canada (IIROC) and The Mutual Fund Dealers Association of Canada (MFDA) effective January 1, 2023) and also the Ontario Securities Commission about the oversight framework should the new SRO apply to become a credentialing body."*[5]

Notably, this news release included no mention whatsoever of discussions regarding potential exemptions or preferential fee treatment for one CB under the Title Protection Framework – only that FSRA was engaged in "discussions."

The lack of engagement with the FP/FA SAC in particular during the drafting process for the proposed Fee Rule is especially disappointing, given its purpose as a "consultative body." As an organization with representation on the FP/FA SAC, we strongly believe this is the kind of rule proposal that should have warranted dedicated discussion between FP/FA SAC members and FSRA staff.

While we acknowledge the opportunity to provide input now through this consultation process, the condensed duration of the consultation period stands in stark contrast to the years of transparent and broad-based discussions and work that went into development of the current Fee Rule for the FP/FA Sector.

3. Lack of Transparency and Alignment Between Proposed Exemption and Framework Cost Realities

FSRA has stated that proposed Fee Rule is a solution to address the issue of duplication in "oversight" costs for CIRO, given its existing oversight by securities regulators. While we are sensitive to these concerns, the proposed Fee Rule – under which CIRO would be exempt from all variable costs and would instead only be responsible for remitting an annual $25,000 fixed fee (plus start-up costs) – seems to provide an exemption that is disproportionate to the actual costs of any regulatory duplication.

[5] https://www.fsrao.ca/newsroom/fsra-continues-implementation-fafp-framework

Specifically, the proposed Fee Rule implies that CIRO's $25,000 annual fixed fee is sufficient to cover all common costs and direct costs unrelated to "oversight," such as consumer education activities, complaints handling, and policy and legal reviews – all costs which CIRO and its title users will equally benefit from. While FSRA has provided the explanation that "supervision activities drive FSRA's costs,"[6] we do not see how $25,000 per year is a sufficient contribution toward the Title Protection Framework costs that are not directly linked to its supervisory activities. In fact, given FSRA's previous statement that it "does not have a factual basis for assessing how each CB will drive costs differently,"[7] this $25,000 amount appears arbitrary.

These concerns are indicative of a larger problem: a lack of transparency and specificity from FSRA regarding Framework costs and spending. While FSRA breaks down Sector spending into the categories of "direct costs" and "common costs," no information or detail is shared in terms of the specific spending that comprises these broad categories (for example, what proportion of FSRA's incurred "direct costs" relate to "oversight").

Moreover, given that some Framework costs are still effectively unknown or are not being fully incurred yet, FSRA's position here is especially confusing. For example, we would expect the costs of oversight and enforcement against individuals or entities using the "Financial Planner" or "Financial Advisor" titles without an approved credential, in contravention of the *Financial Professionals Title Protection Act*, to rise once the transition period is over. Likewise, given its early stage in the development process, we do not yet know what the full costs of developing and maintaining the public registry will be.

Finally, the proposed Fee Rule is short-sighted, and does not reflect the reality of potential cost increases over time. We would point out again that FSRA's FP/FA Sector Budget for FY2023-2024 contemplated an unexplained 5.4% increase in costs.[8] In actuality, cost increases for FY2023-2024 were 9% – nearly twice the increase FSRA had publicly indicated.[9]

4. Risk of Reducing Consumer Access to Financial Planning Advice

FP Canada is concerned that the proposed Fee Rule could ultimately harm the accessibility of financial planning advice for consumers in Ontario.

In the current environment, Ontarians – like all Canadians – are facing severe financial vulnerabilities, such as inflation and the rising cost of living. Research indicates Canadians are also struggling to build their financial resilience, defined as the ability to manage financial hardship, stressors, and shocks as a

[6] https://www.fsrao.ca/media/22976/download
[7] https://www.fsrao.ca/financial-professionals-title-protection-framework-fees-consultation-summary-report
[8] https://www.fsrao.ca/media/17451/download
[9] FP Canada Assessment Invoice for FY2023-2024.

result of unplanned life events.[10] Financial resilience is becoming an increasingly important concept to Canadian policymakers.[11]

While the financial and emotional benefits of engaging in financial planning have long been established, recent research commissioned by FP Canada indicates that financial planners can also play a singularly important role in helping Canadians build their financial resilience specifically, by working with them to develop and implement a comprehensive financial plan.[12]

Given the benefits of engaging in financial planning, FP Canada has also been investing in research to learn more about the barriers preventing Canadians from accessing professional financial planning advice today. While research clearly shows there are numerous barriers inhibiting Canadians from accessing financial planning advice, one of the most commonly cited barriers by consumers is cost.

We are concerned the proposed Fee Rule may exacerbate this reality. In practice, the proposed Fee Rule would create a two-tiered system of cost allocation that requires "Financial Planners" operating under the Framework to subsidize the vast majority of Framework costs on behalf of "Financial Advisors." Given that these costs often get passed on to consumers, and with the Sector cost increases we are already seeing (including a projected 5.4% increase in Sector costs for FY2023-2024, which in actuality was a 9% increase),[13] we are deeply concerned for what FSRA's proposed fee exemption for CIRO will mean for the affordability and accessibility of financial planning advice in the future.

5. Entrenching Credential Standards That Do Not Best Serve Consumers

While we acknowledge this consultation pertains to fees, we nonetheless feel it is important to take this opportunity raise our serious concerns with respect to Ontario's current credential standards.

Our assumption, based on the fact that there is no consultation on the Baseline Competency Profile for "Financial Advisor" credentials, is that existing securities licensure requirements will be deemed sufficient by FSRA to meet the requirements for "Financial Advisor" title use, and that representatives currently approved by CIRO will be permitted to use the "Financial Advisor" title without additional education or proficiency requirements beyond those currently required for product licensure. We do not believe keeping "Financial Advisor" standards at the level of product licensure best serves consumers in Ontario.

While great strides have been made when it comes to the quality of investment advice provided by licensees following from the Client Focused Reforms and corresponding enhancements to "Know Your

[10] https://strategycorp.com/2023/01/planning-for-resilience/
[11] We note for example, that the Financial Consumer Agency of Canada's National Financial Literacy Strategy 2021-2026, indicates that "the ultimate goal of [the FCAC's] National Strategy is financial resilience," and that Canada needs "an ecosystem that enables consumers' ability to surmount shocks and adversity and build resilience." https://www.canada.ca/content/dam/fcac-acfc/documents/programs/financial-literacy/financial-literacy-strategy-2021-2026.pdf
[12] https://strategycorp.com/2023/01/planning-for-resilience/
[13] FP Canada Assessment Invoice for FY2023-2024.

Product," "Know your Client," and "Suitability" requirements, these are all areas that focus on better investment advice and recommendations. From the perspective of consumers seeking financial help, product licensure alone is not sufficient for "Financial Advisor" title use.

Numerous other consumer-aligned stakeholders have raised (and continue to raise) this concern. In a recent joint release, FAIR Canada, CFA Societies Canada, and the Financial Planning Association of Canada all expressed agreement that Ontario's approach to "Financial Advisor" credential standards "sets the bar too low."[14] FAIR Canada further stated that "Ontario's product-focused approach doesn't align with what the majority of consumers would expect from a financial advisor."[15]

The Financial and Consumer Affairs Authority of Saskatchewan (FCAA) has also consulted on raising the Baseline Competency Profile for "Financial Advisor" credentials in their own jurisdiction. In keeping with our submissions to the FCAA's consultations,[16] we believe the competency requirements for "Financial Advisor" credentials under the Framework in Ontario must be raised from current levels.

If FSRA maintains the current competency standards for "Financial Advisor" credentials and brings CIRO's tens of thousands of representatives in under the existing standards, we are very concerned it will entrench the current standards and represent a critical missed opportunity to enhance confidence in Ontario's Title Protection Framework.

RECOMMENDATIONS

Despite our serious concerns with the proposed Fee Rule, we believe it is possible to find a pathway forward; one that addresses FSRA's concerns and reduces duplication, but still serves the interests of consumers and ensures the fairness and sustainability of the Framework itself.

Below we have outlined recommendations that we believe are necessary to provide a more transparent and consumer-focused path forward to bring CIRO into the Title Protection Framework:

1. The Minister Should Not Sign Off on the Proposed Fee Rule

In light of the concerns articulated above, we recommend that the Minister not sign off on the proposed Fee Rule.

As discussed, there were various process problems that preceded its drafting, including the reversal of longstanding FSRA policy positions and lack of communication and engagement with key Sector stakeholders. In addition, the proposed Fee Rule fails to live up to FSRA's own principles, it is misaligned with the scope of the problem it seeks to solve, and not only does it fail to advance consumer interests – it actually risks undermining them.

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[14] https://faircanada.ca/wp-content/uploads/2022/09/2022_09_20_title_protection_ver.0.pdf
[15] Ibid.
[16] https://www.fpcanada.ca/docs/default-source/resources/fp-canada-amended-fcaa-consultation-submission.pdf?sfvrsn=59b88334_3

2. A Better Process Going Forward

As discussed, we are disappointed by the flawed process behind development of the proposed Fee Rule – including the lack of prior communication and engagement with the FP/FA SAC, existing CBs, and other stakeholders, as well as the limited duration of this consultation period. While we understand FSRA is ultimately the regulator, we do not believe it serves the best interests of the Framework for key stakeholders to be reactive when it comes to major Framework decisions and issues, and many of our corresponding concerns likely could have been addressed or resolved through discussions with FSRA staff had there been appropriate input opportunity.

We recommend FSRA improve its communication, engagement, transparency, and process going forward. This includes proactively engaging with the FP/FA SAC and existing CBs when contemplating these kinds of major proposals and other important Framework decisions.

3. Provide Transparency Around Fees

In order to properly assess the extent of, and avoid duplication of, CIRO's oversight fees, we must have an understanding of what specific portion of FSRA's budget pertains to CB oversight, and what the costs are for other expenditures for which there is no basis for any exemption (e.g., policy and legal reviews, consumer education, IT costs, etc.).

We recommend that FSRA disclose their cost analysis behind assessing CIRO at a fixed fee of $25,000 per year so that it can be properly consulted on, and further provide transparency and specificity around all other Framework costs.

4. Institute Cost Control Checks and Mechanisms for Budget Input

Considering the sector cost increases we are already seeing, and the serious risks to advice accessibility with continued cost increases over the long term, we believe a process for controlling costs is necessary to protect the sustainability of the Framework.

This is especially important given the fact many "Financial Planners" serve Canadians in multiple jurisdictions. As Saskatchewan, New Brunswick, and future jurisdictions launch Title Protection Frameworks with their own associated costs, we are concerned about the impact of increasing costs for title users and the potential impact on the affordability of financial advice for consumers.

Accordingly, we recommend FSRA consider caps on program spending within the FP/FA Sector. Additionally, we recommend FSRA-approved CBs be provided input and sightlines into FSRA's sector spending <u>prior</u> to receiving their annual assessment.

5. Establish a Regular Review Process for the FP/FA Sector Fee Formula

As the FP/FA Sector evolves, and additional jurisdictions develop their own Title Protection Frameworks, **we recommend that FSRA commit to a formal process that would allow for the regular review of the FP/FA Sector Fee Formula, to ensure it remains viable and sustainable.**

Just as FSRA committed to reviewing and revisiting the 2019 Fee Rule three years after its coming into force,[17] a similar regular review process would be beneficial, and would allow for review of the outcomes of this proposal.

6. Review Credential Competency Requirements

As part of its FY2023-2024 Statement of Priorities for the FP/FA Sector, FSRA identified the following as one of its key deliverables:

> *"Conduct a review of the framework to evaluate its effectiveness in achieving expected outcomes, and assess opportunities for improvement, including consultation with key stakeholders, where applicable."* [18]

In light of developments in other jurisdictions with their own Title Protection Frameworks, concerns that have been raised by consumer advocates, and ultimately the need to best serve consumers in Ontario, we believe this review must include a review of the current credential standards and competency requirements. **We recommend FSRA undertake a comprehensive review of existing competency standards prior to accepting any new CB applications.**

CONCLUSION

Thank you for the opportunity to provide comment. While we reiterate our support for the Title Protection Framework in general, we urge against the proposed Fee Rule in light of the concerns articulated above.

We remain committed to working with FSRA and all other stakeholders to ensure the Title Protection Framework serves the best interests of consumers in Ontario and would welcome the opportunity to discuss our comments in greater detail with FSRA staff.

[17] https://www.fsrao.ca/engagement-and-consultations/consultation-now-open-fsras-new-2022-fee-rule
[18] https://www.fsrao.ca/media/14536/download

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