

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

Preliminary Position Paper

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I. Introductory Comments

We were asked to examine the mandates of three key financial regulatory organizations: The Financial Services Commission of Ontario (FSCO¹), the Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO). We have tried to answer four specific questions posed to us with a forward-looking proposal that reflects a vision of a modern agency with appropriate mandates, governance, accountability, regulatory outlook, and approach to most effectively regulate Ontario's robust financial sector. In short, we think Ontario needs a restructured regulator to protect the integrity of its financial services marketplace amid rapid changes to industry structure, technology, market demands, and consumer expectations. This new regulator should have an expert Board of Directors, a new executive structure, an identifiable consumer protection orientation, adequate resources, greater agility and accountability.

Purpose of This Preliminary Position Paper

The observations and recommendations reflected in this paper are preliminary in nature. We express them in this form to facilitate a continuing dialogue. We appreciate all of the excellent contributions to date, but we must hear from you again. We are eager to hear your feedback on our preliminary thoughts.

Perspective and Our Background

We started our work in January 2015, each of us bringing different perspectives to this project. Lawrence Ritchie is a lawyer, a former Vice-Chair of the Ontario Securities Commission, and he was a key participant in efforts leading to the cooperative capital markets regulatory initiative. James Daw is a former personal finance columnist and consumer advocate, one of few to have qualified as a certified financial planner. George Cooke is a former regulator and insurance company executive, who is now the Chairman of the Board for a major pension plan.

While our initial perspectives varied, we shared a resolve to make practical but meaningful recommendations to modernize and improve the current regulatory framework if necessary. We also agreed that industry and consumer input would be absolutely vital.

Our Process

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

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 sake, we refer to 'FSCO' throughout this Preliminary Position Paper as the regulator of the sectors rather than specifying the Superintendent. See Appendix D for further information.

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 light of the size, scope, and functions of the three agencies, and to facilitate consultation, we posed 11 supplemental questions in our [April 2015 Consultation Paper](#), plus further sector-specific questions before we held a series of roundtable discussions with stakeholders.

We have reviewed written submissions from 45 organizations and individuals, held seven specific sector roundtable discussions, and engaged in open dialogue during more than 35 informal meetings with regulators, financial services stakeholders, and investor advocates. Appendix A provides an overview of the groups and individuals from whom we heard, and to whom we thank for their time and assistance.

Appendix B summarizes recent and concurrent reviews. Specifically, we have taken note of the 2008 report 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, whose office outlined several concerns and recommendations after conducting a value-for-money audit. We have also been in contact with those leading the Five-Year Review of the *Credit Unions and Caisses Populaires Act, 1994* and the review of Financial Advisory and Financial Planning Policy Alternatives.

It will be vital to ensure that the agencies under review are properly equipped with the most effective means to address the complex issues facing the financial marketplace and its consumers, both today and years from now. The Ministry of Finance engaged the services of a consulting firm and we asked other experts to comment on emerging trends in technology, the marketplace and the regulation of financial services.

With the benefit of our broad consultation, we noted and considered a number of trends, including:

- Emerging competition from non-traditional providers of financial services and emerging multi-product distributors
- 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 to better monitor systemic risk
- Global competition and economic upheaval that pose a threat to traditional pension plans and the viability of Ontario's Pension Benefits Guarantee Fund
- Rising public expectations amid inconsistent rules regarding fee disclosure and the duty of care expected of sales intermediaries
- An international trend away from regulating the price of automobile insurance while consumers seek more personalized coverage options

Appendix C provides additional detail on these trends.

What We Have Heard

Throughout our consultation process we heard similar messages. Many feel that there are material shortcomings in the mandates, regulatory approach, operational resources, tools and capacity. We would like to emphasize that most comments were directed at the regulatory framework, approaches and limitations of the agencies, and not agency personnel.

The agencies under review collectively have regulatory oversight of certain aspects of the following industry sectors:

- Insurance companies, intermediaries and services
- 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. In addition, the Superintendent has been given certain registration authority and other powers and oversight responsibilities over certain activities granted it by statute. Whereas individual sectors, such as mortgage brokers, have been reviewed and relevant legislation updated, there has not been a comprehensive, forward-looking, assessment of the overall regulatory approach. Given the significant changes in the

financial services sector in Ontario, Canada and the world since then, a comprehensive review of the mandate and governance structure of the financial regulatory regimes is long overdue.

What We Were Told

The following summarizes messages and themes that we heard consistently throughout our consultations. To clarify, these are observations made by others, and we do not express any view reflecting their accuracy. However, it emphasizes perceptions that we address in our recommendations.

About DICO

- The current mandates are unclear and outdated, 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
- Its regulatory approach is inflexible and insufficient to address both the complex and ever-changing financial marketplace and the challenges to consumer protection
- The regulatory approach taken to some financial products, services and intermediaries is neither coordinated nor consistent with that of other regulators
- Its 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
- Certain responsibilities are simply inconsistent with FSCO's primary mandates

About the FST

- The FST lacks sufficient independence and resources and in some instances authority.

Appendix E provides a more thorough overview of what we heard during the consultations, organized by the four main mandate review questions.

What We Have Learned

We observe the perception that the Ontario regulatory regime is not as effective as it could or should be. Our financial services sector is a major component of the economy within the province and across Canada. Our agencies should be as nimble and flexible as possible to cope within a rapidly changing environment. These agencies should have the mandate and authority to work closely with the financial services sector and with "sister" agencies in other provinces to encourage the development of a vibrant and safe financial sector and to better ensure that consumers have a consistently high level of service and protection, without burdening market participants with undue regulatory costs or complexity.

We also believe that innovation within financial services is inevitable and necessary. Innovation drives competition and vice-versa. Through this process, the changing demands of today's consumers and investors will be met. However, innovation requires an innovative regulatory environment. So the regulator must be flexible and adaptable. As it stands, we do not believe that Ontario's regulatory framework is sufficiently flexible or adaptable.

II. Our Preliminary Recommendations

As we pursued this task, we quickly determined that to simply answer the four questions asked of the Treasury Board would be of limited assistance to the Government. We answer the questions, but have gone further, to put those answers into context, with more emphasis on specific recommendations.

To address the specific questions we would say:

1. Each agency's mandate continues to be relevant to Ontario's goals and priorities as they pertain to the financial services (as set out in the Minister of Finance's 2014 Mandate Letter²). 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. 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. Many of the agencies' functions could continue to be performed by the agencies. However, we feel that the governance, structure and operations ought to be revised and rationalized. Meanwhile, other functions could be performed by others.

² <https://www.ontario.ca/page/2014-mandate-letter-finance>

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

In short, we are 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 propose that a new Financial Services Regulatory Authority (FSRA) should be established, and it should exercise both prudential and market conduct functions in a coordinated but distinct fashion. We also recommend that FSRA should have a Superintendent of Pensions to oversee the Pension division, in a manner that is interconnected with, but distinct from, the other FSRA functions. We recommend that this agency, with its modified “twin peaks” approach to regulation, should have its own corporate identity operationally distinct from the Government, its officials and staff that would be:

- a. Self-funded;
- b. Properly governed by an expert board of directors;
- c. Arm’s-length from government;
- d. Authorized to make and enforce rules, as limited by the statute;
- e. Guided by a clearly articulated mandate, as set out by its authorizing statute; and
- f. Obligated to act transparently in a principled manner, manage risk and strive for a specified set of positive outcomes.

We also propose that the Financial Services Tribunal should be separated from, and operationally and financially independent of, the proposed FSRA.

Outlined below are our preliminary thoughts on how these issues should be addressed. In discussing the issues with each of the regulated sectors, we believe these recommendations would be equally beneficial across the board. It is important to stress, however, that these preliminary recommendations should be viewed holistically and they are presented with this caveat: Governance, accountability and structural recommendations should be adopted first, with the rest of the changes to follow. In other words, our preliminary focus is on mandate, governance and accountability and therefore we do not envision or support the implementation of some of our recommendations within the current-day agencies.

We make 37 specific recommendations that support our vision of what ought to be done.

Specific Recommendations

Mandate

1. A new regulatory agency 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 distinct market conduct, pensions, and prudential regulatory functions; operating independently of each other, but in a coordinated and consistent manner.
3. The regulator's structure and governance should be flexible enough that the Legislature could add or remove financial sectors to its list of responsibilities, so long as they coherently fit within the mandate of the authority.
4. The constituting statute should ensure clarity and flexibility, giving comprehensible authority and accountability for all matters within its jurisdiction. This would include incorporating a specific statement of principles, a specific statement of purpose, and the express statutory authorities required to enforce its regulatory mandate:
 - a. That mandate should strike a balance between strong and effective consumer protection and the fostering of a strong, vibrant and competitive financial services sector.
 - b. That mandate should require the agency to utilize its statutory powers to adequately, firmly and consistently enforce provisions and, in particular, prohibitions against fraudulent activities or behaviours that harm consumers.
 - c. That mandate should be informed by the 10 principles in the OECD's G20 High-Level Principles on Financial Consumer Protection³.
 - d. That mandate should require the development and regular publication of statements of approach developed internally, as outlined in recommendation 19(c).
5. The structure of the statute should be explicitly informed by three key themes:
 - a. Mandate and Purpose.
 - b. Principles and Objectives.
 - c. Tools and Means.
6. In order to remain relevant and flexible, the mandate of the agency should include a commitment to encourage innovation and transparency within the regulated sectors. This would be coupled with the need to stay abreast of those issues that could either compromise consumer protection, or lead to improvements that would benefit consumers.

³ The full text of the OECD's G20 High-Level Principles on Financial Consumer Protection appear in Appendix G, and are available at the following link <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

7. FSRA's mandate should include the obligation to work and cooperate with other regulators (including self-regulatory organizations) that oversee the providers, sellers and intermediaries of financial products and coordinate regulatory actions to avoid regulatory overlap and arbitrage and to ensure that consumers can be confident in their dealings with these entities or individuals. This would include:
 - a. A similar and familiar regulatory framework and approach to overseeing individuals or entities selling similar products within its jurisdictional oversight (e.g., mutual and segregated fund dealers, insurance agents, insurance brokers, and applicable sales staff within financial institutions, such as banks).
 - b. Common and consistently applied standards for all relevant intermediaries, including agents and brokers selling like products.
 - c. Enhanced sharing of pertinent information and communication among regulators to ensure disciplinary and enforcement consistency so that regulatory activity by one regulator is appropriately applied by another.
 - d. Those powers and tools necessary to ensure the application of what is set out above.
8. The statutory mandate of the agency(s) should include an obligation to operate as transparently, efficiently and effectively as possible, and to pursue initiatives that promote confidence in the regulatory regime and the financial sector in which it operates.
9. FSRA should be given authority over, and responsibility for, the oversight of any self-regulatory body operating within the financial services sector in Ontario (not otherwise overseen by another statutory body).
10. The Government should give serious consideration to transferring responsibility for oversight of all relevant participants in the Ontario financial sector, such as payday lenders and loan brokers, consumer credit reporting agencies, debt and credit counsellors, and guarantee and warranty insurers to FSRA from the Ministry of Government and Consumer Services (MGCS).
11. Regulatory oversight of the Cooperatives sector should be transferred from FSCO to an agency or entity other than the FSRA.
 - a. The government should explore the possibility of transferring the administration of the Co-operative Corporations Act and incorporation functions to MGCS.
 - b. FSRA could continue to review offering statements of cooperatives, or the government could explore whether to transfer that function to the Ontario Securities Commission (OSC).
12. The administration and funding of the Motor Vehicle Accident Claims Fund should be transferred from FSCO to the industry operated Facility Association.

Governance

13. FSRA should operate outside of the Ontario Public Service in order to support operational independence and improve its ability to recruit professionals and industry expertise.
 - a. FSRA should be a self-funded corporation.
 - b. FSRA should be accountable to the Legislature through the Minister of Finance.
14. FSRA's governance structure should be comprised of an independent expert Board of Directors to oversee the operations of the FSRA and a Chief Executive Officer (CEO) position should be established that reports to the Board.
 - a. The CEO or other executives should not sit on the Board.
 - b. The Board Chair should report to the Minister of Finance, with specific requirements set out in statute and through a Memorandum of Understanding.
 - c. The Board of Directors should be responsible for monitoring the activities of FSRA, including compliance with its mandate, the setting of regulatory policy, and the setting of strategic priorities.
 - d. The process for selecting appointees to the Board should be skills-based, consistent with a skills matrix identifying competency and needed expertise on the recommendation of a nominating committee of the Board and in accordance with best corporate governance practices.
 - e. The Board should meet regularly with the sectors overseen by FSRA, and not less often than once per year.
 - f. The Board of Directors should be appointed by Order-in-Council but selected as described below.
15. FSRA's Board should be given rule-making authority and have the scope of that authority clearly delineated in the statute.
 - a. Rules should be drafted with significant public input and dialogue, and be subject to a rule making process set out in the statute.
 - b. Rules should be subject to timely review by the Minister of Finance, but they would come into force unless explicitly rejected.
16. FSRA should be provided authority to retain funds from penalties for specific, articulated purposes, such as a fraud compensation fund and/or increased consumer outreach and education.

Structure

17. FSRA should be divided to provide a market conduct oversight division, a pensions oversight division, and a prudential oversight division, each with its own Superintendent. The market conduct and prudential divisions should include units for applicable financial services sectors or operational functions.
 - a. DICO's prudential regulation functions and expertise should be transferred to FSRA.
 - b. The prudential oversight activities should be fully insulated from market conduct oversight activities, much like Quebec's Autorité des marchés financiers (AMF) model.
 - c. FSRA should only act as a prudential regulator for a limited and defined class of entities (for example, those that operate solely in Ontario), and efforts should be made to transfer the oversight of others to the federal Office of Superintendent of Financial Institutions (OSFI).
18. Each division should be led by a Superintendent, and those Superintendents, as well as any other executives, such as a Chief Administrative Officer, Chief Legal and/or Enforcement Officer, should report directly to the CEO.
19. As mentioned above, due to the unique and specialized nature of pension supervision and regulation, a separate Superintendent of Pensions should be established, operationally accountable to the CEO, responsible for matters organized within the Pensions Regulation Division.
20. To facilitate its mandate, FSRA should be organized, within the divisions, into distinct business 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 unit within FSRA should be led by a senior executive with expertise in the respective financial sector. This individual would ensure that the activities of his or her area were conducted in a transparent manner, and would be responsible for reporting to the appropriate Superintendent, and ultimately to Chief Executive Officer.
 - b. There should be communication and collaboration among the units where appropriate, but each should be insulated from the resource demands of the others.
 - c. Each unit should develop a statement of approach for how it will achieve FSRA's overall mandate. The units should consult with affected stakeholders to develop the statement of approach, and publish the statement of approach, ultimately to the Board for review and prior approval.
 - d. Underlying corporate infrastructure and support should be shared among each business unit (e.g. communications, legal services, information technology, finance) to maximize efficiencies.

21. FSRA should be required to provide a mechanism to ensure that the perspective of consumers is considered in all of its policy-making and actions. Specifically, this should include the creation of a separate 'Office of the Consumer' to perform this and related functions. It should not be organized as a silo, but rather with enterprise-wide responsibilities to ensure that consumer perspectives are considered in all regulatory endeavours pursued.
22. Ontario's deposit insurance scheme; and the Pension Benefits Guarantee Fund (PBGF) should both be administered and overseen by an entity that is separate from, but accountable to, the regulator.
 - a. DICO, as a separate body, could continue to exist to carry out these activities.
 - b. DICO's name should change to reflect its new responsibilities.
 - c. The separate entity should report to the same expert board as the regulator to ensure coordination of activities and policy direction.
23. Consideration should be given to an expanded mandate for FSRA to include the establishment and oversight of a fraud compensation fund.
 - a. 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.
 - b. The fund could be a payer of last resort only after determining that either no applicable errors-and-omissions insurance or fidelity bond coverage existed, that the coverage would be insufficient, or that the coverage would exclude all but a narrowly defined type of fraud.
 - c. The fund could be paid for by premiums applied to licensing fees, by penalties levied by FSRA for non-compliance, and by court-awarded damages that FSRA could seek on behalf of the victims of fraud.
 - d. The fund should exist outside of FSRA, with a requirement that it be monitored by and held accountable to FSRA.

Tools, Means and Regulatory Approach

24. FSRA's role in national regulatory bodies should be incorporated into its mandate, with a requirement that the work done by these groups be reported back to FSRA's governing body.
25. FSRA's mandate should include a requirement that it undertake its activities in a proactive manner.
26. FSRA and the FST should be empowered to recruit professional resources with experience in the regulated sectors.

27. 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.
28. FSRA should be required by statute to take a risk-based and outcomes-based approach to regulation, through which the policy objectives and likely outcomes are considered and explicitly articulated.
29. FSRA should be given authority through appropriate legislation to levy Administrative Monetary Penalties in the pension sector, and in any other sector it regulates, to provide consistent enforcement tools within its jurisdiction.
30. FSRA should be provided revised powers and tools to enable it to ensure effective, consistent and timely enforcement, which includes, among others, a mechanism that would protect the confidentiality of those who "blow the whistle" on improper activity.
31. FSRA should enhance its public engagement and communications to ensure market participants and consumers are aware of its activities (e.g., to ensure transparency, FSRA could implement an email service that would send subscribers daily notices of publications, enforcement actions and consultation documents).
32. 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).

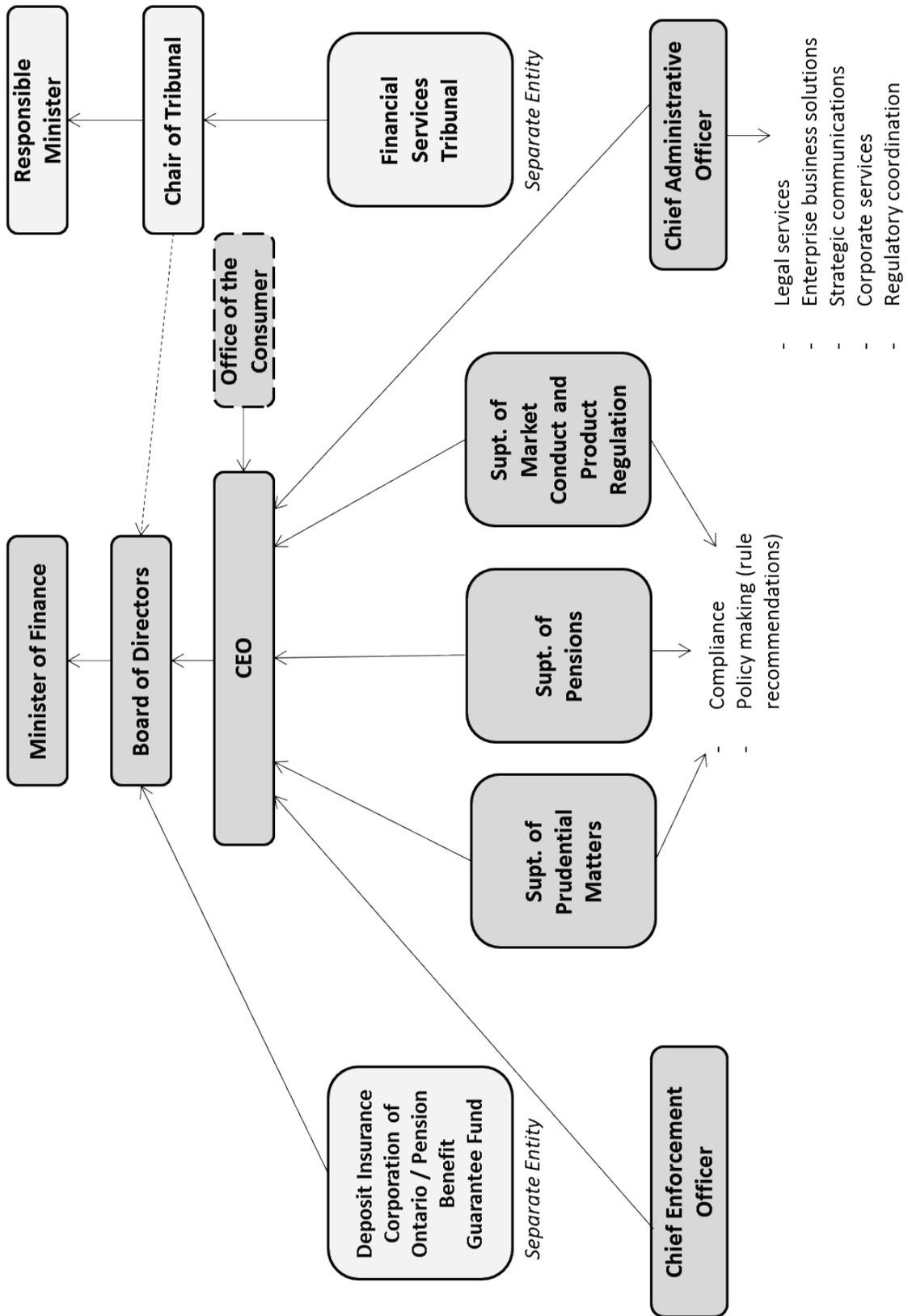
The FST

33. The FST should operate separately from FSRA, with its own budget, subject to normal government process.
34. The FST should be led by a permanent Chair and upwards of two Vice-Chairs, and otherwise be supported by a roster of part-time adjudicators with appropriate expertise, appointed by Order-in-Council.
 - a. A third-party advisory committee should be established to assess candidates for quality and expertise, and to thereafter make recommendations on their suitability.
 - b. The appointment process should be transparent and informed by consultation between the responsible Minister and Chair of the Tribunal, preferably with concurrence of the Chair.
 - c. The number of appointees and part-time appointees required by the FST should be determined based on needs in consultation with Chair.
35. The FST should have clearly articulated authority to adjudicate matters reflective of the jurisdiction of the FSRA including appeals from certain statutory decisions made by the FSRA. Consideration should be given to whether the FST could also serve an adjudicative function for any relevant and appropriate regulatory matters impacting the broader financial services sector, if desirable.

36. A mechanism and/or process should be established to appropriately permit, encourage and facilitate policy-level discourse between the FST and FSRA's Board of Directors.
37. 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 make no recommendation at this time with respect to the prior approval of auto insurance rates by FSCO or its proposed successor. We have been made aware that most other jurisdictions have moved away from the rate setting approach currently used in Ontario. If this approach was to continue within FSRA, we would be concerned that this activity would unnecessarily dominate the agenda of FSRA to the detriment of other sectors. At least three options were presented to us during the consultations: continue rate approval 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, the approach to which to be determined through its rule-making authority. We continue to seek input from affected parties on this issue.

III. Proposed New Regulatory Structure



IV. Providing Feedback

Written comments should be provided in electronic format (preferably Word or PDF) by email to:

FIPBmandatereview@ontario.ca

We kindly ask that all submissions be submitted by November 20, 2015.

While we anticipate some groups will want to meet with us again, we cannot guarantee that we will be able to accommodate this given our timelines. Please ensure that you capture any concerns as thoroughly as possible in your written submission.

Following the comment period, we are to prepare our final recommendations and deliver them to the Minister of Finance by early winter.

APPENDIX A - Consultation Participants

Written submissions were received from the following entities:

- 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 Reciprocal
- Canadian Federation of Pensioners
- Canadian Foundation for Advancement of Investment Rights (FAIR)
- 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
- Financial Services Commission of Ontario
- Financial Services Tribunal
- Greengrass Group
- Healthcare of Ontario Pension Plan
- Independent Financial Brokers of Canada
- 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

**All 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 Populaires 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 & 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 & 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 & 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 Foundation for Advancement of Investment Rights (FAIR)
- Canadian Life and Health Insurance Association
- David Brown (former Chair of the Ontario Securities Commission)
- Deposit Insurance Corporation of Ontario
- 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 Review⁴

In late 2014, the Parliamentary Assistant (PA) to the Minister of Finance, Laura Albanese, launched the statutory five-year review of the *Credit Unions and Caisses Populaires Act, 1994*. 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 is 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. As part of the review, the PA set out to review 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?*

We have met with the PA throughout our review and will remain in contact with her and her staff.

Financial Advisory and Financial Planning Policy Alternatives⁵

Ontario has no general legal framework and no regulatory body assigned to licence and oversee the activities of individuals who offer financial planning advice and services. There are private organizations that compete to offer proficiency courses and accreditation, but membership is not mandatory. There are no government-mandated standards regarding proficiency or quality and no mandatory rules regarding potential conflicts of interest.

To better understand the potential gap in consumer protection, the Ontario government committed in 2013 to investigate the merits of regulating those engaged in financial planning and the provision of financial advice. Two consultations were held in 2014 with stakeholders involved in the financial planning and advising sectors.

Subsequently, the Ontario government announced that it would appoint an expert committee with a mandate to provide key recommendations and submit its final report to the government for review in 2016.

⁴ <http://www.fin.gov.on.ca/en/consultations/cu-cp/>

⁵ <http://www.fin.gov.on.ca/en/consultations/rfp.html>

We have met with the Expert Committee to discuss the potential linkages between their review and ours, and we will continue to keep them apprised of our progress and the direction of our preliminary recommendations. We are aware that the introduction of financial advisory and financial planning regulation could potentially impact FSCO and we will continue to confer with the Expert Committee.

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 minimal 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/reports_en/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 that "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 many of the recommendations related to the regulator have not yet been put in place by the Province.

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.

- **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 US 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 & 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 - Consultation Feedback

As stated elsewhere, we have heard from many constituents and stakeholders. We summarize some of the comments below. We emphasize that, in summarizing these comments, we are not expressing any view regarding their truth or accuracy. We feel it will be helpful to set out all of the themes we have heard, even where there may be disagreement over statements made. It is important to recognize public and industry perceptions that could diminish the credibility of the current regime and its regulatory approach.

<p>Question 1 – Is the agency’s mandate still relevant to Ontario’s goals and priorities, and to what extent?</p>
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Of the written submissions that directly addressed this question, the answer appeared to be unequivocal – the mandates of the agencies continue to be relevant to Ontario’s goals and priorities. However, most acknowledged that the mandates must be modernized. We were strongly encouraged to review work put out by the Organization for Economic Co-operation and Development (OECD), specifically their corporate governance criteria for regulatory agencies and their *G20 High-Level Principles on Financial Consumer Protection*.

We heard from certain groups that their sector would benefit from greater clarity in the mandates. For example, the credit unions and caisses populaires noted that clarity between the mandates of FSCO and DICO is needed. Some pension and insurance stakeholders argued for specific purpose statements within FSCO’s mandate to enhance transparency and accountability of their regulatory activities. The majority of groups supported the incorporation of explicit consumer protection requirements in the mandates of the agencies.

There was also a general interest in expanding the mandates of FSCO and DICO to explicitly include a requirement to support and foster innovation within the sectors. The current absence of this requirement has resulted in a rigid approach to new products, technologies and reasonable risk.

Common in most of the feedback was the notion that Ontario’s consumers, retirees, and financial services sector would benefit from a principled approach focused on risk, outcomes and flexibility

Question 2 - Is the agency carrying out the activities and operations as required in its mandate?

The broad nature of this question combined with the diverse responsibilities of each agency elicited significant feedback touching upon general and specific matters. In conducting our broad consultations, we have heard several common themes around whether the agencies are carrying out their activities and operations as required by their mandates:

- **Perceived delays.** Many interactions with FSCO are seen to take too long. These complaints include auto insurance rate approval, enforcement action, and delays in issuing guidelines, leaving the sectors unsure of how to interpret new or revised regulations. This can lead to non-compliance or delays in provision of their own services.
- **Perceived lack of sector-specific contacts.** Some have the impression that FSCO has not appointed contacts or experts for each sector to ensure that issues are handled in a timely and appropriate manner or to serve as a contact point for stakeholders and consumers.
- **Perceived Disproportionate Focus.** Some say FSCO's operations are regularly overburdened with auto insurance issues, particularly rate regulation, leaving other sectors with a lack of adequate regulation and oversight. Many of the non-auto insurance groups believe this is preventing FSCO from effectively carrying out its other regulatory responsibilities.
- **Perceived inconsistent oversight requirements and enforcement.** Many complain that intermediaries and the products they sell are not subject to the same oversight and requirements as in other sectors selling similar products. This leaves FSCO constrained and consumers without adequate protection in some cases. For example, new requirements for fee disclosure by sellers of mutual funds will come into force next year with no parallel requirement for segregated funds even when sold by the same person. Further, an intermediary banned from selling mutual funds would not necessarily be prohibited from selling segregated funds or other products dependent on a FSCO licence.
 - o Among the sectors that are within FSCO's jurisdiction, we heard from some that FSCO's regulatory enforcement activities are limited by its current authorities. For example, FSCO cannot impose Administrative Monetary Penalties in the pensions sector, unlike in other sectors. As well, some expressed concerns similar to those cited by the Auditor General, particularly that FSCO has limited powers to deal with administrators of underfunded pension plans.

- **Perceived lack of clear authority.** Some observed FSCO lacks formal authority, transparency and accountability when it deals with national regulatory coordination groups, such as the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA).
- **Perceived lack of specialized expertise.** Some observers expressed concern that both FSCO and the FST lack sufficient expertise commensurate with the breadth of subject matter, jurisdiction, and evolving trends and challenges in the market.
- **Lack of adaptability and flexibility to innovation.** Insurers point out that Ontario's tight control of auto insurance rates has fallen out of step with trends in most other nations and it runs counter to a large body of academic research. Indeed, various academic studies suggest that strict rate controls could limit competition and consumer choice, and lead to higher costs.⁶ There is the added risk that undue interference in the marketplace impedes innovative uses of new technology to monitor driver behaviour and thus postpones improvements to public safety.

Question 3 – Are all or part of the functions of the agency best performed by the agency, or might they be better performed by a ministry, another agency or entity?

The question of what should or should not be performed by the agencies prompted varying responses among the sectors and the agencies themselves. The general themes we observed during our consultations included:

- **Integrated market conduct regulation benefits the market and consumers.** Integration of market conduct within financial services regulation benefits consumers and the financial services sector. Yet some felt that thought should be given to a separate pension regulator.
- **Prudential regulation of provincial entities should be conducted by an Ontario regulator(s).** Ontario-based credit unions, caisses populaires and pensions should continue to receive prudential oversight at the provincial level. The few remaining Ontario incorporated insurers should be grandfathered into Ontario's prudential scheme or moved to the federal Office of the Superintendent of Financial Institutions (OSFI).
- **The ambiguity between FSCO and DICO should be addressed.** The separation of regulatory duties is unclear. There is also concern related to the potential conflict between DICO's role as prudential regulator and its role as deposit insurer.

⁶ See "The Relationship Between Auto Insurance Rate Regulation and Insured Loss Costs: An Empirical Analysis" by Lauren Regan, Sharon Tennyson and Mary Weiss:
<http://dspace.library.cornell.edu/bitstream/1813/15118/2/Tennyson%2009%20pub%2005.pdf>

- **Oversight of cooperatives should be moved out of FSCO.** Cooperatives operate in a variety of business sectors with differing regulations. In most cases, they do not offer financial services.
- **The Motor Vehicle Accident Claims Fund (MVACF) should be administered by industry.** FSCO's administration of MVACF is an anomaly and should be handed over to an industry group.
- **Oversight of insurance intermediaries could move to an SRO.** FSCO does not have the resources and expertise to adequately oversee insurance intermediaries.

Question 4 – Are changes to the current governance structure/associated accountability mechanisms necessary to improve mandate alignment and/or accountability?

There was a broad acknowledgment that changes are required to the governance structures and the accountability mechanisms of the agencies. The common themes we heard were:

- **FSCO should decouple from the Ontario Public Service (OPS).** FSCO is overly constrained by OPS hiring restrictions and its uncompetitive compensation scheme.
- **FSCO requires a proper Board of Directors.** The current Commission structure lacks transparency and accountability.
- **FSCO should be given rule-making authority.** Rule-making authority would allow FSCO to be a more transparent, nimble, and flexible regulator. It would also improve its independence from government, allow it to respond sooner to changes in the marketplace and technology, and co-ordinate more effectively with its counterparts in other provinces.
- **The FST should be fully independent.** The FST should be a separate body removed from FSCO and report to a separate board.

APPENDIX F - OECD G20 High-Level Principles on Financial Consumer Protection

<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

1. Legal, Regulatory and Supervisory Framework

Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.

Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms¹. Strong and effective legal and judicial or supervisory mechanisms should exist to protect consumers from and sanction against financial frauds, abuses and errors.

Financial services providers and authorised agents² should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches.

Relevant non-governmental stakeholders – including industry and consumer organisations, professional bodies and research communities – should be consulted when policies related to financial consumer protection and education are developed. Access of relevant stakeholders and in particular consumer organisations to such processes should be facilitated and enhanced.

2. Role of Oversight Bodies

There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfil their mandates. They require clear and objectively defined responsibilities and appropriate governance; operational independence; accountability for their activities; adequate powers; resources and capabilities; defined and transparent enforcement framework and clear and consistent regulatory processes. Oversight bodies should observe high professional standards, including appropriate standards of confidentiality of consumer and proprietary information and the avoidance of conflicts of interest.

Co-operation with other financial services oversight authorities and between authorities or departments in charge of sectoral issues should be promoted. A level playing field across financial services should be encouraged as appropriate. International co-operation between oversight bodies should also be encouraged, while specific attention should be considered for consumer protection issues arising from international transactions and cross-border marketing and sales.

¹ Where relevant, appropriate mechanisms should be developed to address new delivery channels for financial services, including through mobile, electronic and branchless distribution of financial services, while preserving their potential benefits for consumers.

² Authorised agents are understood to mean third parties acting for the financial services provider or in an independent capacity. They include any agents (tied and independent agents) brokers, advisors and intermediaries, etc.

3. Equitable and Fair Treatment of Consumers

All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers. Treating consumers fairly should be an integral part of the good governance and corporate culture of all financial services providers and authorised agents. Special attention should be dedicated to the needs of vulnerable groups.

4. Disclosure and Transparency

Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold³.

In particular, information should be provided on material aspects of the financial product. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading. Standardised pre-contractual disclosure practices (e.g. forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature. Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services. Where possible consumer research should be conducted to help determine and improve the effectiveness of disclosure requirements.

The provision of advice should be as objective as possible and should in general be based on the consumer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience.

Consumers should be made aware of the importance of providing financial services providers with relevant, accurate and available information.

5. Financial Education and Awareness

Financial education and awareness should be promoted by all relevant stakeholders and clear information on consumer protection, rights and responsibilities should be easily accessible by consumers. Appropriate mechanisms should be developed to help existing and future consumers develop the knowledge, skills and confidence to appropriately understand risks, including financial risks and opportunities, make informed choices, know where to go for assistance, and take effective action to improve their own financial well-being.

³ Financial services providers and authorised agents should provide clear, concise, accurate, reliable, comparable, easily accessible, and timely written and oral information on the financial products and services being offered, particularly on key features of the products and (where relevant) on possible alternative services or products, including simpler ones, they provide. In principle, information should include prices, costs, penalties, surrender charges, risks and termination modalities.

The provision of broad based financial education and information to deepen consumer financial knowledge and capability should be promoted, especially for vulnerable groups.

Taking into account national circumstances, financial education and awareness should be encouraged as part of a wider financial consumer protection and education strategy, be delivered through diverse and appropriate channels, and should begin at an early age and be accessible for all life stages. Specific programmes and approaches related to financial education should be targeted for vulnerable groups of financial consumers.

All relevant stakeholders should be encouraged to implement the international principles and guidelines on financial education developed by the OECD International Network on Financial Education (INFE). Further national and international comparable information on financial education and awareness should be compiled by national institutions and relevant international organisations in order to assess and enhance the effectiveness of approaches to financial education.

6. Responsible Business Conduct of Financial Services Providers and Authorised Agents

Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Financial services providers should also be responsible and accountable for the actions of their authorised agents.

Depending on the nature of the transaction and based on information primarily provided by customers financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.

The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided.

7. Protection of Consumer Assets against Fraud and Misuse

Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets, including against fraud, misappropriation or other misuses.

8. Protection of Consumer Data and Privacy

Consumers' financial and personal information should be protected through appropriate control and protection mechanisms. These mechanisms should define the purposes for which the data may be collected, processed, held, used and disclosed (especially to third parties). The mechanisms should also acknowledge the rights of consumers to be informed about data-sharing, to access data and to obtain the prompt correction and/or deletion of inaccurate, or unlawfully collected or processed data.

9. Complaints Handling and Redress

Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.

10. Competition

Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice among financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and, where appropriate, switch between products and providers easily and at reasonable and disclosed costs.