

September 24, 2021

Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West, Suite 100  
Toronto, ON  
M2N 6S6

Dear Sirs/Madams,

### **Re: Proposed Transparent Communication of FSRA Enforcement Actions**

The CAAT Pension Plan would like to thank the Financial Services Regulatory Authority of Ontario (FSRA) for the opportunity to comment on the proposed Approach guidance regarding communication guidelines for enforcement (“Approach”). The CAAT Plan applauds FSRA’s ongoing commitment to transparency and continuously working to promote the highest standards across the financial services sector.

Our concerns and recommendations are outlined below and the CAAT Plan would be pleased to discuss them further at your convenience and make plan staff available to review any future versions of this proposed policy.

### **Recommendations for further refinement of enforcement actions Approach**

#### **1. Avoid “naming and shaming” pension plans over minor incidents**

The CAAT Plan is supportive of FSRA’s work to prevent deceptive or fraudulent conduct and practices and agrees that highlighting bad actors is paramount to maintaining public confidence and protecting consumers. That said, our position is that not all actions require the same degree of publication, especially when the infractions are minor, based on a misunderstanding or are unintentional and not grounded in a pattern.

When evaluating its approach to resolve issues of administration, FSRA should give weight to the severity of the issue when evaluating its course of action. When minor, non-pattern, infractions happen, we believe that “naming and shaming” a specific plan does not foster a collegial environment within the sector and could encourage unnecessary public misunderstanding and discourage administrators from having constructive and open dialogue with FSRA when such issues arise.

As an alternative, we propose FSRA consider posting education bulletins about these minor incidents without naming the wrong doer. The use of education bulletins would ensure issues are flagged and sector participants are made aware without the focus being on the individual plan or individuals involved. Educational bulletins for minor infractions would provide insight to peer plans and an opportunity evaluate and adjust current practices which might be similar, all while ensuring that open dialogue, innovation, and collaboration among pension plan sponsors,

administrators and FSRA remain strong. This process would also meet FSRA's goals of transparency and collaboration with the sector while not causing concern with plan members and the public over minor actions.

Furthermore, while we recognize that there are certain circumstances where the CEO of FSRA is required by the *Pension Benefits Act* (PBA) to issue a Notice of Intended Decision (NOID), we believe that the CEO of FSRA should consider using their discretion and only issue a NOID as a last resort following attempts to resolve concerns of a minor nature between interested parties. Similarly, we believe that as a pension ecosystem, we should work together to resolve any minor conflicts without the need for an Order to be issued unless the situation requires it based on magnitude, or where attempts have been made to resolve the issue with no success.

## **2. Establish a clear framework for discretionary circumstances**

The CAAT Plan is pleased to see that the proposed Approach includes the opportunity for discretion with respect to publication where harm of publication may outweigh the benefits of transparency. However, we believe that the current draft does not clearly articulate the areas where discretion would apply

Our position as a Plan is that not all infractions warrant publication through news releases and thus would like to see the development of a clear framework with respect to FSRA's discretion. Such a framework should delineate between actions that are worthy of posting online, issuing a NOID or Order, or further publication via news release and those which can be handled directly between Plans and your office. For example, a news release would be warranted for a major infraction where an organization was misappropriating funds out of the trust. This would clearly be a matter of public concern and highlighting enforcement around such incidents would increase public confidence in the sector and the work of FSRA. Conversely, the CAAT Plan believes a news release should not be warranted on all cases where FSRA mandates a pension to return contributions to members or requests an administrator to accept an employee, as these issues may be minor in nature and could be specific to a plan text or a plan design and do not provide beneficial substance to other industry partners. Such instances can also be resolved by working with the pension plan, the individual and the regulator – in other words, a fear of being named may negate the ability to work constructively with open dialogue between the parties and FSRA.

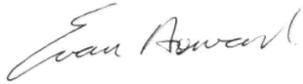
The development of such a framework would bring even greater transparency and clarity to all sector participants and better achieve the goals of the Approach.

## **Conclusion**

The CAAT Plan values its collaborative relationship with FSRA. We support the goals of this policy but would like to see a clear framework developed for discretionary circumstances to provide insight to all parties on whether a news release, a NOID or other publicity is warranted for a given issue. We also recommend FSRA assess and evaluate which information is important and effective for public consumption as we do not see value in “naming and shaming” plans over non-pattern minor infractions. Instead, we would like to see these items dealt with through bulletins that educate the sector but do not single out the specific plan to ensure open dialogue and that the collegial and collaborative nature of the sector remains strong.

Once again, the CAAT Plan appreciates the opportunity to provide comment on this policy proposal and we look forward to working with you on next steps. Please feel free to reach out to me with any questions regarding this submission.

All the best,

A handwritten signature in cursive script that reads "Evan Howard".

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Evan Howard  
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