

OSC Investor Advisory Panel  
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Expert Advisory Panel  
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**Response to Preliminary Position Paper:  
Review of the Mandates of the  
Financial Services Commission of Ontario,  
Financial Services Tribunal and the  
Deposit Insurance Corporation of Ontario**

The Investor Advisory Panel is an initiative by the OSC to enable investor concerns and voices to be represented in its rule and policy making process. Given our mandate, we are pleased to provide our comments on the Expert Advisory Panel's Preliminary Position Paper resulting from its review of the Mandates of Ontario's Financial Services Commission, the Financial Services Tribunal, and the Deposit Insurance Corporation of Ontario.

**Background:**

The Expert Advisory Panel has completed its Preliminary Position Paper and is seeking feedback on its preliminary recommendations, the most significant being a new, restructured regulatory agency: The Financial Services Regulatory Agency (FSRA). Specifically, the *FSRA should operate as an integrated regulator of financial services with distinct market conduct, pensions, and prudential regulatory functions; operating independently of each other, but in a coordinated and consistent manner.* The paper also details how this regulator should be established, governed and run. In addition, it makes a series of recommendations for the Financial Services Tribunal.

We believe these recommendations are a step in the right direction to providing better investor protection in Ontario. For example, the IAP is pleased to see the Panel recognize the growth of regulatory arbitrage as well as the need for consumer input through the creation of an Office of the Consumer. We also support the Panel's provision for whistle blowing.

But while there are many positive elements in the recommendations, the IAP encourages the Panel to consider a few important areas as it moves towards its final recommendations.

### ***Restitution***

The IAP urges the Panel to strengthen its recommendation around restitution for wronged financial consumers. The recommendations include only a passing reference to fraud compensation: *FSRA should be provided authority to retain funds from penalties for specific, articulated purposes, such as a fraud compensation fund and/or increased consumer outreach and education.* We recommend that this be clarified and broadened. A compensation fund should be a priority of the newly focused FST -- not only should it compensate victims of fraud but it should also offer restitution for consumers who are harmed by poor or negligent behaviour on the part of their service providers or registrants. The G20 High-Level Principles on Financial Consumer Protection, which the Panel points to as a set of foundational principles for the FSRA, states as one of its principles complaints handling and redress: *"Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient."*

As we have asserted before, restitution is essential to the complaint and redress process and should be of paramount importance in an industry where insurance providers are moving quickly into the wealth management space. Ontarians are now entrusting a greater share of their investment savings with them -- they should be better protected.

### ***The rise of regulatory arbitrage***

We were pleased to see the Panel acknowledge the rise of regulatory arbitrage in its report, particularly segregated funds, which are being used to circumvent new rules about fee disclosure. However, more emphasis is needed in the final report on how the proposed FSRA would address and prevent such practices, not just in the form of segregated funds, but also in a host of new and emerging products that are being created to exploit the gap between Ontario's regulatory silos. A new regulator must monitor the product landscape for innovations such as these that put financial consumers at risk. Overall, the FSRA must ensure that those it regulates are unable to circumvent and diminish the positive effects of CRM2 in promoting greater transparency for investors.

### ***The voice of the consumer***

While the IAP is pleased to see the inclusion of an Office of the Investor at the proposed new regulator, we feel the recommendations should consider broader representation of consumers. The FSRA should have a consumer advisory panel to ensure that the interests of financial consumers and other financial consumers are well represented in all the regulator's activities. In addition to the establishment of advisory committees, we also call for investor/consumer involvement in governance and decision-making across all of the FSRA's activities.

**Foster a system that puts financial consumers first**

The Panel has repeatedly encouraged the Ontario Securities Commission to advance regulatory reforms that put the interests of investors first. The best way to do this is through a best interest standard whereby the interests of financial consumers come before those of the industry that services them. The FSRA must ensure that the industry it regulates is made up of professionals bound by professional standards. A best interest standard requires financial advisors to be true agents of their clients, putting their clients' interests before their own. This is a basic step in financial consumer protection and we urge the Panel to embed it in their recommendations and vision for the FSRA.