

# Approach



**Effective Date:** [TBD]

**Identifier:** No. CU####APP

## Proposed Approval or Authorization of Business and Investment Activities under the *Credit Unions and Caisses Populaires Act, 2020*

### Purpose

This Approach Guidance applies to credit unions, caisses populaires and credit union centrals or federations (collectively, “**Credit Unions**”) incorporated or continued under the *Credit Unions and Caisses Populaires Act, 2020* (the “**CUCPA 2020**”) or the prior version of the CUCPA 2020, and sets out:

- (i) the approach that the Financial Services Regulatory Authority of Ontario (“**FSRA**”)<sup>1</sup> will take when reviewing and considering applications by Credit Unions for the approval or

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<sup>1</sup> Both the CEO of FSRA and FSRA may exercise regulatory authority under the CUCPA 2020; however, for the purposes of this Guidance, reference will only be made to FSRA as the CEO may delegate authority to FSRA staff, as permitted by s. 10(2.3) of the *Financial Services Regulatory Authority of Ontario Act* (“FSRA Act”).

authorization of business and investment activities, variations and extensions (collectively “**Transactions**”) under the CUCPA 2020

- (ii) the approach that FSRA will take, the principles and criteria that FSRA will apply as well as the information that FSRA will require when considering such applications and exercising its discretion under the CUCPA 2020

## Scope

This Approach Guidance applies to Credit Unions.

## Rationale and background

The CUCPA 2020 provides flexibility for Credit Unions by permitting a broad scope of business and investment activities which, in some cases, must be approved or authorized in advance by FSRA. FSRA has discretion to approve or authorize the following Transactions:

<b>CUCPA 2020 Provisions</b> (unless otherwise noted)	<b>Transaction</b>
139 (2)	Ancillary businesses
140 (2)	Partnerships
143 (2) and (5)	Guarantees
145 1 (I)	Accept deposits from persons or entities approved by FSRA

151 (1)	Subordinated indebtedness paid for in property
156 (2)	Securities acquired due to loan defaults, not permitted by lending or investment policies
168	Establishing or acquiring subsidiary
169	Variation of investment requirements under section 167 or subsection 168 (6)
170	Investment in another CU
171 (1) and (2)	Unauthorized assets acquired in the circumstances listed
174 (2)	Purchase or sale of substantial assets
62 (4) (2020 Regs - proposed)	Security interests in CU property
78(2) and (3) (2020 Regs - proposed)	Substantial investment in a body corporate or unincorporated entity

## Principles

FSRA will exercise its regulatory authority with respect to the approval or authorization of Transactions in a manner that is consistent with its statutory objects as set out in the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”) and with a view to protecting members and depositors of Credit Unions.

In particular, section 3 of the FSRA Act states that FSRA's objects include the following:

1. "to regulate and generally supervise the regulated sectors"<sup>2</sup>
2. "to promote transparency and disclosure of information by the regulated sectors"<sup>3</sup>
3. "to promote high standards of business conduct"<sup>4</sup>
4. "to protect the rights and interests of consumers"<sup>5</sup>
5. "to foster strong, sustainable, competitive and innovative financial services sectors"<sup>6</sup>
6. "to 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"<sup>7</sup>
7. "to protect depositors by pursuing the object set out in the clause above in a manner that will minimize the exposure of the Deposit Insurance Reserve Fund to loss"<sup>8</sup>

In addition, as a principles-based regulator, FSRA will adhere to the following principles when reviewing applications, exercising discretion and communicating with applicants in respect of the approval or authorization of Transactions:

1. promoting **transparency, clarity and certainty** with respect to the criteria that FSRA will consider, the information that FSRA will require, and the processes that FSRA will follow

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<sup>2</sup> FSRA Act, s. 3(1)(a).

<sup>3</sup> FSRA Act, s. 3(1)(f).

<sup>4</sup> FSRA Act, s. 3(2)(a).

<sup>5</sup> FSRA Act, s. 3(2)(b).

<sup>6</sup> FSRA Act, s. 3(2)(c).

<sup>7</sup> FSRA Act, s. 3(4)(b).

<sup>8</sup> FSRA Act, s. 3(4)(c).

2. fostering a **competitive, innovative, strong and sustainable Credit Union sector** by balancing the obligation to protect a Credit Union’s members, shareholders and depositors with the need for Credit Unions to be competitive and take reasonable risks
3. using a **risk-based approach** that focuses on material risks to the Credit Union and the wider sector that could lead to undue loss for members, shareholders and depositors
4. exercising **proportionality**, taking into consideration the nature, materiality and complexity of the proposed transaction and the potential consequences for the Credit Union and its members, shareholders and depositors
5. adhering to a **practical** approach that emphasizes substance over form when determining if the criteria for an application’s approval have been satisfied

## Processes and practices

This section sets out the processes and practices that FSRA will follow when considering applications approval or authorization of Transactions. This includes identifying the criteria that will be considered in accordance with the principles set out above, and the contents of an application necessary for FSRA to arrive at a decision.

### Submitting applications

Applications may be submitted to FSRA’s approvals team via email at [CreditUnionTransactions@fsrao.ca](mailto:CreditUnionTransactions@fsrao.ca) or by using the secure upload on FSRA’s website. When uploading information, please select “Credit Union Transactions” as the file type.

### Meeting with FSRA

To the extent possible, Credit Unions are encouraged to meet with FSRA staff prior to submitting an application for approval or authorization of Transactions for the following reasons:

1. A meeting provides an opportunity to ask questions and ensure that there is a comprehensive understanding of the applications process.

2. There may be more than one approval required for particular Transactions (i.e., there may be associated approvals – see the “Associated Approvals” section below for additional information).
3. Meeting prior to submitting an application will help ensure that any associated approvals or issues are identified as soon as possible, minimizing delays.

## Service Standard

An application for approval or authorization of Transactions will be acknowledged within two business days of receipt by FSRA. If additional information is required, a communication to this effect will be sent out in a timely manner. FSRA will communicate its final decision to the applicant in accordance with FSRA’s [Service Standards](#) commitment as it pertains to Credit Unions.

## Contents of application

There are no forms associated with any of the applications for approval or authorization of Transactions covered by this Guidance. However, an application guide (Investment and Business Activities Guide) that contains documentation and information which will form the basis of a fulsome application will be published on FSRA’s website to guide Credit Unions in the preparation of their applications. Please note that the nature and circumstances of each particular application may necessitate additional information requirements.

A comprehensive business case must be submitted in support of an application regarding one or more of the Transactions referenced above. FSRA will apply the criteria listed below in order to assess whether a Credit Union’s application satisfies the principles set out in this Guidance:

1. The Credit Union has articulated the benefits of the transaction, demonstrating that approval is in the best interests of a Credit Union’s members, customers and shareholders.
2. The Credit Union demonstrates that an appropriate level of due diligence has been undertaken.

3. The Credit Union's business plan with respect to the transaction is sound and feasible.
4. The Credit Union has demonstrated alignment between the transaction and the Credit Union's business plan and governance framework.
5. The Credit Union has conducted a comprehensive analysis of all potential risks to the financial safety, soundness and conduct of the credit union that may result from the transaction, and has developed a plan for managing these risks, including appropriate additional controls, limits and internal reporting.
6. The application demonstrates that the transaction will not result in any unacceptable increase in risk to the Credit Union or FSRA.
7. The Credit Union's financial condition and performance are satisfactory for the purposes of the Transaction.
8. The Credit Union has demonstrated that it possesses or will acquire the expertise, knowledge and resources required to successfully implement its business plan with respect to the Transaction.
9. The Credit Union is in full compliance with the CUCPA 2020, its Regulations, and FSRA's Rules.

The Credit Union's board of directors and management are responsible for determining whether a Transaction is in the best interests of the Credit Union, its members and customers. FSRA relies on representations made by Credit Unions and will seek assurances that the appropriate level of analysis and due diligence have been conducted. In this regard, FSRA may request legal opinions regarding compliance with the CUCPA 2020 or any applicable laws, or to deal with transactional issues to support an application. FSRA will also conduct its own due diligence and retains the right to request any and all information it requires to fully evaluate whether the application satisfies the principles set out in this Guidance.

When preparing the package in support of its application, the CU must articulate how the principles and any criteria for approval have been satisfied, including supporting documentation.

An application for approval or authorization of Transactions should also indicate how the proposed Transaction complies with the legal requirements of the CUCPA 2020 and how the favourable exercise of FSRA's discretion is consistent with the principles listed in the Processes and Practices section of this Guidance.

## Associated approvals

In some cases, a transaction will require more than one approval from FSRA. For example, if a Credit Union proposes to amalgamate with another Credit Union, it may require the approval of a trade name (i.e., the use of another name) or the amendment of its articles of incorporation. Applications should list and describe all of the required approvals, including any such associated approvals.

## Transaction decisions

FSRA will communicate regularly with Credit Unions throughout the application process. Credit Unions will be given the opportunity to address any issues that have been identified through the review of their application. However, if these issues are not or cannot be addressed to FSRA's satisfaction, or if an application does not satisfy the identified principles, approval criteria or information requirements outlined in this Guidance, FSRA reserves the right to reject the application. In cases where an application is ultimately not approved, FSRA will provide the Credit Union with written reasons for its decision.

In keeping with the principle of transparency, FSRA will develop and consult on guidance setting out criteria for the publication of approval decisions.

## Effective date and future review

The effective date of this Guidance is [TBD].

Upon its effective date, this Guidance will replace the following guides previously issued by FSRA:

- Self-Help Process Guide – Purchase or Sale of Assets (2020)
- Self-Help Process Guide – Subsidiary (2020)



The latest date for FSRA to initiate a review of this Guidance is [TBD].

## About this guidance

This Guidance is consistent with [FSRA's Guidance Framework](#).

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.