

CONSUMER ADVISORY PANEL

August 2021

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON
M2N 6S6

Re: FSRA Consultation on Credit Union Market Conduct Framework Approach and Interpretation Guidance

The Financial Services Regulatory Authority of Ontario's **Consumer Advisory Panel** (the "CAP") is pleased to participate in FSRA's consultation on its [Proposed Market Conduct Framework \(MCF\) Approach and Interpretation Guidance](#). The CAP is an initiative of FSRA to help inform FSRA's work and to ensure that consumer, member, and beneficiary perspectives inform FSRA's direction and decisions. This is a key priority for FSRA and an important part of FSRA's stakeholder engagement process. The CAP also supports FSRA's Consumer Office to provide an effective challenge function within FSRA.

This submission focuses on a particular topic in the Interpretation portion of the guidance: **complaints handling** (p. 6). Since the CAP's inaugural meeting in March 2020, complaints handling – also known as *complaints resolution* or *dispute resolution* – has been a topic of significant interest. Complaints resolution is a primary element of consumer protection frameworks and it serves an important function in financial services systems all over the world. In fact, the G20-OECD Task Force on Financial Consumer Protection has identified complaints resolution ("Complaints Handling and Redress") as one of its High-Level Principles on Financial Consumer Protection.¹ Furthermore, the World Bank has released a number of reports on best practices for complaints resolution in the financial services sectors.² The CAP firmly believes that adequate complaint-handling mechanisms are central to consumer protection in FSRA's regulated sectors.

At a basic level, the CAP's position in this submission is that FSRA should bolster its complaint-handling requirements for credit unions while respecting the diversity of the

¹ OECD, G20 High-Level Principles on Financial Consumer Protection (October 2011): <https://www.oecd.org/daf/fin/financial-markets/48892010.pdf>.

² For example, see "[Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman](#)" (2012), "[Good Practices for Financial Consumer Protection](#)" (2017), and "[Complaints Handling within Financial Service Providers](#)" (2019).

Credit Union sector. The CAP is encouraged by the fact that FSRA's guidance sets out complaints resolution as a subject that must be addressed through a credit union's standards of business conduct and ethical behaviour and its code of market conduct. However, the CAP also believes that the guidance does not go far enough to align FSRA's complaint-handling requirements with best practices. As we will suggest in what follows, it is possible for FSRA to strengthen its complaint-handling expectations for credit unions while still regulating in a principles-based manner.

We should note that, more fundamentally, the CAP has concerns with FSRA's approach to principles-based regulation (PBR), which includes this guidance. The CAP believes that FSRA must better articulate its understanding of PBR for external stakeholders, including the relationship between principles and outcomes. Moreover, it is important for FSRA to show that the current regulatory environment in Ontario is suitable for PBR. In order for PBR to succeed – which, ultimately, means protecting the rights and interests of consumers – FSRA must be able to enforce its regulatory standards.

While the CAP believes that more prescriptive requirements would be appropriate for credit unions' complaint-handling processes, the CAP also recognizes that FSRA has a strong desire to regulate in a principles-based manner. Thus, our principal recommendation to FSRA – outlined later in this submission – is sensitive to FSRA's mandate and the fact that FSRA is seeking feedback on principles-based guidance in particular. However, we would like to outline the complaint-handling features that we believe should exist in Ontario's credit union system:

1. Credit unions should have an internal dispute resolution (IDR) process to assist members with their complaints.
2. Credit unions should ensure that the handling (and investigation) of complaints through this IDR process is accessible, fair, timely, transparent, and effective.
3. In the investigation of complaints, credit unions should look for patterns of breaches by the individual employee, the branch, and/or the credit union. If there is reason to suspect that the breach is not unique, then a full investigation of potential systemic issues would be required with the suspected breach, the steps undertaken to investigate, and the outcome of the investigation all reported to FSRA.
4. Credit unions should offer members access to a truly independent external dispute resolution (EDR) body, at minimal cost to members, when complaints are not adequately resolved by the credit union's IDR process.

As will become clear in this letter, more prescriptive requirements – such as (3) and (4) listed above – exist for many deposit-taking institutions in other parts of Canada. The CAP believes that these system features *should* exist in Ontario's credit union sector.

However, we understand that FSRA may view requiring some of these features as being inconsistent with its principles-based approach. We also understand that some policy options are not feasible given the current legislative and regulatory framework in which FSRA operates. (However, the CAP urges system stewards, such as the Ministry of Finance and FSRA, to consider whether they have built a legislative and regulatory framework that provides members the protections that are provided to members in other Canadian jurisdictions.) As a result, we offer a recommendation that is based on just the first two features – (1) and (2) – outlined above. While all four of the above features are important for complaints resolution, our recommendation in this letter is narrower in order to respect the potential constraints on FSRA’s policy options at this time.

Our submission has three sections. The first section sets out the CAP’s understanding of FSRA’s proposed approach to complaints resolution in the credit union sector. The second section briefly reviews complaint-handling systems for credit unions in some other Canadian jurisdictions. The third section advances the CAP’s principal recommendation to FSRA.

1. FSRA’s Proposed Approach to Complaints Resolution

FSRA addresses the topic of complaints resolution at a high level in its guidance. The relevant section is as follows (p. 6):

To achieve this, a credit union’s standards of business conduct and ethical behaviour and its code of market conduct must, at minimum, address the following subjects:

- a) Access to deposits.*
- b) Mis-selling.*
- c) Tied selling.*
- d) Misrepresentation of information to members / customers.*
- e) Disclosure of material information.*
- f) Complaints handling.*
- g) Conflicts of interest, with an emphasis on managing / avoiding conflicts of interest.*
- h) The protection of member / customer information.*

As stated here, a credit union’s (i) standards of business conduct and ethical behaviour and (ii) code of market conduct must *address* complaints handling. However, the

guidance does not specify the manner in which or the extent to which complaints handling must be addressed.³

Simply requiring “Complaints handling” makes it possible (advertently or inadvertently) for a credit union to address complaints resolution in a limited manner. For example, a credit union’s code of market conduct could simply state that the credit union has a complaint-handling process – without offering any further details about the complaint-handling process. If the credit union complies with its market conduct code – and, thus, has a complaint-handling process, even an inadequate one – it could satisfy FSRA’s requirement in theory. This would be a problematic outcome. Thus, as we will argue in the third section, FSRA must strengthen its approach to complaints resolution by providing more regulatory direction in terms of the details of the complaints resolution process that is required.

2. Complaint-Handling Systems in Other Canadian Jurisdictions

This section will briefly explore complaint-handling systems for credit unions in a few other Canadian jurisdictions. The aim of this section is to demonstrate that FSRA’s proposed approach to complaints resolution does not guarantee the same level of member protection through complaints resolution as some other Canadian jurisdictions. While the CAP appreciates that provincial context is important, including the diversity of Ontario’s credit union and caisses populaires system, proportionate protection of Ontario residents within the existing legislative and regulatory framework is paramount. In other words, the CAP urges FSRA to responsibly prioritize credit union member outcomes.

Federally regulated credit unions are required to make both IDR and EDR available to their members.⁴ The Financial Consumer Agency of Canada’s (FCAC) two regulatory guidelines on complaints resolution, *CG-12 Internal dispute resolution* and *CG-13 Application guide for external complaints bodies*, detail the standards that credit unions

³ The CAP acknowledges that there is currently a distinct source of complaint-handling requirements: [section 116 of O. Reg. 237/09](#) under the *Credit Unions and Caisses Populaires Act, 1994*. It is imperative that these requirements continue to exist in a regulation in the (new) *Credit Unions and Caisses Populaires Act, 2020*. However, it is important to note that the existence of these requirements, while important, does not alter the CAP’s recommendation in this submission. The requirements set out in section 116 of O. Reg. 237/09 do not include principles that guide the establishment and maintenance credit unions’ complaint-handling processes.

⁴ The requirements are set out in (i) section 455 of the *Bank Act*, (ii) Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations, (iii) *CG-12 Internal dispute resolution*, and (iv) *CG-13 Application guide for external complaint bodies*.

– and banks – must meet to comply with legislative requirements. These two regulatory guidelines include principles that must guide the establishment and maintenance of complaint-handling processes. As noted just above, it is important emphasize that banks – which are fellow deposit-taking institutions – are required to make both IDR and EDR available to their members.

In Quebec, credit unions are required to make both IDR and EDR available to their members. The basic IDR and EDR requirements are set out in the *Act respecting financial services cooperatives*.⁵ In the case of credit unions that are not members of a federation, the Autorité des marchés financiers (AMF) may serve an EDR role – in the form of conciliation or mediation – if the credit union member is dissatisfied with the resolution of the complaint through the credit union’s IDR process.

In Saskatchewan, credit union members with complaints have access to a three-step process:⁶

- Step 1: Talk to their credit union
- Step 2: Contact the SaskCentral Ombudsman
- Step 3: Ombudsman for Banking Services and Investments (OBSI)

The SaskCentral Ombudsman “seeks satisfactory resolution of complaints with a view of fairness and does not advocate for either the complainant or the credit union when investigating. This service is free of charge to the complainant.”⁷ Moreover, the credit union system in Saskatchewan belongs to OBSI.⁸ As a result, credit union members can pursue their complaint through OBSI if it has not been adequately resolved through their credit union (Step 1) or the SaskCentral Ombudsman (Step 2).

In its current form, FSRA’s guidance will not support Ontario’s credit union members in accessing a complaint-handling system that is comparable to the systems outlined in this section. While the CAP again recognizes that jurisdictions have different regulatory frameworks and that the diversity of the credit union sector in Ontario may make prescriptive requirements (e.g., a requirement for credit unions to make EDR available

⁵ See [section 66.1](#) and [sections 131.1-7](#) of the *Act respecting financial services cooperatives*.

⁶ This process is outlined on the Financial and Consumer Affairs Authority’s (FCAA) website: <https://fcaa.gov.sk.ca/consumers-investors-pension-plan-members/consumers/credit-union-members#complaint>. FCAA is Saskatchewan’s financial and consumer marketplace regulator.

⁷ SaskCentral, Contact Us: <https://www.saskcentral.com/contact-us/>.

⁸ The Saskatchewan credit union system joined OBSI in 2006. See here for more information: <https://www.obsi.ca/en/about-us/our-history.aspx#2006-The-Saskatchewan-credit-union-system-joins-OBSI>.

to their members) undesirable from FSRA's perspective, the CAP believes that FSRA can – at the very least – take a principles-based approach that will bring its complaint-handling requirement into closer alignment with best practices.

3. Recommendation to FSRA

The CAP's principal recommendation to FSRA is that in the Interpretation portion of the guidance, FSRA should specify that credit unions' complaint-handling processes are expected to be accessible, fair, timely, transparent, and effective.

These five principles – accessibility, fairness, timeliness, transparency, and effectiveness – are grounded in international best practices. While there is not perfect convergence among international bodies and regulators regarding which principles are most important, these five form the core of best-in-class complaints resolution.⁹

The CAP believes that the enumeration of these five principles in FSRA's guidance would improve consumer protection while respecting FSRA's desire to regulate in a principles-based manner.¹⁰ These principles would clarify for credit unions what their complaint-handling processes should look and feel like for members. However, the principles are abstract, thus allowing credit unions to approach them in a manner that is proportionate to their size and complexity. These principles would not impose a one-size-fits-all standard on credit unions.

As a supplementary part of our recommendation, we also believe that these five principles should be built into FSRA's supervisory approach of credit unions' complaint-handling processes. While including the five principles in FSRA's guidance is an important first step, it will be vital for FSRA to monitor whether these principles are being realized in practice. Accordingly, a supervisory approach that focuses on accessibility, fairness, timeliness, transparency, and effectiveness will be important for ensuring that credit union members are being protected in practice.

We would like to address a response that FSRA might offer to our recommendation. FSRA may agree that these complaint-handling principles are important but,

⁹ For example, the G20 Task Force on Financial Consumer Protection states that complaint-handling mechanisms should be “accessible, affordable, independent, fair, accountable, timely and efficient.” Many regulators, including the Australian Securities and Investments Commission (ASIC) and FCAC, include some or all of these principles in their regulatory resources on complaints resolution.

¹⁰ While the CAP would also welcome the possibility of FSRA developing more prescriptive guidelines that are associated with these principles, the CAP recognizes that – as stated on p. 2 – this may not fit FSRA's preferred approach to this guidance.

nonetheless, suggest that the guidance need not incorporate these principles. The reason FSRA might take this stance is that the Canadian Credit Union Association's (CCUA) Market Conduct Code (MCC), which meets the minimum requirements for both (i) the standards of business conduct and ethical behaviour and (ii) the code of market conduct, may be adopted by Ontario credit unions. Furthermore, CCUA's MCC itself may include principles on complaints handling, and thus CAP's objective could, in theory, be realized without changes to the proposed FSRA guidance.

However, the CAP believes that this type of rationale is inadequate. It is important for FSRA to be able to ensure that a credit union's complaint-handling process aligns with these principles *irrespective* of the code of market conduct that the credit union adopts. For example, a credit union could decide to establish its own code of market conduct.¹¹ In such a case, it is important for FSRA to have regulatory footing – such as guidance – to ensure the credit union will maintain a complaint-handling process that is accessible, fair, timely, transparent, and effective. Unless the relevant changes are made to FSRA's guidance, this regulatory footing may not exist. This could result in members lacking access to an adequate complaint-handling mechanism in practice.

The CAP recognizes that while we are informed stakeholders, we are not experts on guidance development. Accordingly, we wish to clarify that what is most important to CAP is that the complaints resolution system for credit union members instantiates the five previously noted best practices principles in practice, and that FSRA has the authority to supervise against these principles. If guidance is not the appropriate mechanism for this outcome, the CAP encourages FSRA to identify how else the outcome might be achieved.

Conclusion

We hope that FSRA will consider the recommendation advanced in this submission. We agree with FSRA that the topic of complaints resolution should be included in credit unions' codes of market conduct. However, we believe that FSRA can also strengthen its complaint-handling expectations for credit unions while still regulating in a principles-based manner. When a credit union member has a complaint, they should be able to experience a complaint-handling process that is accessible, fair, timely, transparent, and effective. This should be the baseline for complaints resolution in Ontario's credit union sector, and the CAP firmly believes that the addition of these five principles in

¹¹ In fact, FSRA's guidance specifically states the following: "Credit unions may adopt the CCUA's MCC, another code, or establish their own if it is consistent with the interpretation portion of this guidance" (p. 10).

FSRA's guidance and focus on these principles in supervision is one appropriate path forward.

We truly appreciate the opportunity to participate in this public consultation. We hope that our feedback will contribute to strengthening FSRA's guidance.

Sincerely,

Consumer Advisory Panel