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December 14, 2015

FSCO/FST/DICO Mandate Reviews
Ontario Ministry of Finance
Financial Institutions Policy Branch (FIPB) and Income Security & Pension Policy Division
Frost Building North, Room 424
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Submitted by email: FIBPmandatereview@ontario.ca

Attention: Expert Advisory Panel

Subject: **Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal, and the Deposit Insurance Corporation of Ontario – Preliminary Position Paper**

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to respond to the Expert Advisory Panel's (the Panel) preliminary position paper regarding the FSCO/FST/DICO mandate reviews. IFB has been an active contributor to this discussion, submitting a response to the Panel's initial position paper in June, and participating in the life/health insurance sector roundtable in July.

IFB is a national, not-for-profit professional association representing approximately 4,000 licensed financial advisors. The majority of IFB members are self-employed owners of small to medium-sized businesses, located in Ontario, and licensed to sell life insurance and/or mutual funds. Many are also licensed in complementary fields such as securities, property & casualty insurance, exempt markets, mortgages, etc. Many IFB members are regulated by FSCO, and, therefore, have a direct interest in any potential regulatory changes affecting FSCO, as well as those affecting the broader financial services industry.

In general, IFB supports the overall direction put forward by the Panel. The financial sector has undergone significant change, and become increasingly complex, since FSCO was originally created in 1998. It is clear there is a need for a different type of structure, and more flexible governance model, if FSCO is to operate as a modern, efficient, and proactive regulator.

IFB recognizes and appreciates the extensive work the Panel has conducted within the relatively short time it was allotted to develop these proposals. This Preliminary Position Paper (the Paper) outlines a structural framework that will require continued broad consultation, as the implementation details are fleshed out.

We reiterate the concern we raised in our previous submission, that any future direction for FSCO must be coordinated with the concurrent review underway in Ontario, whose Committee is tasked with reviewing Financial Advisory and Financial Planning Policy Alternatives. It is unfortunate that we do not have the benefit of that Committee's proposed recommendations to further inform our comment at this time.

Below, are our comments on the specific recommendations outlined in this Paper. We have limited our comments to those which are most relevant to IFB members.

Financial Services Regulatory Authority (FSRA)

The Panel has suggested the creation of a new, arms-length agency, called the FSRA, to address the concerns expressed by industry, other stakeholders, and FSCO itself, that there is a need for greater flexibility, accountability and transparency in how the sectors under FSCO are regulated. In setting the direction for the FSRA, IFB views it as important that the new body retain a principles-based approach to regulation which focuses on positive consumer outcomes rather than on narrow product regulation. Changes in the financial marketplace arising from the emergence of new or developing sales channels, more diverse and complex products, and greater emphasis on transparent processes and consumer education, requires a regulatory structure equipped with the tools to respond quickly and efficiently to these challenges.

The Panel envisions that the proposed FSRA would incorporate oversight of both the prudential and market conduct functions, to address the deficiencies identified above. This is consistent with the modern "twin peaks" approach, which is aimed at increased efficiency through separate functional responsibilities, but a coordinated approach to regulation.

We concur that the FSRA should have rule-making authority and operate outside of the public service, in order to address concerns about the constraints this has placed on FSCO's ability to be a proactive regulator. The financial sector in Ontario is unique in its size, diversity and importance to the provincial and national economies. The enabling legislation should be subject to a 5 year statutory review to ensure it remains relevant to industry trends, and accountable to those it regulates and the public in general. Any rule changes should be subject to public review and input, and include a cost-benefit analysis.

The arms-length relationship of the FSRA, governed by an independent Board of Directors, could lead to greater confidence in its ability to act in an impartial manner, and reduce the potential for perceived undue influence by government or individual stakeholder interest groups. The Panel proposes that the Board of Directors would report directly to the Minister of Finance, be responsible for setting policy, strategic direction and decision making, and be appointed by Order-in-Council. We suggest the selection process for potential candidates should reflect modern standards of good governance, such as clear competency requirements, representation from various regulated entities (including life insurance intermediaries), term limits, and the use of performance benchmarks for Board members wishing to stand for reappointment. Competency skills should be linked to knowledge of one or more of the regulated sectors, knowledge of the concerns and needs of users of financial services, and ability to offer a knowledgeable and unbiased perspective when acting in the capacity of a Director.

IFB is in favour of a self-funding model for the FSRA, as FSCO is now. However, we expect that the initial and ongoing costs associated with this new entity will be balanced by the economies of scale and increased efficiencies arising from the transfer of responsibilities into, and out of, the FSRA, such that there will not be any significant increase in fees paid by individual licensees (like our members).

Office of the Consumer

IFB agrees that consumer protection should be tied into the FSRA mandate, in line with the OECD's G20 High Level Principles on Financial Consumer Protection. The establishment of a new Office of the Consumer will help ensure the perspective of consumers is considered in all of the new authority's undertakings.

IFB continues to support financial education as vital to the success of a sound consumer protection strategy. Promoting financial literacy through education should be a key function of the Office of the Consumer.

To add more visibility for the general public, the Panel may want to consider recommending incorporating "Consumer" into the title of the FSRA, as the Financial and Consumer Services Commission of New Brunswick has done. While there are differences in the entities each of them regulates, adding "Consumer" to the title of the new authority would help to demonstrate the commitment to integrating consumer protection into all areas of its financial regulation responsibilities. If, as recommended, certain additional responsibilities are transferred from the Ministry of Government and Consumer Services to the FSRA (i.e., payday lenders and loan brokers, consumer credit reporting agencies, debt and credit counsellors, and guarantee and warranty insurers), the number of financial services affecting consumers will be increased.

Cooperation with other regulators

IFB supports a mandatory obligation to work, and cooperate, with other financial regulators. We have emphasized the importance of this in a number of our consultation responses, particularly as it pertains to cooperation between Ontario's securities and insurance industries. The reality is that many advisors hold more than one financial license, or are licensed in more than one jurisdiction, making compliance time-consuming and costly. Better coordination would not only lead to a more consistent experience for consumers, but would help to address some of the inconsistencies and inefficiencies in regulatory approaches that many advisors currently face. Inconsistencies lead to confusion and can increase the chance of inadvertent non-compliance.

Outside of Canada, the FSRA should continue the leadership FSCO has demonstrated with international insurance regulators. Global markets are increasingly intertwined. Regulators need to engage with their international counterparts in recognition of the influence these markets can have on Canada's, and Ontario's, economies.

Fraud Compensation Fund

The Panel recommends providing FSRA with the authority to establish and oversee a fraud compensation fund. Under the proposal, the fund would be paid for by premiums applied to licensing fees, by penalties for non-compliance, and by court-awarded damages. The proposed framework envisions that the fund would be a payer of last resort, triggered only in the event that there was no applicable errors and omissions insurance coverage, or that the existing coverage was insufficient or inadequate.

Currently, licensed life insurance agents in Ontario are required to maintain errors & omissions insurance, with extended coverage for fraudulent acts. E&O is consumer protection tool, in that it provides restitution to clients, without recourse to civil litigation.

IFB sponsors an E&O plan for its members that complies with the legislated requirements, as well as offering additional coverage that can be voluntarily purchased at a higher premium. Most life-licensed advisors pay for E&O themselves, as part of the cost of being licensed. The cost of the annual premium is not insignificant, and in Ontario (as in some other provinces) includes mandatory fraud coverage. Independent life insurance advisors pay this annual premium often over the course of many years, and often without ever experiencing a claim.

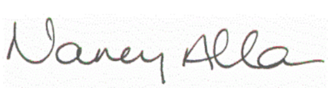
We are concerned, then, that the proposal to establish a Fraud Compensation Fund, if paid for by through increases in licensing fees, will lead to higher costs for individual life insurance advisors – advisors who are already paying a premium inclusive of fraud coverage. An alternative could be to remove the mandatory fraud coverage from E&O, and replace it with an increase in licensing fees. Removing fraud from the coverage may have the effect of reducing the professional liability insurance premium for advisors, and offset the increased financial burden. However, IFB does not recommend this approach, as we believe E&O provides an important recourse for consumers to seek restitution at no cost to them. Furthermore, we are not in favour of creating a different standard of insurance coverage in Ontario, as compared to those provinces which require fraud coverage, and where many of our members are also licensed.

A more satisfactory solution could be to mandate the features of acceptable E&O coverage so that it becomes more comparable across providers, and clients have equal access to restitution. This could address the issue of insufficient or inadequate coverage.

In conclusion, IFB appreciates the opportunity to comment on the Panel's proposals. The Position Paper provides a comprehensive starting point for continued dialogue and we look forward to participating further in the process as this consultation, and the financial planning consultation, evolve in 2016.

Please contact the undersigned, or Susan Allemang, Director, Policy & Regulatory Affairs (email: sallemang@ifbc.ca), should you wish to discuss any of our comments further.

Yours truly,



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