

Approach

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Principles-based Regulation

Purpose

This Approach guidance (“Guidance”) outlines the Financial Services Regulatory Authority of Ontario’s (“FSRA”) approach to principles-based regulation (“PBR”). This Guidance sets out:

- FSRA’s Framework Principles,
- How PBR is reflected in FSRA’s approach to regulation and supervision,
- How FSRA’s Framework Principles will be implemented, and
- How FSRA’s PBR approach and Framework Principles will impact FSRA regulated entities and individuals.

Scope

This Guidance is applicable to all entities and individuals regulated by FSRA.

Rationale and background

About FSRA

FSRA was created to support consumer¹ and pension plan beneficiary protections in Ontario. FSRA is self-funded and designed to respond to a rapidly evolving financial services sector by, amongst other things:

- Promoting high standards of business conduct,
- Fostering strong, sustainable, competitive and innovative financial services sectors,
- Responding to changes in the financial services landscape on a timely basis where possible,
- Promoting good administration of pension plans, and
- Contributing to public confidence in the regulated sectors.

FSRA has embraced a principles-based and outcomes-focused approach to regulation from our inception. FSRA is focused on risk-based supervision and we are guided by our statutory objects established in the *Financial Services Regulatory Authority of Ontario Act, 2016* (“FSRA Act”).

About Principles-based Regulation

PBR is consistent with FSRA’s Mission of “public service through dynamic, principles-based and outcomes-focused regulation.”² PBR is a regulatory and supervisory approach used by leading financial services regulators around the world. In addition to being an effective and efficient way

¹ For the purposes of this guidance, the term “consumer” will include the public, credit union members, investors and other stakeholders in the sectors regulated by FSRA, other than pension plan beneficiaries.

² FSRA is guided by our mission to protect Ontarians, our mandate from the Ministry of Finance, and the values of our membership (<https://www.fsrao.ca/about-fsra/mission-vision-and-values>).

to regulate and supervise regulated entities and individuals, PBR facilitates a regulator's ability to:

- Respond more quickly to technological changes, consumer and beneficiary needs, and innovation in the financial services landscape,
- Focus more effectively on intended regulatory outcomes and objectives to be achieved, and
- Reduce regulatory burden through a more flexible regulatory approach which allows regulated entities and individuals to determine how to best achieve intended regulatory outcomes based on their size, complexity, and risk profile.

Framework Principles

FSRA has developed a set of Framework Principles to guide our regulatory approach. The Framework Principles reflect FSRA's Mission as well as our statutory objects in the *FSRA Act*.³

The Framework Principles are general statements which outline how FSRA will regulate and supervise regulated entities and individuals.

Regulated entities and individuals should familiarize themselves with FSRA's Framework Principles. They are intended to:

- Communicate the highest-level outcomes FSRA is seeking, having regard to the statutory objects in the *FSRA Act*,
- Inform FSRA in the development of our Rules and guidance, in conjunction with FSRA's Guidance Framework,

³ See sections 3 and 3.1.

- Guide FSRA in identifying key areas of focus to prioritize our regulatory and supervisory activities and to more efficiently and effectively allocate resources, in the implementation of FSRA's Risk Based Supervisory Frameworks, and
- Facilitate appropriate outcomes and ensure that FSRA's regulatory responses are reasonable and proportionate.

The Framework Principles:

- 1. Outcomes-focused** – FSRA will focus our regulatory and supervisory activities on the outcomes we seek to achieve for consumers, pension plan beneficiaries, regulated entities and the sectors based on the statutory objects in the *FSRA Act*. The statutory objects will be used as an overlay to the interpretation of the sector statutes. FSRA will regularly assess the effectiveness and efficiency of our regulatory tools, powers, and approach to ensure we are achieving the appropriate outcomes in a reasonable and proportionate manner.
- 2. Innovative** – FSRA will continue to develop our own culture and capabilities in a manner that increases effectiveness and efficiency. This will enable FSRA to fulfil our statutory objects which include facilitating innovation and transformation in the sectors we regulate. FSRA acknowledges that generally “one size does not fit all” and will take into consideration the size, complexity, and risk profile of each regulated entity and of the sector we regulate. FSRA will monitor and assess evolving practices, circumstances and expectations from our stakeholders. and will be responsive and adaptive, consistent with our statutory objects.
- 3. Consumer-centric** – In formulating our regulatory approach toward regulated entities and individuals, FSRA will focus on the impact on consumers (and in the case of pensions, safeguarding the rights/entitlements of plan beneficiaries) in accordance with our statutory objects. FSRA Rules⁴ and guidance strive to reflect the interests and needs of consumers and plan beneficiaries.

⁴ Rules has the meaning as defined under Section 21(1) of the *FSRA Act*.

- 4. Risk-based** – FSRA will direct our resources to the issues, regulated entities and individuals that pose the highest risk. FSRA’s risk assessment will consider the size, complexity, and risk profile of the regulated entity as well as systemic risks in the sectors. FSRA will focus on matters where non-compliance or the inability to achieve intended regulatory outcomes will result in the most harm to consumers or pose the greatest threat to FSRA’s ability to execute against our statutory objects.
- 5. Transparent** – FSRA will communicate regulatory requirements and supervisory expectations as well as our activities and performance to stakeholders.⁵ We will design Rules and guidance that reference the applicable principles against which FSRA will supervise and identify the specific outcomes we are seeking to achieve.
- 6. Collaborative** – FSRA will take into consideration the complexities of the sectors we regulate. FSRA will engage with relevant stakeholders, appreciating their differences and roles, and leverage public consultations to ensure that our regulatory activities consider the viewpoints and needs of our stakeholders, which include the interests of consumers and pension plan beneficiaries. FSRA will also work collaboratively with other regulators to promote jurisdictional harmonization where it is possible and reasonable to do so.

FSRA’s regulatory approach

The sectors that FSRA regulates form a significant component of the economy in Ontario, delivering a vast array of financial products and services integral to the day-to-day lives of Ontarians. FSRA is responsible for ensuring that Ontarians who purchase or rely on these products and services are appropriately protected while ensuring that the sectors remain competitive and responsive to consumer and pension plan beneficiary needs. As an integrated prudential and market conduct regulator⁶, FSRA plays an important role in helping to ensure that pension plan administrators, credit unions and caisses populaires (“credit unions”), and Ontario-incorporated insurance companies and reciprocal insurance exchanges (“insurers”) are adequately funded and capitalized so as to be able to fulfil their obligations to members, depositors, policyholders and beneficiaries. A regulatory approach which focuses on the use of

⁵ The term stakeholders includes regulated entities, the Government of Ontario, as well as consumers.

⁶ For pension plans, Ontario-incorporated insurance companies and reciprocals, and credit unions.

PBR is a more effective and efficient way to regulate the sectors and achieve the intended regulatory outcomes in a manner consistent with FSRA's statutory objects and the Framework Principles.

Use of principles

In our Rules and guidance, FSRA will reference high-level, broadly stated principles, based on our statutory objects, to identify regulatory outcomes that individuals and regulated entities of varying size, complexity, and risk profile, are expected to achieve.

A regulated entity or individual will be responsible for demonstrating how its identified approach is effective in achieving adherence to the principles and intended regulatory outcomes. When applying a PBR and outcomes-focused approach to a credit union, pension plan administrator, or insurer, FSRA will place greater reliance on a regulated entity's board of directors or trustees (where a board of directors or trustees exist) to provide oversight to senior management to internalize regulatory requirements and supervisory expectations to achieve intended regulatory outcomes. Senior management and the board of directors or trustees of a credit union, pension plan administrator, or insurer should communicate, transparently and in a timely manner, the policies, processes, and practices which have been adopted and implemented to demonstrate how the regulated entity is achieving the intended regulatory outcomes and how it is validating that those outcomes are being achieved. FSRA's assessment of the extent to which the regulated entity or individual has achieved the intended regulatory outcomes will entail whether a regulated entity or individual has taken reasonable and good faith efforts to meet and be aligned with the intended regulatory outcomes.

Constructive, transparent, and collaborative supervision

Individuals and well-controlled, well-governed and effectively managed regulated entities that engage in an open and productive manner with FSRA should realize real benefits from FSRA's PBR and outcomes-focused approach. For example, less intensive supervision can result where a regulated entity demonstrates that its oversight and controls are functioning effectively and that the intended regulatory outcomes are being achieved. However, this is predicated on an individual or the regulated entity's senior management and board fully engaging in achieving the intended regulatory outcomes identified by FSRA and working with FSRA in a constructive and transparent manner to ensure that these outcomes are being achieved.

FSRA will consider relevant aspects of the regulatory issue and exercise appropriate supervisory judgment when evaluating the policies, processes, and practices established by the regulated entity or individual to achieve alignment with principles as reflected in identified outcomes. Where a regulated entity or individual identifies potential issues which may result in an inability to achieve the intended regulatory outcomes, open and early communication with FSRA will better enable both parties to identify and develop appropriate solutions, mitigate risks or develop remediation strategies.

FSRA may leverage leading or accepted industry practices when assessing the regulated entity or individual's chosen approach. These industry practices should not be interpreted or implemented as a compliance "checklist". Rather, leading or accepted industry practices will be used to provide regulated entities and individuals with valuable insights regarding the identified approaches used by industry peers and provide a baseline from which to identify practices that are best suited to themselves or their own organization.

It is more efficient and effective to regulate using a principles-based and outcomes-focused approach rather than a regulatory approach that focuses only on whether prescriptive requirements are complied with and/or satisfied. As such, the use of a PBR approach to regulation and supervision will continue to form a foundational component of FSRA's regulatory strategy. It should be evident that this method of regulation and supervision requires the exercise of sound judgment, collaboration, and ongoing and open communication by both the regulator and the regulated entity or person.

Continued need for prescriptive requirements

Operating under a principles-based regulatory approach does not mean a complete absence of prescriptive requirements. In certain circumstances and areas FSRA will continue to rely on detailed Rules and prescriptive requirements to ensure adequate consumer and pension beneficiary protection. This is because the use of principles to identify the regulatory outcomes that FSRA is seeking to achieve will need to be underpinned by prescriptive requirements, but to the extent possible those requirements will be interpreted through guidance and reference specific principles which apply to support the intended regulatory outcomes.

FSRA will be guided by our Framework Principles when approaching regulatory and supervisory issues. Factors that will impact the approach include the relevant legal framework (i.e., statute, regulations, FSRA Rules and case law), the complexity, impact and severity of the issue, and the sophistication and resources of the regulated entity or individual to effectively address the issue.

Individuals and regulated entities can expect that FSRA will review and revise our regulatory and supervisory approaches and will adopt a PBR approach where it is reasonable and possible to do so. Over time, individuals and regulated entities can expect that some regulatory and supervisory issues which have been addressed by a prescriptive regulatory approach may be revised, in whole or in part, to a more PBR approach. A change from a prescriptive to a PBR approach will be an exercise of sound judgment by FSRA, guided by our Framework Principles.

Sector-specific approaches

Each sector-specific regulatory area within FSRA may develop and implement a supervisory methodology which reflects the unique regulatory issues and the size, complexity, and risk profile of the regulated entities, persons, and sectors it regulates. All supervisory processes developed and implemented across FSRA's regulated sectors will be aligned with the Framework Principles as well as all other elements of FSRA's principles-based regulatory approach, as outlined in this Guidance.

FSRA Rules and guidance are intended to be constructed in a manner that reflects the Framework Principles. Each piece of guidance and/or Rule may also identify a distinct set of principles and/or intended regulatory outcomes with respect to the specific issue being addressed (e.g., fair treatment of consumers). The use of Rules and guidance⁷ will be key mechanisms through which FSRA will outline our expectations and requirements (i.e., applicable principles and intended regulatory outcomes).

⁷ FSRA's Guidance Framework (<https://www.fsrao.ca/regulation/guidance/fsra-guidance-framework>) will continue to be used to communicate information, our approach to supervision, regulatory compliance obligations and/or regulatory decisions.

Enforcement

Enforcement remains an integral component of FSRA's principles-based and outcomes-focused approach. FSRA will utilize Interpretation Guidance to identify the principles and relevant statutory objects that relate to our interpretation of sector statutes and regulations, or a Rule.

FSRA's Framework Principles inform FSRA's approach to enforcement. FSRA takes a progressive, measured, and proportional approach to enforcement. Where a regulated entity or individual has not complied with regulatory requirements, FSRA will determine the appropriate course of action after considering the evidence and the unique circumstances of the non-compliance or non-adherence to a particular obligation, including the seriousness and nature of the contravention, risk to consumers and pension plan beneficiaries, potential impact on stakeholders, nature of regulated entity or licensee, past behaviour, efforts to remediate and mitigate, and the need for deterrence. FSRA will strive to be measured in our approach to enforcement, assuming good faith by the regulated entity.

Scope of FSRA's mandate

FSRA's ability to supervise, regulate, make rules, and enforce requirements in the sectors we regulate stems from the authority given to FSRA through the statutes and regulations we administer.

It is beyond the scope of FSRA's mandate and authority to:

- Amend statutes or regulations, either at a provincial or a federal level,
- Amend provincial or federal programs that intersect with our regulated sectors, such as the Canada Pension Plan or the Pension Benefits Guarantee Fund, and
- Provide legal or financial advice to consumers or pension plan beneficiaries.

Effective date and future review

This Guidance became effective on **September 5, 2024**, and will be reviewed no later than **September 5, 2029**.

About this Guidance

This Guidance is an Approach. Approach Guidance describes FSRA's internal principles, processes and practices for supervisory action and application of Chief Executive Officer discretion. Approach Guidance may refer to compliance obligations but does not in and of itself create a compliance obligation. Visit [FSRA's Guidance Framework](#) to learn more.