



February 18, 2022

FSRA Policy Division
25 Sheppard Ave W. Suite 100
Toronto, ON
M2N 6S6

Dear FSRA Policy Team,

RE: Response to FSRA’s Proposed Resolution Planning Guidance

Thank you for the opportunity to provide our thoughts on the Proposed Resolution Planning Guidance (“**Draft Guidance**”). We appreciate FSRA’s efforts to enhance crisis preparedness and resiliency of the Ontario credit union system. We share FSRA’s view that ensuring the safety and stability of our sector is paramount to protecting deposits held by members.

However, we believe that, at least for the time being, resources are better spent in areas other than resolution planning to better support these goals. We would kindly ask that you consider our comments which relate to:

- focusing on recovery planning;
- finding a more efficient tool to aid in resolution;
- relevance of resolution planning for credit unions;
- querying the legislative basis for resolution planning and potential impact to director & officer liability insurance; and
- timing of implementation.

Focusing on recovery planning

To best use finite resources, we believe that it is optimal to focus on preventative measures and the building of a strong, dynamic and innovative credit union sector. It is our view that diverting resources from building a strong business model and focusing on the completion of a comprehensive recovery plan at this time would be counterproductive. We support focusing on the effective running versus resolution of a credit union.

The Recovery Planning Guidance was only released on July 5, 2021. As noted by FSRA, the Guidance is to help credit unions increase their resiliency and to equip them with strategies to use in the event of crisis. The Recovery Planning Guidance provides for a phase-in period to allow credit unions to work with FSRA before submitting their final plans in 2023. We suggest that it would be premature to consider the necessity of resolution planning before final recovery plans have been completed, reviewed and updated over a few cycles.

We believe that contingency and recovery planning processes are more important in this space as there are very limited options once a credit union is considered non-viable and is in the resolution phase. Realistically this would likely result in the winding up a credit union under FSRA administration given it would be difficult to raise capital or negotiate a sale of assets as part of a resolution. Any sale of assets would be considered either as part of the contingency or recovery plan. Furthermore, the last resort of a forced merger with a larger credit union cannot be planned or tested as part of resolution planning.

Finding a more efficient tool to support resolutions

We believe that there may be a more efficient way to support resolutions than through resolution planning. As set out above, we believe that recovery planning is a more important endeavour as there are very limited options once a credit union is considered non-viable and is in the resolution phase. In order to support the resolution process, it may be beneficial for FSRA to communicate all the documentation and in what form it would be required to be kept so as to facilitate an orderly winding down under FSRA administration. FSRA could also consider developing an outsourcing guidance like OSFI Guideline B10 to ensure that all material outsourcing contracts prohibit termination in the event that FSRA takes over the running of a credit union.

Relevance of Resolution Planning for Credit Unions

Resolution planning is something we have seen in larger financial institutions, typically those that have systemic importance, either globally (G-SIFIs) or domestically (D-SIBs). These designations are given to those financial institutions whose viability may threaten the stability of the financial system. As you are aware, OSFI has identified the six largest banks in Canada as domestically systemic important banks. Yet the Canadian credit union system as a whole is only as large as the smallest of the big six banks.

We further note that the *Canada Deposit Insurance Corporation Act* (the “**CDIC Act**”) and the Canada Deposit Insurance Corporation Resolution By-law limit the application of resolution planning to domestic systemically important banks.

We fully support the goals of sector stability and public confidence but feel that these goals are better met through supervision and recovery planning. The significant resources that would be needed to develop comprehensive resolution plans are not justified given that the failure of an Ontario credit union would not present a systemic issue.

We would also point out that the increasing regulatory demands on credit unions erodes profitability by diverting resources to activities not associated with member service, growth or profitability. Credit unions are not large enough nor complex enough to bear unlimited regulatory demands. With this in mind, FSRA may wish to determine which regulatory activities provides the most benefit, and limit rules and guidance to those that the credit unions can reasonably ingest.

Legislative basis for resolution planning and potential impact to director & officer liability insurance

Section 109 of the *Credit Union and Caisse Populaires Act, 2020* (the “Act”) provides that every director, officer and member of a committee shall exercise their powers and discharge their duties honestly, in good faith and in the best interests of the credit union and that they shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Draft Guidance suggests that this section of the Act creates an obligation to ensure that a resolution plan for a credit union is implemented and kept current. This interpretation could be challenged, and it also seems both untimely and unfair given regulatory expectations of credit union boards are already significantly increasing.

In addition, as credit unions typically provide director & officer liability insurance to mitigate the risk to these individuals for any failure to meet the standard outlined in Section 109, it would be important that FSRA reconcile any regulatorily imposed standards of prudent person and duty of care with industry and insurance norms. If FSRA sets a higher bar than would be considered by an insurer adjudicating a potential claim due to an unforeseen event, this may ultimately expose the credit union (and in the extreme scenario, the DIRF) to losses not covered by insurance.

Timing

The Draft Guidance sets out tentatively that credit unions are to provide an interim submission by April 30, 2023 and final resolution plans by January 31, 2024. As set out above, we are of the view that it is premature to evaluate the necessity of requiring resolution planning in the credit union sector. However, if such a requirement moves forward, we believe that this timing is very aggressive given the implementation of other regulatory requirements such as recovery planning, the new Act, and associated Rules. Significant work needs to be undertaken by both the sector and FSRA on these initiatives. We respectfully submit the timing should be re-examined given these other priorities and the need to continue to develop our business in order to address the evolving needs of our members.

Conclusion

We trust that our comments are constructive and helpful. Thank you once again for the opportunity to share our thoughts, and please feel free to reach out to us if you would like to discuss these in greater detail.

Best Regards,

A handwritten signature in black ink, appearing to read 'José Gallant'.

José Gallant

SVP & Chief Administrative Officer

cc. Rob Paterson, President & CEO

