

CONSUMER ADVISORY PANEL

November 10, 2022

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

Re: Proposed 2023-2024 Statement of Priorities Consultation

The Financial Services Regulatory Authority of Ontario's Consumer Advisory Panel (the "CAP") is pleased to participate in the consultation of FSRA's 2023-2024 Statement of Priorities. 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.

1. Environmental Scan

1.1 Changing Face of Ontario Population and Vulnerable Consumers

- There has to be a greater recognition and calling out of the changing face of Ontario's population and consumers in general. The volume of newcomers and consumers for whom English is not their first language has a huge impact on consumers understanding the financial services and products they are purchasing and their trust of financial institutions and government agencies. In addition, immigrants and newcomers likely don't have credit scores, driving records, and are often forced to look at alternative providers like private lenders.
- To highlight consumer harm on vulnerable consumers, for example the recent episode on CBC Marketplace relating to mortgage fraud and consumer harm issues affecting new immigrants. Another group are international foreign students, there should be an attempt by FSRA to provide an Ontario based consumer education program to this group through the education institutions they attend or through the student visa processing centers overseas.
- FSRA is mindful of the added pressure facing Ontario's most vulnerable consumers in times of economic uncertainty (e.g., seniors, consumers with health issues or a disability, consumers with lower financial literacy, consumers with language barriers, consumers with lower income, etc.). The current economic climate may result in greater fraud and criminal activity, disproportionately impacting more vulnerable consumers. Affordability issues, likewise, disproportionately impact seniors on a fixed income, lower-income consumers and visible minorities. Even at the best of times, financial services are difficult for consumers to navigate. FSRA is focused on increasing consumer education to enable them to make more informed decisions.

The language here is pointed toward those who are on the lower end of the economic scale. Is there actually any data that suggests old people and disabled people are more likely to commit fraud?

1.2 Economic issues

- While the report covered the high-level macro-economic issues, FSRA has to deal with what all the leading Economic forecasts by the BoC and other Financial Institutions, are predicting that the Canadian economy, and therefore Ontario, will experience a recession in 2023. If there is a severe economic recession globally and in Canada it may have a significant impact on the Provincial Financial Services Sector regulated by FSRA. There will have to be more regulatory vigilance exercised by FSRA.
- The Environmental, Social and Governance (ESG) should be discussed - for example the BC floods in 2021 and the impact of Hurricane Fiona in the Maritimes in September 2022.
- The socio-economic effects of immigration and labor shortage problems and their impact on the financial services sector should be evaluated and discussed. There should be a focus on monitoring of commercial and residential real estate risk exposures, especially with respect to the market appraised values being used to determine lending or investment decisions for mortgages by financial institutions and pension plans. This is important to ensure first or second time mortgage borrowers/consumers are not being burdened with overvalued real estate properties. Real estate losses can be costly to the average consumer but also to institutional investors like Pension plans on whom the average pensioner depends of his or her income.

1.3 Telematics

- Increased use of telematics in auto insurance – As consumers spent more time at home during the COVID-19 pandemic, they put less mileage on vehicles, leading many to explore usage-based insurance (UBI), including pay-as-you-drive models. Likewise, the number of auto insurers offering UBI discounts has also increased. This segment is expected to continue to grow in the short term as consumers look to save money on premiums. Although FSRA encourages innovation such as telematics in the auto sector, the technology also has the potential to disrupt the fair treatment of customer outcomes (e.g., privacy concerns).

Is there a plan for protecting consumer privacy i.e. an end date for insurer use of their data, and end-date for sharing that data. Any information in terms of what Equite, the IBC fraud investigatory arm is doing with this medical data and who THEY share it with?

1.4 Third-party outsourcing

- Financial services companies and pension plans are relying more on third-party service providers to supply technology services or fulfill operational needs. Third parties can help companies that are hampered by legacy systems. However, third parties come with increased risks, including operational disruptions and privacy/data breaches.

Is there a plan to control the sharing of medical information between insurers and their subcontractors ie assessment companies? "third parties come with increased risks, including operational disruptions and privacy/data breaches"

2. FSRA Wide

2.1 FSRA is doing an excellent job using research on consumers to better understand their needs. However, FSRA should highlight more information about the types of consumers FSRA is engaging in qualitative and quantitative research beyond gender, age, geography, in order to better understand some of the cultural differences. Consumers are not a homogeneous group and recruitment efforts should include other factors like language, culture, newcomer/born in Canada, whether they are aspiring to be purchases of financial products but don't know how, lack the confidence, etc.

2.2 Consumer education is factored into the statement of priorities but perhaps more education/awareness building of working with regulated versus unregulated financial services providers would be helpful, especially in the mortgage brokering priorities as there will likely be many more consumers seeking private lenders in the current economic environment. A recommendation that FSRA call out the need for "mandatory disclose" by all financial services providers so consumers at least know who regulates the various financial services providers and where they can turn if something goes wrong - making this mandatory on policy statements/account statements/contracts will move the yardstick forward.

2.3 FSRA needs to strengthen the generation of greater public awareness regarding consumer disclosure framework. Including it in the planned outcomes would create more consumer awareness.

2.4 As FSRA like other organizations is facing turnover in its workforce, it would be great to include greater focus on attracting and retaining staff who are reflective of the changing "face" of Ontario's population and consumers and who have "lived experiences" or better understanding of "lived experiences".

2.5 There is a lack of reference to how FSRA will deal with reputation risk management, and ethics risk management. Does FSRA at the ground level ask the entities it regulates "show your reputation risk and ethical risk training plans" to review as to see how they protect.

2.6 On disclosure enhancement, there should some mention of the financial highlights by regulated sector similar to that noted in the FSRA Annual Report.

3. Property and Casualty (Auto) Insurance

3.1 There is a need to increase consumer awareness regarding the difficulty in accessing the insurance benefits.

3.2 Ensure that insurers are being held accountable for making reasonable decisions on treatment recommended by the insurance treatment providers.

3.3 Consumer protection is required on accessing the insurance benefits.

3.4 Page 17: Overview: Will make the oversight more dynamic, flexible and transparent for Ontario's consumers to ensure fair and reasonable rates. c) Act on consultation feedback to promote informed decision-making and increase transparency throughout the sector to create more accountability. d) Explore the development of consumer satisfaction benchmarking.

Rates and underwriting is the theme – where is customer satisfaction? under outcomes - how can FSRA deliver value-for-money to consumers when the important issue of outcomes i.e. LAT is ignored?

3.5 Page 18: Planned Outcomes: ii) Improved protection of consumer rights and interests?

What about the OCF-1 permission form? Protecting consumers means protecting their rights by putting parameters around insurer use of data they collect including an end-date or destruction of files at time of settlement.

3.6 Page 18: Planned Outcomes: Setting conduct expectations:

When is FSRA planning on telling consumers they have no intent of taking concrete action or transparent steps consumers can actually see to sanction insurers who behave badly?

3.7 Page 19: Planning Outcomes: i) Better understanding of insurers' business and enhanced regulatory oversight.

- How can this be done without assessing LAT outcomes? Where is the end to end view to ensure the product has value? How will FSRA know when insurers are complying with legislation? Is there a plan to change the dynamic of increasing insurer failure to comply with legislation and the bending of expectations when this is regularly applied: "It is well-settled that insurers are not held to a standard of perfection in their adjusting of claims and that an award is meant to act as a deterrent against bad faith conduct by an insurer – not as punishment for reaching an incorrect decision."

3.8 Total lack of accountability for insurance companies, they know this, and act accordingly.

3.9 FSRA continues to focus on rates and premiums and not on consumer satisfaction especially for those who use the product. Why are claimants paying a fee to hold insurers

accountable? Why isn't the public seeing any insurers being held to account for shoddy treatment of customers? Why are systemic failures, without checks and balances, leading to making the Regulator look weak? It's failure by design and it is up to FSRA to take action.

The need to see balance in the oversight – consumers matter as much as insurers do. FSRA to take a more meaningful direction in respect to using their influence to insert accountability along the way during the claims process. FSRA should use their influence at Minister of Finance to re-introduce sanctions at the hearing level. MOF failures puts increased pressure on FSRA – is there an action plan on this?

4. Pensions

4.1 Pleased with some of the work in Pension sector.

4.2 Continue the review of long-term viability and financial sustainability of the Pension Benefits Guarantee Fund (PBGF). Recommendation that this review should be expanded to also include the aspect of the importance of bringing the amounts of financial protection up to par with inflation. It has been over 40 years since the amounts has been looked at and to ensure it meets international bases.

4.3 Regarding the development of target benefit regulation, there is an emphasis to ensure that there is no imposing and changing on existing single employer benefit plans to a target benefit plan. This means, that with the development of defined benefit plans over the course of the years, and the promises made for protection to define benefit retirees, that those people who have been involved with them, achieve the amounts of monies that they have in there.

4.4 Recommending inclusion in discussions with CAPSA , regarding Multi-Jurisdictional legislation between provinces, in determining the Province in which a DB Plan is registered and regulated. According to the regulations of Plurality, the jurisdiction in which a DB Pension Plan is registered is based on the current number of Active Employees in that plan, with no consideration given to the number of Retiree's in that plan, even though many or most of the DB Plans in today's world have double or triple the number of retirees in comparison to the number of active employees. This also allows for Jurisdictional shopping in the hands of plan sponsors. Numbers of Retires in the Plan should also be taken into consideration.

5. Credit Unions

5.1 Sensitive matters like Money Laundering, Illicit activities and Fraud against Consumers should be discussed. There is some reference in certain parts of the document, but some more explicit discussions would be helpful.

Financial Planners and Advisors

6.1 FSRA needs immediate real-time insight into what complaints are being made, and how are complaints being investigated. When you authorize so many organizations to enforce and if you want standards to be met, then the review officials are limited in their powers in this because of the legislation and the way it was given to FSRA.

6.2 Highlighted that this legislation to protect financial advisors and not really consumer protection legislation. Consumers should not be expected to know where to go. From experience, at the very least, there should be a link to that person's name and their financial advisory financial planning credentialing body.

6.3 What are the SROs going to do differently now that they are given responsibilities credentialing bodies for financial advisors and financial planners?

6.4 Consider the following:

- First, there has to be a focus on what the learnings are from problems, by reviewing the complaint and enforcement throughout the process that should be data driven, which means data has to be collected.
- Review the external dispute resolution system (GIO/OLHI), whether they're not fit for purpose. Not independent and may not comply with international standards.

The following response was provided by a member of the Panel:

The Financial Professionals Title Protection Act, 2019 (FPTPA) was adopted to rectify the absence of a regulatory framework governing the use of financial titles in Ontario. This regulatory void had led to two especially problematic investor protection concerns. For one thing, the wide array of titles and credentials being used by individuals operating in Ontario's financial services marketplace was creating confusion among consumers / investors. Also, absent regulation, no quality control existed with regard the expertise and knowledge of individuals providing finance planning and financial advisory services. To address these issues, the FPTPA limits the use of the Financial Planner (FP) and Financial Advisor (FA) titles to individuals who have obtained a credential from a credentialing body approved by FSRA. It also establishes minimum standards for FP and FA title users, including a requirement to put the client's interest first, which provides confidence to consumers that the individuals they are working with are qualified to provide financial planning and advisory services. This legislation together its associated regulations will allow FSRA provide consumers / investors with added confidence when dealing with FA and FP title users who will be subject to minimum credentialing criteria and appropriate supervision by an approved credentialing body (CB).

Robust oversight / enforcement of the FPTPA will dictate the degree to which the legislation prevents misrepresentation of credentials and by extension protects financial consumers / investors from harm. It is therefore appropriate that FSRA has identified the evaluation of its supervisory approach for credentialing bodies as a key deliverable for the coming year. What is less appropriate is the approach to supervision that FSRA is planning to pursue. Specifically,

oversight of FP's and FA's has been assigned to their respective CB's, many of which have limited experience in the areas of compliance and enforcement; FSRA will directly oversee the CB's but beyond reviewing a CB's Annual Information Return it is unclear what additional supervision will take place; and the identification and sanctioning of individuals using the FP/FA titles without an approved credential will be largely, if not entirely, dependent on consumer and industry complaints. Absent both a better informed / engaged public and a more 'direct' real time participation by FSRA, I am concerned that the proposed supervisory will not prove sufficiently robust to achieve the legislation's intended purpose. However, by making a couple of important adjustments, I do believe that FSRA would be able to improve the effectiveness of the FPTPA.

The first adjustment relates to investor engagement / education. No regulatory initiative designed to protect consumers / investors should be designed and implemented without them. Borne of a desire to eliminate or at least reduce investor confusion, the emergence of multiple CB's under the FPTPA each conferring FA and FP titles based on different designations does not on its surface achieve that outcome. Consequently, it will be important that FSRA develop, implement, and maintain public awareness messaging that promotes a better understanding and appreciation of financial titles. I suggest that this messaging initially focus on the FP and FA titles to help shape consumer / investor expectations around the type and standard of service FA's and FP's can provide and, importantly, the differences between them. While regulators and industry participants broadly understand the distinctions between an FP and an FA, these differences are not nearly as transparent to the general public. Consequently, to the extent that the FPTPA has now created a single regulatory framework that effectively validates both the FP and FA titles, it is both appropriate and necessary that the public be made aware of the functional scope and limitations of each of these titles.

In my view, a second component of this public awareness campaign should focus on the complaint process. The value and integrity of this new titling framework will depend crucially on robust compliance and enforcement procedures. As currently structured, supervision under the FPTPA will be highly reliant on consumer / investor-initiated complaints. Neither FSRA nor the CB's have the resources to proactively monitor the activities of individual title holders and intend instead to respond consumer / investor complaints. I can see at least two serious problems with this consumer / investor triggered compliance and enforcement approach. For one thing, there is little incentive for a consumer / investor to lodge a complaint. The FPTPA makes no provision for offering restitution to a consumer / investor that incurs a loss because of dealing with an individual that is inappropriately using the FA or FP title. The only consequence available under the legislation for the inappropriate use of these titles are fines or sanctions that can be imposed by the relevant CB or FSRA.

For those consumers / investors that, notwithstanding the absence a personal direct benefit, would remain motivated to complain, the process contemplated by the FPTPA is not that simple. A complainant will be expected to contact the specific CB that conferred the designation of FP or FA on the individual who allegedly acted improperly. Given that 4 CB's have already been designated by FSRA and some of these CB's have been authorized to confer more than one designation, it will be challenging for many consumers / investors to identify the appropriate CB to contact. Furthermore, it is likely that many allegations of inappropriate conduct will relate to individuals who were using the FA or FP titles fraudulently having received no designation from

an authorized CB. In these instances, the complainant is expected to contact FSRA but may only come to this realization after a futile search to identify a non-existent CB.

In essence the FPTPA legislation establishes a compliance and enforcement framework that is highly reliant on consumer / investor complaints. It is therefore not clear why a degree of difficulty is introduced into the process by requiring consumers / investors to figure out on their own where exactly to direct their complaint. Further undermining the process, is the absence of any restitution provisions in the legislation. Consequently, while highly reliant consumer / investor generating complaints, the legislation offers no direct incentive for them to do so. To me, this appears to be a flawed process and I recommend that FSRA consider redesigning it by addressing its key shortcomings.

To this end, I propose that FSRA establish and actively promote a single point of contact or clearinghouse for all complaints related to FPs and FAs. Rather than placing the onus on consumers / investors to figure out where to lodge their complaint, they should be made aware that all they are required to do is call a single well publicized 1-800 number or navigate an easily accessible website. The complaint would be recorded, and the complainant would immediately be provided with the identity and contact information of the CB that he or she should notify. Alternatively, in those instances involving fraudulent use of the FA or FP title with no associated CB, the complainant would be told that FSRA will investigate the complaint. An important side benefit is by maintaining a record of all complaints, FSRA will have access to real time data with which to be able to better gauge the effectiveness of the legislation and monitor the performance of CB's.

While a single contact point or clearinghouse would simplify the complaint process, it would not do much to address the motivation issue. While the prospect of restitution would be a strong motivator and one that I hope will ultimately be available, it is not currently an option. A more practical alternative that I hope FSRA may be prepared to consider at this time is the introduction of a 'whistle blower' feature in the FP / FA complaint process. This feature would offer a monetary reward to some complainants under certain conditions. While this whistle blower feature could take many forms, one example would be to reward the first complainant that identifies an individual who is fraudulently using an FA or FP title. In addition to motivating potential complainants, the introduction of a whistle blower feature would help raise overall public awareness about the new titling requirements for FPs and FAs in Ontario.