

# New FCAC Supervision Framework

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## AUTHORS



Melissa Prado



Peter A. Aziz

The Financial Consumer Agency of Canada (FCAC) has published its new Supervision Framework, which reflects the comments received from stakeholders on an earlier draft of the framework which FCAC published for consultation in the fall of 2016. The Supervision Framework aims to provide a high degree of transparency into how FCAC supervises and monitors federally regulated financial institutions, external complaints bodies, and payment card network operators. FCAC will commence implementation of the Supervision Framework on November 1, 2017, but FCAC internal processes and initiatives to support the framework will be phased in over time. More details about supporting initiatives, such as the revised Publishing Principles, effective dates of new tools and corresponding changes to FCAC processes, will be provided to regulated entities throughout the summer months.

## What You Need To Know

- FCAC takes a risk-based approach to supervision. As a result, the Supervision Framework places greater emphasis on market conduct risk and the prevention of breaches of market conduct obligations by regulated entities. The framework defines **market conduct risk** as the risk of breaching a market conduct obligation that is overseen by FCAC. **Market conduct obligations** are the legislative obligations, voluntary codes of conduct and public commitments that are overseen by FCAC.
- FCAC classifies entities as either Tier 1 or Tier 2. This classification guides the nature and intensity of FCAC's supervisory interactions:
  - Tier 1 entities are those that engage in business activities that inherently include market conduct risk because the nature of the products and services offered by them requires compliance with market conduct obligations. Tier 1 entities include those offering retail products and services to consumers, entities whose participants offer payment services to merchants, and entities that offer dispute resolution services to member banks. Tier 1 entities are assigned a senior officer and undergo a cycle of proactive supervision, whereby FCAC maintains ongoing communication with each entities, and which includes the development of Market Conduct Profiles to determine the intensity of supervision.
  - Tier 2 entities are those that engage in business activities that result in minimal risk of breaching market conduct obligations because, due to the nature of their products or services, the market conduct overseen by FCAC does not typically apply to them. Tier 2 entities include entities such as banks and trust companies that do not offer retail products or services, and insurance companies that restrict their business to the sale of insurance. Monitoring for Tier 2 entities is significantly less intense and are not typically assigned a senior officer. FCAC will reclassify a Tier 2 entity if its business model expands into products or services that increase its market conduct risk.

- FCAC expects regulated entities to proactively identify, address and monitor risks and keep FCAC updated on their particular risks and controls. In particular, FCAC expects regulated entities to proactively report to FCAC any material developments that could change their market conduct risk. We expect FCAC to provide further details about this reporting requirement.
- FCAC has indicated that the Publishing Principles for FCAC Decisions (which aim to clarify how FCAC will publish information about Notices of Violation, Notices of Decision and Notices of Non-Compliance) will be reissued in the summer of 2017. These were included in the fall draft but do not appear in the Supervision Framework. At this point, the FCAC Commissioner determines on a case-by-case basis—based on facts of the case and any other relevant considerations and factors—whether to make public the name of a regulated entity that has committed a violation.
- FCAC has also announced that it will separate the supervision and enforcement functions and create a distinct Enforcement Division. This division will expand FCAC’s capacity to respond to breaches of market conduct obligations. Further announcements on staffing of the new Enforcement Division will be made in the coming months.

*To discuss these issues, please contact the author(s).*

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