February 14, 2019

*Delivered via FSRA’s Online Submission System*

Financial Services Regulatory Authority of Ontario

130 Adelaide St. W., Suite 800

Toronto, Ontario

M5H 3P5

Dear Sirs/Mesdames;

**Re: Proposed FY 2019-20 FSRA Priorities and Budget Document**

I am a private citizen and not a representative of any industry participant or other stakeholder. I write to congratulate FSRA on your Draft Priorities and Budget document. I do have short comments I hope you will find constructive.

Having had experience with FSCO’s Market Conduct Branch I was particularly sympathetic to the conclusion of the Expert Advisory Panel that FSCO was *“both unable and unwilling to undertake effective enforcement in the public interest”.* It is hard to imagine a more damning appraisal of a public regulator. In a December 14, 2015 submission to the Panel I expressed concern over whether consumer protection could, to use the Panel’s words, be *balanced* with the fostering of a strong, vibrant and competitive financial services sector.

My concern stemmed from the following. The Law Society of Ontario regulates lawyers pursuant to the Law Society Act. The LSO is a “self” regulator but has much in common with FSRA (self-funded; properly governed; arm’s-length from government…). The LSO has a duty to protect the public interest but they also have a duty to facilitate access to justice. The LSO can lose its way balancing protection of the public with the strong, vibrant legal profession needed to access justice. Were the Panel asked to look at the LSO they would find it similarly unable and unwilling to undertake effective enforcement in the public interest. In fact this week a respected legal ethicist called for the imposition of an explicit twofold statutory duty on Benchers (Directors of the LSO) to act in the best interests of the public and to exercise reasonable care when doing so. This would not be necessary had the LSO got the balance right.

Protecting the public interest is particularly difficult given the present state of consumer advocacy in Canada. In its 2017-18 Annual Report of Activities the Consumers Council of Canada wrote:

*The elephant in the room in these sessions in early 2018 was the difficulty of financially sustaining Canada’s consumer organizations, along with the issue of governments relying on consumer organizations to balance input into consultations without providing funding to enable their work. This has meant many federal and provincial consultations have lacked quality, independent consumer representation.*

As long as FSRA remains vigourously protective of the public interest, though that public interest may be inaudible, FSRA has the opportunity to foster a strong financial services sector *through* effective enforcement in the public interest. More audible stakeholders understand that effective enforcement in the public interest is good for the financial services industry. Confederation Trust once chafed at the regulatory burden imposed on trust companies. In hindsight the entire life industry likely wishes the burden had been heavier.

Congratulations again on your work. The focus on regulatory effectiveness is to be applauded however it is slightly concerning that the term “enforcement” appears only three times in your Draft and “effective enforcement” only once.

As FSCO learned, and as the LSO may be learning, effective enforcement in the public interest is the core source of legitimacy for any regulator.

Sincerely,

Tim I.G. Hyde