



P.O. Box 26056 Churchill  
Mississauga, Ontario L5L 5W7

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Expert Advisory Panel – FSCO/FST/DICO Mandate Reviews  
Ministry of Finance  
Financial Institutions Policy Branch (FIPB) &  
Income Security & Pension Policy Division  
Frost Building North, Room 424  
95 Grosvenor Street, 4th Floor  
Toronto, Ontario M7A 1Z1

Email: [FIPBmandatereview@ontario.ca](mailto:FIPBmandatereview@ontario.ca)

Dear Members of the Expert Review Panel:

Thank you for this opportunity to provide a follow up submission to the Expert Advisory Panel on the Mandate Review of the Financial Services Commission, (FSCO) the Financial Services Tribunal (FST) and the Deposit Insurance Cooperation of Ontario (DICO). This submission is in response to the offer to make an additional submission by the panel members to attendees at the Roundtable for P&C insurers held on July 29<sup>th</sup>. Our submission is similar to comments made by Wendy Rinella who attended this session on behalf of the Mortgage and Title Insurance Industry Association of Canada (MTIAC)

In this submission we will be responding to questions discussed at the Roundtable:

**Question #1:** What changes, if any, to the mandate, powers, governance or structure of the Financial Services Commission of Ontario (FSCO) or the Financial Services Tribunal (FST) are necessary to enhance oversight of the property & casualty insurance sector and improve consumer protection?

- a) Would your sector support FSCO being given rule making power?
- b) Should FSCO's mandate include an obligation to encourage innovation?

**Question #6:** Are there additional matters you would like to raise consistent with the Expert Advisory Panel's mandate that have not been addressed?

Before we share our comments, I will provide additional background about MTIAC.

## **MTIAC Update**

As indicated in our submission dated June 5, 2015, members of the Title Insurance Industry Association of Canada came together with mortgage insurers and signed a letter of intent to create the Mortgage and Title Insurance Industry Association of Canada (MTIAC), and in French as the Association des Compagnies d'Assurance Hypothécaire et Titres du Canada (ACAHTC).

The signatories to the Letter of Intent of November 2014 are as follows:

**CANADA GUARANTY MORTGAGE INSURANCE COMPANY**  
**CHICAGO TITLE INSURANCE COMPANY**  
**FCT INSURANCE COMPANY LTD.**  
**GENWORTH FINANCIAL MORTGAGE INSURANCE COMPANY OF CANADA**  
**TRAVELERS INSURANCE COMPANY OF CANADA**

As at July 2, 2015, MTIAC was federally incorporated.

## **MTIAC Responses:**

### **Roundtable Question #1:**

What changes, if any, to the mandate, powers, governance or structure of the Financial Services Commission of Ontario (FSCO) or the Financial Services Tribunal (FST) are necessary to enhance oversight of the property & casualty insurance sector and improve consumer protection?

- a) Would your sector support FSCO being given rule making power?
- b) Should FSCO's mandate include an obligation to encourage innovation?

In our previous submission we stated our support in principle for including consumer protection in the mandate of the New Regulator. We also identified the need for the New Regulator to have greater financial disclosure for the companies that it regulates, easily accessible on its website, similar to OSFI regulated companies. In addition, we flagged one area of caution as the potential overlap with the Financial Consumer Association of Canada (FCAC).

As part of the Roundtable discussion the issue of "principle-based" vs "rule-based" regulator were reviewed. MTIAC supports the principle/ interest-based mandates for FSCO, provided they do not duplicate the role of other regulators, like FCAC.

During the discussion, IBC mapped out its support for a consumer interests regulator, similar to the UK regulator. The definition of consumer interests would include innovation, fraud, financial literacy etc. MTIAC is supportive of the IBC position and in particular the inclusion of innovation in the FSCO mandate. The evolution of insurance products will continue to evolve alongside the evolution of new forms of ownership and products enabled by the digital economy. The New Regulator should be at the forefront of these discussions.

At the session, the MTIAC representative also raised the point that the new regulator's fraud mandate should be expanded to include all forms of financial fraud, not just auto insurance fraud. Real estate

fraud, through identity theft and forgery is a devastating form of fraud against its victims. Real estate fraud is also the focus of criminal organizations, not just individual theft. While there are some remedies through title insurance and the land title assurance fund for real estate fraud, MTIAC believes the new regulator's priority should be prevention and avoidance of all forms of fraud.

**Question #6:** Are there additional matters you would like to raise consistent with the Expert Advisory Panel's mandate that have not been addressed?

## **I. Sector Review Process**

At the session the MTIAC representative raised the challenges of being a small sector subject to FSCO review – in particular, the ad hoc review processes used by FSCO to conduct its reviews. MTIAC is concerned that there is inadequate communication and consultation with the sector on a review process:

### 1) Criteria for Review

There is little to no explanation regarding how or why FSCO chooses a review mandate. If it is complaint based, the nature of the complaint is not revealed. There is no formal review process whereby the industry sits down with the regulator to discuss issues of concern or issues on the horizon. Instead, each licensed insurer receives a separate letter announcing the review and a deadline for a response to queries raised. MTIAC believes that Ontarians would be better served if the regulator were to track its concerns with each sector through regular communication and if it provided advance notification (beyond a day or two) and sit down with the sector to discuss all issues – current and future. Consistent with our concern, we believe the regulator should be primarily focused on new and emerging issues rather than on past events.

### 2) No Consistent Contact

The Review contact person has changed three times since the start of the current Title Insurance Review process. MTIAC believes there should be a contact, manager and director assigned in the event of staff departures. Having multiple contacts on each file will better serve the regulator, the regulated entities, and Ontarians at large.

### 3) Timetable

The timetable of the report has changed multiple times. MTIAC believes the new regulator should make it a top priority to sit down with the industry to firm up a mutually agreed upon time table for the report. We also believe that the new regulator should communicate regularly with the industry to ensure that the agreed upon timetable is met.

### 4) The Report

MTIAC believes the sector should be privy to the draft recommendations of the report prior to its release and have the opportunity to clarify and discuss the recommendations with the regulator in advance of the release.

In effect, the review process adopted by the new regulator should focus on greater engagement with industry and provide greater accountability for the timetable and communications with the sector.

## II. Customer Feedback and Assessment

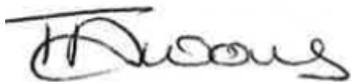
MTIIAC believes that regulatory environments operate most efficiently and effectively when there is continuous and timely communication between the regulator and the entities it regulates. To make this work, there should be regular engagement between the regulator and the regulated entities so that the regulated entities can better understand the regulator's intent, the regulator can understand the impact of potential changes on the regulated entities and obtain advice and guidance on the best way to achieve the regulatory intent. Building further, MTIIAC believes it is very important for regulators to work with clients to understand how they operate, why they act as they do, and the level of burden that any regulators' action puts on them. In addition to the research it conducts about the market, it should be conducting third party reviews of its own practices and processes. In particular, MTIIAC would welcome additional opportunities and mechanisms to provide feedback (beyond the annual responses to the "Statement of Draft Priorities" document).

MTIIAC believes other Canadian regulators and entities have in place best practices for 'feedback loops' that could be drawn upon. For instance, OSFI conducts regular meetings with regulated financial institutions in addition to their annual survey. The Tarion Warranty Corporation regularly surveys the home building community which it regulates to understand its constituency, their needs and the impact of their regulatory decisions and processes with a focus to improvement.

Thank you for the opportunity to comment again.

If you would like further clarification on any points raised in this document please reach us through [info@MTIIAC-ACAHTC.com](mailto:info@MTIIAC-ACAHTC.com).

Sincerely,


Kris Barnier  
Acting VP Public Affairs, MTIIAC