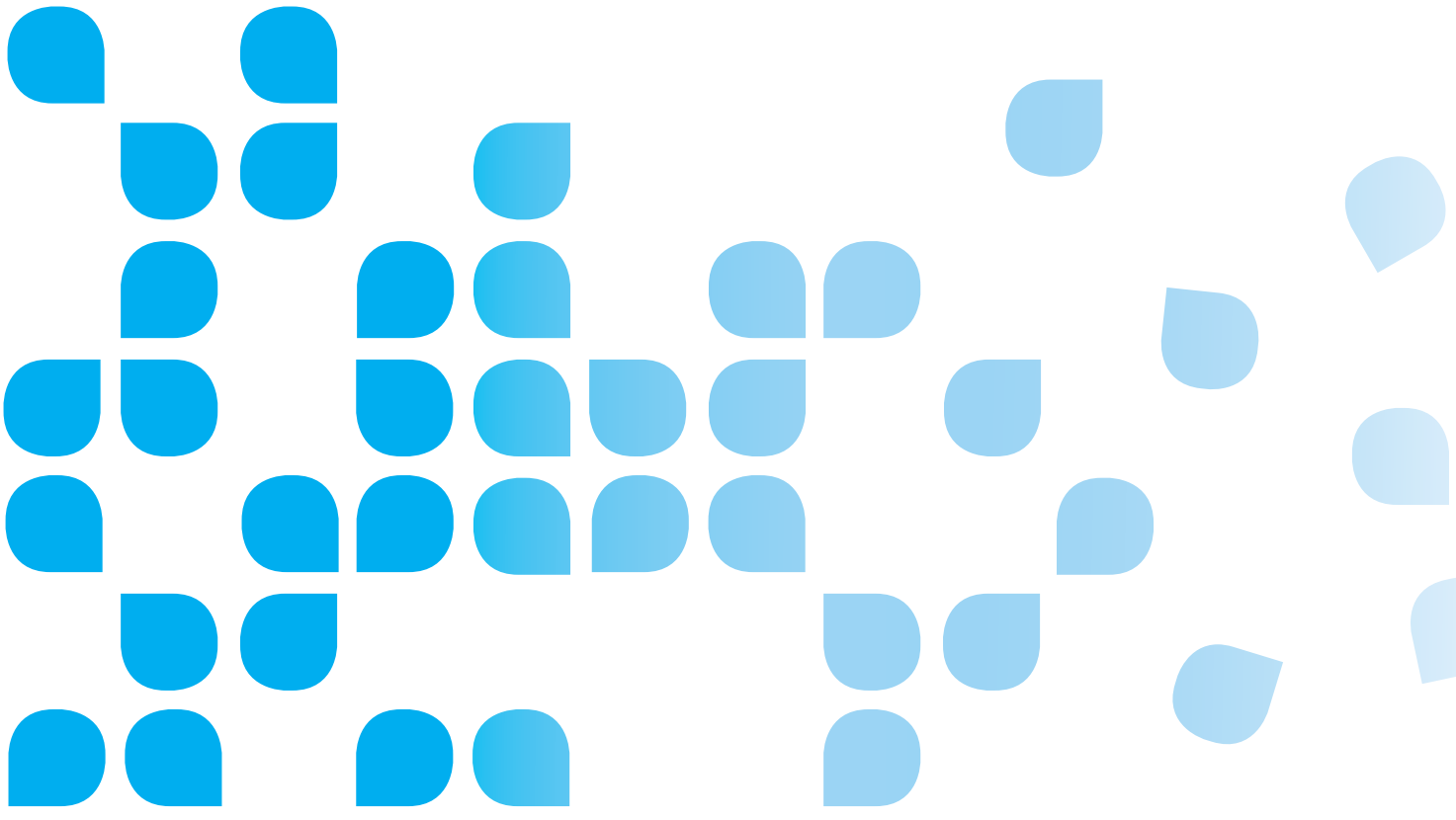
REVIEW OF THE MANDATES

of the Financial Services Commission of Ontario,
Financial Services Tribunal, and the
Deposit Insurance Corporation of Ontario

Final Report
March 31, 2016

Panel Members:
George Cooke
James Daw
Lawrence Ritchie



March 31, 2016

The Honourable Charles Sousa
Minister of Finance
7 Queen's Park Crescent, 7th floor
Toronto, Ontario
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Dear Minister Sousa,

Attached is our Final Report regarding the mandate reviews of the Financial Services Commission of Ontario (FSCO), Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO).

You will notice that most recommendations remain similar to those outlined in the Preliminary Position Paper we circulated to elicit public comment last fall. Now, having received nearly fifty submissions and made appropriate adjustments, we are confident our proposals for a world-class regulatory system will be supported broadly.

Our recommendations were prepared with both the present and the future in mind, and in light of industry and regulatory trends here and worldwide. It became clear to us that the mandate of the agencies under review should be modernized and that significant changes in governance, structure and associated accountability mechanisms are necessary to improve mandate alignment.

With financial services and pensions sectors changing at a rapid pace, we need a regulator that is sufficiently independent, flexible, innovative, and expert. We do not believe a thorough transformation could be accomplished within the current regime. So we have recommended a new, independent and integrated regulator called the Financial Services Regulatory Authority (FSRA).

To ensure adjudicative independence, the FST should be separated from the regulator and have its resourcing improved. While DICO has met the needs of Ontarians as the deposit insurer for credit unions and caisses populaires, we believe independence and efficiency could be enhanced by transferring its regulatory functions to FSRA at an appropriate time.

We would like to acknowledge the assistance provided by Ministry of Finance staff over the course of this review. We also want to thank you for the opportunity to conduct this mandate review of the agencies — it has been a rewarding experience. We remain available should you have any questions or concerns.

Yours truly,

George Cooke

James Daw

Lawrence Ritchie

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Glossary

AMF – Autorité des marchés financiers

AMP – Administrative Monetary Penalty

ARSF – L'autorité de régulation des services financiers

BCBS – Basel Committee on Banking Supervision

CAO – Chief Administrative Officer

CAPSA – Canadian Association of Pension Supervisory Authorities

CCIR – Canadian Council of Insurance Regulators

CCMR – Corporative Capital Markets Regulatory System

CDIC – Canada Deposit Insurance Corporation

CEO – Chief Executive Officer

CRF – Consolidated Revenue Fund

DICO – Deposit Insurance Corporation of Ontario

E&O – Errors and omissions

FA – Facility Association

FAA – Financial Administration Act

FSCO – Financial Services Commission of Ontario

FSRA – Financial Services Regulatory Authority

FST – Financial Services Tribunal

HCAI – Health Claims for Automobile Insurance

IADI – International Association of Deposit Insurers

IAIS – International Association of Insurance Supervisors

ICURN – International Credit Union Regulators Network

IEF – Investor Education Fund

IIROC – Investment Industry Regulatory Organization of Canada

LMCD – Licensing and Market Conduct Division

MBRCC – Mortgage Broker Regulators' Council of Canada

MEDEI – Ministry of Economic Development, Employment and Infrastructure

MFDA – Mutual Fund Dealers Association of Canada

MGCS – Ministry of Government and Consumer Services

OPS – Ontario Public Service

OSC – Ontario Securities Commission

OSFI – Office of the Superintendent of Financial Institutions

PBGF – Pension Benefits Guarantee Fund

SRO – Self–Regulatory Organization

TBS – Treasury Board Secretariat

Acknowledgements

We begin by thanking those individuals, industry organizations, regulators, pension plans, and advocates of investors and consumers who took the time to participate in this review. Your views, advice and other contributions were invaluable.

We are also very grateful for the assistance and support provided by Ministry of Finance staff over the past year.

I. Introductory Comments

The three of us were appointed by the Minister of Finance in early 2015 to undertake a mandate review of three agencies important to the financial well-being of Ontarians: the Financial Services Commission of Ontario (FSCO[1]), the Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO). We will now set out our findings, including recommendations for substantive change. Our recommendations address the mandate, governance and organizational structure of a modern, responsive and effective regulator, and the framework through which it could operate. We received supportive and helpful responses to the Preliminary Position Paper released last November, which led us to refine and add to our initial list of 37 recommendations. We hope that the following recommendations will help guide Ontario to a world-class regulatory system for its financial services and pension sectors.

The government asked us to answer four specific questions regarding the relevance, responsibilities, powers, and governance of the three agencies. We concluded and propose that radical change is required. The financial services and pensions sectors are changing at a rapid pace, and these three Ontario regulatory agencies have not evolved as quickly as in other parts of the world. To keep pace, Ontario needs a regulatory authority that is flexible, innovative, and in possession of expertise appropriate to match the consistently evolving financial environment. We call not for amendments, revisions or improvements to the existing regulatory framework and apparatus, but for the replacement of the current regulatory structure and approach with a more nimble and accountable one; we simply do not believe the necessary transformation could be accomplished within the current regime.

[1] The Financial Services Commission of Ontario is described in legislation as a commission composed of five persons: the Chair and two Vice-Chairs of the Commission, the Director of Arbitrations (appointed under the *Insurance Act*) and the Superintendent of Financial Services. Responsibility for regulating the financial services and intermediaries is assigned to the Superintendent of Financial Services. For simplicity, we refer to 'FSCO' throughout this Final Report as the regulator of the sectors rather than specifying the Superintendent. See Appendix D for further information.

We call for the creation of a new, independent and integrated regulator and propose that it be called the Financial Services Regulatory Authority (FSRA). It should have a modern governance structure and regulatory authorities, and should regulate most of those sectors now overseen by FSCO. We recommend that the FST continue, but be reconstituted as a tribunal separate from FSRA and be equipped with more resources. We recommend that DICO continue to manage the deposit insurance scheme for Ontario's credit unions and caisses populaires, but that prudential oversight be transferred to FSRA.

We now make 44 recommendations. These address the Mandate; Structure; Governance; and Tools, Means and Regulatory Approach of the entities. These recommendations are set out in the next section of this report, along with a broader narrative and explanation of our rationale for making them.

We note that the recommendations and views outlined in this report are ours. They may not reflect those of the government.

Our Process

The Minister of Finance asked that our review be guided by a process set out by the Treasury Board Secretariat (TBS), which directed us to determine:

1. Whether, and to what extent, each agency's mandate continues to be relevant to Ontario' goals and priorities?

2. Whether the agency is carrying out the activities and operations as required in its mandate?

3. Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?

4. Whether changes to the current governance structure/associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?

In order to answer these questions, we undertook an extensive consultation process that included:

- More than 40 meetings with regulators, financial services and pension sector stakeholders, and investor advocates between March 2015 and January 2016;

- A Consultation Paper released in April 2015 in which we posed 11 supplemental consultation questions;

- Seven sector roundtable discussions held in July 2015;

- A Preliminary Position Paper that sought input on our initial 37 recommendations.

We received approximately 100 written submissions throughout this process and had numerous face-to-face conversations and presentations. Appendix A provides a list of those who took part in our consultation process.

Appendix B provides a summary of recent and concurrent reviews relevant to the agencies, including the recently released report on the review of the *Credit Unions and Caisses Populaires Act, 1994* and the ongoing review of Financial Advisory and Financial Planning Policy Alternatives. We have also included summaries of the Expert Commission on Pensions, the International Monetary Fund's 2014 Financial Sector Assessment Program Report, and the 2014 Annual Report of the Auditor General of Ontario.

During our broad consultations, we noted and considered a number of trends, including:

- Emerging competition from non-traditional providers of financial services and emerging multi-product distributors[2];
- Technological innovations that could benefit consumers, yet pose new risks (e.g., usage-based insurance and autonomous vehicles, increasingly sophisticated data analytics, the rise of electronic commerce and social media);
- Ongoing consolidation among major market players;
- New entrants and services outpacing existing regulations;
- Integration and coordination of regulatory activities both nationally and globally;
- Centralization of prudential oversight, supported by regulatory and informational coordination among regulators, to better monitor systemic risk;
- Global competition and economic changes and events that pose a threat to traditional pension plans and the viability of Ontario's Pension Benefits Guarantee Fund;
- Increased public expectations amid inconsistent rules regarding fee disclosure and the duty of care expected of sales intermediaries;
- International movement away from regulating the price of automobile insurance, particularly as consumers seek more personalized coverage options.

[2] An additional trend involving crowdfunding has been identified under this heading, see Appendix C.

We are of the view that our recommendations will allow the regulator to address these trends. The proposed regulatory approach outlined in this report includes modernized authorities, governance and accountability mechanisms to ensure that the interests of industry stakeholders and the public will be met in the complex world of today, and the evolving world of tomorrow. Our landscape is not static.

Appendix C identifies a number of trends. While this list of trends may not be exhaustive, and is subject to ongoing change, it nonetheless supports our view that regulators must have the tools, governance structure and mandate to be sufficiently dynamic. While no one is able to predict the future, we have tried to suggest solutions commensurate with Ontario's evolving regulatory needs.

What We Have Heard

Throughout our consultations we heard consistent messages. Many with whom we consulted pointed to material shortcomings in the mandates, regulatory approach, operational resources, tools and capacity of the agencies. We would emphasize, however, that most criticisms were directed at the regulatory framework, approaches and limitations of the agencies, and not at their personnel.

The agencies under review oversee aspects of the following industry sectors:

- Insurance companies and intermediaries;
- Pension plans;
- Loan and trust companies;
- Credit unions and caisses populaires;
- Mortgage brokering;
- Co-operative corporations;
- Service providers who invoice auto insurers for listed expenses in relation to statutory accident benefits.

Refer to Appendix D for an overview of the agencies.

This list has changed somewhat since the mid-1990s and legislation governing the sectors has been updated from time to time. The Superintendent has been assigned responsibility in statute for certain activities. Although individual statutes have been reviewed and updated, there has not been a comprehensive, forward-looking, assessment of the overall regulatory approach. So a re-examination was overdue.

Here we reiterate what we heard throughout our consultation process. To clarify, these are observations made by others, and we will not comment on the degree of accuracy. We have tried, however, to address the perceptions of the commentators in our recommendations.

About DICO

- The current mandates are unclear and out-dated, and there is a perceived ambiguity between the roles of FSCO and DICO;

- As both a prudential regulator and an insurer, DICO has an inherent conflict of interest.

About FSCO

- FSCO is limited by the constraints of the Ontario Public Service, and lacks the appropriate resources, governance structure and accountability to effectively fulfill its current mandates;

- FSCO's regulatory approach is inflexible and insufficient to address both the complex and ever-changing financial marketplace and the challenge of protecting consumers, investors, and pension plan beneficiaries[3];

- The regulatory approach taken to some financial products, services and intermediaries by FSCO is neither coordinated nor consistent with that of other regulators;

- FSCO's policy and decision-making process lacks transparency and, in turn, the agency does not require or foster appropriate transparency within the sectors it regulates;

- The credibility of the regulatory regime is undermined by the perception that FSCO is unable or unwilling to undertake effective enforcement;

- Some of FSCO's responsibilities are simply inconsistent with FSCO's primary mandates.

About the FST

- The FST lacks sufficient independence from the regulator;

- In order to function efficiently as an expert tribunal, the FST needs access to the appropriate resources and in some instances authority.

[3] We use the term 'pension plan beneficiaries' as a catch-all term. In doing so, we also intend to include active plan members, retirees, deferred plan members and other beneficiaries (e.g., those collecting a deceased spouse's pension).

Summary of our Preliminary Recommendations

As outlined in our Preliminary Position Paper, we were of the view that many of the functions that are performed by both FSCO and DICO could be performed better by a single integrated organization. We proposed that a new Financial Services Regulatory Authority (FSRA) should be established and that it should exercise both prudential and market conduct functions in a coordinated but distinct fashion. We also proposed that the FST should be separated from the regulator.

Feedback on our Preliminary Recommendations

We reviewed 50 written responses to our preliminary recommendations and held a small number of discussions. Most of those who offered comments supported our overall direction and endorsed the need for change, although a few argued the current system is adequate, and suggested only small changes are required (e.g., increase FSCO's resources).

Many sought clarifications and made additional suggestions. Several of those who commented had inadvertently misinterpreted our intent, so we have attempted to provide more clarity in the next section of this report.

Here are some of the more common views expressed:

- FSRA's stated mandate should specifically reference concerns of each sector, particularly in regard to pensions;
- Consumer protection and the protection of pension plan beneficiaries are important goals of effective regulatory regimes; however, each is unique in its focus and policy objective. The regulator should advance consumer protection and the protection of pension plan beneficiaries in a manner that reflects their differences;
- FSRA should focus more on deterring and preventing fraud;
- FSRA should be encouraged to coordinate with other regulators and/or to take a similar regulatory approach to products that could be harmful to the market. A one-size-fits-all approach should be avoided;
- Careful consideration should be given to how FSRA is funded and accountable for using its scarce resources: there should be no cross-subsidization between sectors (e.g., one sector should not subsidize the regulatory costs of another);
- The Board of Directors ought to be reflective/representative of FSRA's regulated sectors and the interests it protects;

- FSRA should be given rule-making authority, but the process must be transparent and open to public input. Rule-making authority should be balanced with a principles-based approach to regulation;

- Balance and flexibility ought to be applied to ensure that the proposed structure of FSRA does not lead to silos within the organization;

- The Statements of Approach, to be developed by each functional unit of FSRA, may not be an adequate alternative to incorporating sector-specific concerns into the overall mandate;

- The proposed Office of the Consumer should not be isolated from the rest of the organization; consumer, investor, and pension plan beneficiary protection should be integrated into the regulator's core activities. It is unclear how the office would be funded;

- There are material differences between the administration of the deposit insurance scheme for credit unions and the Pension Benefits Guarantee Fund, and as a result, shared oversight may not be functional;

- DICO should continue to exist as a separate entity responsible for administering the deposit insurance scheme, as well as other responsibilities not associated with prudential oversight;

- Improvements to errors and omissions (E&O) insurance should be pursued before considering the establishment of a Fraud Compensation Fund. Cost implications for the establishment the fund would need to be carefully considered;

- FSRA's approach to regulation should be principles-based;

- The FST should be separated from the regulator and all efforts should be made to ensure it possesses the required expertise;

- FSRA should be empowered to determine how automobile insurance rates are regulated through its rule-making authority;

- Given that the recommendations propose significant change, thoughtful consideration needs to be given to the manner of implementation, and the most appropriate team to lead it.

We have considered all of the feedback we received and adjusted our recommendations where we felt that was necessary. We hope the additional detail provided with recommendations in the next section will help to address many of the concerns raised.

What We Have Learned

In our earlier paper, we described: the perception that Ontario's regulatory regime is not as effective as it could or should be; the economic importance of financial services and the pension sector in Ontario and across Canada; and the need for regulators to be nimble and flexible to cope within a rapidly changing environment.

These agencies require the mandate and the authority to work closely with the sectors they regulate, and with "sister" agencies in other provinces, if they are to encourage a vibrant and safe environment. They will need to offer a high level of service to ensure consumers, investors, and pension plan beneficiaries are protected, without burdening market participants with undue regulatory costs or complexity.

As we have outlined above, many stakeholders agree with these views and the need for change. There is a widespread desire for Ontario to modernize its approach to regulation of financial services and pensions amid a changing environment. Yet some groups want no change; they feel well-served already, or seem weary of change, increased regulation or scrutiny. But we disagree. Reflecting on industry and regulatory trends and in response to what we have heard, we have formed the view that the status quo is not sufficient for today or the future.

Innovation within financial services is inevitable, necessary and desirable. It will drive competition and vice-versa. This dynamic, together with ever-changing demands from consumers and investors will require an innovative, flexible, adaptable and responsive regulatory environment. We maintain our earlier view that Ontario's current regulatory framework is not sufficiently flexible, adaptable or responsive. We conclude that significant revision is required in terms of the mandate, governance, organizational structure, regulatory tools, means and overall regulatory approach.

II. Our Final Recommendations

Our review has been guided by the four key questions posed by TBS and the Minister of Finance. We will begin here by answering them in high-level terms; but this would not be sufficient. We also need to advise the government on the specific changes required, and we will outline our 44 recommendations in detail in the next section. Later, in Appendix E, the recommendations are listed without the explanations.

Our answers to the four questions remain similar to our last report:

1. *Whether, and to what extent, each agency's mandate continues to be relevant to Ontario' goals and priorities?*

   Each agency's mandate continues to be relevant to Ontario's goals and priorities as they pertain to the financial services and pensions sectors (as set out in the Minister of Finance's 2014 Mandate Letter[4]). However, we feel Ontario's goals and priorities should be made more explicit in the legislation and otherwise, as should the agencies' mandates and the way they are empowered and directed to pursue the government's priorities.

2. *Whether the agency is carrying out the activities and operations as required in its mandate?*

   While each agency is carrying out activities and operations as required by its mandate, the lack of clarity and transparency in how each is to carry out its activities and operations makes it more difficult to engender satisfactory trust and confidence. These deficits should be repaired.

3. *Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?*

   Many of the agencies' functions should be performed within a new regulatory framework. We feel that the governance, structure and operations of a new regulator ought to be established in a manner that is consistent with the recommendations in this report. Some functions could be performed by other entities.

4. *Whether changes to the current governance structure/associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?*

   Significant changes in governance, structure and associated accountability mechanisms are necessary to improve mandate alignment and/or accountability.

[4] https://www.ontario.ca/page/2014-mandate-letter-finance.

In short, we are of the view that many of the regulatory functions that are performed by both FSCO and DICO could be performed better by a single integrated organization — FSRA. FSRA should exercise both prudential and market conduct functions in a coordinated but distinct fashion, each with its own Division within the regulator. We also recommend that FSRA should have a separate Pensions Division with its own Superintendent, and it should operate in a manner that is interconnected, but distinct from, the other two FSRA divisions. We recommend that FSRA, with its modified "twin peaks-plus" approach to regulation, should have its own corporate identity and be:

a. Self-funded[5];

b. Properly governed by an expert board of directors;

c. Operationally independent from government[6];

d. Authorized to make and enforce rules, as limited by its enabling statute;

e. Guided by a clearly articulated mandate, as set out by its enabling statute; and

f. Obliged to act in a transparent and principled manner, manage risk and strive for a specified set of positive outcomes.

We also propose that the FST operate separately from and independent of FSRA and be established by its own statute. While the FST's governance and operations should be independent of FSRA, the regulator could support the tribunal by providing office space and administrative support service to exploit efficiencies in only those areas distinct from the tribunal's adjudicative processes and outputs. This outsourcing of support would not be a matter of governance oversight.

We conclude that DICO should continue to exist as an insurer, as it was prior to 2009, before it was assigned responsibility for the prudential oversight of credit unions. While it could continue to report to a unique Board of Directors, we believe serious consideration should be given to having it report to the same Board as FSRA to reduce costs, bureaucratic and administrative burdens.

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[5] We use the term self-funded, as does the Ontario Securities Commission, to mean FSRA would recover its operating costs by imposing proportional levies and fees on the financial service sectors it regulates. For the purposes of our report, this could be interchangeable with the term 'cost-recovery'.

[6] We refer to the administration and day-to-day operations. The government would still administer FSRA's enabling statute, the legislation and regulations enforced by FSRA, and would appoint its Board of Directors. Additionally, the government and its agencies, boards and commissions are subject to various Cabinet Directives to ensure adequate levels of accountability and good governance. The government and FSRA's Board of Directors would need to review and consider which of these Directives would apply to FSRA, and outline applicability in a memorandum of understanding. This would ensure accountability while avoiding undue administrative and bureaucratic burden on what needs to be a flexible regulator.

We believe our final 44 recommendations, detailed in the next section, would be beneficial for industry, consumers, investors and pension plan beneficiaries alike. It is important to stress, as we have in the past, that these recommendations should not be treated as a series of stand-alone recommendations to be implemented piecemeal. We present these recommendations with an important caveat dealing with their implementation: governance, accountability and structural recommendations should be adopted first, with the rest of the changes to follow once the proposed agencies have been established. In other words, we would not envision or support a selective implementation of some of these recommendations within the current-day agencies. It is vital that the government name a transition team and work to establish FSRA by statute before embarking on the implementation of other specific recommendations.

Proposed New Regulatory Structure

Our proposed new regulatory structure is outlined in Appendix F. Based on feedback we received, we have altered slightly our recommended vision for the proposed regulatory regime. Specifically, we now propose that the FST report to the Minister of Finance with no relationship to the FSRA Board of Directors. We have also clarified that administration of the Pension Benefit Guarantee Fund should not be transferred to DICO.

III. Detailed Final Recommendations

Mandate

Recommendation 1: A new regulatory authority should be created, and we suggest it be called the Financial Services Regulatory Authority (FSRA).

It became clear early during our review of Ontario's primary financial services regulators that the current organizations could not be fully effective in a changing financial services and pensions landscape. When compared with regulators in other jurisdictions, it was apparent Ontario's regulators are constrained by their administrative structures, their lack of independent powers and other limitations.

We have concluded that the Financial Services Commission of Ontario (FSCO) should be replaced by an organization with features similar to the Ontario Securities Commission (OSC) and Quebec's regulator of financial markets, products and services, the Autorité des marchés financiers (AMF). As discussed below, that new organization should replace FSCO, and incorporate the regulatory functions of the Deposit Insurance Corporation of Ontario (DICO). We suggest that the new organization could be called the Financial Services Regulatory Authority (FSRA), or in French, *L'autorité de régulation des services financiers (ARSF)*. We would not endorse an attempt to implement our other recommendations within the current agencies.

We are of the view that the change of name from a "Commission" to an "Authority" is appropriate. This change of name is more appropriate given the international trend towards the nomenclature of 'authority'. It more accurately reflects an entity with a broad range of subject matter expertise and responsibilities over the sectors it regulates, and one with a more progressive governance structure.

We have received many positive reactions to the proposals sketched out in our Preliminary Position Paper. A few submissions questioned the cost and effort required to establish a new regulator, and some argued that the current system is sufficient for their own corner of the financial services or pension sector. We would stress, however, the importance of considering the system as a whole. The current organizational structures unduly limit effectiveness and adaptability. Our proposal to build FSRA from the ground up would be essential to keeping up with the times as financial products, institutions and services change.

Recommendation 2: FSRA should operate as an integrated regulator of financial services with responsibility for regulation of market conduct, pension plans, and prudential matters; with each division dealing with its particular subject matter but operating in a coordinated and consistent manner.

Ontario moved toward an integrated model for the regulation of financial services and pensions in 1997, when the Ontario Insurance Commission, Pension Commission of Ontario, and Deposit Institutions Division of the Ministry of Finance were merged. However, with a view to enhancing effectiveness, the prudential regulatory functions related to credit unions and caisses popularies incorporated in Ontario were transferred from FSCO to DICO in 2009. Ontario therefore has two provincial agencies providing regulatory functions within the same financial services sectors.

Based on the feedback we have received, and an assessment of the current regime, we question whether this is the best approach for Ontario. We do, however, recognize and acknowledge that the policy sentiment which drove the original integration, at least in part, is sound. There are scale advantages to conducting similar activities within the same entity. Not only can this lead to lower costs, it allows for a consolidation of expertise. As we will discuss further under Recommendations 25 and 29, this approach can also help to prevent conflicting regulatory approaches among overlapping regulated areas and provide greater regulatory clarity. One of the problems that was brought to our attention, however, was that if there is too much integration among areas with different policy concerns, priorities and desired outcomes, and with them, competitive resource demands, the integrated agency's ability to consistently perform at its best across all regulated space can be compromised.

> *"IFB supports the overall direction put forward by the Panel. The financial sector has undergone significant change, and become increasingly complex, since FSCO was originally created...It is clear there is a need for a different type of structure, and more flexible governance model…"*
>
> ***– Independent Financial Brokers of Canada***

Our assessment suggests that FSRA should consolidate functions, but it should have separate divisions for the regulation of market conduct; prudential oversight; and pension administration. These divisions of the regulator should operate in a coordinated manner, but each division should be insulated from the routine regulatory activities, pressures and resource demands of other divisions. During our consultations, we heard numerous examples of FSCO resources being redistributed during peak periods. We understand that this is a result of structural issues, which we address in this report; however, a regulator cannot function properly when resources are taken from one sector and distributed to another. This increases the risk of both regulatory and service-delivery gaps.

We therefore encourage a modified "twin-peaks" — or "triple-peaks" — regulatory approach. As noted above, there should be separate Market Conduct, Prudential Oversight and Pension Divisions (or peaks), each led by its own Superintendent. There should be clear lines of communication among the Superintendents to ensure that one of FSRA's regulatory functions does not become too isolated from the others. While market conduct activities should not necessarily be hampered by prudential concerns, the leaders of each division should be aware of FSRA's other regulatory activities at all times, and should be kept apprised of trends and issues within the market that could impact their area.

> *"CFP is quite pleased with the overall thrust of the Review Panel's preliminary recommendations and, in particular, with the significant focus on pensions provided by the creation of a separate Superintendent of Pensions."*
>
> ***– Canadian Federation of Pensioners***

While some of the organizations and individuals that responded to our Preliminary Position Paper questioned why pensions would require a separate division, many within the pension sector emphasized that the regulation of pensions needs to reflect the unique character and policy concerns of that sector. Unlike other financial services, pensions do not fall neatly into a twin-peaks regulatory framework, as there is a significant overlap between prudential and market conduct concerns. Pension oversight must balance the interests and needs of plan administrators, sponsors and beneficiaries, and these interests require a coordinated approach by a single section of the regulator.

Some representatives of the pension sector argued during the initial period of our consultations that there should be a separate pension regulator, as recommended by The Report of the Expert Commission on Pensions. After the release of our Preliminary Position Paper, however, we received submissions that were more receptive to our proposals for a Pension Division with its own Superintendent within the integrated governance model proposed.

Recommendation 3: The structure and governance of the regulator should be flexible enough to accommodate the addition or removal of responsibilities as determined by its enabling legislation.

An important feature of the proposed FSRA structural model would be the flexibility to take on the responsibility for regulating additional financial services sectors, or to reassign responsibilities at a later date. As we outlined in our Preliminary Position Paper, the financial services and regulatory landscape could change drastically in the coming years. The regulator must be prepared to adjust as necessary to promote a robust and healthy financial services sector while ensuring consumers, investors and pension plan beneficiaries are protected.

We are sensitive to the ongoing evolution of financial services, pensions, and regulatory efforts in the province. As regulatory needs arise, the government must be enabled to add to FSRA's mandate where deemed appropriate. FSRA's governance and structure must be adaptable to accommodate this.

For example, and as outlined in Appendix B, the Financial Advisory and Financial Planning Policy Alternatives review is currently underway in Ontario. Without prejudging the outcome of that review, we believe that FSRA should be flexible enough to provide regulatory services to the financial planning and advisory sector if the government decided to place that responsibility with FSRA.

Another example of this broad recommendation can be found in Recommendation 15.

Recommendation 4: The enabling statute should ensure clarity and flexibility, and assign to FSRA comprehensive authority and accountability for all matters within its jurisdiction. The statute should include a specific statement of principles, a specific statement of purpose, and the statutory authorities required to fulfill the agency's regulatory mandate. FSRA's mandate should reflect a balance of interests and desired outcomes for all sectors overseen:

a. In the context of financial services, FSRA should be directed to provide strong and effective consumer protection while fostering a strong, innovative, vibrant and competitive financial services sector.

b. In the context of pensions, FSRA should be directed to protect beneficiaries while promoting a strong and sustainable pension system that would operate in an efficient and fair manner, balancing the interests of all parties.

In light of helpful feedback we received, we agree that a dual responsibility should be reflected when FSRA's principles, purpose and authorities are set out in its statutory mandate. It should be made clear that, in its role as regulator of financial services, FSRA should strike an appropriate balance between the protection of consumers and the needs of the financial services sectors. With regard to pension oversight, the regulator should strike a balance between protecting the interests of plan beneficiaries and promoting a strong and sustainable pension system that operates in an efficient and fair manner.

A number of those who responded to our preliminary report suggested that sectors other than pensions should also be cited in FSRA's mandate. However, we feel these would be more appropriately articulated through FSRA's divisional Statements of Approach as noted in Recommendation 27(c). As an example, we have heard from several insurance industry representatives that FSRA's mandate should incorporate the International Association of Insurance Supervisor's (IAIS) Insurance Core Principles. Given the broad regulatory responsibilities of the proposed FSRA, it would be more suitable to include these core principles in the Statement of Approach for the insurance section of the proposed Market Conduct Division.

"The FSRA's pension mandate and structure needs to enable regulatory oversight which recognizes that pension plans are different and that there are significant differences within the regulatory oversight requirements of the different pension structures."

– The Association of Canadian Pension Management

Likewise, DICO has suggested that FSRA's mandate be guided by the principles established by entities such as the Basel Committee on Banking Supervision (BCBS), the International Association of Deposit Insurers (IADI) and the International Credit Union Regulators Network (ICURN). Principles such as these could certainly have a place in the Statement of Approach for the deposit-taking institutions sections of both the Market Conduct and Prudential Oversight Divisions of FSRA.

To those who have questioned the efficacy of this approach, we point out that these Statements of Approach would require the approval of FSRA's Board of Directors and would therefore carry significant weight. We discuss this issue further under that particular recommendation.

Recommendation 5: The structure of FSRA's enabling statute should be explicitly informed by three key themes:

a. Mandate and Purpose.

b. Principles and Objectives.

c. Tools and Means.

FSRA's enabling statute should explicitly state FSRA's mandate and purpose, the principles by which it operates, the objectives it must meet, and the tools and means the agency will have at its disposal. We encourage the government to consider this during legislative drafting. In our view, a helpful example of legislative clarity can be found in the establishment of the OSC under the Ontario *Securities Act*.

Recommendation 6: The mandate should require FSRA to utilize its statutory authorities to adequately, firmly and consistently discourage fraudulent activities or behaviours that mislead or harm consumers and pension plan beneficiaries.

Throughout our consultation process, we were consistently encouraged to clarify the regulator's role in fraud detection and prevention. Given the serious nature of fraud and the ability of perpetrators to cross sectoral boundaries, we agree that fraud is an issue that should be paramount within the regulator's mandate.

> *"We strongly urge the Expert Panel to consider strengthening the fraud mandate of the newly recommended Financial Services Regulatory Authority."*
>
> ***– CANATICS, Canadian National Insurance Crime Services***

Each sector provided examples of fraud during our consultations. We were taken by these examples and feel we need to recommend strongly that FSRA should have the appropriate authorities embedded in statute and should work to develop better mechanisms to proactively protect the public from unscrupulous groups and individuals.

This could include the authority to make use of, or participate in, data analytics designed to identify fraudulent activities. For example, FSRA could work with those who administer and govern Health Claims for Automobile Insurance (HCAI) data to ensure that additional uses are properly evaluated and implemented. HCAI already serves anti-fraud and anti-abuse purposes by serving as the portal through which health care providers invoice auto insurers directly. The system maintains a wealth of data that FSRA ought to explore for additional purposes that could significantly benefit consumers.

> *"Ontario's [motor vehicle accident] victims would benefit should a new agency utilize its statutory powers to adequately, firmly and consistently enforce provisions and, in particular, prohibitions against fraudulent activities or behaviours that harm consumers."*
>
> ***– FAIR Association of Victims for Accident Insurance Reform***

Along with enhanced authorities, FSRA should also have adequate investigation and enforcement staff who have the authority to take swift and firm action. Giving FSRA a specific fraud-deterrence mandate, as well as the appropriate anti-fraud authority and resources would enable it to protect consumers and pension plan beneficiaries, and thus maintain confidence in the financial services and pensions sectors.

We do not intend to imply that FSRA should be the only responsible entity for fraud prevention, deterrence and detection. Each regulated sector and the businesses operating within them must also participate actively in fighting fraud. FSRA ought to have the authorities necessary to require and enable the sectors to do their part.

Recommendation 7: FSRA's mandate should be informed by the OECD's G20 High-Level Principles.

Based on our work, we are of the view that the regulators' current specified mandates are insufficient in regards to consumer protection, and FSRA's mandate would be better informed by the OECD's G20 High-Level Principles on Financial Consumer Protection[7]. These principles recommend integrating several aspects of consumer protection into the overall legal, regulatory and supervisory framework for financial services. We kept these principles in mind as we developed the recommendations throughout this report.

The OECD principles address a number of issues, including:

- Fair treatment of consumers;
- Full disclosure of transaction risks, terms and conditions;
- Promotion of financial education;
- Adequate training and qualifications for individuals participating in the market;
- Disclosure of conflicts of interest and remuneration;
- Protection of consumers from fraud, misrepresentation and other misuses;
- Affordable, fair and efficient complaints handling and redress services with full transparency of rulings;
- Competitive markets and products, innovation and service quality.

"We believe these principles are a purposeful starting point in defining and creating the legislated mandate of the new regulatory body. It is clear that objectives such as disclosure and transparency, responsible business conduct of financial services providers, protection of consumer assets against fraud and misuse, protection of consumer data and privacy, and competition should be captured in the expected outcomes for the proposed FSRA."

– Allstate Canada

These principles ought to be reflected in FSRA's legislated mandate.

As appropriately varied for the context, these principles should also apply to pension plan beneficiary protection. These principles of course will evolve over time, and we are of the view that the mandate of FSRA should reflect such evolution.

As emphasized earlier, the focus on consumers and pension plan beneficiaries must be achieved while simultaneously fostering a strong, vibrant and competitive financial services sector and a strong and sustainable pension system.

[7] http://www.oecd.org/daf/fin/financial-markets/48892010.pdf.

Recommendation 8: FSRA should be required to develop, seek public comment, and publish an annual Statement of Priorities, which would include the Statements of Approach described in Recommendation 27(c).

In order to bolster and maintain confidence among consumers, investors and pension plan beneficiaries, regulators of financial services and pensions must strive to operate in the most transparent way possible. FSRA should seek public input regarding its priorities and regulatory approach.

For that reason, FSRA should consult before publishing an annual Statement of Priorities, similar to the process FSCO undertakes. The same would be true for DICO, the entity that will administer the province's deposit insurance scheme (see Recommendation 29 for details on DICO). The public should also be consulted on the Statements of Approach for each of FSRA's functional units (refer to Recommendation 27[c] for details).

Recommendation 9: FSRA's mandate should include a requirement that it undertake its activities in a proactive manner.

In our Preliminary Position Paper, we noted several key concerns raised by the Auditor General's review of FSCO and by those sectors and individuals with whom we consulted. One such concern was that the regulator has been more reactive than proactive regarding investigations and enforcement. We feel that an effective regulator should seek to prevent non-compliance rather than react after the fact. Our recommendations for providing FSRA with adequate resources, as outlined below, will aid in this approach. This objective should be incorporated into the statutory mandate of the Authority.

"DICO fully supports the recommendation that the new agency's mandate include a requirement that it undertake its activities in a proactive manner."

– Deposit Insurance Corporation of Ontario

Recommendation 10: In order to remain relevant and flexible, the mandate of FSRA should include a commitment to encourage innovation and transparency within the regulated sectors. FSRA will need to stay abreast of those issues that could compromise its ability to satisfy its mandate.

We agree with the representatives of various industry sectors who noted that innovation is inevitable and necessary within the financial services sector. Innovation drives competition and creates investor and consumer choice. For innovation to flourish, and the demands of consumers and investors to be met, regulators must be flexible, nimble and adaptable as they put adequate consumer protection measures into place. As things stand, Ontario's regulatory framework or agency mandates are insufficiently adaptable. We have heard that the structure and orientations of FSCO and DICO have been unduly rigid toward new products, services and technologies. We have also heard that, in some cases, regulators have seemed reluctant to accept reasonable risk. Some examples cited by others include:

In the auto insurance sector:

- Resistance to full utilization of telematics technology to rate for usage-based automobile insurance;
- Resistance to the application of data-analytics for fraud prevention purposes;
- A rigid approach to the use of technology for verification purposes (e.g., the adoption of electronic insurance pink slips) or for the enabling of the sharing economy.

In the deposit-taking institution sector:

- Resistance to deposit-taking institutions implementing innovative services.

Consumers have come to expect more rapid innovation, speedier delivery and instant access to information during the two decades since Ontario's financial services regulator was created. Evolving and emerging sectors need a 21st century regulator willing and able to respond quickly and capably. The trends identified in our Preliminary Position Paper demonstrate that technological and other innovations will continue to change the regulatory landscape. Regulators must be prepared to embrace innovation in the marketplace, yet have the capacity, expertise and critical eye necessary to ensure consumers are protected. They must also play an active role in anticipating trends and promoting favourable change. We feel that the current regulatory framework halts or slows innovation rather than moving with it or encouraging it. A newly empowered FSRA should be directed and equipped to deal appropriately with innovation in the marketplace while ensuring that steps are taken to promote transparency.

Recommendation 11: FSRA's mandate should include an obligation to work and cooperate with other regulators (including self-regulatory organizations) to coordinate regulatory actions, to avoid regulatory overlap and arbitrage and to ensure that consumers and pension plan beneficiaries can be confident in their dealings within the regulated sectors.

Recommendation 12: FSRA should have:

a. A regulatory framework and approach that would promote consistency across all regulated sectors.

b. An enhanced mechanism for sharing pertinent information among regulators to ensure that disciplinary and enforcement actions imposed by another regulator or another component of FSRA are appropriately applied elsewhere, and that the development of new rules is coordinated to ensure fairness and consistency.

c. Those powers and tools necessary to ensure the consistent application of what is set out above.

As financial products and services converge, particularly in the minds of consumers, it is essential to ensure a consistent approach to regulating similar products and intermediaries. For example, we heard that individuals being regulated and licensed differently by FSCO and other bodies — such as the Mutual Fund Dealers Association (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC) — has created some regulatory gaps to which consumers may be vulnerable. Some of the Auditor General's criticisms were directed at FSCO's application of an oversight model that is less robust for life insurance agents than what is applied by regulators for the distribution of similar financial products.

> *"The Section supports the Panel's recommendation that the FSRA's mandate include the obligation to cooperate with other regulators."*
>
> ***– Ontario Bar Association, Pensions and Benefits Law Section***

There were a handful of industry submissions that took issue with our preliminary recommendation on this matter. Regarding like products, we were not swayed by arguments that mutual funds and segregated funds are categorically different and therefore do not require similar regulation. Many consumers would not understand the distinction between a security and an insurance product — particularly for products that look and behave in much the same manner. Furthermore, many consumers will simply trust the advice they are receiving. In many cases, they are unaware of what licence[8] an individual holds or what regulatory framework lies behind that licence. Increased communication and common standards among regulators will be necessary to ensure that those selling like products receive equivalent scrutiny across the board.

[8] For simplicity, we use the term 'licence' to refer to those licensed by FSCO to sell insurance products and those registered with securities regulators to sell securities products.

Currently securities dealers, advisers and their registered representatives are subject to much more thorough oversight and requirements to gauge the suitability of investments when advising clients. We heard from self-regulatory organizations on the securities side that many of these individuals carry licences to sell both insurance and securities products. A problem in the market place, we were told, is that if an individual has his or her securities license revoked, there is no mechanism to ensure that their life insurance licence receives additional scrutiny or revocation. Over the past year, we have heard several examples of unscrupulous dealers who continue to sell insurance products after being banned from dealing securities.

> *"We are…seriously concerned about cases in which dually-licensed individuals may be disciplined by one financial regulator but no follow-up disciplinary action is taken with respect to these individuals by the other regulator reducing the effectiveness of the disciplinary sanctions".*
>
> ***– Investment Industry Regulatory Organization of Canada***

Without making a specific proposal for how to address these issues, we emphasize the need for FSRA to find ways to proactively consider actions and regulatory approaches taken by other regulators to similar or overlapping matters. For example, where a securities salesperson has been subject to an order effectively barring them from regulated activities by a securities regulator, FSRA should have a duty to consider whether that person should be permitted to continue selling segregated funds or syndicated mortgages[9].

We have noted a broad consensus among other regulators, investor advocates, and certain industry groups that regulators should harmonize standards or principles and open lines of communication so that sales people will be regulated in a similar, robust and co-ordinated manner.

Similarly, where government jurisdictions overlap, and where there are different approaches to similar activities and products, provincial regulators, like FSRA, should be enabled to work closely with federal counterparts such as the Office of the Superintendent of Financial Institutions (OSFI) and the Financial Consumer Agency of Canada. Through this process, they could be more proactive in advocating for, and developing where possible, consistent forms of regulation to ensure consumers of like products are equally protected regardless of whether the regulatory jurisdiction is provincial or federal[10].

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[9] As we completed this report, FSCO and IIROC announced that they have signed an information-sharing agreement that will provide more effective regulation and strengthen consumer protection in Ontario. We applaud this effort.

[10] The reality that products and services could be subject to both federal and provincial legislative and regulatory authority is highlighted in the Supreme Court of Canada's 2011 Securities Reference and its 2007 Canadian Western Bank v. Alberta and 2014 Bank of Montreal v. Marcotte decisions.

Another similar issue is the convergence of products and distribution channels. Today a consumer can walk into a bank, credit union, or financial services brokerage and invest in or purchase many of the same financial products. We believe that there is a growing need for regulatory bodies to work together to ensure consumers are protected so that they can rest assured that the investment, insurance or other financial products they choose — and the individuals who sell them — are regulated and overseen in a similar manner.

We agree that care must be taken to avoid a rigid one-size-fits all approach. However, common standards and consistent regulation could be accomplished without creating unnecessary obstacles for industry. The ongoing presence of regulatory arbitrage could prove harmful to consumers and the health of the financial services sector, and FSRA ought to be empowered to address this issue.

Recommendation 13: FSRA should be obliged by statute to operate in a way that is as transparent, efficient and effective as possible, and should pursue initiatives that would promote confidence in the regulatory regime and the financial sectors in which FSRA will operate.

The regulator must strive for operational transparency and make all possible efforts to ensure operations are undertaken in the most efficient (i.e., timely and cost-effective) ways possible. By doing so, FSRA would prevent costs from becoming burdensome for industry, and ultimately consumers. Recommendations 8, 21(c) and (e), 22(a), and 38 build upon this requirement.

As we note in Recommendations 10 and 34, it would also be important that FSRA promote a similar stance within the sectors it regulates.

Recommendation 14: Any existing or new self-regulatory organizations (SROs) operating within the financial services sectors as provided for under FSRA's enabling legislation should be accountable to FSRA, and FSRA should be given the authority to delegate regulatory functions to an SRO. If existing legislation requires amendments to give effect to these outcomes, they should be pursued.

Without offering a view on whether self-regulation is desirable or appropriate, we are of the view that any self-regulatory regime should operate within, and reflect the policy imperatives of, the regime as a whole. Self-regulatory organizations (SROs)[11] should be fully integrated into the overall regulatory regime and not operate in isolation from a sector's primary regulator. We suggest that the primary financial services regulator should be authorized to hold an SRO accountable for performing its regulatory functions.

[11] For the sake of clarity, our view applies equally to Delegated Administrative Authorities (DAAs).

To ensure a more integrated approach to SRO oversight, we suggest consideration be given to having SROs operate under a delegated authority, guided by a memorandum of understanding set out by the chief regulator. In our view, this would provide FSRA and any SRO operating within the scope of its jurisdiction more flexibility to adapt to changes, and would improve regulatory accountability over all. The existing structure could prove too limiting in a changing environment.

As financial sectors evolve, so too will distribution channels. We have already seen a clear example in 2016 of a regulated financial institution expanding into a new type of distribution channel[12]. This could very well result in a two-tiered system of oversight for certain sectors. In this example, FSRA and the applicable SRO will need to take a more integrated approach. This ought to be accomplished by holding the SRO accountable to FSRA.

Recommendation 15: The government should consider transferring to FSRA the statutory responsibility now residing with the Ministry of Government and Consumer Services for oversight of such financial service providers as payday lenders and loan brokers, consumer credit reporting agencies, debt and credit counsellors, and guarantee and warranty insurers.

If FSRA is to be established as an integrated regulator of financial services in Ontario, the government could assign it the responsibility to oversee additional sectors and service providers to make its oversight more comprehensive and therefore more effective. We agree with a proposal put forth by FSCO in an earlier submission that entities such as payday lenders and guarantee and warranty insurers could be folded into the financial services regulator. We see a potential for savings from the economies of scale achieved by rolling additional sectors into a single regulator operating on a cost-recovery basis.

We learned after releasing our Preliminary Position Paper that there are ongoing reviews related to some of these sectors. As we had not been involved in those reviews, and had not heard from anyone operating within any of these sectors, it would be premature for us to make firm recommendations. However, we would urge the government to consider integrating these services into the FSRA framework once it has been established and the feasibility of the transfer has been explored fully.

[12] https://www.avivacanada.com/article/aviva-canada-announces-acquisition-rbc-general-insurance-company.

Recommendation 16: The government should eliminate overlapping responsibility for the regulation and nurturing of co-operative corporations.

a. The Ministry of Government and Consumer Services should be responsible for incorporating the enterprises and offering the sort of practical advice available to other businesses.

b. The regulation of co-operative enterprises should be left to those that are responsible for the sectors in which they operate.

c. Offering statements used by cooperatives to raise capital from the public should be regulated in a manner consistent with similar offering documents used to raise capital in the Province.

> *"Co-operative oversight should not remain with FSCO, nor its proposed successor"*
>
> ***– The Ontario Co-operative Association***

While we favour an integrated approach to regulating the financial services sector, we are sensitive to the views of those in the co-operatives sector who feel out of place in the current regulatory framework. It would not be sensible to have FSRA oversee co-operatives that do not provide financial services. We were not persuaded, however, by the sector's recommendation that responsibilities should be split among the Ministry of Economic Development, Employment and Infrastructure (MEDEI), Ministry of Government and Consumer Services (MGCS) and FSRA. This would cause even more confusion and result in dispersed knowledge and expertise.

> *"There are cost savings and efficiencies for the government if co-operative businesses join the other corporations in Ontario which incorporate through the ServiceOntario portal of the Ministry of Government and Consumer Services (MGCS)."*
>
> ***– The Cooperators Group Ltd.***

We agree with those co-operatives that suggested that co-operatives should incorporate through ServiceOntario, a division of MGCS. This would be much more efficient, and it would save FSRA from inheriting an antiquated FSCO responsibility that does not align with its core mandate. It would also utilize MGCS's existing infrastructure to provide more timely and efficient service to the co-operative sector. We also think that oversight of the *Co-operative Corporations Act* could move under the authority of MGCS. This would align with other legislation overseen by MGCS, such as the *Ontario Business Corporations Act*. As the Ministry responsible for administering the *Co-operative Corporations Act,* it would be MGCS's responsibility to seek legislative and regulatory changes as needed or directed by government. MEDEI should not be made responsible for administering this legislation or providing oversight of co-operatives. Co-operatives could, however, turn to MEDEI for some of the services it provides to other businesses.

It is our understanding that MEDEI does not have the mandate to oversee co-operatives in the way the sector is seeking. MEDEI's website describes its role as delivering "a range of programs, services and tools to help businesses innovate and compete in today's fast-changing global economy, including business support and youth entrepreneurship programs, strategic investments and international trade and export expertise". We were informed that MEDEI continues to take steps to support the development of sustainable and scalable social enterprises, including social-purpose co-operatives. While it may offer services and programs that co-operatives could access, it does not appear to administer and oversee statutes in the way in which the sector has suggested.

While administration of the *Co-operative Corporations Act* could transfer to MGCS, this oversight function should be limited to the Act itself. Regulation and oversight of the practices of co-operative enterprises should continue to be left to those ministries, agencies and municipal bodies that are responsible for the sectors in which they operate.

While outside of the scope and mandate of our review, we would encourage the government to undertake a review of the *Co-operative Corporations Act,* with the aim of modernizing the Act. Unlike many other statutes, there is no legislated review period (e.g., every five years), so the sector is dealing with what many view as an out-dated piece of legislation.

The co-operative sector would prefer to have FSRA inherit FSCO's role in reviewing offering statements at a low cost. We remain conflicted on this point. Throughout our review, we found no evidence that FSCO has the expertise to review offering statements, a view that FSCO itself shared with us. The OSC, on the other hand, does review documents used by many companies when seeking to raise money from the public (e.g., a prospectus). The OSC possesses the important skills and experience required to conduct this task effectively. However, it has been proposed that this role be transferred to the Cooperative Capital Markets Regulatory System (CCMR) once it becomes operational. We are aware that a transfer of responsibility for reviewing co-operative offering statements to the CCMR would be both problematic and unrealistic at this time; however we feel that co-operative offering statements should be regulated in a manner consistent with similar offering documents used to raise capital.

The cooperative sector has expressed concerns that most of its members are neither as large nor as sophisticated as most companies seeking to sell share certificates that would be traded on the securities markets. In many cases, co-operatives are small, community-run organizations seeking only to raise as little as a few thousand dollars. However, it is important to view the entire picture. There are also increasingly complex co-operatives, such as those in the energy sector, that seek to raise hundreds of millions of dollars. FSRA would have to establish the skills and expertise necessary to undertake these reviews, and provide the same level of scrutiny as the review of other offering statements. It should be noted that this would likely result in an increased fee to some in the co-operative sector.

It might be appropriate for small, community co-operatives that only raise a few thousand dollars to pay modest fees. However, large co-operatives raising millions of dollars should pay fees comparable to with those that securities regulators would charge.

We are keenly aware of the sector's concerns regarding the need to control the cost of these reviews. Today, FSCO does not fully recover the cost of oversight of the co-operative sector. The government has subsidized their regulation[13] for a number of years. For these reasons, we would strongly urge FSRA to implement a fee structure reflective of the capital being raised.

Recommendation 17: The government should require that documents issued to raise capital for syndicated mortgage investments be subject to the same level of regulation as the securities regulator applies to other offering documents used to raise capital in the Province.

During our review, we became concerned with what appears to be a regulatory gap regarding syndicated mortgages. All companies involved in raising money for property development through the sale of syndicated mortgages to small investors should be actively monitored to ensure compliance with relevant legislation and regulations in a manner that is consistent with the level of oversight and scrutiny applied by securities regulators.

Given the complexity of the product and the nature of the investment, we are of the view that the securities regulator, rather than FSRA, would be best equipped to undertake this task. This would best ensure a consistent application of disclosure requirements across products and investments seen by investors as comparable. This is already the case in other provinces and has already been proposed by those working to establish the new CCMR[14]. However, if this approach does not align with the ultimate direction of the CCMR or government policy, we would encourage the government to ensure that syndicated mortgages are regulated in a manner consistent with similar products (e.g., securities).

[13] http://fsco.gov.on.ca/en/about/annual_reports/Documents/2013-2014-ar.pdf, pages 5 and 30.

[14] http://ccmr-ocrmc.ca/wp-content/uploads/commentary-draft-initial-regulations-en.pdf, page 13.

Recommendation 18: The administration and funding of the Motor Vehicle Accident Claims Fund should not be under the authority of FSRA.

a. The government should work with industry to transfer responsibility to the industry-operated Facility Association.

b. A practical solution for addressing any unfunded liability should be part of the transfer.

We recognize the importance of the Motor Vehicle Accident Claims Fund (MVACF), which pays accident benefits to those with no recourse to automobile insurance, and that compensates victims injured by uninsured or unidentified motorists. The MVACF also pursues those drivers of uninsured vehicles to recover funds paid on their behalf. However, we agree with FSCO's written response to our first Consultation Paper that claims administration and debt collection functions do no align with its mandate or the core functions of a regulator. As such, these roles should not be assumed by FSRA.

During our initial consultations, we heard from several groups that the administration of the MVACF could be transferred to industry. We are attracted to a proposal to transfer responsibility to the Facility Association (FA), a non-profit organization funded by automobile insurers in the provinces and territories that operate private insurance systems. This responsibility would fit well with the FA's original purpose, which is to act as the 'insurer of last resort' for high-risk drivers. The FA already operates uninsured motorist funds similar to the MVACF in the Atlantic Provinces.

> *"The Board of Directors of Facility Association remains open to dialogue on this issue… we have considerable experience in administering similar funds, the Uninsured Automobile Funds (UAFs), in the four Atlantic provinces."*
>
> ***– Facility Association***

Having the FA administer the MVACF could result in administrative savings. By removing this function from the regulator and placing it into an entity already engaged in similar functions and activities, the cost of administration could decrease, to the benefit of consumers and the health of the fund.

We were pleased to learn that the FA and other industry groups support this view. However, representatives of these entities have raised an important issue: the MVACF is projected to have an unfunded liability. We agree with the industry that this issue would have to be addressed before the role of administering the fund could be transferred to the FA.

While outside the scope of our review, it is our view that responsibility for addressing the liability could be assumed by insurers, who could then add the cost to automobile insurance premiums. Drivers already bear this cost as a fee when they renew their drivers' licence. An annual assessment levied via insurance premiums could gradually eliminate the unfunded liability while keeping the cost to consumers at a minimal level[15].

Governance

Recommendation 19: FSRA should be a self-funded corporation without share capital, operationally independent of government, yet accountable to the Legislature through the Minister of Finance.

In our view, operational independence for FSRA is a prerequisite. This would be a vital step toward modernizing the regulation of financial services and pensions in Ontario. To fulfill its regulatory functions, a corporation operating outside of the Ontario Public Service, and funded on a cost-recovery basis, would be in a far better position than FSCO is today.

As a corporation, FSRA would have greater operational independence from government[16], allowing it to operate as a 'legal person' — meaning it could enter into legal agreements and hire its own staff in its own name. It should, however, be held accountable to the government through the Minister of Finance, who would then be accountable to the Legislature for FSRA's activities. This is the model in practice for FSCO, DICO and the OSC today.

[15] We also understand that changes to standard auto insurance accident benefits coverage, as announced in the 2015 Ontario Budget, may help reduce the projected unfunded liability when they come into effect later this year.

[16] We refer to the administration and day-to-day operations. The government would still administer FSRA's enabling statute, the legislation and regulations enforced by FSRA, and would appoint its Board of Directors. Additionally, the government and its agencies, boards and commissions are subject to various Cabinet Directives to ensure adequate levels of accountability and good governance. The government and FSRA's Board of Directors would need to review and consider which of these Directives would apply to FSRA, and outline applicability in a memorandum of understanding. This would ensure accountability while avoiding undue administrative and bureaucratic burden on what needs to be a flexible regulator.

The most common concern reflected in the responses to our Preliminary Position Paper was with regard to funding. FSCO is now allocated an amount to spend each year based on its operational and regulatory needs, and as determined through the government's annual planning process. Section 15 of the *Financial Administration Act* (FAA) then requires FSCO to recover all of its costs within the fiscal year. FSCO does so by charging assessments and fees to the regulated sectors[17] and licensed entities. In order to remain compliant with Section 15 of the FAA, FSCO's expenses must equal the revenues collected at the end of each fiscal year[18]. This rigid budgetary approach allows for little operational flexibility.

> *"We agree that the current realities of financial services regulation call for the formation of a new regulator in Ontario. In this regard, it is imperative that the Panel recommendations regarding the independence of this new regulator be adopted."*
>
> ***– Desjardins***

Under Section 25 of the *Financial Services Commission of Ontario Act, 1997* (FSCO Act), the Lieutenant Governor-in-Council may assess all entities that form part of a regulated sector for all expenses and expenditures that the Ministry of Finance, FSCO and the Financial Services Tribunal have incurred. In addition to assessment calculations determined by regulation[19], the Minister of Finance is also authorized to establish fees for services provided by FSCO. Such fees may be formally established by a Minister's Fee Schedule[20]. Any changes to fees must be approved through a formal government process. This also limits the operational flexibility of the regulator by preventing adjustments to reflect an increase or decrease in costs.

FSCO recovers approximately 99 per cent of its operating budget from the sectors it regulates and the individuals and entities it licenses. The province provides an allocation to cover excess costs, such as for the oversight of the co-operative sector. All of FSCO's revenue is then returned to the government's Consolidated Revenue Fund (CRF). Each fiscal year, FSCO is provided a new spending authority.

The OSC, on the other hand, operates on a cost-recovery model and derives its authority to collect fees from Part I of the *Securities Act*. The OSC publishes an annual budget each year. It normally plans to balance its budget over a three-year cycle, but has the flexibility to run a surplus or deficit during a budget cycle. If, after a three year period the OSC has collected more or less than is required for operational and regulatory purposes, fees to the industry are adjusted for the following three-year period.

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[17] The Lieutenant Governor-in-Council may assess the sectors, FSCO administers the process.

[18] http://fsco.gov.on.ca/en/about/annual_reports/Documents/abp-2014-17.pdf.

[19] https://www.ontario.ca/laws/regulation/010011.

[20] Amendments were recently made to FSCO-related statutes to enable the Minister to set fees by way of fee regulation; however, these amendments are not yet proclaimed in force.

The OSC operates outside of the government's CRF[21] , which in our view provides it with greater operational flexibility. We strongly feel that FSRA should have a funding model similar to that of the OSC. Specifically, the authority to set its own budget, levy fees and assessments as necessary[22], and retain funds separate from the CRF.

We do not intend to suggest that FSRA's finances be fully detached from the public sector, we simply believe that more operational flexibility is required. Operating outside of the CRF would not change the fact that FSRA's budget would be made up of public money, nor would it prevent the government from ordering money to be paid into the CRF. It would, however, enable FSRA to control its budget without the undue burden of calculating precise industry assessments every fiscal year to ensure it meets a statutory requirement to balance revenue and expenses.

The AMF in Quebec is also financially self-sufficient through the fees paid by the persons and firms it oversees[23]. When FSRA's enabling legislation and funding model are drafted, we would encourage the government to consider the authorities of the OSC and the AMF.

We understand that the issue of cost is significant to both government and the regulated financial sectors. We encourage the government to follow several key principles when it establishes FSRA, including:

- FSRA should be permitted to retain funds collected from fees, assessments and penalties/regulatory action. The fees from penalties should only be used for specific purposes, excluding operating costs, and FSRA's other revenue should not form part of the government's CRF.
- Fees and assessments levied from the industry should reflect the actual cost of regulation and the reasonable cost of FSRA's operations.
- Every effort should be made to prevent cross-subsidization among sectors. For example, one sector should not subsidize the regulatory costs of another.
- Fees and assessments should be examined on a regular basis and should be adjusted based on any surplus or deficit during FSRA's budget cycle.
- Every effort should be made to prevent unnecessary or excessive costs from being passed on to industry, and ultimately, consumers and pension plan beneficiaries.
- FSRA's budget should be transparent and published in an Annual Report.

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[21] The OSC is required to pay monies into the CRF if received as payment for an enforcement action, though several exceptions are articulated in s. 3.4(2) of the *Securities Act*. The Minister of Finance can also order the OSC to pay surplus funds into the CRF.

[22] Fees could be set by a fee rule, subject to Ministerial approval similar to the OSC model.

[23] https://www.lautorite.qc.ca/en/about-amf-corpo.html.

As much as we prefer to see stable or declining costs, we would expect the cost for regulating certain sectors to rise in the short-term. We have heard throughout our review that many are unhappy with the regulation of their sectors. Many have indicated their sectors do not receive adequate attention from the regulator. Many expressed a desire for a more proactive and hands-on approach. It must be acknowledged that an increase in fees may be required in the short-term to improve the quality of regulation for those sectors.

This notwithstanding, in the medium- and long-term, we are of the view that efficiencies will likely result depending on the operational and regulatory approach taken by FSRA. Our view is that a modernized regulator with appropriate authorities, governance and flexibility will operate in a more cost-effective manner than is now the case. There will also be opportunities for FSRA to decrease regulatory burden and costs for some sectors.

For example, as outlined in Recommendation 23, FSRA's Board should be empowered to reconsider how auto insurance rates should be determined. We are confident that, given supporting evidence, they will do away with the current process that is costing the industry — and thus consumers — a great deal of time and money. Substantial savings in the rate approval process should more than offset any increased regulatory costs to this sector in the medium- to long-term. Careful consideration will need to be given to short-, medium- and long-term funding issues during the implementation of the proposed regime.

Recommendation 20: FSRA should be empowered to hire its personnel from outside of the Ontario Public Service's collective agreements, compensation restraints, and other hiring restraints to support its ability to recruit professionals and industry expertise as it deems necessary.

Throughout our consultations, many groups and individuals told us FSCO's effectiveness is diminished by its inability to acquire additional and necessary resources when required. Similarly, it lacks the ability to offer competitive wages to certain professionals and industry experts necessary to meet the complex and dynamic regulatory needs and to match the sophistication of the sectors and activities it regulates. We agree that it is vital that FSRA be structured to exist outside of the Ontario Public Service and its collective agreements (OPS). We would like to emphasize that this recommendation is key to establishing a flexible and proactive regulator with the expertise to effectively regulate the ever-changing financial services landscape.

FSCO's ability to hire extra and expert staff in times of heightened need is constrained by the Ministry of Finance's headcount controls. In addition, a strict adherence to the compensation schedules of the OPS precludes FSCO from competing for the professional expertise that a regulator requires. This should not be viewed as a criticism of FSCO's knowledgeable, committed and dedicated staff, nor should it be interpreted as a broader comment on the public service. However, there are positions that require very specific skill sets, experience and expertise. This view is supported by the Principles of Corporate Governance that the OECD recommends for supervisory, regulatory and enforcement authorities. According to the OECD, the "ability to attract staff on competitive terms will enhance the quality and independence of supervision and enforcement"[24].

The ability to compensate individuals in a competitive manner is vital to ensuring that the best candidates will come forward. Our recommendation would also enable FSRA to offer temporary secondment opportunities from the private sector, much as the OSC does. It is generally agreed that the OSC's and DICO's operational separation from the OPS and its collective agreements has enabled them to hire and retain more expert staff than they otherwise could have.

We recognize that implementing this approach is more complex than it appears. In order to satisfy this recommendation, the government will have to undertake a review of various public service and compensation-focused statutes and Cabinet Directives to determine applicability to FSRA. In doing so, we would encourage the government to use the current-day OSC as a model for the structure we envision.

[24] http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf, page 31.

Recommendation 21: FSRA should have a skills-based Board of Directors appointed by the Lieutenant Governor in Council. The Board would oversee FSRA's operations and the Board should have the authority to appoint a Chief Executive Officer (CEO).

a. The CEO should oversee other managers and report to the Board, but neither the CEO nor those other managers should have seats on the Board.

b. The Board Chair should report to the Minister of Finance, and meet specific requirements set out in its enabling statute and a Memorandum of Understanding.

c. The Board of Directors should approve and publish a strategic plan, set regulatory policy, and monitor the activities of FSRA to ensure compliance with its mandate.

d. Board appointments should be guided by a clearly articulated matrix for identifying necessary skills, competency and expertise, not by a strict requirement to achieve a balance of representation from regulated sectors. This skills matrix should be made public and a committee of the Board should propose candidates for the Board in accordance with the best corporate governance practices.

e. The Board should meet at least once per year with those sectors overseen by FSRA.

At the moment, FSCO does not have a governing board. Instead, the FSCO Act sets out a three-part structure that includes the Commission, the Superintendent of Financial Services and Staff, and the FST.

Under the FSCO Act, the Commission is to have five members, each appointed for a fixed term by the Lieutenant Governor in Council. The members are the Chair, Vice-Chair(s), the Director of Arbitrations, and the Superintendent of Financial Services. The Superintendent is also the CEO. Oddly, the Chair and Vice-Chairs of the Commission are also the Chair and Vice-Chairs of the FST. Such a dual role could result in a perceived or real conflict of interest. Meanwhile the Commission lacks any real governing role. Its stated purpose is to make recommendations about the regulated sectors, fees and assessments to the Minister of Finance, and to carry out FSCO's mandate of protecting the public interest and enhancing public confidence in the regulated sectors.

As a result of this structure, in practical terms, much of the direction and oversight at FSCO comes from the Superintendent and CEO, who reports to the Minister of Finance through the Deputy Minister of Finance. FSCO is also integrated into the Ministry of Finance's corporate reporting and human resources (e.g., it is tied to the Ministry of Finance's headcount, which is currently capped). In our view, this reflects neither appropriate regulatory independence from political influence nor operational independence from the constraints of the bureaucracy.

FSCO's written submission acknowledged that sound governance models and practices would be essential for the regulator to operate independently from government and to effectively fulfill its mandate. We strongly agree.

FSRA will require an independent, skills-based Board of Directors and this requirement should be formalized in FSRA's enabling statute. When we included this recommendation in our Preliminary Position Paper, a number of respondents argued for having the various sectors represented on FSRA's Board. While we understand that some may view this as beneficial, we respectfully disagree. Experience in one particular sector would not be sufficient to prepare an individual to govern FSRA, an organization that would have a diverse set of roles. A purely representational board would be a disservice to the sectors and the public, as it might result in polarized perspectives that would make it difficult to properly function.

FSRA's Board should be appointed by the Lieutenant Governor in Council to sit for a fixed term, and the appointees should be selected using a clearly articulated skills matrix. A skills matrix would identify the skills, knowledge, experience and capabilities required of each member, and the Board as a whole, in order to meet both its operational and regulatory responsibilities. The skills matrix should be made public and a committee of the Board should nominate candidates for the Board in accordance with the best corporate governance practices.

The Board should serve a fiduciary role and should have the authority to appoint and replace the CEO as necessary (subject to any term limits agreed upon by the Board). The Board should also be responsible for regularly assessing CEO performance; for example to determine whether he or she effectively and appropriately exercised the powers, authorities and responsibilities prescribed in statute, and whether he or she exercised appropriate corporate and administrative oversight. The Board should also be responsible for approving FSRA's rules, strategic direction, and budget. The CEO and other FSRA Executives should not have seats on the Board.

In order to ensure accountability to the Legislature, FSRA's Board of Directors should report to the Minister of Finance through the Chair of the Board. The Board should be required to inform the Minister on matters of regulatory concern, including any issues that could impact or harm the sectors, the economy, consumers, investors or pension plan beneficiaries. The reporting requirements of the Board to the Minister would need to be set out in statute and through a memorandum of understanding. The Minister would be responsible to the Legislature for FSRA's activities.

The Board would need to take an active role in monitoring the overall activities of FSRA to ensure its mandate has been met. This would be accomplished by setting regular Board meetings, with regular updates from the CEO.

As noted throughout our recommendations, transparency will be of paramount importance. For that reason, we would urge future FSRA Boards to direct the CEO to develop and publish a Business Plan (including a strategic plan) so that the sectors and the public would be made aware of, and have an opportunity to comment on, FSRA's regulatory approach. Further to this, we would urge that FSRA's Board be required to meet with the regulated sectors on a regular basis.

If these recommendations were implemented, FSRA would have a much more modern and effective governing structure that would provide greater agency oversight, accountability, and regulatory independence.

Recommendation 22: FSRA's Board should be given rule-making authority and have the scope of that authority delineated clearly in statute.

a. A process for setting rules should include a requirement for significant public input and dialogue, and these and other requirements for the rule-making process should be set out clearly in statute.

b. Rules should be subject to timely review by the Minister of Finance, with the understanding that those rules would come into force unless explicitly rejected.

FSRA's Board should be given authority to make rules that would be enforceable pursuant to the statute, having a similar authority as Cabinet Regulations. We agree with others that the current process for developing and amending regulations may not be nimble enough in certain circumstances. Additionally, rules allow for a degree of technical detail that is more difficult to achieve by way of regulation. While the current regulatory process is appropriate for many other areas of government, our view is that the financial services and pensions regulatory environments require a more flexible means.

In our view, assigning rule-making authority to FSRA would enable it to be much more responsive to newly emerging issues that may not have been contemplated previously. As financial sectors continue to innovate, we expect to see new issues emerge more frequently. Rule-making authority would allow FSRA to act quickly to address regulatory gaps, amend stale processes, and in some cases, greatly depoliticize regulatory approaches. It is our belief that a regulator with 'boots on the ground' will better understand issues, and realize sooner and more clearly when actions ought to be taken, than other levels of government.

Using the OSC model as an example, rules ought to be drafted with public comment and input from the regulated sectors. The process should include the publishing, and if necessary, re-publishing of draft rules on the FSRA website for public comment. This would ensure that sufficient input is received from persons most affected by the proposed rules. The final rule proposal and a summary of the public input could then be shared with the Minister of Finance. The rule should come into effect automatically if the Minister does not object within a reasonable period of time (e.g., 60-120 days[25]). This specified time limitation would ensure that regulatory efforts would not be delayed and that the process of independent rule-making would not be politically undermined. The strong consultation and accountability requirements of the rule-making process would also assist in preventing over-regulation or overly prescriptive regulation.

[25] Under subsection 143.4(2) of the *Securities Act*, if the Minister does not approve a rule, reject it, or return it to the OSC for further consideration, it comes into force at least 75 days after the rule is delivered to the Minister. The Minister has 60 days to approve, reject or return a rule for further consideration under subsection 143.3(3).

The extent and scope of FSRA's rule-making authority should be articulated clearly in statute as soon as possible. Given the number of sectors that FSRA could come to oversee, we would strongly encourage the Ministry of Finance to begin a thorough review of all relevant statutes as soon as possible to determine necessary legislative amendments. We would also caution those assigned to the task that they should avoid unduly limiting FSRA's authority.

We understand the concerns of some that assigning FSRA rule-making authority could be seen as contradicting the principle that elected representatives should be responsible for making laws. However, we do not feel this to be the case. FSRA's authority would be clearly articulated, and limited by, statute and by FSRA's legislated mandate. The rule-making process would include notice and comment requirements that would strengthen the accountability framework. Rules would then be subject to approval by the Minister of Finance, who could reject the proposed rule in certain specified circumstances. FSRA, like FSCO, would continue to enforce a number of sector-specific statutes and regulations that are administered by government.

In addition to improving the flexibility of the regulator and enhancing the transparency of regulatory policy, this would allow the regulator to address some issues that we have heard about from both industry groups and the Auditor General. See Recommendations 23 and 32 for specific examples.

Recommendation 23: Using its rule making authority, FSRA's Board should be obliged and empowered to decide how auto insurance rates are to be regulated. This must be done in alignment with Recommendation 27(c).

Of all of the issues raised by automobile insurers, the current process for reviewing and approving rate changes was the most frequently cited source of dissatisfaction. In Ontario, insurers must seek prior approval before they can adjust rates — up or down. As required by the *Automobile Insurance Rate Stabilization Act, 2003*, FSCO's actuaries and staff must review each insurer's data and assumptions regarding claims costs, expenses and investment income to ensure that the proposed rates would be just and reasonable, and neither excessive nor so low that the lack of revenue would impair a company's financial solvency. This process can take several months to complete.

Industry representatives, however, seem to have the impression that FSCO actuaries and staff go beyond rate approval and engage instead in rate setting. Several insurers argued that FSCO officials routinely defy the analysis done by the insurers' larger teams of professional actuaries without a sound basis for doing so. Those who highlighted this concern stated this practice is especially evident when FSCO is directed at the political level to seek broad rate reductions.

For example, an August 2015 submission from an insurer asserted that their company uses 10 trillion price points in Ontario automobile insurance. Company executives insist these price points have been developed over time by a team of more than 40 actuaries. However, we heard that when rates are submitted to FSCO, FSCO staff would scrutinize, recalculate and dispute the figures, in many cases without providing a sound actuarial rationale. We were told that FSCO would then impose a rate based on its in-house calculations.

In a June 2015 written submission, another insurer provided an example of the cost and burden of this approach and argued that this practice leads to higher costs for consumers:

> *In Ontario today, the high cost of rate filings is a cost of doing business that is passed on to consumers. The most straightforward filing (a "simplified" filing) typically requires a 100-page submission, while a filing following product reform is much more detailed and may average up to 600 pages. Moreover, the administration of Ontario's rate regulation system is excessively cumbersome and slow; for example, it took over seven months for our usage-based insurance offering to be approved although the product was already in use in other markets.*

A common view was that Ontario's tight control on auto insurance rates has fallen out of step with trends in many other jurisdictions and that the practice runs counter to a large body of academic research. Indeed, various academic studies would suggest that, in a variety of regulated industries, strict rate controls could limit competition and consumer choice and thus lead to higher prices[26]. There is the added risk that undue interference in the marketplace could impede innovative uses of new technology and thus postpone improvements in public safety and consumer protection (e.g., usage-based insurance technologies which reward safe driving habits and can be used to more accurately and fairly define risk-classification[27]).

[26] Examples include: Leadbetter, D., Voll, J., and Wieder, E. (2008). The Effects of Rate Regulation on the Volatility of Auto Insurance Prices - Evidence from Canada, 76(1), 21-54; Regan, L., Tennyson, S., and Weiss, M. (2008). The Relationship Between Auto Insurance Rate Regulation and Insured Loss Costs: An Empirical Analysis. Journal of Insurance Regulation, 27(1), 23-46.; Cummins, J. D. (Ed.). (2002). Deregulating Property-Liability Insurance: Restoring Competition and Increasing Market Efficiency. Brookings Institution Press; D'Arcy, S. P. (2001). Insurance Price Deregulation: The Illinois Experience. Insurance Rate Regulation Conference, Brookings Institution.

[27] While FSCO has approved a number of usage-based policies, some insurers argue that they are unable to fully utilize the technology. For example, they are only permitted to maintain or decrease rates based on the data collected. They are currently prohibited from using the technology to increase rates as a result of poor driving.

We have also heard concerns that the current process of rate approvals requires the creation and maintenance of huge databases of actuarial information related to claims costs, price points, risk criteria, etc. that some feel are irrelevant for purposes other than rate approvals. Collecting and maintaining this data has created a significant burden on the industry in terms of both time and resources.

> *"...moving away from the current prior approval rate regulation system is not a trade-off between the interests of consumers and the interests of insurers...The industry's regulatory costs will be much lower, which will translate into lower expenses and lower premiums; and innovative products and pricing strategies will be brought to market more quickly."*
>
> ***– Insurance Bureau of Canada***

All of the industry representatives who wrote or spoke to us called for less rigid rate regulation. The former Commissioner of the New Jersey Department of Banking and Insurance reported to us that approximately 80 per cent of drivers in New Jersey received a rate reduction once the State stopped requiring prior approval of rate changes and switched to a file-and-use system, the type of system Ontario's auto insurance industry is lobbying to have.

Another significant issue, one that representatives of other financial sectors have raised, is that FSCO's involvement in auto insurance rate regulation overburdens its resources. We heard consistently that, during peak periods, FSCO becomes so overburdened with auto insurance that resources from other areas are re-deployed to assist. Representatives of the other sectors made this point and noted that they have experienced service and/or regulatory gaps as a result.

While we question whether the current process for regulating rates is in the best interest of consumers or the sector, this issue falls outside of our mandate. We have not been asked to review the automobile insurance system, its legislation, or its regulations. However, our mandate did include the requirement to comment on "*Whether the agency is carrying out the activities and operations as required in its mandate?".* When it comes to the regulation of automobile insurance rates, FSCO is not ultimately protecting the public interest or enhancing confidence in the sector. We do understand, however, that FSCO is bound by its current legislative and regulatory framework.

While the issue of auto insurance rate regulation arose during every consultation session with property and casualty insurers, and in each of the insurers' written submissions prior to our Preliminary Position Paper, we received little input on how the regulator could improve the situation. In our view, FSCO's hands are tied without legislative changes implemented by the government. So, in our Preliminary Position Paper, we set out three possible approaches for addressing the following question as it pertains to the regulation of auto insurance: "*Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?*":

- Continue rate approvals within FSRA as practiced today;
- Remove this function from FSRA and transfer it to a formal rate-setting board, or;
- Give FSRA authority/responsibility for rate regulation, leaving the approach to be determined through its rule-making authority.

The feedback we received suggested that there is broad support for the third option. Those who disagreed seemed to regard prior approval of rates as a substitute for adequate regulatory investigation and enforcement. But, if the FSRA we envision did provide a much more proactive regulatory approach with a stronger focus on consumer protection, it might change the minds of those wedded to the status quo.

Before FSRA could set new rules for how auto insurance rates are to be regulated there would need to be amendments to legislation, which would go a long way in de-politicizing the process. An effective, well-governed and transparent regulator with rule-making authority would be in a position to introduce a less rigid approach, removed from political influence. Modernizing the rate approval process through a transparent and accountable rule-making process would be a major win for consumers. They could benefit from a faster, more efficient and less costly system.

We would strongly urge that FSRA's Board of Directors be directed to undertake a review of the rate approval process prior to setting a rule. We are confident that, after such a review, FSRA would be in a position to implement a less costly, less time-consuming, and more transparent process that would benefit consumers and the health of the sector.

Recommendation 24: FSRA should be provided authority to retain funds from penalties for specific, articulated purposes, such as supporting a fraud compensation fund (see Recommendation 31), hiring a lawyer to sue the perpetrators of fraud to recover money for the victims, and/or to pay for increased consumer outreach and education.

Both FSCO and DICO have the legislative and regulatory authority to levy Administrative Monetary Penalties (AMPs) in specific circumstances. However, this money must be transferred to the government's CRF. We recommend that FSRA be permitted to retain funds from penalties for use for limited, specified purposes as set out in its enabling legislation[28].

To avoid any perceived conflict of interest, revenue from financial penalties should be applied to specific, articulated purposes, such as to support a fraud compensation fund (see Recommendation 31), to hire lawyers to sue perpetrators of fraud and recover money for the victims, and/or to pay for increased consumer outreach and education through the Office of the Consumer (see Recommendation 28).

A precedent for such a use of fine revenues lies in the OSC's Office of Investor Policy, Education and Outreach, which is the recent result of the integration of the OSC's Office of the Investor and Investor Education Fund (IEF). The IEF was a non-profit organization established by the OSC in 2001 to develop and promote independent financial information, programs and tools to help consumers make better financial and investing decisions[29].

Given that FSRA's enhanced mandate would relate to consumer protection, this may be the most appropriate tool for funding various consumer-focused initiatives. The government could find inspiration from the AMF's Education and Good Governance Fund, which provides financial support for awareness, education and research projects that tie into the mission of the AMF[30].

This approach to fine revenues would help control the costs associated with increased consumer protection activities, and help to prevent standard regulatory fees and assessments from increasing unnecessarily.

[28] As an example, section 3.4 of the *Securities Act* states that money received by the OSC pursuant to an order or as a payment to settle an enforcement proceeding may be designated for use by the OSC for the purpose of educating investors or enhancing knowledge of the securities and financial markets.

[29] http://osc.gov.on.ca/documents/en/Publications/Publications_rpt_2015_osc-annual-rpt_en.pdf.

[30] https://www.lautorite.qc.ca/en/eggf-corpo.html.

Structure

Recommendation 25: FSRA should be divided into three Divisions, each with its own Superintendent: Market Conduct, Prudential Oversight, and Pensions. The Market Conduct and Prudential Divisions should include separate units responsible for overseeing various financial services sectors or operational functions within FSRA's mandate. The Board should appoint the Superintendents upon the recommendation of the CEO.

a. Prudential regulation of credit unions and caisses populaires should be transferred from the Deposit Insurance Corporation of Ontario to FSRA, but not until FSRA is fully operational after the transfer of other responsibilities from the Financial Services Commission of Ontario.

b. FSRA's prudential oversight activities should be insulated from market conduct oversight activities, as it is in Quebec's Autorité des marchés financiers model.

c. FSRA should only act as a prudential regulator for a limited and defined class of entities, such as small farm mutual insurers, Ontario incorporated credit unions, and the captive or reciprocal insurers that are based in, and do most of their business in, Ontario but which would not be eligible for regulation by the federal Office of the Superintendent of Financial Institutions.

As outlined earlier under Recommendation 2, FSRA's regulatory functions should be divided into three Divisions; Market Conduct, Prudential Oversight, and Pensions. Within these Divisions, separate functional units should be established to conduct regulatory activities for each of FSRA's sectors and/or functions. We will return to the concept of functional units in Recommendation 27.

The interaction between prudential and market conduct regulation in Ontario is not entirely clear in the current environment. While FSCO and DICO take a twin-peaks approach to credit union regulation (i.e., market conduct regulation is provided by FSCO, while prudential or solvency regulation is conducted by DICO), FSCO's regulation of Ontario-incorporated insurance companies is fully integrated (i.e., FSCO undertakes both market conduct and prudential regulation). There does not appear to be a strong policy rationale for the differing approaches.

> *"CAIR supports the establishment of the FSRA and a prudential oversight division, with its own Superintendent."*
>
> ***– Canadian Association of Insurance Reciprocals***

In our view, an integrated regulator would be more effective at the very least due to scale advantages (e.g., consolidated expertise, backend support, etc.). However, appropriate regard must be given to the internal separation of market conduct and prudential activities to prevent internal conflicts of interest and to ensure adequate and consistent oversight is provided to both regulatory arms. For this reason, we recommend that — while integrated — FSRA would take a modified 'twin peaks' approach by separating and insulating the functions, much like the approach taken by the AMF in Quebec.

In our view, this structure would accommodate three Superintendents, with each performing regulatory functions and directing their own Division. Each Superintendent would require the statutory authorities necessary to carry out the regulatory functions assigned to their Division as an authorized delegation from the CEO. The Superintendents should be hired by FSRA's Board of Directors upon the recommendation of the CEO.

This model was influenced by the AMF structure in Quebec. We encourage the government to review the AMF's structure and the associated authorities when drafting FSRA's enabling legislation.

With regard to credit unions and caisses populaires, we recommend that prudential regulatory functions should be transferred from DICO to FSRA. We appreciate that it has not been long since credit union regulatory functions were first transferred to DICO. The 2009 transfer of responsibilities was made with a view to enhancing effectiveness of the regulatory regime. However, consolidating activities within FSRA would benefit all of the regulated sectors and would have the potential to lower costs.

The proposal to transfer responsibilities from DICO to FSRA was included in our Preliminary Position Paper, and some of those who commented felt the transfer would delay progress. We assume that this concern arose in response to the release of Parliamentary Assistant Laura Albanese's review of the *Credit Unions and Caisses Populaires Act, 1994* (CUCPA). We would strongly support having DICO continue in its current form until FSRA is established and operational. Only then should prudential regulatory functions transfer to FSRA. This would limit any disruption to the sector or to the government while the CUCPA review recommendations are considered and implemented.

We envision the Market Conduct Division of FSRA regulating those same sectors now regulated by FSCO. In addition to Ontario-incorporated credit unions and caisses populaires, the Prudential Oversight Division should oversee the solvency of a defined class of insurers, such as small farm mutual insurers that only operate in Ontario, and the captive or reciprocal insurers that are based in, and do most of their business in, Ontario.

> *"The IBAO strongly supports these recommendations in principle, particularly the distinct market conduct function with hopefully a new, more muscular and visible enforcement regime against fraudulent activity and behavior that harm Ontario consumers."*
>
> ***– Insurance Brokers Association of Ontario***

We should clarify that we think FSRA should play an "as needed" role with regard to prudential oversight of Ontario-incorporated insurance companies. OSFI clearly has the expertise to carry out this function, however we expect responsibility for regulating a few small entities will need to be transferred from FSCO to FSRA. That said, we would encourage the government to require that new entrants to the sector meeting certain requirements fall under federal jurisdiction.

FSRA's Pension Division should continue all aspects of pension oversight and regulation that now resides within FSCO. As noted under Recommendation 2, a separate Pension Division will be necessary due to the unique nature of pensions. A separate Division would be best able to balance the concerns of plan beneficiaries, sponsors and administrators.

Recommendation 26: Operationally, FSRA should be led by an Executive Team consisting of the three Superintendents and other executives, such as a Chief Administrative Officer, Chief Legal and/or Enforcement Officer, all reporting directly to the CEO.

FSRA's CEO should be supported by three Superintendents, each of whom would report directly to the CEO, and be collectively responsible for FSRA's regulatory responsibilities. In addition, FSRA should also include a Chief Administrative Officer (CAO) and a Chief Legal and/or Enforcement Officer. The CEO would be responsible for overseeing the development of rules, by-laws and regulatory policies, as well as the implementation of FSRA's strategic plan and integrated regulatory model as approved by the Board of Directors.

The CEO should be granted all necessary regulatory powers and authorities necessary to provide regulatory services to FSRA's sectors. The CEO should be responsible for leading the regulatory activities of FSRA through the Superintendents of each regulatory division. The CEO ought to be enabled to delegate certain regulatory authorities to the Superintendents. Any such delegation of power should be transparent to the public.

The financial services and pensions sectors are increasingly complex, fast-paced and demanding. It will be vital for their regulators — the CEO, Superintendents, and regulatory staff — to focus on the core regulatory functions at all times. They would be better able to service their sectors, and the affected consumers or pension plan beneficiaries, if they were not distracted by administrative issues.

For that reason, it will be important for FSRA to hire a CAO. The CAO would be responsible for oversight of human resources, including hiring; enterprise business solutions, including the development or implementation of an enterprise information technology system; strategic communications; and other corporate services, such as finance and government relations.

Some have expressed concerns that FSRA's CEO might become overly burdened with the administrative functions in an organizational structure such as we have proposed, and that the regulatory Divisions could become isolated from each other, the rest of the organization and the Board. We disagree with this view. The CEO would be in a position to provide strategic direction and to interact continuously with each of the three proposed Divisions. Having a CAO would free the CEO from the burden of operational and administrative responsibilities. The CEO ought to be enabled to delegate administrative and corporate responsibilities to the CAO as necessary and appropriate.

Under FSCO's current structure, our understanding is that there is no dedicated CAO. While there has traditionally been an executive who would oversee corporate services, FSCO's close integration with the Ministry of Finance has created complications. Because FSCO is not a 'legal person' as a corporation would be, it is unable to hire its own employees or enter into contracts in its own name. As a result, approval for certain aspects of hiring and contractual agreements falls to the Ministry. In the case of hiring, FSCO must turn to the Ministry's CAO and Deputy Minister for approval. Due to reporting relationships under the current structure, this has often left FSCO's Superintendent and CEO unduly burdened with administrative and operational issues, which distracts from the core mandate of FSCO.

We would also support FSRA having a Chief Legal and/or Enforcement Officer to oversee FSRA's investigations, enforcement actions, and any litigation initiated by — or directed against — FSRA. Given the concerns expressed by the Auditor General and a number of stakeholders regarding FSCO's current lack of enforcement action, FSRA would benefit from having someone at the executive level to oversee this function.

Recommendation 27: To facilitate its mandate, FSRA's three Divisions should be organized into distinct functional units, like the bays in a vehicle service garage, with each unit responsible for specific operations and/or sectors, all operating and pursuing a consistent, coherent regulatory approach.

a. Each functional unit within a FSRA Division should be led by an individual with expertise in the specific sector assigned to the unit. This individual would ensure that the activities of his or her area are conducted in a transparent manner, and would be responsible for reporting to the appropriate Superintendent, and ultimately the Chief Executive Officer.

b. While there should be communication and collaboration among the functional units, the operation of each functional unit should be insulated from the resource demands of the others.

c. The CEO should ensure that each Division develops, annually, a Statement of Approach for how it will achieve its mandate within FSRA in consultation with affected stakeholders. The Statements of Approach should be submitted to FSRA's Board for review and approval prior to publication.

d. To maximize efficiency and control costs, an underlying corporate infrastructure should provide a set of shared services, such as for communications, legal services, information technology, and finance.

Our consultation process left us under the impression that representatives of various regulated sectors — auto insurance and pensions excepted — are often not certain about whom to contact at FSCO regarding a problem or question. While FSCO has both an Automobile Insurance Division and a Pensions Division there is nothing comparable for other sectors. Those sectors tend to turn to FSCO's Licensing and Market Conduct Division (LMCD), which handles most of FSCO's market conduct regulatory duties, including prudential oversight for Ontario-incorporated insurers, and all licensing, registration, and incorporations.

Some felt this catch-all structure has left some sectors with too few expert resources to contact when they have specific questions or concerns. We heard this echoed by those in the credit union, mortgage broker, cooperative, and health service provider sectors. The situation was described as murky by industry representatives, and would likely be even murkier for consumers.

Early in our review we heard that FSCO had made an effort over the last several years to break down internal silos. However, there seems to be an overwhelming view within the industry sectors that this has further complicated interactions with FSCO and resulted in delays, miscommunication and frustration. Of the four sectors that raised this issue, all suggested that FSCO should have a dedicated senior-level person responsible for overseeing their sector.

Given our recommendation that FSRA should take an integrated approach to regulation with three key Divisions, we began using the metaphor of a large vehicle service garage with multiple 'bays' for different specialties to describe how the regulation of the various financial sectors should be organized. In our view, each of the three Divisions should include a bay for the sectors under its authority. We refer to these bays more formally as functional units. As an example, the Market Conduct Division could include functional units — though not monolithic structures — for property and casualty insurance; life and health insurance; credit unions and caisses populaires; mortgage brokers; and accident benefit service providers. The Prudential Oversight Division could be divided similarly by functional unit to include Ontario incorporated insurance companies and credit unions and caisses populaires. The Pension Division could include functional units including, but not limited to, defined benefit plans; defined contribution plans; and administrator regulation. We offer these examples, but the structure will ultimately be a decision of the Board of Directors.

It is vital that each functional unit be insulated from the operational demands of the others. As noted under Recommendation 2, increased demands in one area should not be handled by pulling staff away from another. During periods of increased workload, FSRA should be enabled to hire temporary staff or seek the assistance of a service provider. We do not support a structure where one sector would increase regulatory efforts at the expense of another, in terms of both limited financial and staffing resources.

The leader of each functional unit should have expertise in the respective sector. During our consultations, many praised DICO staff for their expertise. We were told that many members of DICO's staff have direct experience working within the credit union sector. Sector representatives were more satisfied in their dealings with DICO as a result.

Having appropriate experts lead each of FSRA's functional units would benefit both the regulator and the sectors. A dedicated individual with expertise would serve to resolve the issues raised by the sector and by consumer representatives who were concerned that they did not have a dedicated sector-specific contact. It would also aid in FSRA's regulatory approach to have individuals familiar with the activities being regulated.

Each Superintendent and functional unit leader should be responsible for overseeing the development of sector-specific Statements of Approach. The process would require each functional unit to formalize how it will meet FSRA's statutory mandate. These statements should be drafted with input from the relevant sectors and the public, submitted to the Board of Directors for review and approval, and then published in FSRA's Statement of Priorities.

Statements of Approach would serve an important purpose. They would allow the regulator to develop and commit to more explicit and sector-specific mandates. Many of the submissions we received in response to our Preliminary Position Paper argued for sector-specific statements within FSRA's mandate. FSRA's mandate, as it pertains to the financial services sector and pensions sector, should remain at a high level. However, we agree that the regulator should be formally directed to undertake activities in a sector-specific way. The Statements of Approach would allow for this.

As an example, we have recommended that FSCO's legislated mandate should include a requirement to undertake activities in a proactive manner. The functional unit for property and casualty insurance could be required to be proactive in the monitoring of auto insurance claims costs in order set appropriate regulatory policy and make recommendations to government in a timely manner. It could be required to monitor fraud, to educate and inform consumers about such issues as how the auto insurance system works, to explain optional benefits that might be appropriate for them, and to promote safer driving. The mortgage broker functional unit could commit to undertake market research to identify emerging trends. The functional unit for overseeing the solvency of credit unions and caisses populaires could pledge to identify areas of prudential concern at an early stage and to intervene effectively as to minimize the risk of losses for DICO's deposit insurance fund.

In order to maintain efficiencies, the three main Divisions and their functional areas should be supported by a central infrastructure. This could include strategic communications, legal services, information technology, and finance. These services could be structured within a Shared Services Division. As noted in Recommendation 26, these types of services should be overseen by a CAO and a Chief Legal and/or Enforcement Officer.

The cost of operating each functional unit would be paid from fees and assessments imposed on the enterprises or individuals they regulate. While costs and revenues may not match expenses each and every year, the goal should be to maintain a fair balance of cost sharing over time, including for the cost of shared services, administration, and governance. Assessments could vary by enterprise or licensee in line with the cost of regulation (e.g., activity-based cost). As noted earlier, it would be important to have FSRA set principles for containing costs and preventing duplication of effort.

Recommendation 28: FSRA should be required to provide a mechanism to ensure that the perspective of consumers and pension plan beneficiaries is considered in all of its policy-making and actions. Specifically, this should include the creation of a separate 'Office of the Consumer' within FSRA to perform this and related functions. It should have enterprise-wide responsibilities to ensure that individuals' perspectives are considered in all regulatory endeavors FSRA undertakes. It should not serve as a dispute or complaint resolution service.

As noted in several of our previous recommendations, we suggest that FSRA take a holistic and integrated approach to protecting consumers and pension plan beneficiaries (for example, see Recommendations 4, 6, 11, 12).

The Office of the Consumer would not be a separate entity, but rather an office within FSRA, apart from the three main Divisions. It could serve several important purposes. One purpose might be to gather and voice consumer and pension plan beneficiaries' concerns during any discussions about changes to, or the development of, rules, regulations, legislation, or enforcement methods. The Office of the Consumer could, with proper funding, undertake independent research and establish committees or panels dedicated to consumers and pension plan beneficiaries that could engage in these consultations, similar to the OSC's Investor Advisory Panel.

In the current financial services regulatory environment[31], we find there are no voices for the consumers of various products and services. There are certainly those who claim to represent the consumer, but we were unable to find any organized voice that does not have a self-serving purpose or a narrowly defined agenda. The lack of a consumer voice is unhealthy for public debate and consultation. Enabling the Office of the Consumer to establish a committee or panel to fill this gap would be extraordinarily beneficial.

Another important role would be to conduct, or commission, research to help better understand the concerns of consumers and pension plan beneficiaries and to examine best practices employed in other jurisdictions. This could include undertaking focus groups, surveys, and jurisdictional scans to identify emerging issues, trends, and possible solutions.

Additionally, the Office of the Consumer ought to be responsible for ensuring that the divisions of FSRA are informed of consumers' and pension plan beneficiaries' issues, and would support any public consultation required, including on FSRA's Statements of Approach and Priorities. It could also be accountable for ensuring that a consistent approach to consumer and pension plan beneficiary protection is pursued in all of FSRA's activities.

> *"Without a voice of the consumer, there is no reasonable expectation that the consumer's needs will be identified…"*
>
> ***– McBride Bond Christian LLP***

[31] We refer to those sectors currently overseen by FSCO.

The Office of the Consumer could find inspiration in the OSC's Office of Investor Policy, Education and Outreach, now responsible for managing the longstanding Investor Education Fund, which had been funded by money received by the OSC pursuant to orders or settlements that had been designated for educational use under the terms of those orders and settlements. The Securities and Exchange Commission (SEC) in the United States also has a similar body within its auspices[32].

A dispute or complaint resolution service is *not* something the Office of the Consumer should provide. That should be the role of the appropriate Divisions and functional units within FSRA, perhaps in part by monitoring the effectiveness of industry-sponsored ombud services. FSRA, where appropriate, should take a leadership role in strengthening and supporting the financial services ombuds-network.

As we noted under Recommendations 19 and 24, the Office of the Consumer could be funded largely, or entirely, through funds from the collection of penalties. Any additional costs should be paid from the levies and fees charged to regulated companies and individuals. We defer to FSRA's Board to determine an appropriate calculation method.

Aside from funding, no other recommendation outlined in our Preliminary Position Paper raised as much concern and confusion as the Office of the Consumer. Many had anticipated this office would operate separately from FSRA and that it would become isolated from consumer and plan beneficiary protection efforts within the regulator. This was not our intention.

[32] The SEC maintains both an Office of the Investor Advocate and an Office of Investor Education and Advocacy.

Recommendation 29: Ontario's deposit insurance scheme for credit unions and caisses populaires should be administered by an entity that is operationally separate from FSRA.

a. DICO should continue to maintain authority for the deposit insurance scheme, as well as other responsibilities not directly related to prudential oversight.

b. DICO could continue to report to a separate Board of Directors, but serious consideration should be given to a modified governance structure where FSRA's Board of Directors could also serve as DICO's Board of Directors.

c. The CEO should be appointed by DICO's Board of Directors.

During our consultations with the credit unions and caisses populaires sector, a discussion regularly arose concerning the potential conflict between DICO's current role as a deposit insurer and prudential regulator.

Some believe that any perception of a conflict between DICO's roles would be unwarranted and that there has been no evidence of a conflict of interest since DICO inherited prudential responsibilities in 2009. Others took the position that prudential regulation and deposit insurer functions should be split as they are under the federal model, as between OSFI and the Canada Deposit Insurance Corporation (CDIC). They argued that this separation could prevent the prudential regulator from discouraging innovation and reasonable risk due to an overabundance of caution related to the insurance fund.

There certainly is a potential for operational conflict between the roles of deposit insurer and prudential regulator. There could be situations when regulatory activities would be influenced too heavily by concerns for the deposit insurance fund. As a matter of principle, a regulator should not administer an insurance fund. As with our concern regarding the administration of the MVACF (see Recommendation 18), we do not feel this should be a core function of a regulator.

During our consultations, we heard repeatedly that DICO is an effective administrator of the deposit insurance scheme. We agree that DICO should continue to conduct this function and others. So we recommend that DICO revert to its pre-2009 form. It should retain the authorities and tools necessary to resolve any financial disruptions that may arise within credit unions and caisses populaires in future. It should have the authority to force sales or amalgamations, provide financial assistance, conduct liquidations, and reimburse depositors for the loss of insured deposits.

While DICO should continue to report to a Board of Directors, the government should give serious consideration to having FSRA's Board of Directors assume that oversight role.

In the current structure, DICO's prudential regulatory functions and deposit insurer functions are overseen by a single CEO. As stated, a potential conflict resides there at the operational level. A common Board of Directors would not have this same effect. In our view, appointing the same individuals to provide oversight to both organizations would not be a conflict. This would also save the sector the cost of administering a second Board of Directors. For clarity, we are not recommending that DICO be dissolved as a corporation, nor are we suggesting that its current Board of Directors be replaced immediately. We suggest that FSRA's Board only begin to oversee DICO once FSRA is otherwise fully operational.

In any case, DICO's CEO should continue to be appointed by the Board.

Recommendation 30: The Pension Benefits Guarantee Fund should not be administered or overseen by FSRA.

The Pension Benefits Guarantee Fund (PBGF) should not reside with a financial services regulator any more than the credit union deposit insurance scheme or the MVACF. An administrator should confer with FSRA on issues that may impact the fund or pension plan beneficiaries, sponsors or administrators, but administration of the fund should be conducted elsewhere.

In our Preliminary Position Paper, we contemplated the notion of having DICO oversee and administer the deposit insurance scheme and the PBGF. When we suggested that idea, we did not intend to imply that the administration of these unique funds are simple money-management functions. We are aware that these are materially different and complex functions, and we envisioned them being administrated as separate funds, yet by the same organization. We initially surmised that each would require similar actuarial, accounting and financial expertise that could benefit from consolidation. However, responses to this proposal have persuaded us that the PBGF should not be overseen by DICO, given the varying complexities of the two funds and the different ways in which they operate. Additionally, given its current liability and political nature, the PBGF could come to dominate DICO's operational agenda.

We understand that there are numerous pension-related reviews and initiatives underway that could have an impact on the PBGF over the next several years. While these reviews are under way, we strongly urge the government to explore new options for administering the PBGF.

Recommendation 31: FSRA should be directed to identify and seek to eliminate gaps in protection for consumers who might be defrauded by licensed sales agents, brokers and corporations. FSRA should have the authority to establish a fraud compensation fund such as exists in Quebec if or where enhancements to mandatory insurance coverage would not fully close current gaps.

Public authorities set standards for financial intermediaries to protect the public. They typically insist that an intermediary obtain a licence, meet certain educational and professional standards and have proof of some form of E&O insurance or fidelity bond to protect their clients. Then authorities encourage citizens to verify that they are dealing with someone who has a valid licence and credentials before turning to that person to purchase a financial product or to make an investment. Unfortunately, consumers do not always take such precautions and even those who are the most diligent could fall prey to licensees bent on defrauding them.

Thus far, most jurisdictions have only required a type of E&O insurance that limits the protection for consumers to narrowly defined types of fraud and circumstances. It is common for such E&O insurance policies to exclude coverage for every type of fraud in one part of the policy, then add back coverage elsewhere for a narrowly prescribed type of fraud. E&O insurance will only insure a consumer when it has been proven that an agent failed to obtain insurance coverage (e.g., life insurance, disability insurance, life annuity) after the consumer had paid premiums to acquire the coverage. Further limitations to this type of coverage were set out in a letter submitted to the panel by the OmbudService for Life and Health Insurance:

"…E&O insurance does not cover all claims made by consumers against independent agents and has certain limitations. For example:

- *Intentional or willful acts that result in losses to consumers are not covered;*
- *Claims made after an agent retires or is no longer in business are not covered. This limitation affects certain classes of consumer complaints that are typically made years after the product is sold, such as life insurance and suitability complaints;*
- *Lapses in coverage are a common issue with E&O policies. If the agent fails to promptly renew his or her annual E&O policy there will be interruptions in coverage that will affect the consumer's right to claim compensation; And*
- *There is no suspension of the limitation period during the E&O claims process. Once the limitation period runs out, the consumer's claim legally expires and the right to seek compensation in court is lost."*

The Office of the Auditor General of Ontario noted in its 2014 Annual Report that FSCO did not thoroughly verify whether agents carried valid E&O insurance, but renewed their licences anyway. We understand that FSCO has made great strides towards resolving this issue, but we are concerned that this is not sufficient to protect Ontario's consumers and investors.

Victims of fraud by other types of intermediaries, such as those overseen by the Mutual Fund Dealers Association (not FSCO), may or may not be protected by a requirement that the corporation employing the intermediary obtain what is called a standard form financial institution bond. Such a bond will cover fraudulent acts by employees or agents who handle an investor's assets, but not if the fraud is committed by the owner of the corporation.

FSRA should be directed to identify and seek to close such gaps that leave consumers and investors inappropriately exposed. We note that the Independent Financial Brokers recommended this in their most recent submission to our panel. This investigation should include a review of existing policy options for enhancing insurance coverage and preventing lapses of coverage. Officials might meet with success by urging insurers and intermediaries to come up with a more comprehensive form of insurance, or similar protection. It would be ideal to have the private sector propose and implement a solution. This, in addition to FSRA's clearly articulated fraud mandate outlined in Recommendation 6, may be sufficient to address this issue. However, if existing gaps cannot be adequately closed in a timely and thorough way, then FSRA should have the authority to establish a fraud compensation fund. FSRA could look no further than Quebec to find a well-established system for cushioning financial service consumers from losses due to fraud. Quebec has long had a compensation fund that is supported by charging various types of intermediaries a variable annual levy, and by suing in court to recover funds from those who commit fraud.

> *"…There must be effective enforcement to prevent fraud and other wrongdoing, and meaningful mechanisms to provide some compensation to consumers when they have been the victims of fraud and other wrongdoing."*
>
> ***– FAIR, Canadian Foundation for Advancement of Investor Rights***

Quebec's fund for reimbursing the victims of fraud by licensed financial intermediaries is unique in the world[33]. Quebec's fund, which will pay for losses of up to $200,000 per person, has paid as few as 12 claims in one year and up to roughly 900 another year between 1999 and 2011. The average sum paid was $35,000. About 45,000 sellers of insurance, mutual and scholarship funds, investment contracts and financial planning services pay annual fees to provide fraud protection beyond what their professional liability insurance or fidelity bonds would pay. The annual fraud fund fees were $160 for sellers of insurance during the years 2008 to 2011, and $100 for most other intermediaries. Sellers of mutual funds paid an extraordinary $260 a year, mainly to compensate for fraud committed by Vincent Lacroix, founder of Norbourg Financial Group[34]. The AMF recently issued a consultation paper that included an examination of whether to extend the coverage of the fund[35].

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[33] The United Kingdom has a fund that compensates consumers who fall victim to a fraud or miss-selling in cases that result in the insolvency of a regulated corporation.

[34] http://www.lautorite.qc.ca/files/pdf/consultations/indemnisation/AMF-guide-ref_mecanisme-protection-an.pdf.

[35] https://www.lautorite.qc.ca/files//pdf/consultations/indemnisation/avis-consultation-indemnisation-an.pdf.

We envision that such a fraud fund could be overseen by FSRA, but not necessarily administered by it. FSRA ought to explore the most appropriate means for establishing the fund, and should consider outsourcing its administration.

As outlined in our preliminary recommendation, the fund could indemnify those individuals who become victims of fraud due to the activities of a licensed individual or entity. This would place an onus on consumers to determine whether the intermediary is licensed. The fund could be a payer of last resort, after determining the fraudulent sales intermediary had no private insurance or fidelity bond coverage; that any available coverage would be insufficient; or that the coverage would exclude the type of fraud perpetrated.

The majority of the responses to our initial recommendation revolved around funding. In our view, the cost of administering a fraud compensation fund could be paid from premiums applied to licensing fees as in Quebec, plus any penalties levied by FSRA for non-compliance as outlined in Recommendation 24. Like other forms of insurance, premiums would be reflective of claims costs. This would provide the regulated sectors an incentive to play an active role in preventing fraud from occurring. As observed in the Quebec example, this would not increase costs to the sector in a substantial way.

Tools, Means and Regulatory Approach

Recommendation 32: FSRA should have explicit authority to play a role in national regulatory organizations and the obligation to report back to FSRA's Board of Directors.

One issue that we discussed with FSCO officials early during our review was their involvement with the national entities, such as the Canadian Council of Insurance Regulators (CCIR), the Canadian Association of Pension Supervisory Authorities (CAPSA), and the Mortgage Broker Regulators' Council of Canada (MBRCC). Our concerns at that time were echoed by those with whom we met subsequently. That is, without a legislated mandate, independent authority or accountability, FSCO cannot ensure tangible results.

We applaud actions taken by regulators to harmonize standards or to improve communication among regulators. Yet, without adequate authority and direction to do so, efforts are less effective and are not subject to proper accountability. This situation could be improved by including this activity in FSRA's enabling statute.

There is certainly an observable trend within Canada and other jurisdictions toward harmonization and inter-jurisdictional collaboration and communication. Through FSRA, we could see an opportunity to improve Ontario's role in such efforts. In our view, co-ordination and communication should be a stated priority, and FSRA's management should be required to report to the Board of Directors on the activities of these national groups and any progress towards approved initiatives.

Formalizing this activity would also prevent policy issues from 'hiding' within the national groups. We cannot ignore the concerns we heard repeatedly about policy issues being given to the national groups for further research and consideration without producing tangible results. Some of those from whom we heard believe this is because the current regulator has no clear authority to participate and, in many cases, cannot enact changes without lobbying the Ministry of Finance to make regulatory or legislative changes. While that may still be an appropriate and necessary process for some issues, others may benefit from FSRA's proposed rule-making authority. In this case, rule-making could produce benefits for the financial services and pensions sectors, as well as for consumers and pension plan beneficiaries.

Recommendation 33: FSRA should be empowered to retain professional resources with experience in the regulated sectors.

To supplement Recommendation 20, which seeks to enable FSRA to recruit professionals and industry expertise, we suggest that FSRA's status as a government agency not limit its ability to retain professional service providers and consultants to complete short-term, high-priority tasks.

We would encourage FSRA's Board of Directors to work with the Ministry of Finance to develop a procurement process that would enable FSRA to be a nimble regulator. While we support accountability mechanisms and proper agency oversight, there are instances when the government's internal policies are insufficiently flexible to respond to pressing regulatory issues. For example, current limitations prevent FSCO from obtaining expert witnesses, such as actuaries, in an expeditious manner during enforcement actions or litigation. The FSRA Board may wish to seek targeted exemptions from the government's procurement directives and policies.

Recommendation 34: FSRA's authority should be sufficient to require transparency within the regulated sectors, including the disclosure of all costs of products and services, as a means of consumer protection.

We are concerned that in the current regulatory framework, FSCO either cannot or does not require sufficient market transparency. As a result, consumers, investors and pension plan beneficiaries cannot feel confident in their dealings, and this undermines the regulatory regime. Efforts should be made to ensure that FSRA will have sufficient authority to champion the same degree of transparency within the regulated sectors with which it will be expected to operate.

While sector-specific issues are outside of our mandate, we felt obliged to make a recommendation that would encourage greater clarity for consumers, investors, and pension plan beneficiaries. We think FSRA should be enabled, possibly through its rule-making authority, to require greater levels of disclosure of costs of financial and pension products and services, and any other pertinent information the regulator deems necessary to ensure consumers, investors, or pension plan beneficiaries are well informed. This should also include a requirement by the regulator for greater transparency in industry labels and titles (e.g., agent vs. broker). Consumers and investors should know exactly who and what they are dealing with, and what standards those entities are to meet.

We do not feel that all members of the public receive sufficient information to make informed financial decisions. In the absence of greater transparency, we fear that consumers and investors are not afforded sufficient protection. We encourage the government to provide FSRA with the authority to address this issue where necessary.

Recommendation 35: FSRA's regulatory approach should be grounded in clearly articulated principles, both risk-based and outcomes-based. It should not be unduly rule-bound or restrictive.

Most commenting stakeholders supported our initial call for a principled approach to regulation. However, there was some confusion surrounding our call for a 'risk-based' and an 'outcomes-based' approach. FSCO's existing principles of regulation[36] include a reference to risk-based regulation, plus the obligations be proactive and to base decisions on sound evidence. These are principles that align with an expectation that the regulator will strive for positive outcomes.

Risk-based regulation is a consistent approach to regulation that calls for the assessment of regulatory activities (e.g., investigations, audits, spot checks) and the assignment of regulatory resources to be based on the measured risk to consumers, investors, pension plan beneficiaries, or the regulated sectors and the economy as a whole. Risk can be identified and measured in a number of ways, including environmental scans to gauge sectoral trends and market conditions, the implementation of reporting requirements for regulated entities, the monitoring of complaints, or alerts from whistle-blowers. FSRA should also operate by this principle, but with a stronger emphasis on proactivity as outlined in Recommendation 9.

We feel that FSRA should also take an outcomes-based approach to regulation. This approach focuses on high-level objectives rather than micro-level compliance. This approach avoids imposing restrictive rules around specific activities in a way that could increase costs and efforts with no overall benefit. Instead, the aim would be to pursue specific, positive macro-level outcomes.

We are not suggesting that these should be the only regulatory principles for FSRA to uphold. We would leave it to the Board of Directors to determine what would be the best way to achieve FSRA's mandates. However, we feel that the inclusion of risk-based and outcomes-based regulation would be important for the regulated sectors and the public, particularly as it would help to transparently ground the regulatory objectives at issue in each specific exercise of authority.

[36] http://fsco.gov.on.ca/en/about/annual_reports/Pages/2014-reg-framework.aspx.

Recommendation 36: FSRA should be given authority through appropriate legislation to levy Administrative Monetary Penalties in any sector it regulates, and to provide consistent enforcement tools within its jurisdiction.

During our early consultations, we heard that FSCO's regulatory enforcement activities in the pension sector are limited by its current authorities. Some of the concerns expressed aligned with those raised by the Auditor General, particularly that FSCO has limited powers to deal with administrators of underfunded plans. One suggestion was to expand the regulator's authority to levy AMPs.

We agree with the Auditor General's assessment of FSCO's current power in relation to the pensions sector, and have concluded that enforcement action in all sectors would benefit from FSRA having appropriate regulatory tools at its disposal. We support the idea of expanding the application of AMPs to each of the regulated sectors to ensure that FSRA can take swift action when necessary.

Recommendation 37: FSRA must be provided with powers and tools that would enable it to ensure effective, consistent and timely enforcement. This should include a mechanism that would protect the confidentiality of those who "blow the whistle" on improper activity.

During a roundtable discussion with the mortgage broker sector, some expressed concern over the lack of a 'whistleblowing' process at FSCO. It was argued that the regulator could not meet its legislated mandate in the absence of such a process. While FSCO has a public inquiries telephone number and email address, there is no way for those in the sector to anonymously contact FSCO with sensitive information.

We were unaware that FSCO has no formal 'whistleblowing' mechanism in place for the financial services and pensions sectors. We concur that the public inquiries area of FSCO is unable to serve this role due to its inability to accept anonymous tips and treat them in an effective way. It would be in the best interest of consumers and the health of the sector for FSRA to include a service for the anonymous reporting of fraud or non-compliance by industry participants.

Recommendation 38: FSRA should enhance its public engagement and communications to ensure market participants and consumers are aware of its activities.

As noted in other recommendations, FSRA's Board of Directors should meet regularly with the regulated sectors and we encourage the Office of the Consumer to establish consumer, investor and pension plan beneficiary panels to encourage greater engagement. We urge any future FSRA Board of Directors to make public engagement and communication a high priority. Direct consultation must form a part of its mandate.

We included this recommendation in our Preliminary Position Paper, with the example that FSRA could implement an email service that would send subscribers daily notices of publications, enforcement actions and consultation documents. Some responded that a similar service exists already within FSCO. We acknowledge that FSCO maintains an online Subscription Centre, however the content is limited to sector newsletters and bulletins. We envision a subscription service that would also meet the needs of consumers, investors and pension plan beneficiaries. This could include the circulation of consultation documents (including proposed FSRA rules), notices of regulatory enforcement actions, public warnings (e.g., regarding scams or unlicensed activity), and notices of FSRA publications via email messages sent to interested parties.

Recommendation 39: Professional and/or accredited FSRA staff should be required to meet all applicable standards of practice in carrying out their activities (e.g., actuaries should meet all standards of practice as set by the Canadian Institute of Actuaries).

We acknowledge that FSCO's professional and accredited staff members likely meet all applicable standards of practice in carrying out most of their activities. Yet we feel the need to recommend a specific requirement due to the number of complaints we heard during our consultations.

In our discussions with auto insurers, we consistently heard that the mandatory actuarial standards enforced by the Canadian Institute of Actuaries are not always observed by FSCO. For example, the signature of a certified actuary is not always included and actuarial evidence is not always provided. Serious concerns were expressed regarding this practice, particularly given the stringent requirements placed on auto insurers for their compliance, including making chief executives personally liable for the accuracy of submissions to the regulator. In undertaking their work, auto insurers employ teams of actuaries (we have heard examples of up to 60 actuaries on a team), all of whom provide evidence and attest to their work. This should not be a one-sided requirement.

Any professional or accredited FSRA staff must, in all circumstances, adhere to the same professional standards of practice expected of the industry. To say otherwise would contradict our recommendation that FSRA's mandate include an obligation to operate as transparently as possible, as outlined in Recommendation 13.

The Financial Services Tribunal (FST)

Recommendation 40: The FST should be established by statute as an independent tribunal with its own budget funded by government.

a. The FST should be empowered through its enabling legislation to enter into an agreement with FSRA to provide it with administrative support.

b. The FST should be administratively supported by FSRA in a manner that respects and facilitates its independence.

c. The FST should be led by a full-time Chair, plus up to two Vice-Chairs, and it should be supported by a roster of part-time adjudicators with appropriate expertise, appointed by Lieutenant Governor in Council.

d. A process involving input from third parties should be established to help the Minister of Finance assess candidates for quality and expertise, and thereafter make recommendations on their suitability.

e. Adjudicators should be appointed for initial terms of two to three years with a limit of ten years in total to facilitate an orderly turnover of membership.

f. The appointment process should be transparent and informed by consultation between the Minister of Finance and Chair of the Tribunal, preferably with concurrence of the Chair.

g. The number of appointees and part-time appointees required by the FST should be determined based on needs in consultation with the Chair.

We have noted the significant conflict of interest that currently exists between the FST and FSCO. As outlined earlier, the Chair and Vice-Chair(s) of the Commission are now also the Chair and Vice-Chair(s) of the FST. In other words, those adjudicating the Superintendent's regulatory decisions are also part of the body mandated with providing regulatory services. We heard from numerous stakeholders, including the FST, that a clear separation between adjudicator and regulator should be required.

The FST, like FSCO, was established by the FSCO Act. In addition to the overlap between the Chair and Vice-Chair(s), FST staff members (i.e., not adjudicators) are FSCO employees, and are therefore accountable to the Superintendent. Because the FST does not have the status of a 'legal person', it is unable to hire its own staff or enter into contracts. FSCO, through the Ministry of Finance, supports the FST in this regard.

In order for the FST to be a fully effective and independent tribunal, it should be established through its own enabling legislation (a Financial Services Tribunal Act), and should be held accountable to the Minister of Finance. The government should fund the budget of the FST as it pertains to the tribunal's Chair, Vice-Chair and other adjudicators appointed by the Lieutenant Governor in Council. This would be as other tribunals are now funded.

> *"We agree the FST should be separate from and independent of FSRA."*
>
> ***– Ontario Pension Board***

As a means for controlling costs, FST's enabling legislation should allow it, as a creature of statute, to enter into a service agreement with FSRA to obtain administrative support. We envision the FST remaining in the physical premises of FSRA and sharing common resources such as information technology, human resources, and facilities. The FST should not incur the cost of leasing its own space and corporate support. Instead, there would be economies of scale from sharing space and resources with FSRA, and jointly billing the regulated sectors to cover those costs as is done today.

We have heard from some that this kind of resource sharing arrangement could raise concerns, or create a perception, that the FST's independence could be diminished. We do not share this view. First, the arrangement is significantly more independent than the current structure, in which the Chair and Vice-Chair(s) of the FST sit on the Commission itself. Further, a similar approach has been proposed for the CCMR. A consultation document issued on the governance and legislative framework of the CCMR states that: "*The Authority will have a Regulatory Division responsible for the policy, regulatory operations, advisory services and enforcement functions of the Authority and an independent Tribunal which will adjudicate enforcement and other administrative proceedings*"[37]. In the CCMR model, there would be a Chief Regulator and a Chief Adjudicator. This model could work equally well for FSRA. As long as the governance, oversight, staff and accountability mechanisms are separated, there would not be any negative impact from having the FST share administrative and corporate resources with FSRA.

To be clear, we would only recommend the sharing of administrative and operational resources. No FSRA personnel should be permitted to assist or otherwise participate in the adjudicative aspects of the FST. Any service and administrative support agreement between FSRA and the FST should be respectful of the separation and independence of each agency. The agreement should not require the FST to participate in anything that would compromise its full adjudicative independence.

The current FST has expressed concern that its operations are not adequately resourced. Under the current statute, the FST must be comprised of a Chair, up to two Vice-Chairs, and up to twelve qualified members. There have been significant challenges in recruiting appointees due to the tribunal's unpredictable schedule and its low per diem rates. It also appears that the appointment process is not always timely.

[37] http://ccmr-ocrmc.ca/wp-content/uploads/Commentary-English1.pdf, pg. 2.

> *"Mortgage Professionals Canada strongly endorses an enhanced Financial Services Tribunal."*
>
> ***– Mortgage Professionals Canada***

We feel that, as a separate and independent tribunal, the FST would require a full-time Chair and up to two Vice-Chairs who could continue to have part-time positions. A full-time Chair would likely be required due to the increased responsibilities associated with a separate and independent tribunal. The opportunity for a full-time position would aid in recruiting a qualified expert to lead the tribunal. The Chair, Vice-Chairs and the part-time roster of adjudicators should be appointed based on their relevant expertise. Remuneration should be commensurate with the expertise required and the candidate's adjudicative experience. As with FSRA, it will be difficult to attract and retain individuals if they are not compensated adequately.

In order to facilitate the appointment of qualified individuals with the necessary expertise, a process should be established to assess candidates and make recommendations on their suitability. A committee of the Chair and Vice-Chair(s), as well as sector representatives, could facilitate this process. For example, a representative from the Ontario Bar Association's Pensions and Benefits Law Section could participate on the appointment committee. We feel this would facilitate a transparent and consultative approach that would ensure qualified candidates would be brought forward for the Minister's consideration. The appointment of members under this process should be informed by consultation between the Minister and Chair. While concurrence of the Chair is preferable, the final recommendation would be the Minister's, with the appointment to be made by the Lieutenant Governor in Council.

Members of the FST should be appointed based on the government's Agencies and Appointments Directive. Initial terms should not extend past two to three years, with a series of appointments lasting no longer than ten years. This would be a healthy way to facilitate the orderly turnover of FST members.

As noted above, the FSCO Act allows for the appointment of 12 members in addition to the Chair and Vice-Chairs. In its submission, the FST noted that restrictions in availability and conflicts of interest make it difficult to attract qualified members among those fully employed elsewhere. This makes it more difficult for the FST to carry out the activities required by its mandate. The FST noted that an increase in the number of part-time appointees could assist with this issue. We agree that the FST requires the resources necessary to function properly. We strongly encourage the government to empower the FST through its enabling legislation to increase the number of part-time appointees beyond the current limit of 12. The ultimate number should be established through consultation with the current FST.

Recommendation 41: The FST should have authority to adjudicate matters clearly articulated in the statute, including appeals from certain statutory decisions made by FSRA.

The FST's enabling legislation should clearly articulate the matters and sectors for which the tribunal will adjudicate. The FST should continue to hear appeals regarding specific types of statutory decisions made by the regulator.

The FST's enabling legislation should be flexible, much like FSRA's, to allow for the addition of responsibilities later. With greater convergence in products and services, with intermediaries carrying multiple licences, and given the desire to minimize duplication and ambiguity of efforts, it could be possible in the future for the FST to serve as a central adjudicative body for the financial services sector as a whole.

Recommendation 42: A mechanism and/or process should be established to appropriately permit, encourage and facilitate a discourse on broad sector trends and issues between the FST and FSRA's Board of Directors.

It is important that FST members remain informed about emerging industry and regulatory trends within the financial services and pension sectors. In our view, maintaining an understanding of trends and policy issues will be vitally important to a healthy adjudicative body. The tribunal members should not be isolated from what is happening in the various industry sectors.

We would like to clarify that we do not propose that the FST should be involved with FSRA in policy discussions, nor should the FST confer with FRSA about the intention of FSRA policy while cases are being heard. Instead, the FST, FSRA and possibly other entities should periodically engage in a regulatory roundtable or policy forum to discuss matters such as changing regulatory practices, sector trends, or events in the global markets. This would serve as an avenue for individuals to hear about the same topics and engage in an open discussion.

Recommendation 43: As appropriate through legislation or otherwise, the Legislature should strive to ensure that the courts defer to the FST on policy or other matters that are within its subject-matter expertise.

We recommend that the FST's enabling statute should assign it the appropriate authorities to serve as a truly expert tribunal, worthy of having the courts defer to its decisions within its specific areas of expertise. We think the government should consider an appropriate statutory restriction on judicial scrutiny of decisions within the FST's expertise in appropriate circumstances.

Representatives of the legal community expressed concern that the FST is perceived to be lacking in specialized expertise, and provided examples of how this has resulted in applications to dispute the decisions of FSCO in the courts rather than before the FST.

If our other recommendations regarding the FST were implemented, the expertise, resources, and independence of the tribunal would improve greatly. In our view, this would go a long way to ensure that the courts will defer to the FST on policy or other matters within the tribunal's subject-matter expertise.

Implementation

Recommendation 44: The transition from the current structure to the regime contemplated in these recommendations must be carefully and strategically planned, implemented and overseen, with due regard to its potential impact on affected businesses and consumers. For this reason, we make the following general recommendations:

a. The government should proceed with the development of FSRA's enabling statute. Legislative amendments would also be needed to the statutes enforced by FSCO and DICO.

b. The proposed legislation establishing FSRA should include provisions for the establishment of an initial Board of Directors, which would be responsible for overseeing the operationalization of FSRA in conjunction with government.

c. The initial Directors of the Board could be fewer in number than the contemplated final Board of Directors, but should be sufficient in number to legally bind the ultimate Board of Directors so that they have the authority to speak for FSRA throughout the implementation stage.

d. The initial Board of Directors, in collaboration with Ministry of Finance staff, should develop and prepare a transparent implementation plan to be approved by government, and implemented by a dedicated Transition Team ("Transition Team").

e. The Transition Team should be independent of, but seek input and advice as necessary from, the existing agencies.

If the government were to accept our recommendations in whole or in part, we offer the following, high-level implementation recommendations. While we would urge the government to move as quickly as possible, we would also caution that implementation should include careful and strategic planning and it should be carried out in a way that does not result in undue disruption to business, consumers, or pension plan beneficiaries.

The establishment of FSRA would not be fully comparable with the earlier establishment of FSCO; a Transition Team with a dedicated senior leader, and accountable to the Minister of Finance, would be necessary to ensure that the implementation would be carried out smoothly, efficiently, and in a timely manner. We fear that, should the government or Ministry of Finance view this as a routine undertaking, key issues could be missed, or worse, disregarded.

> *"...it is essential that the Panel give consideration to how the new proposed FSRA structure will be implemented."*
>
> ***– Central 1 in cooperation with the Credit Unions of Ontario***

Therefore, as an initial step, the government should establish a dedicated Transition Team to begin work towards the establishment of FSRA and the FST. The first task of the Transition Team should be to produce FSRA's and the FST's enabling statutes, and consider appropriate and necessary amendments to those statutes that FSCO and DICO enforce. We suggest that the enabling statutes be drafted in a manner that allows for the early establishment of the corporations and their governance. The FSRA statute should contain transition and implementation provisions, including those that would allow for the establishment of an interim Board of Directors early in the process[38].

Once the initial Board of Directors has been established, it should work with the Transition Team, including key Ministry of Finance staff, to prepare an implementation plan. The plan should include key milestones and targets, and a strategy for engaging the regulated sectors and the public. Once finalized, the implementation plan should be provided to the Minister of Finance for review and approval. Once approved, the Transition Team should take the necessary steps to execute the plan.

Finally, while we have the utmost respect for those working at the agencies we were asked to review, they should not be included in the core Transition Team. They will undoubtedly have extremely helpful advice throughout the process, but the paradigm shift we are proposing must not be underestimated. Those deeply involved in the current system should continue to concentrate on that important role. They would not be in the position to play a key role in developing the new agencies. FSRA must be established without bias or fear of taking a new approach.

[38] We see no need to establish a full Board of Directors at this stage; however, the initial Board should have enough individuals to legally bind the full Board once established. For example, if the initial Board were to have only four members, this should not preclude it from hiring key executives, establishing corporate supports, signing a lease, etc.

APPENDIX A – Consultation Participants

Written submissions were received in response to our November 2015 Preliminary Position Paper from:

- Advocis
- Allstate
- Association of Canadian Pension Management
- CAAT Pension Plan
- Canadian Association of Direction Relationship Insurers
- Canadian Association of Financial Institutions in Insurance
- Canadian Association of Insurance Reciprocals
- Canadian Federation of Pensioners
- Canadian Life and Health Insurance Association
- CANATICS
- Central 1 Credit Union
- Coalition of Health Professional Associations in Ontario Automobile Insurance Services
- Co-operators
- Deposit Insurance Corporation of Ontario
- Desjardins
- Facility Association
- FAIR: Fair Association of Victims for Accident Insurance Reform
- FAIR – Canadian Foundation for Advancement of Investment Rights
- Financial Services Tribunal
- Healthcare Insurance Reciprocal of Canada
- Healthcare of Ontario Pension Plan
- Individual #1
- Individual #2
- Individual #3
- Individual #4
- Investment Industry Regulatory Organization of Canada
- Independent Financial Brokers of Canada
- Insurance Brokers Association of Ontario
- Insurance Bureau of Canada
- LawPro
- Life Insurance Settlement Association of Canada
- McBride Bond Christian LLP
- Mortgage Professionals Canada
- Mutual Fund Dealers Association of Canada
- Norton Rose Fulbright on behalf of Centro Mortgage Inc.
- Oliver Publishing
- OmbudService for Life and Health Insurance
- OMERS
- Ontario Association of Architects
- Ontario Bar Association, Pensions and Benefits Law Section
- Ontario Co-operative Association
- Ontario Mutual Insurance Association
- Ontario Pension Board
- Ontario Teachers' Pension Plan
- OSC Investor Advisory Panel
- Pension Investment Association of Canada
- Primerica
- Real Estate Council of Ontario
- Registered Insurance Brokers of Ontario
- Sun Life Financial

Written submissions were received in response to our April 2015 Consultation Paper from:

- Advocis
- Alliance of Concerned Life Agents of Ontario
- Allstate
- Association of Canadian Pension Management
- Association of Credit Unions of Ontario
- Association of Mortgage Investment Professionals
- Canadian Association of Accredited Mortgage Professionals
- Canadian Association of Direct Relationship Insurers
- Canadian Association of Financial Institutions in Insurance
- Canadian Association of Insurance Reciprocals
- Canadian Federation of Pensioners
- Canadian Institute of Actuaries
- Canadian Life and Health Insurance Association
- Central 1 Credit Union
- CGI Information Systems and Management Consultants
- Colleges of Applied Arts and Technology Pension
- Deposit Insurance Corporation of Ontario
- Desjardins
- Ethidex
- Facility Association
- FAIR – Canadian Foundation for Advancement of Investment Rights
- Financial Services Commission of Ontario
- Financial Services Tribunal
- Greengrass Group
- Healthcare of Ontario Pension Plan
- Independent Financial Brokers of Canada
- Individual #1
- Intact
- Insurance Brokers Association of Ontario
- Insurance Bureau of Canada
- Investment Funds Institute of Canada
- Law Society of Upper Canada
- LawPRO
- Life Insurance Settlement Association of Canada
- Mortgage and Title Insurers
- Mortgage and Title Insurance Industry Association of Canada
- Ontario Association of Architects
- Ontario Bar Association
- Ontario Cooperative Association
- Ontario Municipal Employees Retirement System
- Ontario Mutual Insurance Association
- Ontario Pension Board
- Osler Hoskin and Harcourt LLP
- Primerica
- Sun Life Financial
- TD Insurance
- Toronto Financial Services Alliance

Written submissions are publicly available upon request.
Please email FIPBmandatereview@ontario.ca to receive electronic copies.

Sector roundtable participants included:

Cooperative Sector:

- Chartered Professional Accountants
- L'Alliance des Caisses Populiares de l'Ontario
- Lerners LLP
- Ontario Cooperative Association
- Prentice Yates Clark

Mortgage Brokers Sector:

- Association of Mortgage Investment Professionals
- Canadian Association of Accredited Mortgage Professionals
- Commercial Real Estate Lenders Association of Ontario
- Independent Mortgage Brokers Association of Ontario
- Real Estate and Mortgage Institute of Canada Inc.

Credit Unions and Caisses Populaires Sector:

- Alliance of Large Credit Unions of Ontario's
- Alterna Savings/Alterna Bank
- Association of Credit Unions of Ontario
- Central 1 Credit Union
- L'Alliance des caisses populaires de l'Ontario limitée
- la Fédération des caisses populaires de l'Ontario
- Meridian

Pension Sector:

- Association of Canadian Pension Management
- Canadian Federation of Pensioners
- Canadian Institute of Actuaries
- Colleges of Applied Arts and Technology Pension
- Ontario Bar Association
- Ontario Municipal Employees Retirement System
- Ontario Pension Board
- OPTrust
- Pension Investment Association of Canada

Insurance Sector (Property and Casualty):

- Allstate
- Canadian Association of Direct Relationship Insurers
- Canadian Institute of Actuaries
- Desjardins General Insurance Group
- Facility Association
- Insurance Brokers Association of Ontario
- Insurance Bureau of Canada
- Law Society of Upper Canada
- LawPRO
- Ontario Association of Architects
- ProDemnity
- TD Insurance
- Title Insurance Industry Association of Canada

Insurance Sector (Life and Health):

- Advocis
- Canadian Association of Financial Institutions in Insurance
- Canadian Life and Health Insurance Association
- Independent Financial Brokers of Canada
- Life Insurance Settlement Association of Canada
- Sun Life Financial

Health Service Providers Sector:

- Association of Independent Assessment Centres
- Coalition of Health Professional Associations in Ontario Automobile Insurance Services
- Ontario Rehab Alliance

Informal discussions were held with the following groups and individuals:

- Alliance of Large Ontario Credit Unions
- Autorité des marchés financiers
- Alberta Treasury Board and Finance
- Bryan Davies (Chair of the Board of the Canadian Deposit Insurance Corporation and former Superintendent/CEO of the Financial Services Commission of Ontario)
- Canadian Association of Accredited Mortgage Professionals
- Canadian Association of Direct Relationship Insurers
- Canadian Association of Financial Institutions in Insurance
- Canadian Life and Health Insurance Association
- David Brown (former Chair of the Ontario Securities Commission)
- Deposit Insurance Corporation of Ontario
- FAIR – Canadian Foundation for Advancement of Investment Rights
- Financial Services Commission of Ontario
- Financial Services Tribunal
- Holly Bakke (former Commissioner of the New Jersey Department of Banking and Insurance)
- Insurance Brokers Association of Ontario
- Insurance Bureau of Canada
- Investment Funds Institute of Canada
- Investment Industry Regulatory Organization of Canada
- Mutual Fund Dealers Association
- Ontario Bar Association (Pensions and Benefits Section)
- Ontario Co-operative Association
- Ontario Mutual Insurance Association
- Ontario Securities Commission
- Ontario Securities Commission's Investor Advisory Committee
- Phil Howell (former Superintendent/CEO of the Financial Services Commission of Ontario)
- Registered Insurance Brokers of Ontario
- Sun Life Financial

APPENDIX B – Concurrent and Recent Reviews

Credit Unions and Caisses Populaires Act, 1994 – Five-Year Review[39]

In the fall of 2014, the Parliamentary Assistant (PA) to the Minister of Finance, Laura Albanese, was appointed to lead the statutory review of the *Credit Unions and Caisses Populaires Act, 1994*, which the legislation requires be conducted once every five years. The Minister of Finance appointed Osgoode Hall Law School Professor Poonam Puri as an Expert Advisor to assist Ms. Albanese in the review.

The objective of the PA's review was to make recommendations on ways to improve the legislative framework so that credit unions and caisses populaires can continue to contribute to Ontario's economy and serve their members. The PA completed her review and delivered a final report to the Minister of Finance in November 2015.

As one of many components of the review, the PA examined the roles of both FSCO and DICO. A consultation paper released in October 2014 sought comment on the following questions:

1. *Is the allocation of regulatory responsibilities between FSCO and DICO clear and appropriate?*

2. *Are any changes to the mandate or governance structure for FSCO or DICO necessary to improve regulatory oversight of the credit union sector?*

The final report outlines feedback that is similar to what we received when consulting with the sector. Specifically, there is a divide between those who see a conflict of interest between DICO's role as deposit insurer and prudential regulator; those who believe that market conduct regulation of credit unions should transfer from FSCO to DICO; and others who are happy with the status quo.

Acknowledging our ongoing review, the PA's final recommendation was that "the government consider [the mandate review expert advisory panel's] final recommendations to ensure the roles of FSCO and DICO are clarified where necessary, keeping in mind the best interests of the credit union system in Ontario".

Financial Advisory and Financial Planning Policy Alternatives[40]

Ontario has no general legal framework to oversee the activities of individuals who offer financial planning and financial advisory services. There are private organizations that compete to offer proficiency courses and accreditation, but membership is not mandatory.

[39] http://www.fin.gov.on.ca/en/consultations/cu-cp/.

[40] http://www.fin.gov.on.ca/en/consultations/rfp.html.

To better understand the potential gap in consumer protection, the Ontario government committed in 2013 to investigate the merits of more tailored regulation of individuals engaged in financial planning and the provision of financial advice. Accordingly, in 2014, the Ministry of Finance conducted a stakeholder consultation which received participation from both industry and consumer advocacy groups.

Subsequently, the Ontario government appointed the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives ("Expert Committee"), with a mandate to provide advice and recommendations regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and, the appropriate scope of such regulation.

In June 2015, the Expert Committee released its Initial Consultation Document soliciting input on specific questions regarding the scope of financial advice and financial planning; adequacy of the current regulatory regime and possible changes; conflicts of interest; consumer harms and benefits; and information for consumers. The initial consultation concluded in September 2015 and received 107 submissions from interested parties. The Expert Committee will release its preliminary policy recommendations this spring. The preliminary policy recommendations will be subject to further stakeholder input. The Expert Committee is expected to deliver its final report to the government in fall 2016.

The preliminary policy recommendations had not been released at the time of our review; however, we have met with the Expert Committee on several occasions to discuss the potential linkages between their review and ours.

Office of the Auditor General of Ontario – 2014 Annual Report

Each year, the Auditor General (AG) issues an Annual Report that includes, among other things, various value-for-money audits. According to the AG, "value-for-money (VFM) audits are intended to examine how well government ministries, organizations in the broader public sector, agencies of the Crown and Crown-controlled corporations manage their programs and activities". Section 3.03 of the AG's 2014 Annual Report included an evaluation of FSCO.

The AG set out to examine FSCO's regulation of pension plans, cooperative corporations and financial service providers, specifically insurers and their sales agents, mortgage brokers, credit unions and caisses populaires, and loan and trust companies. The intent was to assess whether FSCO's systems and procedures for regulating these sectors are effective. The audit focused on FSCO's activities in fiscal years 2011/12, 2012/13 and 2013/14.

In respect to pensions, the AG noted a concern with the growing number of defined-benefit pension plans that are not fully funded and the risk they pose for the Pension Benefits Guarantee Fund (PBGF). The AG also found that the Superintendent of Financial Services has limited powers under the *Pension Benefits Act* (PBA) to deal with administrators of severely underfunded plans, particularly when compared with the powers and authorities of the Office of the Superintendent of Financial Institutions at the federal level.

The AG recommended that FSCO make better use of the powers it does have under the PBA and improve its monitoring of the under-funded plans. According to the AG, FSCO only conducted on-site examinations of 11 per cent of under-funded plans over a three-year period. During these examinations, the AG asserted that FSCO did not adequately cover significant issues such as whether investments complied with federal law, and noted that FSCO's efforts to monitor investments by administrators were weak.

To review FSCO's oversight of the regulated financial services sectors, the AG focused attention on FSCO's Licensing and Market Conduct Division (LMCD). The AG highlighted the following key findings at the time of review:

- FSCO provided weak oversight of cooperative corporations, despite their ability to raise significant amounts of money from the public. Additionally, FSCO did not recover all of its costs related to cooperatives.

- Monitoring, including investigations of life insurance agents, was insufficient. FSCO did not verify whether agents had valid errors and omissions insurance, and renewed licences of those who had been disciplined by other regulators, had declared bankruptcy, or had criminal records.

- Complaints were delayed and enforcement action was weak. Complaints about such criminal offences as fraud and forgery were seriously delayed and the resulting investigations led to weak enforcement action. In some cases, investigations took years to complete.

- FSCO's LMCD only conducted proactive examinations in the mortgage brokerage sector; all other investigations were reactive in response to complaints.

- FSCO lacks information-sharing mechanisms with other regulators to ensure it is notified when an agent is disciplined by another entity.

- FSCO should explore opportunities to transfer oversight responsibilities to SROs.

The full text of Section 3.03 of the AG's report can be found here: http://www.auditor.on.ca/en/content/annualreports/arreports/en14/303en14.pdf.

International Monetary Fund's 2014 Financial Sector Assessment Program

The International Monetary Fund observed, in its 2014 Financial Sector Assessment Program Report, that Quebec's AMF operates in line with international best practice and has adequate resources to conduct effective risk-based market conduct regulation. By contrast, the IMF said FSCO is constrained by limited resources and that it has adopted both a reactive and industry-wide risk-based approach to supervision of federally incorporated insurers and the large number of insurance intermediaries it regulates. With respect to regulation of intermediaries, the IMF said FSCO's approach "is more reactive, mainly in response to self-declarations of non-compliance or complaints/information received." In the case of property and casualty insurance intermediaries, the IMF said that the lack of resources has constrained the ability of FSCO and the Registered Insurance Brokers of Ontario to consistently monitor the timing, delivery and content of point of sale material.

The Report stated "It is essential that FSCO be equipped with adequate resources and financial capacity to deal with the size and diversity of the Ontario marketplace." The IMF recommended the government remove FSCO from its fiscal controls and administrative guidance to strengthen its autonomy.

The full text of the 2014 Financial Sector Assessment Program can be found here: http://www.imf.org/external/pubs/ft/scr/2014/cr1472.pdf.

A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules – The Report of the Expert Commission on Pensions

The Expert Commission on Pensions was established in November 2006 in response to the increasing challenges facing pension plans and the need to reform Ontario's pension legislation.

The government has been implementing regulatory reforms reflecting the Expert Commission's recommendations in stages since the passage of key legislation in 2010; however, to date the Province has not yet put many of the recommendations related to the regulator in place.

The report recommended the creation of a separate independent pension regulator with budgetary, staffing and other powers of self-management comparable to those of the Ontario Securities Commission. It would assist in the development of pension policy by collecting data and contributing its experienced-based insights into the operation of the regulatory system.

The report recommended that the powers of the Superintendent be enhanced in a number of ways, which included specifying required actuarial assumptions, reviewing the effects of a plan split, merger or asset transfer, and establishing benchmarks to identify plans at risk of failure.

The report also recommended the creation of a new Pension Tribunal of Ontario that would have exclusive, final and binding jurisdiction over all PBA-related matters, and be comprised of a Chair who is a jurist of stature, two members with a background in law and two members with a background in actuarial science. It was recommended that the tribunal have all powers necessary to dispose of matters before it.

For greater detail, please refer to the full text of the Report of the Expert Commission on Pensions, available here: http://www.fin.gov.on.ca/en/consultations/pension/report/.

APPENDIX C – Trends in the Regulated Sectors

To assist with our review of the FSCO, FST and DICO mandates, the Ministry of Finance engaged a consulting firm to provide an analysis of financial services sectors and regulation, as well as more specific sectoral trends. In addition, we heard from a number of groups and individuals that provided extremely helpful insight into where the future of financial services, and their regulation, are heading.

- **Emerging competition from non-traditional providers of financial services and emerging multi-product distributors**
    - Advances in technology are providing new entrants with fast access to the market.
    - New participants (e.g., Google, Wal-Mart, Home Depot and Samsung) may attempt to sell new financial services products and services to existing clients and thereby could change and disrupt traditional distribution channels. The regulator and market participants must be prepared to respond in a way that protects and empowers consumers.
    - Local entrepreneurs may turn more to crowd funding than traditional lenders to raise money. Newly relaxed rules will allow businesses to start soliciting once they have registered with a securities regulator.

- **Technological innovations that could benefit consumers, yet pose new risks**
    - Many see technology as the catalyst for consumer-focused changes emerging within the financial services sector. Those consumers will expect regulators to be flexible and supportive of this changing environment. They will expect the sort of oversight that does not stifle innovation. Recent changes include usage-based auto insurance and autonomous vehicles, increasingly sophisticated data analytics, the rise of electronic commerce and social media.
    - A topical example of this desire for regulators to be adaptable to consumer demands is the popularity of the sharing-economy with apps such as Uber, Rover, and Airbnb.
    - The advancement of automotive technology (e.g., telematics) may lead to disruptive changes in the way automobile insurance is underwritten, priced, and distributed. For example, consumers may purchase insurance from the vehicle's manufacturer or dealer.

- **Consolidation among major market players**
  - There has been a steady trend towards consolidation within the credit union sector in Ontario and Canada. In many cases, this is in response to sustainability issues facing the sector. This trend has led to larger deposit-taking and lending institutions.
  - Health service providers, the newest group of service providers to be regulated in their dealings with auto insurers, have been consolidating in response to higher regulatory costs. Small practitioner-owned clinics will increasingly compete with much larger corporate entities.

- **New entrants and services outpacing existing regulations**
  - There has been an observable increase in non-standard services, such as syndicated mortgage promoters and non-bank lenders. These services are encompassed by existing legislation but there are those who feel the regulator has not applied adequate scrutiny. Regulators will have to become increasingly nimble and responsive to emerging gaps in monitoring and enforcement.

- **Integration and coordination of regulatory activities both nationally and globally**
  - Canada and other jurisdictions have been moving toward a more coordinated approach to financial services regulation and regulatory communication. This includes the development and adoption of international regulatory and market supervision standards; increased participation in national or international regulatory and supervisory bodies; and agreements (e.g., memorandum of understanding) between regulators.

- **Centralization of prudential oversight to better monitor systemic risk**
  - There has been an international trend towards a twin-peaks approach to financial services regulation, whereby responsibility for market conduct and prudential regulation is assigned to separate entities. The United States, United Kingdom and Australia have all adopted this approach.
  - This trend has been driven by the financial crisis in 2007/08, which resulted in a need for more focused and dedicated regulation and supervision of solvency concerns to mitigate systemic risk.

- **Global competition, and the threat it poses for traditional pension plans and the viability of Ontario's Pension Benefits Guarantee Fund**
    - Changes in economic conditions, new free-trade agreements, and the decline in North America of the manufacturing, resource, media and unionized retail sectors is creating unstable conditions for certain major employers and the funding levels of their Canadian pension plans. Historically low interest rates have further compromised the funding status of pension plans, leaving Ontario's Pension Benefits Guarantee Fund exposed to the potential for more costly claims than it could possibly handle.

- **Rising expectations amid inconsistent rules regarding fee disclosure and the duty of care expected of sales intermediaries**
    - Consumers and certain market participants are increasingly aware of the difference in disclosure and transparency requirements placed upon intermediaries in Ontario's financial services marketplace and the higher standards required in other nations. Consumers, investors and their advocates will continue to demand common standards across these similar industries.

- **An international trend away from regulation of the pricing of automobile insurance while consumers seek more personalized coverage options**
    - Many jurisdictions, particularly throughout the United States and Europe, have moved away from the prior approval system that is used to regulate auto insurance rates in Ontario. We heard from one U.S. jurisdiction that it experienced auto insurance rate reductions for nearly 80 per cent of drivers following the introduction of a more flexible system.
    - It has been predicted that jurisdictions will continue to move away from this approach, which has been described as inflexible and unnecessarily costly. A large body of academic research has revealed that rate regulation actually leads to higher costs than consumers would pay in a competitive marketplace.
    - Increasing consumer demands for personalized services, products and price will continue to drive market innovation and require regulators and governments to reconsider existing policies and regulation (e.g., usage-based insurance will continue the trend towards personalized rates and will require regulatory flexibility).

APPENDIX D – Overview of the Agencies

Financial Services Commission of Ontario and Financial Services Tribunal – Structure and Mandate

The *Financial Services Commission of Ontario Act, 1997* establishes the Financial Services Commission of Ontario as a commission composed of five persons: the Chair and two Vice-Chairs of the Commission, the Director of Arbitrations (appointed under the *Insurance Act*) and the Superintendent of Financial Services. The Chair and two Vice-Chairs of the Commission are, by virtue of their office, also the Chair and Vice-Chairs of the FST.

The Superintendent of Financial Services is appointed under Part III of the *Public Service of Ontario Act, 2006*. The FST Chair and Vice-Chairs and Director of Arbitrations are appointed by the Lieutenant Governor in Council.

The *FSCO Act* provides that the purposes of the Commission are to:

(a) provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors

(b) make recommendations to the Minister on matters affecting the regulated sectors

(c) provide the resources necessary for the proper functioning of the FST.

1. *Automobile Insurance Rate Stabilization Act, 2003*
2. *Co-operative Corporations Act*
3. *Compulsory Automobile Insurance Act*
4. *Credit Unions and Caisses Populaires Act, 1994*
5. *Financial Services Commission of Ontario Act, 1997*
6. *Insurance Act*
7. *Loan and Trust Corporations Act*
8. *Mortgage Brokerages, Lenders and Administrators Act, 2006*
9. *Motor Vehicle Accident Claims Act*
10. *Prepaid Hospital and Medical Services Act*
11. *Registered Insurance Brokers Act*
12. *Pension Benefits Act*

The Superintendent is responsible for granting various licences and approvals as set out in the FSCO-related acts. As part of that, the Superintendent has extensive powers and duties in each act, including: issue guidelines, conduct inquiries, examinations and inspections, require production of records and information, compel evidence and attendance of witnesses, search and seize records, issue, revoke or suspend licences and impose associated conditions, conduct prosecutions, impose administrative penalties and issue various orders.

The FST is empowered to hear certain appeals and review decisions of the Superintendent and DICO as set out in the FSCO-related acts. The FST has exclusive jurisdiction to exercise the powers conferred on it and determine all questions of law and fact in any proceeding before it. The FST may make its own rules of practice and procedure to be observed, determine what constitutes adequate public notice, conduct any necessary inquiry or inspection and compel evidence and attendance of witnesses.

The Director of Arbitrations is empowered to appoint mediators and arbitrators under the *Insurance Act* to deal with disputes concerning entitlement to or quantum of statutory accident benefits. The Director may hear appeals of arbitral decisions and has exclusive jurisdiction to determine all questions of fact and law and issue various orders.

Deposit Insurance Corporation of Ontario – Structure and Mandate

The Deposit Insurance Corporation of Ontario is governed by the *Credit Unions and Caisses Populaires Act, 1994.* Originally established in 1977 as the Ontario Share and Deposit Insurance Corporation, it is a corporation without share capital. The Corporation is governed by a Board of Directors, comprised of not more than nine persons appointed by the Lieutenant Governor in Council.

The duties of the board are to manage or supervise the management of the affairs of the Corporation and to perform such additional duties as may be imposed by the *Credit Unions and Caisses Populaires Act, 1994*, prescribed by the regulations or imposed by its by-laws.

The board has administratively delegated some of its duties to the Chief Executive Officer, a staff position within the Corporation that has no recognition in the legislation. The Chief Executive Officer is not a member of the Board.

The objects of the corporation are to:

(a) provide insurance against the loss of part or all of deposits with credit unions;

(b) promote and otherwise contribute to the stability of the credit union sector in Ontario with due regard to the need to allow credit unions to compete effectively while taking reasonable risks;

(c) pursue the objects set out in clauses (a) and (b) for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Corporation to loss;

(d) collect, accumulate and publish such statistics and other information related to credit unions as may be appropriate;

(e) perform the duties provided under this Act or the regulations or do anything the Corporation is required or authorized to do under this Act or the regulations; and

(f) carry out such other objects as the Minister may specify in writing or as may be prescribed.

In addition, the Corporation has ancillary powers to do all things necessary or incidental to its objects which are enumerated in legislation.

The Corporation may, with the approval of the Minister, establish and acquire subsidiaries.

Subject to the approval of the Lieutenant Governor in Council, the Corporation may make by-laws on specific matters, including prescribing standards of sound business and financial practices for credit unions, defining the expression “deposit” for the purposes of deposit insurance, and governing the declaration and payment of premium rebates.

The Corporation is required to maintain a Deposit Insurance Reserve Fund to pay for deposit insurance claims, the costs associated with the continuance or orderly winding up of credit unions in financial difficulty, financial assistance provided to credit unions under administration or being wound up, and the costs of the Corporation.

Deposit insurance premiums as set out in the regulations, are collected by the Corporation and deposited in the Deposit Insurance Reserve Fund.

The Corporation may order a credit union subject to supervision or administration based on corresponding criteria found in the legislation. As administrator, the Corporation has the power to conduct the operations of a credit union or require the credit union to amalgamate, dispose of assets and liabilities, or to be wound up. The Corporation can also be appointed as liquidator.

Since 2009, the Corporation has also been given the power to issue orders related to solvency matters such as investments, liquidity, and capital adequacy. It can also levy administrative monetary penalties. It approves material purchase and sale transactions and the acquisition of subsidiaries by credit unions. The Corporation has examination powers and also has the power to issue a capital adequacy guideline which has the force of law.

APPENDIX E – Final Recommendations

Mandate

1. A new regulatory authority should be created, and we suggest it be called the Financial Services Regulatory Authority (FSRA).

2. FSRA should operate as an integrated regulator of financial services with responsibility for regulation of market conduct, pension plans, and prudential matters; with each Division dealing with its particular subject matter but operating in a coordinated and consistent manner.

3. The structure and governance of the regulator should be flexible enough to accommodate the addition or removal of responsibilities as determined by its enabling legislation.

4. The enabling statute should ensure clarity and flexibility, and assign to FSRA comprehensive authority and accountability for all matters within its jurisdiction. The statute should include a specific statement of principles, a specific statement of purpose, and the statutory authorities required to fulfill the agency's regulatory mandate. FSRA's mandate should reflect a balance of interests and desired outcomes for all sectors overseen:

    a. In the context of financial services, FSRA should be directed to provide strong and effective consumer protection while fostering a strong, innovative, vibrant and competitive financial services sector.

    b. In the context of pensions, FSRA should be directed to protect beneficiaries while promoting a strong and sustainable pension system that would operate in an efficient and fair manner, balancing the interests of all parties.

5. The structure of FSRA's enabling statute should be explicitly informed by three key themes:

    a. Mandate and Purpose.

    b. Principles and Objectives.

    c. Tools and Means.

6. The mandate should require FSRA to utilize its statutory authorities to adequately, firmly and consistently discourage fraudulent activities or behaviours that mislead or harm consumers and pension plan beneficiaries.

7. FSRA's mandate should be informed by the OECD's G20 High-Level Principles.

8. FSRA should be required to develop, seek public comment, and publish an annual Statement of Priorities, which would include the Statements of Approach described in Recommendation 27(c).

9. FSRA's mandate should include a requirement that it undertake its activities in a proactive manner.

10. In order to remain relevant and flexible, the mandate of FSRA should include a commitment to encourage innovation and transparency within the regulated sectors. FSRA will need to stay abreast of those issues that could compromise its ability to satisfy its mandate.

11. FSRA's mandate should include an obligation to work and cooperate with other regulators (including self-regulatory organizations) to coordinate regulatory actions, to avoid regulatory overlap and arbitrage and to ensure that consumers and pension plan beneficiaries can be confident in their dealings within the regulated sectors.

12. FSRA should have:

    a. A regulatory framework and approach that would promote consistency across all regulated sectors.

    b. An enhanced mechanism for sharing pertinent information among regulators to ensure that disciplinary and enforcement actions imposed by another regulator or another component of FSRA are appropriately applied elsewhere, and that the development of new rules is coordinated to ensure fairness and consistency.

    c. Those powers and tools necessary to ensure the consistent application of what is set out above.

13. FSRA should be obliged by statute to operate in a way that is as transparent, efficient and effective as possible, and should pursue initiatives that would promote confidence in the regulatory regime and the financial sectors in which FSRA will operate.

14. Any existing or new self-regulatory organizations (SROs) operating within the financial services sectors as provided for under FSRA's enabling legislation should be accountable to FSRA, and FSRA should be given the authority to delegate regulatory functions to an SRO. If existing legislation requires amendments to give effect to these outcomes, they should be pursued.

15. The government should consider transferring to FSRA the statutory responsibility now residing with the Ministry of Government and Consumer Services for oversight of such financial service providers as payday lenders and loan brokers, consumer credit reporting agencies, debt and credit counsellors, and guarantee and warranty insurers.

16. The government should eliminate overlapping responsibility for the regulation and nurturing of co-operative corporations.

    a. The Ministry of Government and Consumer Services should be responsible for incorporating the enterprises and offering the sort of practical advice available to other businesses.

    b. The regulation of co-operative enterprises should be left to those that are responsible for the sectors in which they operate.

    c. Offering statements used by cooperatives to raise capital from the public should be regulated in a manner consistent with similar offering documents used to raise capital in the Province.

17. The government should require that documents issued to raise capital for syndicated mortgage investments be subject to the same level of regulation as the securities regulator applies to other offering documents used to raise capital in the Province.

18. The administration and funding of the Motor Vehicle Accident Claims Fund should not be under the authority of FSRA.

    a. The government should work with industry to transfer responsibility to the industry-operated Facility Association.

    b. A practical solution for addressing any unfunded liability should be part of the transfer.

Governance

19. FSRA should be a self-funded corporation without share capital, operationally independent of government, yet accountable to the Legislature through the Minister of Finance.

20. FSRA should be empowered to hire its personnel from outside of the Ontario Public Service's collective agreements, compensation restraints, and other hiring restraints to support its ability to recruit professionals and industry expertise as it deems necessary.

21. FSRA should have a skills-based Board of Directors appointed by the Lieutenant Governor in Council. The Board would oversee FSRA's operations and the Board should have the authority to appoint a Chief Executive Officer (CEO).

    a. The CEO should oversee other managers and report to the Board, but neither the CEO nor those other managers should have seats on the Board.

    b. The Board Chair should report to the Minister of Finance, and meet specific requirements set out in its enabling statute and a Memorandum of Understanding.

    c. The Board of Directors should approve and publish a strategic plan, set regulatory policy, and monitor the activities of FSRA to ensure compliance with its mandate.

    d. Board appointments should be guided by a clearly articulated matrix for identifying necessary skills, competency and expertise, not by a strict requirement to achieve a balance of representation from regulated sectors. This skills matrix should be made public and a committee of the Board should propose candidates for the Board in accordance with the best corporate governance practices.

    e. The Board should meet at least once per year with those sectors overseen by FSRA.

22. FSRA's Board should be given rule-making authority and have the scope of that authority delineated clearly in statute.

    a. A process for setting rules should include a requirement for significant public input and dialogue, and these and other requirements for the rule-making process should be set out clearly in statute.

    b. Rules should be subject to timely review by the Minister of Finance, with the understanding that those rules would come into force unless explicitly rejected.

23. Using its rule-making authority, FSRA's Board should be obliged and empowered to decide how auto insurance rates are to be regulated. This must be done in alignment with Recommendation 27(c).

24. FSRA should be provided authority to retain funds from penalties for specific, articulated purposes, such as supporting a fraud compensation fund (see Recommendation 31), hiring a lawyer to sue the perpetrators of fraud to recover money for the victims, and/or to pay for increased consumer outreach and education.

Structure

25. FSRA should be divided into three Divisions, each with its own Superintendent: Market Conduct, Prudential Oversight, and Pensions. The Market Conduct and Prudential Divisions should include separate units responsible for overseeing various financial services sectors or operational functions within FSRA's mandate. The Board should appoint the Superintendents upon the recommendation of the CEO.

    a. Prudential regulation of credit unions and caisses populaires should be transferred from the Deposit Insurance Corporation of Ontario to FSRA, but not until FSRA is fully operational after the transfer of other responsibilities from the Financial Services Commission of Ontario.

    b. FSRA's prudential oversight activities should be insulated from market conduct oversight activities, as it is in Quebec's Autorité des marchés financiers model.

    c. FSRA should only act as a prudential regulator for a limited and defined class of entities, such as small farm mutual insurers, Ontario incorporated credit unions, and the captive or reciprocal insurers that are based in, and do most of their business in Ontario, but which would not be eligible for regulation by the federal Office of the Superintendent of Financial Institutions.

26. Operationally, FSRA should be led by an Executive Team consisting of the three Superintendents and other executives, such as a Chief Administrative Officer, Chief Legal and/or Enforcement Officer, all reporting directly to the CEO.

27. To facilitate its mandate, FSRA's three Divisions should be organized into distinct functional units, like the bays in a vehicle service garage, with each unit responsible for specific operations and/or sectors, all operating and pursuing a consistent, coherent regulatory approach.

    a. Each functional unit within a FSRA Division should be led by an individual with expertise in the specific sector assigned to the unit. This individual would ensure that the activities of his or her area are conducted in a transparent manner, and would be responsible for reporting to the appropriate Superintendent, and ultimately the Chief Executive Officer.

    b. While there should be communication and collaboration among the functional units, the operation of each functional unit should be insulated from the resource demands of the others.

    c. The CEO should ensure that each Division develops, annually, a Statement of Approach for how it will achieve its mandate within FSRA in consultation with affected stakeholders. The Statements of Approach should be submitted to FSRA's Board for review and approval prior to publication.

    d. To maximize efficiency and control costs, an underlying corporate infrastructure should provide a set of shared services, such as for communications, legal services, information technology, and finance.

28. FSRA should be required to provide a mechanism to ensure that the perspective of consumers and pension plan beneficiaries is considered in all of its policy-making and actions. Specifically, this should include the creation of a separate 'Office of the Consumer' within FSRA to perform this and related functions. It should have enterprise-wide responsibilities to ensure that individuals' perspectives are considered in all regulatory endeavors FSRA undertakes. It should not serve as a dispute or complaint resolution service.

29. Ontario's deposit insurance scheme for credit unions and caisses populaires should be administered by an entity that is operationally separate from FSRA.

    a. DICO should continue to maintain authority for the deposit insurance scheme, as well as other responsibilities not directly related to prudential oversight.

    b. DICO could continue to report to a separate Board of Directors, but serious consideration should be given to a modified governance structure where FSRA's Board of Directors could also serve as DICO's Board of Directors.

    c. The CEO should be appointed by DICO's Board of Directors.

30. The Pension Benefits Guarantee Fund should not be administered or overseen by FSRA.

31. FSRA should be directed to identify and seek to eliminate gaps in protection for consumers who might be defrauded by licensed sales agents, brokers and corporations. FSRA should have the authority to establish a fraud compensation fund such as exists in Quebec if or where enhancements to mandatory insurance coverage would not fully close current gaps.

Tools, Means and Regulatory Approach

32. FSRA should have explicit authority to play a role in national regulatory organizations and the obligation to report back to FSRA's Board of Directors.

33. FSRA should be empowered to retain professional resources with experience in the regulated sectors.

34. FSRA's authority should be sufficient to require transparency within the regulated sectors, including the disclosure of all costs of products and services, as a means of consumer protection.

35. FSRA's regulatory approach should be grounded in clearly articulated principles, both risk-based and outcomes-based. It should not be unduly rule-bound or restrictive.

36. FSRA should be given authority through appropriate legislation to levy Administrative Monetary Penalties in any sector it regulates, and to provide consistent enforcement tools within its jurisdiction.

37. FSRA must be provided with powers and tools that would enable it to ensure effective, consistent and timely enforcement. This should include a mechanism that would protect the confidentiality of those who “blow the whistle” on improper activity.

38. FSRA should enhance its public engagement and communications to ensure market participants and consumers are aware of its activities.

39. Professional and/or accredited FSRA staff should be required to meet all applicable standards of practice in carrying out their activities (e.g., actuaries should meet all standards of practice as set by the Canadian Institute of Actuaries).

The Financial Services Tribunal (FST)

40. The FST should be established by statute as an independent tribunal with its own budget funded by government.
    a. The FST should be empowered through its enabling legislation to enter into an agreement with FSRA to provide it with administrative support.
    b. The FST should be administratively supported by FSRA in a manner that respects and facilitates its independence.
    c. The FST should be led by a full-time Chair, plus up to two Vice-Chairs, and it should be supported by a roster of part-time adjudicators with appropriate expertise, appointed by Lieutenant Governor in Council.
    d. A process involving input from third parties should be established to help the Minister of Finance assess candidates for quality and expertise, and thereafter make recommendations on their suitability.
    e. Adjudicators should be appointed for initial terms of two to three years with a limit of ten years in total to facilitate an orderly turnover of membership.
    f. The appointment process should be transparent and informed by consultation between the Minister of Finance and Chair of the Tribunal, preferably with concurrence of the Chair.
    g. The number of appointees and part-time appointees required by the FST should be determined based on needs in consultation with the Chair.

41. The FST should have authority to adjudicate matters clearly articulated in the statute, including appeals from certain statutory decisions made by FSRA.

42. A mechanism and/or process should be established to appropriately permit, encourage and facilitate a discourse on broad sector trends and issues between the FST and FSRA’s Board of Directors.

43. As appropriate through legislation or otherwise, the Legislature should strive to ensure that the courts defer to the FST on policy or other matters that are within its subject-matter expertise.

Implementation

44. The transition from the current structure to the regime contemplated in these recommendations must be carefully and strategically planned, implemented and overseen, with due regard to its potential impact on affected businesses and consumers. For this reason, we make the following general recommendations:

    a. The government should proceed with the development of FSRA's enabling statute. Legislative amendments would also be needed to the statutes enforced by FSCO and DICO.

    b. The proposed legislation establishing FSRA should include provisions for the establishment of an initial Board of Directors, which would be responsible for overseeing the operationalization of FSRA in conjunction with Government.

    c. The initial Directors of the Board could be fewer in number than the contemplated final Board of Directors, but should be sufficient in number to legally bind the ultimate Board of Directors so that they have the authority to speak for FSRA throughout the implementation stage.

    d. The initial Board of Directors, in collaboration with Ministry of Finance staff, should develop and prepare a transparent implementation plan to be approved by government, and implemented by a dedicated Transition Team ("Transition Team").

    e. The Transition Team should be independent of, but seek input and advice as necessary from, the existing agencies.

APPENDIX F – Proposed FSRA Organizational Structure