RETHINKING FSCO’S MANDATE

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Where Finance, Risk & Actuarial Professionals Meet
Review of the Mandates of FSCO, DICO and FST

• Financial services sector is evolving: new technology, new service providers, and new distribution channels.

• Need to ensure that the regulation of financial services products and those who sell them keeps pace.

• 2014 Ontario Budget announced that the government would review the role, structure and efficacy of all its agencies.

• The 2014 Fall Economic Statement announced the combined mandate review of FSCO, the FST and DICO.
Review of the Mandates of FSCO, DICO and FST

*Expert Advisory Panel*

- **January 2015**, a three-member Expert Advisory Panel was appointed to make workable recommendations to the government by early Winter 2015.

1. **George Cooke** – former president and CEO of The Dominion of Canada General Insurance Company, and current chair of the board of directors of OMERS Administration Corp.

2. **James Daw** – former Toronto Star personal finance columnist who has written extensively about all facets of Ontario’s financial system

3. **Lawrence Ritchie** – Osler, Hoskin & Harcourt LLP partner and former Vice-Chair of the Ontario Securities Commission.
Review of the Mandates of FSCO, DICO and FST

Mandate

• *Panel looked for fresh ideas on how to:*

1. Protect **consumers** of financial services.

2. Promote **efficient financial markets** that connect savers and investors in the economy.

3. Maintain an **appropriate balance** between protecting consumers and promoting efficient markets.

4. Provide **efficient and effective regulatory oversight of pension plans** to increase security for pension plan beneficiaries.
Review of the Mandates of FSCO, DICO and FST

Terms of Reference

Addressed 4 key issues:

1. Whether, and to what extent, each agency’s mandate continues to be relevant to Ontario’s 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 and associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?
Current regulation performed by separate bodies

Ontario’s Key Financial Regulatory Agencies

Financial Services Commission of Ontario (FSCO)

Deposit Insurance Corporation of Canada (DICO)

Financial Services Tribunal (FST)
FSCO

Jurisdiction

• Financial Services Commission of Ontario, 1997

Mandate

• Provide regulatory services that protect the public interest and enhance public confidence in the sectors that it regulates;
• Make recommendations to the Minister of Finance about the regulated sectors;
• Provide resources necessary for the proper functioning of the FST;
• Regulate market conduct and solvency

Regulated industries

• FSCO regulates: the life and property insurance sectors; pension plans; loan and trust companies; credit unions and caisses populaires; mortgage brokers; co-operative corporations in Ontario; and service providers who invoice auto insurers for statutory accident benefit claims.
FST

Jurisdiction
- Expert tribunal that adjudicates cases involving compliance issues arising in the regulated sectors
- Certain decisions of the Superintendent can be challenged in proceedings before the Tribunal
- Exclusive jurisdiction to exercise powers conferred to it pursuant to the Financial Services Commission of Ontario Act, 1997

Jurisdiction Cont’d
- Exclusive jurisdiction to determine all questions of law and fact in proceedings before it
- Authority to make rules for the practice and procedures to be followed in a proceeding before it
- Power to summon witnesses and order the payment of costs of the FST or of another party

Mandate
- Provide the resources necessary for the proper functioning of the FST.
DICO

Jurisdiction

• An Ontario Provincial Agency established under the Credit Unions and Caisses Populaires Act, 1997 ("CUCPA").

Mandate of the Board

• Governed by a Board of Directors that manages and supervises the affairs of the Corporation

Mandate of DICO

• Provide insurance against the loss of part or all of deposits with credit unions;
• Promote and otherwise contribute to the stability of the credit union sector in Ontario
• Pursue the above objects for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Corporation to loss;
• Collect, accumulate and publish relevant statistics and other information
• Perform the duties provided under the CUCPA or the regulations or do anything the Corporation is required or authorized to do under the act or the regulations
• Carry out such other objects as the Minister may specify in writing, or as may be prescribed.
Reports and Studies Consulted by the Expert Advisory Panel

Credit Unions and Caisses Populaires Act, 1994
Five-Year Review 2014

- Statutory five-year review of the Act including review of the roles of FSCO and DICO
- Consultation paper (Oct 2014) asked stakeholders:
  - Is the allocation of regulatory responsibilities between FSCO and DICO clear and appropriate?
  - Are any changes to the mandate or governance structure for FSCO or DICO necessary to improve regulatory oversight of the credit union sector?


- Ontario has no general legal framework and no regulatory body assigned to license and oversee financial planners
- Two consultations held in 2014
- Expert committee appointed to provide key recommendations and submit its final review and report in 2016.
The AG highlighted the following key findings re FSCO:
• Provides minimal oversight of cooperative corporations;
• Monitoring was insufficient;
• Response to complaints was delayed, enforcement weak;
• Licensing investigations only conducted in response to complaints, except in the case of mortgage brokers;
• Lacks information sharing mechanisms;

IMF Observations:
• FSCO is constrained by limited resources
• FSCO’s approach is “more reactive, mainly in response to self-declarations of non-compliance or complaints/information received.”
• “It is essential that FSCO be equipped with adequate resources and financial capacity to deal with the size and diversity of the Ontario marketplace.”
• Recommended that the government remove FSCO from its fiscal controls and administrative guidance to strengthen its autonomy.
Reports and Studies Consulted by the Expert Advisory Panel Cont’d

Arthur’s Report

- Expert Commission on Pensions established in 2006
- Report recommended the creation of a separate, independent pension regulator with budgetary, staffing and other powers of self-management comparable with the OSC
- Recommended the creation of a Pension Tribunal of Ontario that would have exclusive jurisdiction over all Pension Benefits Act matters
- Recommended that the powers of the Superintendent be enhanced:
  - Specifying required actuarial assumptions;
  - Reviewing the effects of a plan split, merger or asset transfer;
  - Establishing benchmarks to identify plans at risk of failure
OUR PANEL’S CONSULTATIONS

• We received approximately **50 written submissions** in response to our April 2015 consultation paper from many entities, including insurance associations, professional associations, pension plans, law firms, FSCO, and the Law Society of Upper Canada

• Held **7 sector roundtable talks**, including with:
  – Cooperatives
  – Mortgage Brokers
  – Credit Unions and Caisses Populaires
  – Pension
  – Insurance (Property, Casualty, Life and Health)
  – Health Service Providers

• Held **informal discussions** with more than 40 groups and individuals
General Consultation Feedback

• Sectors would benefit from greater clarity in their mandates
• Explicit consumer protection requirements should be included in the mandates of each agency
• FSCO and DICO mandates should include the explicit requirement to support and foster innovation within the sectors
• A principled approach focused on risk, outcomes and flexibility is needed
What we heard about FSCO:

- **Lack of resources** - limited by the constraints of the Ontario Public Service
- **Inflexible and insufficient** regulatory approach to address the complex and changing financial marketplace and consumer protection requirements.
- **Lack of coordination** with other regulators in the approach taken to some financial products and services
- **Lack of transparency** in the policy and decision-making process
- **Lack of credibility** due to the perception that FSCO is unable or unwilling to undertake effective enforcement.
- **Frustrating Delays**: Many interactions with FSCO are seen to take too long.
What we heard about DICO

- The current mandate is unclear.
- Perceived ambiguity between the roles of FSCO and DICO
- As both a prudential regulator and an insurer, DICO has a conflict of interest.
What we heard about the FST

• The FST lacks sufficient independence and resources and, in some instances, lacks authority.
Terms of Reference Recommendations

1. Each agency’s mandate continues to be relevant. However, goals and priorities should be made more explicit in the legislation and agency mandates.

2. Need for more clarity and transparency in how each agency is to carry out its activities and operations.

3. Need for the governance, structure and operations of these agencies to be revised and rationalized.

4. Need for significant changes in governance, structure and associated accountability mechanisms to improve mandate alignment and accountability.
Preliminary Recommendations – Creation of a single, integrated organization

• Propose the creation of the Financial Services Regulatory Authority (“FRSA”)
• FRSA to have prudential and market conduct functions
• FRSA to have three Superintendents:
  – Superintendent of Market Conduct
  – Superintendent of Prudential Oversight
  – Superintendent of Pensions
• Modified “Twin Peaks” approach to regulation
• Own corporate identity, operationally distinct from the Government
  1. Self-funded;
  2. Governed by an expert Board of Directors;
  3. Arm’s length from government;
  4. Authority to make and enforce rules;
  5. Clear mandate;
  6. Transparent, principled, and effective as possible
  7. Manage risk and strive for a set of positive outcomes
37 Preliminary Recommendations

• **Mandate** – 12 recommendations
• **Governance** – 4 recommendations
• **Structure** – 7 recommendations
• **Tools, Means and Regulatory Approach** – 9 recommendations
• **FST** – 5 Recommendations
Proposed New Regulatory Structure

Minister of Finance

Board of Directors

Chair of the Tribunal

Office of the Consumer

Supt. Of Prudential Matters
- Compliance
- Policy making

Chief Enforcement Officer

Supt. Of Pensions

Chief Administrative Officer
- Legal services
- Enterprise business solutions
- Corporate services
- Regulatory coordination

Supt. Of Market Conduct and Product Regulations

Responsible Minister

SEPARATE ENTITY
DICO/ Ontario Pension Benefit Guarantee Fund

SEPARATE ENTITY
FST

Chair of the Tribunal
RESPONSE TO PRELIMINARY RECOMMENDATIONS

• Received approximately **50 written submissions** in response to our Preliminary Position Paper; the vast majority generally supported our vision for FSRA.

• The few who did not support our position suggested either *status quo* or for FSCO to be given a revised mandate and more resources.
RESPONSE TO PRELIMINARY RECOMMENDATIONS

• Some common responses included:
  – FSRA’s mandate should reference all sectors;
  – Consumer protection and pension plan beneficiary protection are not synonymous;
  – FSRA should have a strong anti-fraud mandate;
  – FSRA should coordinate with other regulators, but shouldn’t have a one-size-fits-all approach;
  – FSRA’s funding must be given careful consideration; cross-subsidization is inappropriate;
  – The Board of Directors should be reflective of the sectors and constituents therein;
  – The Office of the Consumer should not be isolated from the rest of the organization: its activities should permeate everything the Authority does;
  – FSRA should be enabled to determine how automobile insurance rates are regulated;
  – The PBGF may not fit with DICO; the functions are very different;
  – DICO should remain as a separate entity;
  – The FST should be separated from the regulator; and
  – Careful consideration must be given to implementation/transition issues.
Modernizing the Regulation and Oversight of Financial Services and Pensions

“In November 2015, the [Expert Advisory] panel released a preliminary position paper to provide insight into their initial views and to solicit feedback from the public.”

“In this paper, the panel proposed significant reforms to the regulatory landscape, including the establishment of a new, independent and flexible regulator with a modernized governance and accountability framework.”

“The government is committed to modernizing and strengthening the regulation of financial services and pensions, and to improving consumer, investor and pension plan beneficiary protection. Necessary legislative or regulatory changes will be identified and pursued as early as possible.”

“The panel’s final report will be released this spring.”