



Financial Services Commission of Ontario
STATEMENT OF PRIORITIES

June 2005

Introduction

The Financial Services Commission of Ontario (FSCO) is a regulatory agency established under the *Financial Services Commission of Ontario Act, 1997 (FSCO Act)*.

Section 11 of the *FSCO Act* requires FSCO to deliver to the Minister of Finance and publish in *The Ontario Gazette* (by June 30th of each year), “a statement setting out the proposed priorities of the Commission for the fiscal year in connection with the administration of this Act and all other Acts that confer powers on or assign duties to the Commission or the Superintendent.”

This is FSCO’s eighth Statement of Priorities. It identifies key challenges facing FSCO, outlines proposed strategic priorities, highlights initiatives, and notes recent progress on significant projects.

FSCO is comprised of three parts: the five-person Commission or Board; the Superintendent of Financial Services and staff; and the Financial Services Tribunal. FSCO regulates insurance, pension plans, loan and trust companies, credit unions/caisses populaires, mortgage brokers and co-operative corporations in Ontario.

As of April 1, 2005, FSCO regulated 399 insurance companies, 8,642 pension plans, 242 credit unions and caisses populaires, 680 mortgage brokers, and 1,742 co-operative corporations, as well as approximately 34,630 insurance agents, 3,780 corporate insurance agencies and 1,273 insurance adjusters. The regulated sectors represent a large, dynamic and evolving industry that plays a vital role in the provincial economy and the financial security of individuals and families.

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Our Mandate

To protect the public interest and enhance public confidence in the regulated sectors, FSCO provides regulatory services that protect financial services consumers and pension plan beneficiaries, and supports a healthy and competitive financial services industry.

Our Vision

We are committed to being a vigilant, fair-minded and forward-looking regulatory agency with a constructive and responsive presence in Ontario’s financial services marketplace.

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Key Challenges

FSCO engages in strategic planning exercises to inform the development of overall direction and strategic priorities. Upon completion of the process for this year, we determined that the key environmental challenges influencing our Statement of Priorities remain the same. This year, FSCO continues to take into account the following key challenges in the environment.

Convergence

There is a continuing trend toward consolidation and mergers of financial institutions, globalization of the marketplace and convergence of the financial services industry. This trend challenges financial services regulators to address issues facing the financial services industry through a cross-jurisdictional, cross-sectoral approach. Stakeholders are increasingly calling for national rather than local solutions to regulatory issues. Mechanisms are needed to facilitate harmonized solutions for national issues.

Market conditions

Strong global economy, low interest rates and the rise of the Canadian dollar have had an impact, both positive and negative, on the financial condition of financial institutions and pension plans. In particular, the Canadian P&C insurance sector has improved over the past year. However, changes in this sector are by nature cyclical and the length of any recovery is difficult to predict. Consumers of financial services and pension plan beneficiaries continue to express concern about the implications of market conditions that have the potential to fluctuate. Regulators must be able to anticipate and react to changing market conditions. They also need to address solvency and market conduct issues that may affect financial services consumers and pension plan beneficiaries.

Evolving regulatory environment

A number of initiatives are underway to rationalize the regulatory structures and framework to align the regulation of financial services with evolving market realities. Regulators need to keep pace with, and have adequate regulatory instruments to respond to, the changing regulatory environment. FSCO will also need to respond to any changes that may occur in the regulatory systems for financial services not regulated by FSCO.

Impact of technological change

The increasing trend toward electronic communication throughout the economy demands an enhanced capability to deliver services electronically. Regulators must be able to conduct business with the industry electronically and be accessible to consumers and pension plan beneficiaries on-line.

What this Means to FSCO

To meet these challenges we are guided by established strategic priorities. These priorities build on the delivery of the core business activities we carry out to achieve our mission. As each is significant, FSCO's strategic priorities are not ranked in any particular order:

- I. Promote a coordinated national approach to regulatory issues.
- II. Enhance the risk-based approach to regulation.
- III. Review and recommend amendments to the regulatory framework to keep up with changes in the marketplace.
- IV. Improve delivery of services.

We believe these strategic priorities and the initiatives associated with them on the following pages will have a positive impact on consumers and pension plan beneficiaries. By pursuing them, FSCO will meet the on-going needs of financial services consumers.

Most projects undertaken by FSCO are complex in that they involve a range of stakeholders and are carried out in conjunction with federal and other provincial jurisdictions. As a result, many initiatives span several years and work continues on an on-going basis from year-to-year.

FSCO's Statement of Priorities traditionally includes a Report on Key Initiatives from the previous year's Statement. In this year's Statement, the report-back on activities will list the accomplishments and will provide more details about the benefits for stakeholders and the regulatory system.

Our Strategic Priorities

I Promote a coordinated national approach to regulatory issues

FSCO continues to work with other Canadian regulators in coordinating regulation of the financial services industry at the national level.

FSCO supports the development of harmonized regulatory solutions through participation in the Joint Forum of Financial Market Regulators (Joint Forum), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Council of Insurance Regulators (CCIR).

FSCO is participating with these national organizations as a member of, or in some cases as a lead of, committees and project teams that are mandated to undertake the following initiatives:

Joint Forum

- Examine issues related to differences in investment rules for pension funds, mutual funds, segregated funds and other pooled investment funds. Work with stakeholders to identify specific problems resulting from any regulatory inconsistencies in this area. Determine what action, if any, is necessary to deal with the issues that are identified.
- Complete work on more effective Point of Sale Disclosure for mutual funds and segregated funds. The goal is to develop a regime that will bring information to consumers when they need it, in a form they can use, and in a cost-effective, practical manner. This will ultimately mean better, more timely information on which consumers can base their investment decisions.
- Continue to work to create appropriate linkages between regulators and the Financial Services OmbudsNetwork in order to ensure that regulators' confidence in the new system continues at a high level.

CCIR

- Develop a harmonized framework for the collection and reporting of company complaint data. This work is being led by Ontario and Quebec as a component of CCIR's broader Risk-Based Market Conduct Regulation Committee. The system is being developed with input from the Canadian Life and Health Insurance Association and the Insurance Bureau of Canada.
- Work with the Reciprocal Licensing Committee of the CCIR to introduce common insurance intermediary application forms to be used across Canada. Propose a system of reciprocal licensing of insurance intermediaries for adoption in 2006.

- Implement the amended governance model for oversight of the Automobile Insurance Statistical Plan.

CAPSA

- Work with the Stakeholder Task Force on Common Pension Standards to develop detailed standards for plan administration and basic entitlement components of a proposed Model Pension Law.
- Continue to work on the development of a revised reciprocal agreement for the regulation of multi-jurisdictional pension plans. The agreement is intended to address problems related to the regulation and administration of multi-jurisdictional pension plans which result from differences in legislative requirements for pension plans in jurisdictions across Canada.

II Enhance the risk-based approach to regulation

- Develop a risk-based approach to monitoring the investment of pension plan funds. FSCO will test an investment monitoring model and corresponding Investment Information Summary (IIS) form in 2005. The intention is to finalize the monitoring model and the IIS form, and fully implement the investment monitoring program by spring 2006.
- Implement risk-based market conduct assessments for property and casualty insurance companies, and life insurance companies. The assessments will enhance consumer protection and identify ways to improve market efficiency.
- Develop and implement risk-based examination processes for pension plans, mortgage brokers and insurance companies. The objective of this initiative is to evaluate the safety and soundness of companies through a separate assessment of inherent risks and risk management processes. This approach is a more cost-effective use of resources as it works through a sharper focus on risk.

III Review and recommend amendments to the regulatory framework to keep up with changes in the marketplace

- Review partial pension plan wind-ups affected by the *Monsanto* decision to ensure compliance with obligations to distribute surplus on partial wind-ups.
- Update and establish policies to clarify distribution of surplus on partial pension plan wind-up.

Work with the Ministry of Finance and FSCO stakeholders on the following priorities:

- Identify strategies to address contingent liabilities of the Pension Benefit Guarantee Fund to ensure its financial viability.
- Review the *Insurance Act* to harmonize the re-insurance provisions of the Minimum Capital Test with other jurisdictions.
- Expand the number of Pre-approved Framework (PAF) Guidelines. PAF Guidelines developed for the most common auto accident injuries will speed access to rehabilitation, better utilize health care resources, and provide more cost certainty for insurers.
- Provide support for a winding down of the Designated Assessment Centre (DAC) system.
- Work with the Facility Association (FA) on changes to enhance the effectiveness of the residual auto insurance market mechanism.
- Work with the co-operative sector to develop regulations required as a result of amendments to the *Co-operative Corporations Act*.
- Work on the electronic standard invoice project. This involves continuing regular discussions with stakeholders to ensure that the needs of all sectors are being met.
- Advise and assist the Ministry of Finance in the review of the *Mortgage Brokers Act*. The objective of the new Act is to enhance consumer protection and create a climate in which the industry can grow under responsive, fair and modern regulation.
- Undertake a detailed review of education requirements for the purposes of licensing mortgage brokers and agents under the proposed new legislation.
- Advise and assist the Ministry of Finance in the ongoing review of the *Credit Unions and Caisses Populaires Act, 1994*.
- Provide increased flexibility to provincially incorporated insurers in their investment decisions while maintaining public protection through the development of "Prudent Portfolio" investment rules.

IV Improve delivery of services

- Introduce Internet-based licensing of mortgage brokers.
- Upgrade IT systems for Motor Vehicle Accident Claims Fund (MVACF) and develop electronic MVACF forms.

- Continue to upgrade the on-line features of the Dispute Resolution Practice Code.
- Plan and implement a range of outreach activities to increase awareness of dispute resolution services in non-GTA areas.
- Launch new FSCO website with upgraded forms, enhanced features and on-line tools to assist consumers and other stakeholders in locating current information on the regulated sectors.
- Launch web-based electronic automobile insurance filing system (ARCTICS) industry-wide.

FSCO Funding

Under Section 25 of the *FSCO Act, 1997*, the Lieutenant Governor-in-Council may assess all entities that form part of a regulated sector with respect to all expenses and expenditures that the Ministry of Finance, the Commission and the Tribunal have incurred. The Minister of Finance is also authorized to establish fees with respect to these regulated sectors for services provided by FSCO.

In determining the administration of the funding system, FSCO has established that it will:

- be fair;
- reflect the use of FSCO resources;
- enable reasonable predictability of regulatory costs;
- be simple to administer; and
- be flexible and easily modified.

FSCO has also made a commitment to the following principles in carrying out its funding system:

- revenues will not exceed forecasted expenditures for each sector;
- disruption will be minimized and changes will take into account the effect of fees on the marketplace; and
- FSCO will be accountable to its stakeholders for the efficiency and quality of the services delivered.

FSCO will move to quarterly assessment invoices, rather than annual assessment invoices, for the regulated sectors it currently assesses (Insurance, Credit Unions and Loan & Trust). This approach will allow for more accurate calculation of assessment amounts with more predictability for the sectors.

Also this year, FSCO is developing an Activity Based Costing (ABC) model. Once implemented, using specialized software, ABC will assist FSCO's ability to formulate and verify the costs recovered through the FSCO fee schedule and assessments.

Statement of Priorities – 2005

Report Back on Key Initiatives

I Promote a coordinated national approach to regulatory issues

FSCO continued to work with other Canadian regulators in coordinating regulation of the financial services industry at the national level through the following initiatives:

Joint Forum

- Released final Guidelines for Capital Accumulation Plans (CAPs) that provide a harmonized national standard for the operation of CAPs, which include defined contribution pension plans and group RRSPs where members have investment choice. The Guidelines will ensure CAP members have the information and assistance they need to make informed investment decisions, ensure a similar regulatory result for all CAP products and services, and outline and clarify the rights and responsibilities of sponsors, service providers and members.
- Developed strategies with key stakeholders to address issues related to the operation of the Financial Services OmbudsNetwork and regulators' requirements for company complaint data. This work is expected to provide the foundation for the information sharing needed to implement a risk based approach to regulation.

CAPSA

- Released final Pension Plan Governance Guidelines to help pension plan administrators implement effective governance systems for their plans. The Guidelines provide a clear outline of good governance practices which will help ensure accurate, efficient and cost effective delivery of the benefits promised under a pension plan.
- Worked on the development of a revised reciprocal agreement, which would enable effective and efficient regulation and administration of multi-jurisdictional pension plans. Worked with Quebec to develop a draft framework agreement.

CCIR

- FSCO chaired the CCIR/CISRO Industry Practice Review Committee. This committee conducted market conduct review of relationships between agents, brokers and insurers to assess whether potential conflicts of interest are being managed.
- FSCO chaired the CCIR committee on an initiative to harmonize licensing standards across Canada for insurance agents and brokers. The initiative responded to

industry requests for harmonization of licensing standards by developing and testing harmonized application forms for agents and brokers.

- FSCO chaired CCIR's risk-based market conduct committee whose objective is to consider the various models and approaches to risk-based market conduct regulation and to develop a consensus among insurance regulators about the appropriate definition and objectives of such regulation. This work provided a resource on which we will be basing recommendations for modernizing the insurance regulatory framework.
- FSCO chaired the CCIR Information Sharing Committee which developed a protocol for information sharing among CCIR members that was approved by CCIR in 2004.
- FSCO chaired the CCIR Working Group on Automobile Insurance Statistical Plan Governance whose objective was to develop an enhanced governance model. The proposed structure would see the creation of an independent entity, overseen by regulators, with defined accountability requirements.

II Enhance the risk-based approach to regulation

- Developed and consulted on an investment monitoring model, with an aim of promoting strong governance for pension fund investments. Revised originally proposed model as a result of suggestions received during the consultation.
- Followed up on the risk-based market conduct pilot assessments conducted in 2004 for life insurers in area of the marketing and trading practices of individual variable insurance contracts (segregated funds). This activity helped to maintain a healthy financial sector regulated by FSCO.
- Implemented risk-based market conduct assessments for general insurers in the area of Statutory Accident Benefits (SABs) and claims. This helps ensure that claimants are being fairly treated in accordance with the law.
- Enhanced risk-based supervision and monitoring of Ontario incorporated insurance registrants, Deposit Insurance Corporation of Ontario, the credit unions and caisses populaires and leagues. Risk-based monitoring is achieved by evaluating risk profiles, financial condition, risk management processes and compliance with applicable legislation. This approach enhances FSCO's ability to assess the safety and soundness of the entities regulated by FSCO.
- Undertook risk-based review of insurers' practices and procedures for implementing and using filed and approved auto insurer rates, risk classification systems and underwriting rules.
- Developed Pre-approved Framework (PAF) Guidelines for whiplash and related

injuries. The PAF Guidelines improved access to rehabilitation, promoted better utilization of health care resources, and provided more cost certainty for insurers.

- Established a stable funding structure for the Motor Vehicle Accident Claims Fund (MVACF). This initiative involved enacting regulation changes to increase driver's license funding for MVACF from \$1.00 to \$3.00 per year.

III Review and recommend amendments to the regulatory framework to keep up with changes in the marketplace

Worked with the Ministry of Finance and FSCO stakeholders on the following priorities:

- Regulation 347/04 under the *Insurance Act*, governing the licensing and regulation of insurance agents in Ontario. The regulation enhanced consumer protection by introducing new conflict of interest disclosure requirements for life agents, and supported the national life agent proficiency standard, the Life Licence Qualification Program (LLQP). The regulation eliminated unnecessary barriers to becoming an agent and removed unnecessary restrictions to operating an agency and replaced them with more focussed regulatory measures.
- Regulation 410/04 under the *Registered Insurance Brokers Act*, governing insurance brokers. The regulation harmonized provisions with those made in regards to insurance agents by Regulation 347/04 (see above). The regulation provided consumer protection through the introduction of a new conflict of interest disclosure standard and modernized investment rules for funds held in trust. The regulation also eliminated outdated ownership restrictions for corporate brokerages.
- As part of the review of the *Mortgage Brokers Act* as set out in the 2004 Budget, FSCO helped to: prepare a consultation paper released by the government; organize consultation roundtables with stakeholders; and, prepare draft legislation.
- Advised and assisted the Ministry of Finance and Deposit Insurance Corporation of Ontario in the ongoing review of the *Credit Union and Caisses Populaires Act, 1994*.
- Supported the development and implementation of auto insurance reforms to enhance consumer protection, including: banning of paralegals convicted of certain *Criminal Code* violations from representing claimants in Statutory Accident Benefits Claims; prohibiting insurers from cancelling policies for inadvertent "non-sufficient-funds" or late payment, provided payment is made within notice period; and, enacting regulation amendments to ban credit scoring and other specified financial and lifestyle factors for the purpose of underwriting and rating auto insurance.
- Conducted consultations on the elimination of the Designated Assessment Centre system, and a customized auto insurance policy.
- Conducted a privacy impact assessment in support of the development of the

standard invoice database that would provide more detailed information on medical and rehabilitation costs to monitor industry trends.

- Supported the development and implementation of further provisions dealing with unfair and deceptive acts and practices and took measures to combat fraud and abuse in the auto insurance system. Consulted on additional provisions related to unfair and deceptive acts and practices, hosted a stakeholder meeting to discuss inappropriate behaviour, took enforcement action with respect to paralegals and breaches of the new regulatory requirements.
- Implemented changes from the review of automobile underwriting rules and risk classification systems. Issued bulletins to the industry on territorial rating, and on revised excluded driver endorsements and their use.
- The government included amendments to the *Co-operative Corporations Act* included in the *Budget Measures Act, 2004*. The amendments were made to improve co-operative corporations' ability to respond to changing market conditions and the needs of their members. The amendments will also facilitate capital-raising by co-operative corporations and enhance their ability to attract well-qualified directors and officers.
- The government introduced, via regulation, an updated and harmonized solvency test, the Minimum Capital Test, for Ontario-incorporated property and casualty insurance companies. The Minimum Capital Test improves consumer protection by providing a more accurate assessment of property and casualty insurers' financial solvency. It is expected to decrease administrative costs for insurers doing business in more than one jurisdiction, since other provinces are introducing the Minimum Capital Test.

IV Improve delivery of services

- Streamlined insolvency processes in the Pension Division by increasing the number of administrators on the roster, which will reduce the administrator appointment times.
- Dealt with operational, actuarial and policy issues raised by the *Monsanto* case. Actuarial and operational staffing was increased to resolve partial wind-ups with surplus. FSCO released overview documents, foundation policies and Q's & A's to guide stakeholders. As a result, FSCO was able to enforce the *Pension Benefits Act* regulations on surplus distribution of partial wind-ups.

- Monitored loan and trust companies for compliance with the sunset provisions of the *Loan and Trust Corporations Act*. As of July 1, 2005, solvency reviews of loan and trust companies will be the responsibility of the Office of the Superintendent of Financial Institutions (federal jurisdiction).
- Replaced the stand-alone financial (statistical) information gathering system used by FSCO to regulate the solvency of Ontario insurance companies. This work required harmonizing the reporting system with that used by the Office of the Superintendent of Financial Institutions (OSFI), the federal regulator, to collect data. FSCO arranged with OSFI to assist in extracting appropriate data from annual and quarterly filings by Ontario incorporated companies and provide such information to FSCO.
- Enhanced and further developed the web-based electronic filing system (ARCTICS) with a view to launching it industry wide. ARCTICS will enable insurance companies writing automobile insurance to submit filings electronically.
- Issued simplified filing guidelines to facilitate insurers' ability to file for auto insurance rate reductions and receive approval quickly.
- Launched Auto Insurance Portal enhancing delivery of information to auto insurance consumers by providing a one-stop information source. FSCO's Auto Insurance Portal provides clear, organized, topical information responding to current issues in auto insurance and balancing potentially conflicting messages from existing industry sources. As well, the Portal raises consumer awareness of the services provided by FSCO.
- Launched the Educational Auto Rate Tutorial, an on-line interactive tool helping consumers to understand how auto insurance rates are set, and that consumers should shop around for auto insurance.
- Launched a suite of consumer brochures responding to current issues in the regulated sectors, particularly insurance. The brochures provide accurate and timely information, and raise consumer awareness of the services provided by FSCO.
- Launched an on-line, web-based system for selecting Designation Assessment Centres (DACs).

The Financial Services Tribunal

The Financial Services Tribunal (Tribunal) is an independent, adjudicative body composed of nine to 15 members. As of April 1, 2005, there are 14 members, including the Chair and two Vice-Chairs of the Commission.

The Tribunal has exclusive jurisdiction to exercise the powers conferred to it under the *FSCO Act, 1997*, and other Acts that confer powers on or assign duties to the Tribunal. It also has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it.

As well, the Tribunal has authority to make rules for the practice and procedure to be observed in a proceeding before it, and to order a party to a proceeding before it to pay the costs of another party or the Tribunal's costs of the proceeding.

For the year ahead the Tribunal has identified the following priorities:

- Adopt and implement a members' code of professional and ethical responsibilities; and
- Develop and maintain an index of all Tribunal decisions by subject, issue and relevant section of financial services legislation.

Conclusion

This Statement has outlined FSCO's proposed initiatives and projects for the coming year. We look forward to working with our many stakeholders to achieve our objectives and thereby sustain a fair, efficient and effective financial services marketplace where consumers are protected and competition thrives.

Bryan P. Davies
Chief Executive Officer
Financial Services Commission of
Ontario and
Superintendent of Financial Services

Colin McNairn
Chair,
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