



**Review of the Mandates of the
Financial Services Commission of Ontario,
Financial Services Tribunal and the
Deposit Insurance Corporation of Ontario**

**Consultation Paper
April 21, 2015**

Ontario Ministry of Finance

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Ontario Undertakes a Mandate Review of Financial Services Regulators

The Government of Ontario has undertaken to review the role, structure and efficacy of all its agencies, many of which have been assigned to protect the public, and deliver programs and services.

As part of this broad Mandate Review, the government announced a review of the mandates of the Financial Services Commission of Ontario (FSCO), the Financial Services Tribunal (FST) and the Deposit Insurance Corporation of Ontario (DICO) – all agencies under the jurisdiction of the Ontario Minister of Finance.

The Minister of Finance has appointed a three-member Expert Advisory Panel (“Panel”) to consult relevant industry representatives, licensed market participants, and consumers and their advocates, and to make workable recommendations to the government by early next winter.

The members of the Panel are:

George Cooke – former president and CEO of The Dominion of Canada General Insurance Company, and current chair of the board of directors of OMERS Administration Corp.

James Daw – former Toronto Star personal finance columnist who has written extensively about all facets of Ontario’s financial system

Lawrence Ritchie – Osler, Hoskin & Harcourt LLP partner and former vice-chair of the Ontario Securities Commission.

FSCO has a wide range of responsibilities, and currently regulates the insurance sector; pension plans; loan and trust companies; credit unions and caisses populaires; the mortgage brokering sector; co-operative corporations in Ontario; and service providers who invoice auto insurers for statutory accident benefits claims. The Commission is also responsible for the Financial Services Tribunal – a body that adjudicates cases involving compliance issues arising in the sectors regulated by FSCO.

The Deposit Insurance Corporation of Ontario provides insurance for certain deposits held in Ontario credit unions and caisses populaires and oversees credit unions and caisses populaires operating in Ontario.

The broad field of financial services is among the fastest-growing sectors in Ontario, generating jobs directly, and enabling growth and jobs in other sectors. The financial services sector is vital to the well-being and performance of the economy, contributes to a strong business climate, and is entrusted with managing the savings and investments of Ontarians.

The financial services sector is also evolving. Credit unions continue to consolidate, and co-operative corporations increasingly include much larger and more complex enterprises. New technology, new service providers and new distribution channels have also increased options for consumers of all financial services, while supplementing traditional methods. In some instances, there are concerns that the regulation of financial services products, or those who sell them, has not kept pace with these changes.

In addition, the economic conditions under which pension plans operate have changed since 2008, creating concerns regarding the affordability and sustainability of some workplace pensions.

Through the questions outlined below, the Panel will be looking for fresh ideas on how to: 1) protect consumers of financial services; 2) promote efficient financial markets that connect savers and investors in the economy; 3) maintain an appropriate balance between protecting consumers and promoting efficient markets; and 4) provide efficient and effective regulatory oversight of pension plans to increase security for pension benefits.

Panel's Terms of Reference

The Panel has been asked to advise the Government of Ontario on potential changes to the mandates of the three agencies, and suggest ways to modernize the regulation of current and emerging related financial services, as well as pension plans.

Key issues that the Panel must address include:

1. Whether, and to what extent, each agency's mandate continues to be relevant to Ontario's goals and priorities?
2. Whether the agency is carrying out the activities and operations as required in its mandate?

3. Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?
4. Whether changes to the current governance structure/associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?

Public Consultation

Through this consultation paper, the Panel seeks the views of Ontarians. This input will be an important component of the Panel's research and analysis. The Panel encourages individuals and organizations to communicate their views on the issues identified in this document, as well as other issues that may help inform the work of the Panel. The public is encouraged to raise concerns, propose solutions and relay first-hand experiences that may be helpful and relevant to the objectives and goals of these mandate reviews.

Please note that these are public consultations. All submissions received will be made available to the public to ensure the transparency of the consultation and policy-making process. All submissions will be posted to the Ministry of Finance website at www.fin.gov.on.ca. Any comments or other materials received, or summaries of them, may be disclosed to other interested parties during and after the consultation through Freedom of Information requests. Personal information will not be disclosed without prior consent.

If for any reason you feel your submission should not be posted publicly or shared with other parties, please indicate this in your covering letter. Please note that all submissions received are subject to the *Freedom of Information and Protection of Privacy Act*.

If you have any questions about this consultation or how any element of your submission may be used or disclosed, please contact FIPBmandatereview@ontario.ca.

Written comments can be provided by mail, fax, or email:

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Submissions are requested by June 5th, 2015

FINANCIAL SERVICES COMMISSION OF ONTARIO

FSCO was established on July 1, 1998 and is governed by the *Financial Services Commission of Ontario Act, 1997* (FSCO Act). It was created by merging the operations of the former Ontario Insurance Commission, the Pension Commission of Ontario, and the Deposit Institutions Division of the Ministry of Finance. The FSCO Act is not subject to a mandatory periodic statutory review, and has not been significantly amended since it came into force.

Currently, FSCO has over 500 full-time employees and a budget of approximately \$102.8 million. The majority of FSCO's costs are recovered from the sectors it regulates through a combination of assessments and fees. Shortfalls arising primarily from the regulation of the co-operatives sector have historically been funded by the government.

Governance

In order to support FSCO's legislative mandate, the FSCO Act sets out a three-part structure for FSCO, which includes the Commission; the Superintendent of Financial Services and staff; and the FST.

The Commission consists of a Chair and two Vice-Chairs, appointed by the Lieutenant Governor in Council, the Superintendent of Financial Services appointed under the *Public Service of Ontario Act, 2006* and the Director of Arbitrations appointed under the *Insurance Act*.

The Superintendent is responsible for supervising the regulated sectors and administering and enforcing the FSCO Act as well as related acts. The Superintendent is also the chief executive officer and is responsible for the financial and administrative affairs of the Commission.

Current Mandate

FSCO's current mandate, as set out in the FSCO Act is to

- provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors;
- make recommendations to the Minister of Finance about the regulated sectors;
- and

- provide resources necessary for the proper functioning of the FST.

FSCO is responsible for regulated sectors that encompass individuals, businesses and pension plans. The regulated sectors are comprised of: co-operative corporations, credit unions and caisses populaires, insurance, service providers who invoice auto insurers for statutory accident benefit claims, loan and trust corporations, mortgage brokering, and pension plans.

As of March 31, 2015, FSCO regulated or registered:

- 1,785 co-operative corporations
- 114 credit unions and caisses populaires
- 332 insurance companies, 5,322 corporate insurance agencies, 49,282 insurance agents, and 1,617 insurance adjusters
- 3,883 accident benefit service providers that invoice auto insurers directly
- 51 loan and trust corporations
- 1,185 mortgage brokerages, 2,611 mortgage brokers, 9,988 mortgage agents, and 133 mortgage administrators
- 7,191 pension plans

Primarily, FSCO provides services through two types of regulation. The first is the regulation of market conduct, which is the relationship between consumers and licensed businesses or individuals. The second is the regulation of solvency, which addresses the financial stability and long-term ability to meet financial obligations.

FSCO advises the government on emerging trends and policy issues in the regulated sectors and provides input on legislative and regulatory initiatives. FSCO gathers market information not only through its monitoring and compliance activities, but also through its membership in national regulatory organizations, many of which are hosted at FSCO as secretariats.

FINANCIAL SERVICES TRIBUNAL

One of the purposes of the Commission is to provide the resources necessary for the proper functioning of the FST. The FST is an expert tribunal that adjudicates cases involving compliance issues arising in the regulated sectors. Certain decisions, or proposed decisions of the Superintendent, may be challenged in proceedings brought before the Tribunal. It has the power to make its own rules regarding the practice and

procedures of hearings and the power to summon witnesses, on the request of a party, or order the payment of costs of the FST or of another party. It has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it.

The Chair and the Vice Chairs of FSCO are also the Chair and Vice Chairs of the FST. Between six and up to 12 additional members with experience and expertise in the regulated sectors are appointed to the FST by the Lieutenant Governor in Council. Generally, proceedings before the FST are held before one or three person panels.

Operationally, the FST is supported by a Registrar and Assistant Registrar. The FST has also established the Financial Services Tribunal Legal Advisory Committee which provides confidential advice to assist the FST in fulfilling its responsibilities. Members of this committee have experience in litigation or administrative law and have argued cases before the courts or the FST. The committee is guided by terms of reference set by the FST.

DEPOSIT INSURANCE CORPORATION OF ONTARIO

DICO was established in 1977 to insure deposits held in Ontario's credit unions and caisses populaires. It is constituted and governed by the *Credit Unions and Caisses Populaires Act, 1994* (CUCPA).

DICO has approximately 45 full-time employees and revenues of about \$28.7 million. Its primary source of income is the deposit insurance premiums charged to Ontario incorporated credit unions operating in the province. The premiums are set by regulation under the CUCPA. DICO does not receive any funding from the government; however it has access to a \$400 million revolving credit facility through the Ontario Financing Authority to address extraordinary liquidity needs that cannot be met by the Deposit Insurance Reserve Fund (DIRF). The DIRF is established by DICO and mandated by the CUCPA to pay deposit insurance claims, the costs of continuance or orderly winding up of credit unions in financial difficulty, and DICO's operational costs. The DIRF is approximately \$185 million, which represents less than one per cent of insured deposits at credit unions.

Governance

DICO is governed by a Board consisting of up to nine members appointed by the Lieutenant Governor in Council, one of whom is appointed as Chair. The board manages or supervises the management of DICO's affairs and performs additional duties set out in the CUCPA such as regulatory approvals and compliance orders.

Current Mandate

The statutory objects of DICO as set out in the CUCPA are to:

- provide insurance against the loss of part or all of deposits with credit unions;
- promote and otherwise contribute to the stability of the credit union sector in Ontario with due regard to the need to allow credit unions to compete effectively while taking reasonable risks;
- pursue the above objects for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Corporation to loss;
- collect, accumulate and publish such statistics and other information related to credit unions as may be appropriate;
- perform the duties provided under the CUCPA or the regulations or do anything the Corporation is required or authorized to do under the act or the regulations; and
- carry out such other objects as the Minister may specify in writing or as may be prescribed.

DICO or a licensed trustee in bankruptcy may be appointed as liquidator of a credit union. As liquidator, DICO may exercise various powers necessary for the winding up of a credit union. The costs and expenses of the winding-up of a credit union by DICO are payable out of the property of the credit union.

In addition, and subject to the approval of the Lieutenant Governor in Council, DICO may make by-laws, including those prescribing standards of sound business and financial practices for credit unions. Through this power, DICO sets enforceable standards on corporate governance and risk management for credit unions.

In 2009 many of the functions of the Superintendent of Financial Services under the CUCPA were transferred to DICO in order to reduce regulatory overlap and promote

more efficient regulatory oversight. These functions included regulatory oversight and approvals related to capital adequacy, restrictions on borrowing, and lending and investing. Related amendments were made to enforcement powers to enable DICO to exercise powers that the Superintendent may also exercise. Certain decisions or proposed decisions of DICO may be challenged in proceedings before the FST.

The President and Chief Executive Officer of DICO is responsible for the financial and administrative affairs of the Corporation; is appointed by the Board; but is not a member of Board.

As of March 31, 2015, there were 114 credit unions and caisses populaires operating in the province.

The deposit insurance limits are set out in regulations under the CUCPA. The current insured limit is \$100,000 for aggregate deposits by a depositor at each credit union, excluding deposits in registered accounts such as Registered Retirement Savings Accounts and Tax-Free Savings Accounts, which are insured without limit.

MANDATE REVIEW QUESTIONS

As noted earlier, key issues that the Panel has been asked to address include:

1. Whether, and to what extent, each agency's mandate continues to be relevant to Ontario's goals and priorities?
2. Whether the agency is carrying out the activities and operations as required in its mandate?
3. Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?
4. Whether changes to the current governance structure and associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?

The purpose of the FSCO, FST and DICO mandate reviews is to review the agencies themselves, rather than the legislation or regulations enforced by the agencies. For example, the review will consider FSCO's role in the regulation of automobile insurance in Ontario, but it will not review or comment on the benefit structure. Similarly, it will review whether FSCO effectively monitors pension plan funding, but not the specific

requirements for funding as stipulated in the *Pension Benefits Act*. The review will also consider DICO's role in the regulation of credit unions and caisses populaires in Ontario, but it will not consider deposit insurance limits.

In soliciting the public's input on the above questions, the Panel believes it is important to take into consideration the following additional issues and questions.

Future of the Financial Services Sector

The financial services sector has been evolving rapidly, and the pace of change is expected to continue at an accelerated rate. Technological advancements, structural changes in distribution channels, emerging new products, and increased competition are expected to significantly change how the financial services sector meets the future needs of consumers. This in turn, will have an impact on the ability of regulatory structures to effectively and efficiently protect consumers and respond to the needs of the sector.

5. *What are your views on the future of the financial services sector over the next 10 to 15 years and how should the mandates and functions of FSCO, the FST, and DICO be adapted to address the market transformation to come?*

Consumer Protection and Promoting a Strong Financial Services Sector

Consumer protection is a key goal of financial services regulation. This goal is achieved by setting market conduct standards and regulating solvency. However, the current legislative mandates of FSCO, the FST, and DICO do not explicitly articulate that their goal is to provide consumer protection. At the same time, the mandates do not address that consumer protection goals must be balanced against the goal of fostering a strong and innovative business environment. Currently, only DICO, under the CUCPA, is required to promote and otherwise contribute to the stability of the sector it regulates with due regard to the sector's need to compete effectively by taking reasonable risks.

6. *Should the legislated mandates of the agencies explicitly refer to the goal of consumer protection, and should that goal be balanced with the goal of promoting a strong financial services sector? If yes, how?*

Structural Models

Across Canada, different jurisdictions have adopted different structural models for the regulation of financial services. Some jurisdictions have opted for an integrated regulator that is responsible for all sectors, including providing deposit insurance. Other jurisdictions deliver regulatory services through a combination of agencies, self-regulatory organizations, and government departments.

Although Ontario combined the former Insurance Commission of Ontario, Pension Commission of Ontario and Deposit Institutions Division of the Ministry to create FSCO, the province continues to have four agencies responsible for the financial sector in Ontario. They include the FST, the regulators DICO, FSCO, and the Ontario Securities Commission, as well as a number of self-regulatory organizations, such as the Registered Insurance Brokers of Ontario, which is responsible for the administration of the *Registered Insurance Brokers Act* in Ontario. Since the creation of FSCO, some have advocated a further integration of all financial services regulators into a single regulator, while others, as recommended to the government in *A Fine Balance*, the Report of the Expert Commission on Pensions, have suggested introducing a stand-alone pension regulatory body.

7. *Should FSCO continue to exist as an integrated regulator? If not, what model is more appropriate for the regulation of financial services in Ontario?*
8. *Should DICO continue to be a separate agency? If not, what model is more appropriate for the provision of deposit insurance and regulation of credit unions in Ontario?*
9. *Are there any regulated financial services entities or sectors that would be suited to a self-regulatory regime?*

Scope of Responsibility

Over the years, changes in the marketplace and government goals and priorities have led to changes in the scope and areas of responsibility for FSCO and DICO.

For example, in order to eliminate overlap and duplication in the regulation of the loan and trust sector, Ontario no longer incorporates loan or trust corporations as a result of reforms implemented several years ago. Loan and trust corporations must now be federally incorporated and regulated in order to conduct business in the province.

A decline in the number of Ontario-incorporated insurance companies is causing the province to consider exiting from the solvency regulation of this sector as well.

Conversely, FSCO is now responsible for licensing a new sector: accident benefit service providers who invoice auto insurers directly.

It may be appropriate to question whether some areas of responsibility currently assigned to FSCO should continue to fall within FSCO's mandate. These could include: approval of automobile insurance rates and risk classification systems; administration and oversight of the Motor Vehicle Accident Claims Fund; administration of the Pension Benefits Guarantee Fund; and the incorporation, registration and oversight of co-operative corporations.

On the other hand, some activities related to financial services not within FSCO's mandate are regulated by another government ministry or not regulated in Ontario despite being regulated in other jurisdictions. It may be appropriate to consider if the scope of activities should be expanded for FSCO in some areas.

FSCO continues to play a role in the market conduct regulation of the credit union sector. It is also responsible for approving: new incorporations, amalgamation agreements, offering statements, and applications by credit unions to continue under the laws of another jurisdiction. Given the transfer of solvency responsibility to DICO in 2009, the sector is questioning whether it is appropriate to further consolidate regulatory responsibility from FSCO to DICO, or whether deposit insurance functions should be separate and apart from solvency regulation.

10. What areas of responsibility could be removed from/or added to the mandates of FSCO or DICO?

11. Should DICO continue to act as liquidator of failed credit unions?

Corporate Governance

The three agencies under review carry out their mandates within the governance structures set out in legislation. In order to fully consider whether changes are necessary to improve mandate alignment and agency accountability, consideration should be given to their corporate governance structures. Some have raised the following questions:

- 12. Is the commission structure of FSCO effective, or should consideration be given to establishing a clearer board-governed framework? Should there be a separation of the Superintendent and CEO functions? Should the Superintendent/ CEO be a member of the Board?*
- 13. Should there be a clearer separation of governance of the FST from FSCO to improve independence and avoid perceived conflict of interest?*
- 14. Should the cross appointments of the FSCO Chair and Vice Chairs as the FST Chair and Vice Chair be removed and an independent board for the FST established?*
- 15. Is the board governed structure of DICO effective? If not, what alternate governance structure should be given consideration? Should the President/CEO of DICO be a member of the Board?*

Additional Issues

If there are any other issues that should be considered beyond what is included in this paper, you are encouraged to share your views.

SUMMARY OF CONSULTATION QUESTIONS

1. Whether, and to what extent, each agency's mandate continues to be relevant to Ontario's goals and priorities?
2. Whether the agency is carrying out the activities and operations as required in its mandate?
3. Whether all or part of the functions of the agency are best performed by the agency, or whether they might be better performed by a ministry, another agency or entity?
4. Whether changes to the current governance structure/associated accountability mechanisms are necessary to improve mandate alignment and/or accountability?

ADDITIONAL QUESTIONS FOR CONSIDERATION

Future of the Financial Services Sector

5. *What are your views on the future of the financial services sector over the next 10 to 15 years and how should the mandates and functions of FSCO, the Tribunal and DICO be adapted to address the market transformation to come?*

Consumer Protection and Promoting a Strong Financial Services Sector

6. *Should the mandates of the agencies explicitly refer to the goal of consumer protection, and should that goal be balanced with the goal of promoting a strong financial services sector? If yes, how?*

Structural Models

7. *Should FSCO continue to exist as an integrated regulator? If not, what model is more appropriate for the regulation of financial services in Ontario?*
8. *Should DICO continue to be a separate agency? If not, what model is more appropriate for the provision of deposit insurance and regulation of credit unions in Ontario?*
9. *Are there any regulated financial services entities or sectors that would be suited to a self-regulatory regime?*

Areas of Responsibility

10. *What areas of responsibility could be removed from or added to the mandates of FSCO or DICO?*
11. *Should DICO continue to act as liquidator of failed credit unions?*

Corporate Governance

12. *Is the commission structure of FSCO effective, or should consideration be given to establishing a clearer board governed framework? Should there be a separation of the Superintendent and CEO functions? Should the Superintendent/ CEO be a member of the Board?*
13. *Should there be a clearer separation of the governance of the FST from FSCO to improve independence and avoid conflict of interest?*
14. *Should the cross appointments of FSCO and Tribunal Chair and Vice Chairs appointments be removed and an independent board for the Tribunal established?*
15. *Is the board governed structure of DICO effective? If not, what alternate governance structure should be given consideration? Should the President/CEO of DICO be a member of the Board?*

ADDITIONAL RESOURCES

Financial Services Commission of Ontario

<http://www.fSCO.gov.on.ca>

Corporate Reports (Agency Business Plan, Annual Reports, Statement of Priorities, and Superintendent's Report on Insurance)

http://fSCO.gov.on.ca/en/about/annual_reports/Pages/default.aspx

Memorandum of Understanding with Minister of Finance

<http://www.fSCO.gov.on.ca/en/about/Documents/FSCO-MOU.pdf>

Financial Services Tribunal

<http://financialservicestribunal.on.ca>

Deposit Insurance Corporation of Ontario

<https://www.dico.com>

Accountability Reports (Memorandum of Understanding with Minister of Finance, Business Plan, and Annual Report)

https://www.dico.com/design/4_20_Eng.html

Publications (Advisories, Sector Notices, By-Laws)

http://www.dico.com/design/4_17_Eng.html

Legislation

Financial Services Commission of Ontario Act, 1997 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97f28_e.htm

Credit Unions and Caisses Populaires Act, 1994 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_94c11_e.htm

Other

A Fine Balance, Safe Pensions, Affordable Plans, Fair Rules

http://www.fin.gov.on.ca/en/consultations/pension/report/Pensions_Report_Eng_web.pdf

Office of the Auditor General of Ontario's 2014 Annual Report – Chapter 3.03 – *Financial Services Commission of Ontario - Pension Plan and Financial Service Regulatory Oversight*

http://www.auditor.on.ca/en/reports_en/en14/303en14.pdf