

October 29, 2021

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted via FSRA Online Submission System

Re: Consultation on proposed FY2022-2023 Statement of Priorities

FAIR Canada is pleased to provide comments with respect to the above-referenced Consultation.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to governments and regulators, and proactive identification of emerging issues.¹

We would like to focus our comments on two specific areas in the Statement of Priorities that are of particular interest from an investor and consumer protection point of view:

- 1) the cross-sectoral commitment to strengthen consumer focus; and
- 2) operationalizing the financial planner/financial advisor (FP/FA) title protection framework.

1) The Commitment to “Strengthen Consumer Focus”

Maintaining an unwavering focus on protecting the consumer is fundamental to FSRA’s mandate. In this sense, we are supportive of FSRA’s commitment to strengthen its consumer focus as a key component of its proposed cross-sectoral priorities.

That being said, we encourage FSRA to outline a series of more ambitious priorities and specific cross-sectoral consumer protection deliverables, especially in areas where extensive information is readily available regarding the nature of the problem(s) and potential solution(s).

¹ Visit www.faircanada.ca for more information.

Making a real difference for consumers requires committing to and delivering on specific consumer-focused actions. Doing so will not only benefit consumers, but it will enhance FSRA’s ability to track and measure progress on key initiatives, a core element of transparent and effective governance.

With respect to the consumer focused “key deliverables” enumerated by FSRA, we have the following specific comments:

FSRA Consumer Focus “Key Deliverables”	Comments
<ul style="list-style-type: none"> • Identify opportunities for FSRA to respond to the needs of and risks to consumers in positions of vulnerability, to strengthen FSRA’s focus on the protection of vulnerable consumers. 	<ul style="list-style-type: none"> • We urge FSRA to go beyond merely <i>identifying</i> opportunities to respond and set out the <i>specific actions</i> that will be implemented. • For instance, the tools currently being deployed by Canadian securities regulators to help protect vulnerable consumers could be adapted by FSRA as appropriate. • These could include mechanisms whereby consumers can nominate a “trusted contact person,” and temporary holds can be placed on accounts in circumstances where a consumer may have become vulnerable.² • FSRA could also establish an advisory committee focused on the needs of vulnerable consumers and adopt a vulnerable consumer strategy and action plan, similar to the Seniors Strategy established by the Ontario Securities Commission in 2018.
<ul style="list-style-type: none"> • Strengthen FSRA’s baseline understanding of the current complaints resolution system, including consumer experiences. 	<ul style="list-style-type: none"> • Beyond strengthening FSRA’s understanding, we think it is important that FSRA take action and outline specific deliverables. The poor consumer experiences with the current complaint handling systems are sufficiently

² [CSA Notice of Amendments to National Instrument 31-103 \[...\] to Enhance Protection of Older and Vulnerable Clients](#), July 15, 2021.

FSRA Consumer Focus “Key Deliverables”	Comments
	<p>documented and widely known.³</p> <ul style="list-style-type: none"> • FSRA’s counterpart in Quebec (the AMF) for example recently published draft regulations for comment which are intended to address numerous consumer concerns (e.g., access barriers, confusion, timeliness) across all provincially regulated financial institutions.⁴ • The proposed regulations would require all provincially regulated financial institutions in Quebec to, among other things: <ul style="list-style-type: none"> ○ establish a complaint process that is simple to follow and free to the complainant; ○ provide assistance to complainants; ○ deliver a final response to the complainant within 60 days; and ○ stop using misleading terms such as “ombudsman” to refer to persons engaged in the process on the financial institution’s behalf. • A similar regulation could and should be a priority in Ontario as well.
<ul style="list-style-type: none"> • Enable the FSRA Consumer Advisory Panel (CAP) and other consumer stakeholders to participate in more FSRA rule development, guidance, and other policy work (e.g., more consumer stakeholder engagement with FSRA public consultations, more consumer panels, etc.) further strengthening FSRA’s collaboration with consumer stakeholders in policymaking. 	<ul style="list-style-type: none"> • The priority here should be to ensure that engaging the CAP and other consumer stakeholders occurs in <i>all</i> consumer-related policy work. This should be formally reflected in relevant governance documents, such as in the CAP’s Terms of Reference. It should also be reflected in FSRA’s policy making process. • We note, for example, the mandate of the UK’s Financial Services Consumer Panel

³ [Industry Review: The Operations of External Complaints Bodies](#), Financial Consumer Agency of Canada (FCAC), 2020. See also: [Domestic Bank Retail Sales Practices Review](#) (FCAC, 2018); and [Independent Evaluations of the Ombudsman for Banking Services and Investments \(OBSI\)](#).

⁴ [Complaint processing and dispute settlement - AMF publishes draft regulation for comment](#) (AMF, 2021).

FSRA Consumer Focus “Key Deliverables”	Comments
	<p>includes a positive obligation for the Financial Conduct Authority to consult the Panel “throughout its deliberations on policies and practices that have a consumer impact.”</p> <ul style="list-style-type: none"> • FSRA should establish similar positive duties to engage with the CAP and other consumer stakeholders.

2) Operationalizing the FP/FA Title Protection Framework

Further to our [comment letter](#) on the most recent FSRA FP/FA title protection consultation, we note that both Saskatchewan and New Brunswick have introduced, or will be introducing, their version of an FP/FA title protection framework in their respective province.

When operationalizing the Ontario framework, and to reduce regulatory fragmentation and burden, we would urge FSRA to look to the frameworks in these provinces for opportunities to harmonize and adopt similar important consumer protections currently missing in the Ontario model. For example:

- Saskatchewan’s decision to put the “client’s interest first” in a manner that aligns with the requirements imposed on dealers and advisers under the Canadian Securities Administrators’ Client Focused Reforms;⁵
- New Brunswick’s [stated preference](#) for adopting the Quebec approach to confusing titles, where financial professionals are prohibited from using titles specified as being too similar to the title of Financial Planner; and most importantly,
- Saskatchewan’s approach to enforcement, whereby the province’s Financial and Consumer Affairs Authority (FCAA) retains direct authority to impose significant fines and penalties to address misconduct by FPs and FAs in that province. It will also be able to act in situations where the interests of the consumers in Saskatchewan may be harmed.⁶

Adopting these essential elements would do much to harmonize and enhance the effectiveness of Ontario’s framework.

As such, we believe it is imperative for FSRA to consider resolving these issues as part of its efforts to operationalize what, in effect, was intended to be a consumer protection framework for

⁵ [The Proposed Financial Planners and Financial Advisors Regulations](#); Sask. FCAA, ss. 6 and 7.

⁶ Section 36, [The Financial Planners and Financial Advisors Act](#), SS 2020, c 22.

Ontarians. This could be achieved either through FSRA's existing rule-making power, by amending its proposed title protection [Supervisory Framework](#), or by engaging with the Ontario government to introduce needed amendments to the not-yet-in-force [Financial Professionals Title Protection Act](#).

Conclusion

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to discuss our submission with FSRA should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,



Jean-Paul Bureaud,
Executive Director

FAIR Canada | Canadian Foundation for Advancement of Investor Rights