

Approach

Effective Date: TBD

Identifier: No. GR0014APP

Proposed 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
- 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

FSRA was established an independent regulatory agency, replacing the Financial Services Commission of Ontario and the Deposit Insurance Corporation of Ontario. FSRA was created to

improve consumer 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

FSRA has embraced a principles-based and outcomes-focused approach to regulation from its inception. FSRA is focused on risk-based supervision and is guided by its statutory objects established in the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8 (“*FSRA Act*”).

Even prior to its official launch on June 8, 2019, FSRA committed to being a “principles-based regulator”. PBR is consistent with FSRA’s Mission of “public service through dynamic, principles-based and outcomes-focused regulation.”¹

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 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 disruptions in the financial services landscape
- more effectively focus on desired regulatory outcomes and objectives to be achieved
- reduce regulatory burden through a more flexible regulatory approach, which allows regulated entities to determine how to best achieve adherence with outcomes based on their size, complexity, and risk profile

¹ [Mission, Vision and Values](#)

Framework principles

FSRA has developed a set of Framework Principles to guide its regulatory approach. The Framework Principles reflect FSRA's Mission as well as its statutory objects in the *FSRA Act*.²

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

1. **Outcome-Focused** – FSRA will focus its regulatory activities on the outcomes we seek to achieve for consumers and pension plan beneficiaries, regulated entities and the sectors based on the statutory objects in the *FSRA Act*, which will be used as an overlay to the interpretation of the sector statutes.
2. **Innovative** – FSRA will continue to develop its own culture and capabilities in a manner that enables it to fulfill its objects, which specifically includes facilitating innovation and transformation in the sectors it regulates.
3. **Consumer-Centric** – In formulating its regulatory approach toward regulated entities and individuals, FSRA will focus on impact on consumers and pension plan beneficiaries. Our Rules³ and guidance strive to reflect the interests and needs of consumers.
4. **Risk-Based** – FSRA will direct its resources to the issues and regulated entities and individuals that pose the highest risk. FSRA's risk assessment will consider the size, complexity, nature of the regulated entity, and where non-compliance or the inability to achieve the desired outcomes, will result in the most harm to consumers or pose the greatest threat to FSRA's ability to execute against its statutory objects.
5. **Transparent** – FSRA will communicate its expectations and/or requirements, as well as its activities and performance to stakeholders.⁴ We will design Rules and guidance that reference the applicable principles against which FSRA will supervise, and identify the

² See sections 3 and 3.1.

³ Rules has the meaning as defined under Section 21(1) of the *FSRA Act*.

⁴ The term stakeholders includes regulated entities, the Government of Ontario, as well as consumers.

specific outcomes FSRA is seeking to achieve.

6. **Collaborative** – FSRA will engage with all stakeholders and leverage public consultations to ensure that its regulatory activities reflect the viewpoints and needs of its stakeholders, which include the interests of consumers and pension plan beneficiaries.

Regulated entities and individuals should familiarize themselves with FSRA’s Framework Principles since they are intended to:

- communicate to the regulated entities and individuals, referencing underlying principles, which set out the highest-level outcomes FSRA is seeking having regard to the statutory objects in the *FSRA Act*
- guide FSRA in the development of its Rules and guidance
- assist FSRA in identifying key areas of focus to prioritize its regulatory, supervisory and compliance activities and to more efficiently and effectively allocate resources
- facilitate appropriate outcomes and ensure that FSRA’s regulatory responses are reasonable and proportionate

The Framework Principles do not themselves create expectations for regulated entities or individuals.

FSRA’s regulatory approach

The sectors that FSRA regulates form a significant component of the larger economy in Ontario, delivering a vast array of financial products and services to Ontarians, which are integral to their day-to-day lives. FSRA is responsible for ensuring that Ontarians who purchase or rely on these products and services are appropriately protected whilst ensuring that the sectors remain competitive and responsive to consumer and pension plan beneficiary needs. In general, FSRA believes that a regulatory approach which focuses on the use of PBR is a more effective and efficient way to regulate its sectors and achieve the desired regulatory outcomes in a manner consistent with the FSRA statutory objects.

When using a PBR approach, FSRA will reference high-level, broadly stated principles, either in its guidance or its Rules, and identify desired outcomes to communicate its expectations of regulated entities.

When applying a PBR and outcomes-focused approach to a credit union, pension plan or insurer, FSRA will place greater reliance on a regulated entity's senior management⁵ and board of directors to internalize the requirements in order to achieve desired outcomes.⁶ The regulated entity or individual will be responsible for demonstrating how its identified approach is effective in achieving adherence to the principles articulated. In the context of a credit union, pension plan or insurer, senior management and the board of directors of the regulated entity 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 desired outcomes and show how it is validating that the desired outcomes are being achieved. FSRA's assessment of adherence will entail whether the regulated entity has taken reasonable and good faith efforts to meet and be aligned with the desired outcome(s).

Well-controlled and governed, and effectively managed regulated entities that engage positively and openly with FSRA should realize real benefits from FSRA's PBR and outcomes-focused approach. For example, these benefits may be demonstrated by showing that the regulated entity's own management and controls are functioning effectively to validate that the desired outcomes are being achieved. This can result in less intensive supervision or a less intensive risk mitigation program. However, this is predicated on the senior management and boards of regulated entities fully engaging in achieving the desired 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 all aspects of the relevant regulatory issue, as well as exercise appropriate supervisory judgment when evaluating the policies, processes and practices established by the regulated entity to achieve adherence with principles as reflected in identified outcomes. Where a regulated entity or individual identify potential issues, which may result in an inability to achieve

⁵ In the case of a registered pension plan, FSRA will rely on the plan administrator, which is subject to a fiduciary duty.

⁶ In the case of a registered pension plan, the reliance would be placed on the administrator and its board of directors.

the desired regulatory outcomes, open and early communication with the regulator will better enable both parties to identify appropriate solutions, mitigate risk incidents or develop remediation strategies.

FSRA may leverage industry best 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, best practices will be used to provide regulated entities 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 their own organization

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

However, it is important to note that this does not mean that FSRA will be a purely principles-based regulator in its regulatory and supervisory approach. In certain areas, FSRA will need to continue to rely on detailed Rules and prescriptive requirements, sometimes referred to as "bright-line" requirements, to ensure adequate consumer and pension beneficiary protection. This is because the use of principles to identify the 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 desired outcomes.

FSRA will be guided by its Framework Principles when it adopts either a PBR or a prescriptive approach. Factors that will impact the regulatory approach adopted by FSRA will include the relevant legal framework (i.e., statute, regulations, FSRA rules and case law), the complexity, magnitude and impact of the regulatory problem, and the sophistication and resources of the regulated entity to effectively address the issue.

Each FSRA core regulatory function may develop and implement a supervisory methodology which reflects the unique regulatory issues as well as the size, complexity, and risk profile of the

sector it regulates. That said, 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 PBR approach as outlined in this Guidance.

FSRA guidance and its Rules 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 desired outcomes with respect to the specific issue being addressed (e.g., fair treatment of consumers, IT risk management etc.), and may also identify the regulatory "means" to achieve the desired outcomes. The use of guidance⁷ and Rules will thus be key mechanisms through which FSRA will outline its expectations and requirements (i.e. applicable principles and desired outcomes).

Enforcement

Enforcement remains an integral component of FSRA's principles-based and outcome-focused approach. FSRA will utilize Interpretation Guidance to identify the principles that relate to its interpretation of sector statutes and regulations, or a Rule. Its interpretation of compliance obligations will be based upon its statutory objects, which serve as an interpretative "overlay" to each sector statute.

FSRA will be formulating specific guidance to outline its approach to investigations and enforcement to provide enhanced transparency around its enforcement processes and practices. This will assist regulated entities and individuals (and their counsel where applicable), in responding to and participating in initial assessments and investigations conducted by the Legal & Enforcement function of FSRA.

FSRA's Framework Principles will inform FSRA's approach to enforcement. FSRA takes a progressive, measured and proportional approach to enforcement. This means that where a regulated entity or individual has not complied with regulatory requirements, FSRA will determine the appropriate 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

⁷ [FSRA's Guidance Framework](#) will continue to be used to communicate information, its approach to supervision, regulatory compliance obligations and/or regulatory decisions.

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 its approach to compliance and enforcement, assuming good faith by the regulated entity.

Effective date and future review

This Guidance became effective on **(insert date here)** and will be reviewed no later than **(insert future date here)**.

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.