

November 11, 2022

Financial Services Regulatory Authority of Ontario (FSRA)  
Submitted via the FSRA website

**Re: FSRA Proposed FY2023-2024 Statement of Priorities**

FAIR Canada is pleased to provide comments with respect to the above-referenced proposed Statement of Priorities.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.

Our comments focus on the following three specific priorities which are of particular interest from an investor and consumer protection perspective:

1. Continuing to strengthen the FSRA's cross-sector focus on consumers.
2. Ensuring the title protection framework for financial planners/financial advisors (FPs/FAs) meets consumer expectations and protects consumers.
3. Enhancing standards for segregated fund contracts (e.g., total cost reporting and upfront compensation issues).

**1. Strengthening the Consumer Focus**

The FSRA's continued cross-sector commitment to strengthening the focus on consumers is welcome and necessary.

Relative to the FY2022-2023 Statement of Priorities, this Statement of Priorities moves beyond "identifying opportunities" to, in certain instances, describing how the FSRA will "act" on those opportunities. This is a positive step and change in focus. We encourage the FSRA to continue to outline specific deliverables on key consumer protection issues to the greatest extent possible each year.

This should include, for example, specific deliverables on complaint handling /dispute resolution standards. While there is mention of planned work to "evaluate" the external dispute resolution (EDR) framework in the insurance industry, there is an opportunity to do more.

One such specific deliverable would be to address the existing gap in the complaint handling framework for consumers who may have complaints against independent insurance advisors selling segregated fund contracts. This long-standing issue arises because segregated funds are not within the Ombudsman for

Banking Services and Investments' (OBSI) mandate, and the OmbudService for Life and Health Insurance only deals with complaints against the insurer, not the selling agent.

Moreover, the need for effective and fair dispute resolution mechanisms is a fundamental *cross-sector issue*. As such, it should be made clear that the FSRA's work in this area is not limited to the insurance sector.

Another area that would benefit from specific deliverables is the planned outcome to "Strengthen Consumer Advisory Panel (CAP) engagement." As we have previously suggested, the FSRA should adopt formal mechanisms to require engaging the CAP and other consumer stakeholders on all consumer-related policy work.<sup>1</sup>

## 2. The Financial Planner (FP)/Financial Advisor (FA) Title Protection Framework

Further to our comment letters in response to past FSRA consultations on this topic,<sup>2</sup> we are pleased to see that the FSRA intends to focus on improving the FP/FA title protection framework to better protect consumers.

We are especially encouraged to note that this will include working with the Ministry of Finance to identify and implement any required changes to the governing legislation and/or regulations and engaging with other jurisdictions to identify opportunities for improvements.

We continue to believe that many of the shortcomings of the Ontario framework are rooted in its governing legislation:

- The *Financial Professionals Title Protection Act, 2019* (Act) assigns responsibility for oversight of FP/FA conduct solely to credentialing bodies (CBs), with no oversight role for the FSRA in this respect.
- The Act and related Title Protection Rule do not include a best interest standard – this fundamental aspect of the framework is expressed only in terms of a FSRA "expectation" in a guidance document.<sup>3</sup>
- The Act fails to provide the FSRA with the power to issue fines or penalties. It also fails to list offences that the FSRA would be responsible for enforcing.
- The baseline competency profile for FAs, set out in the Title Protection Rule and related FSRA Guide, needs to be significantly strengthened to align with what consumers would reasonably expect from individuals offering "financial advice". To meet this expectation, FAs need to be able to provide comprehensive rather than product-focused advice.<sup>4</sup>

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<sup>1</sup> FAIR Comment Letters: [Consultation on proposed FSRA FY2022-2023 Statement of Priorities](#) (Oct. 29, 2021); [Consultation on Terms of Reference for FSRA's CAP](#) (Nov. 30, 2021)

<sup>2</sup> FAIR Comment Letters: [Financial professionals title protection rule and guidance - second consultation](#) (Jun. 21, 2021); [Consultation on the updated proposed Financial Professionals Title Protection Application](#) (Dec. 8, 2021).

<sup>3</sup> [Financial Professionals Title Protection – Administration of Applications](#), at page 13: "FSRA expects the code of ethics and professional expectations will include a requirement for credential holders to put the client's interests first."

<sup>4</sup> [Financial Professionals Title Protection – Administration of Applications](#), at page 19: "A FA education program should demonstrate it has content that reflects an understanding of common investment products, with in-depth knowledge and expertise in one or more of those products."

In working to address these shortcomings, we urge the FSRA to look to Saskatchewan’s Title Protection legislation and the approach the Financial and Consumer Affairs Authority is considering with respect to enhancing the baseline competency profile for FAs.<sup>5</sup>

Finally, we believe the planned outcome iii) on page 27 of the proposed Statement of Priorities should be strengthened as follows:

Enhanced public confidence ~~by ensuring that ,informing consumers that their~~ financial planners and advisors meet consistent minimum education standards and ~~are required to~~ abide by a code of conduct that puts consumer interests first.

The above edit removes the implication that “informing consumers” is an outcome rather than a means to achieve an outcome (enhanced public confidence). While informing the public about key elements of the framework would be a welcome key deliverable, it should not be framed as a planned outcome. Finally, it seems premature to tell the public that FPs/FAs “meet consistent minimum standards” – there is presumably little evidence available at this stage to conclude that FPs/FAs are meeting the applicable standards. Similarly, the focus should be on ensuring FPs and FAs in practice do put the consumer’s interest first, rather than simply informing consumers FPs and FAs are required to do so.

### 3. Segregated Fund Contracts

With respect to the sale of segregated fund contracts, we agree that the following initiatives should be a priority<sup>6</sup>:

- Finalizing total cost reporting disclosure requirements.
- Consulting on national guidance relating to upfront compensation.

We also fully support the plan to ban deferred sales charges for new segregated fund contracts by June 1, 2023 along with planned measures to ensure consumers are treated fairly during the transition to the ban.

These are all key consumer and investor protection initiatives that need to be implemented with a sense of urgency. Any unnecessary delays will only expose consumers to ongoing harm.

Lastly, regarding planned outcome (ii) under this priority on page 22, we note that the focus is on providing the industry a “clear understanding” of regulatory requirements. We suggest adding similar language, along the following lines, to reflect the importance of improved *consumer understanding*:

“Consumers have a clear understanding of the information they receive and the associated costs and risk involved when investing in segregated fund contracts; insurers and agents actively engage with their customers to facilitate this understanding.”

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<sup>5</sup> [The Financial Planners and Financial Advisors Act - Notice of Proposed Regulations and Request for Further Comment](#) (July 2022).

<sup>6</sup> See our detailed views on these issues here: FAIR Canada Comment Letter: [CSA and CCIR Joint Notice and Request for Comment – Total Cost Reporting for Investment Funds and Segregated Funds](#) (Jul. 27, 2022); FAIR Canada Comment Letter: Discussion Paper on Upfront Compensation in Segregated Funds (Nov. 7, 2022), submitted to the Canadian Council of Insurance Regulators Secretariat.

We thank you for the opportunity to provide our comments and views in this submission and would welcome any opportunity to engage with the FSRA going forward as it works to finalise and deliver on its key priorities.

If you have questions or require further explanation of our views on these matters, please contact us at [jp.bureaud@faircanada.ca](mailto:jp.bureaud@faircanada.ca) or [mauro.lagana@faircanada.ca](mailto:mauro.lagana@faircanada.ca).

Sincerely,



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FAIR Canada