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Financial Services Regulatory Authority of Ontario (FSRA)  
Submitted via email to: [AnaMaria.Azevedo@fsrao.ca](mailto:AnaMaria.Azevedo@fsrao.ca)

**FSRA Request for Comment - Complaints Resolution: Policy Framework and Best Practices (No. GR0013INF)**

FAIR Canada is pleased to provide comments on the above-referenced policy framework and best practices for complaint handling (Policy Framework).

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. It advances its 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 moving the needle in the interests of retail investors and financial consumers.<sup>1</sup>

**Behind the Curve**

While the FSRA's Policy Framework to help guide its review of complaint handling is a positive development, it strikes us as out of step with the current state of affairs. For financial consumers in Ontario and across Canada, the poor experiences with current complaint handling systems are well known. Indeed, most of the regulatory community is aware of the problems financial consumers experience when making a complaint.<sup>2</sup> And many have been actively considering concrete measures to address these problems.

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<sup>1</sup> Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

<sup>2</sup> [Industry Review: The Operations of External Complaints Bodies](#), Financial Consumer Agency of Canada (FCAC), 2020. See also: [Domestic Bank Retail Sales Practices Review](#) (FCAC, 2018); and [Independent Evaluations of the Ombudsman for Banking Services and Investments \(OBSI\)](#). FAIR Canada and other investor advocate organizations have been advocating for improvements to complaint handling systems for over a decade: [Canada Needs a Single Provider of External Dispute Resolution Services](#) (December 2011) and [Open Letter to Minister of Finance](#) (November 15, 2011).

For example, the FSRA's counterpart in Quebec (the AMF) published [draft complaint processing regulations](#) designed to address numerous consumer concerns. The proposed regulations would require all provincially regulated financial institutions in Quebec to, among other things, establish internal complaint handling processes that are:

- Simple to follow and free to the complainant.
- Provide assistance to the complainant.
- Deliver a final response to the complainant within 60 days.
- Prohibit the use of misleading terms such as “ombudsman” within the financial institution.

In our view, adopting a similar regulation in Ontario should be the priority. We also note that the Ontario Securities Commission (together with other members of the Canadian Securities Administrators) is actively developing ways to strengthen the Ombudsman for Banking Services and Investments (OBSI), including enabling it to make binding recommendations. The federal government is also prioritizing establishing a single ombuds service with binding powers in 2022. All these efforts are intended to address well-known problems.

As noted in our [comment letter](#) on the FSRA's draft FY2022-23 priorities, the FSRA should move beyond just “strengthening its understanding” of complaints resolution, and it should implement concrete measures aligned with the initiatives underway in Canada.

### **Best Practices or Basic Tenants?**

In our view, the high-level “Best Practice” statements set out in the Policy Framework read more like basic tenants or fundamental considerations. In many cases, the FSRA does not articulate what it considers to be the best practice in a particular area. Rather, the Policy Framework lists a range of different approaches without indicating which approach is a “best practice.” In other instances, the high-level description of the best practice does not provide any meaningful way to benchmark service providers. Below we list a few illustrative examples of our concerns.

#### **a) Best Practice #3: “IDR processes are required to have certain consumer-focused features.”**

The FSRA notes the high degree of convergence in the relevant principles for internal dispute resolution (IDR) systems and the Policy Framework includes five of these principles (accessibility, fairness, timeliness, transparency, and effectiveness.). However, the Policy Framework provides little details about what these principles mean in practice. For example:

- “Accessible” should specify that the IDR process should be a free service. It should also, for example, require that information about the IDR process be made publicly available in formats to accommodate persons with disabilities.
- “Timeliness” should be described in terms of minimum days to resolve complaints (such as the Quebec draft regulation cited above which requires firms to deliver a final

response to the complainant within 60 days.)

**b) Best Practice #6: EDR mechanisms have the ability to reliably secure redress for consumers.**

Under this Best Practice, equipping an external dispute resolution (EDR) provider with binding authority is described as simply “one approach” to securing redress. This is despite the well-established view that a non-binding approach results in poor outcomes for consumers. As demonstrated in the investment sector, an inability to issue binding decisions unequivocally skews the process in favour of financial firms, enabling them to ignore EDR recommendations or offer low-ball settlements to consumers. Any process that enables such outcomes is indefensibly unfair and should not be considered a “best practice.”

Issuing binding decisions is considered essential to promote fairness and effectiveness in the system. This practice is recognized by Ontario’s Capital Markets Modernization Task Force, the World Bank Group<sup>3</sup>, the International Monetary Fund (IMF), and independent expert assessors of complaint handling systems.<sup>4</sup> In December 2021, the Prime Minister of Canada also indicated the federal government would, as a matter of priority, seek to create a single independent ombudsman with the power to impose binding decisions.<sup>5</sup>

**c) Best Practice #8 “Regulators have access to complaints data from their regulated sectors and use the data to strengthen their regulatory efforts.”**

While the importance of identifying and reporting systemic issues is noted under this Best Practice, the *specific* elements required are not outlined. These should include, for example:

- A clear protocol for the EDR’s identification and reporting of systemic issues.
- A definition of systemic issues that encompasses any complaint that might have an impact on multiple consumers, even if there is only a single complaint on the issue.
- Clear policies, procedures, and training for identifying and reporting systemic issues.
- Public transparency on systemic issues reported to regulators.

Absent some greater specificity, we are concerned the Policy Framework will not be an effective yardstick by which to assess whether existing approaches to handling complaints are consumer focused or producing the expected outcomes. Stated differently, we are concerned that the open-ended nature of the Policy Framework will make it difficult to identify weaknesses or provide meaningful insights for developing concrete proposals for change.

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<sup>3</sup> [Good Practices for Financial Consumer Protection](#) (World Bank, 2017).

<sup>4</sup> [Independent Evaluation of OBSI Investment Mandate](#) (2016).

<sup>5</sup> [Deputy Prime Minister and Minister of Finance Mandate Letter](#) (Dec. 16, 2021).

## Enhancing Consumer Outcomes Today

It is a long-standing problem that consumers who purchase segregated funds through independent insurance advisors have no access to an EDR to resolve their complaint. This is because a complaint about an independent insurance advisor is outside the OmbudService for Life and Health Insurance's (OLHI) mandate.<sup>6</sup> Similarly, in these situations, consumers cannot look to OBSI for assistance because segregated funds, by virtue of being an insurance product, are not within OBSI's mandate.<sup>7</sup>

While there is little data available on the number of complaints about segregated funds that OHLI turns away each year, we believe the FSRA should investigate this issue on a priority basis to determine how widespread the problem is and how best to address it.

## Conclusion

We encourage the FSRA to escalate its efforts to implement needed improvements to the IDR and EDR system. We also recommend that, on a priority basis, the FSRA ensures that all consumers of financial products under its jurisdiction have access to fair and equitable EDR complaint handling services in line with current best practices.

We thank you for the opportunity to provide our comments regarding this consultation. We would be pleased to discuss our submissions with you if you have questions or require further explanation of our views on these matters. Please feel free to contact me at [jp.bureaud@faircanada.ca](mailto:jp.bureaud@faircanada.ca).

Sincerely,



Jean-Paul Bureaud,  
President, CEO and Executive Director  
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

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<sup>6</sup> OHLI's mandate is limited to complaints about its member insurance companies and excludes complaints involving a "non-member third party," such as an independent insurance advisor.

<sup>7</sup> See the [Protocol on Segregated Funds](#).