

# Approach

**Effective Date:** January 11, 2022

**Identifier:** No. GR0011APP

## Transparent Communication of FSRA Enforcement Action

### Purpose

This Approach Guidance describes when and how FSRA publishes information, including news releases, about its enforcement action. Enforcement action is formal legal action initiated by FSRA to impose regulatory sanctions for non-compliance with statutory requirements, regulatory misconduct, and address unsuitability for licensing or registration (“Enforcement Action”).

Transparency for Enforcement Actions increases public awareness of misconduct and of the sanctions taken to improve consumer protection and deter future misconduct in the regulated sectors.

### Rationale and principles

Greater transparency of Enforcement Action achieves FSRA’s statutory objects,<sup>1</sup> including:

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<sup>1</sup> *Financial Services Regulatory Authority of Ontario Act, 2016, S.O. 2016, c.37 sections 3 and 3.1.*

- **To protect the rights and interests of consumers and pension plan beneficiaries:** Consumers and plan beneficiaries benefit from early notice of Enforcement Action and a full understanding of the reasons for it.
- **To regulate and generally supervise the regulated sectors:** Transparent communication will assist the regulated sectors, and those who are licensed in them, to understand their legal and compliance obligations, and the potential consequences for failing to meet them.
- **To promote high standards of business conduct in the financial services sectors:** Transparency of Enforcement Action promotes knowledge and understanding within the financial sectors. Transparency also deters non-compliance and therefore facilitates higher standards of business conduct.
- **To promote the good administration of pension plans:** Transparency of Enforcement Action ensures that plan sponsors and administrators know their regulatory and compliance obligations, and the potential consequences of non-compliance.
- **To contribute to public confidence in the regulated sectors:** Public confidence is enhanced with knowledge that legal requirements are enforced and contraventions are appropriately sanctioned.
- **To deter deceptive or fraudulent conduct, practices, and activities by the regulated sectors:** Enforcement takes a risk-informed approach, focusing on conduct which is deceptive or fraudulent, causing material consumer harm. Regulated entities and individuals who engage in such conduct are identified to consumers through the publication of enforcement proceedings and the sanctions are publicized to create greater deterrence.

A consistent and clear approach to transparency of Enforcement Action also ensures that non-compliant regulated entities and individuals are treated evenly and know in advance when and how FSRA will inform the public that it is taking action for non-compliant activity.

## Scope

This Approach Guidance affects the following entities regulated or registered by FSRA:

- statutory accident benefits service providers
- corporate insurance agencies
- insurance adjusters
- insurance agents
- insurance companies
- mortgage administrators
- mortgage agents
- mortgage brokerages
- mortgage brokers
- pension plans
- pension plan administrators
- credit unions

This Approach Guidance affects the following sector stakeholders:

- consumers and pension plan beneficiaries
- general public

## Processes and practices

### Enforcement information

FSRA ensures greater awareness of its Enforcement Action by making the following information (“Enforcement Information”) publicly available on the enforcement section of the FSRA web site and through news releases:

- Notices of Proposal and Notices of Intended Decision when FSRA initiates Enforcement Action
- Orders carrying out Enforcement Action, including interim Orders
- where an Order is the result of a settlement, Minutes of Settlement

FSRA issues a news release when Enforcement Action is taken. News releases will generally be factual and written in plain language. The combination of a news release and public posting of

the Enforcement Information on FSRA's web site promotes public awareness and reduces risk to consumers.

## Enforcement action

This Approach Guidance applies to Enforcement Action where formal legal action is initiated by FSRA to impose regulatory sanctions for non-compliance with statutory requirements, regulatory misconduct, and address unsuitability for licensing or registration.

Supervisory and remedial actions taken on a co-operative basis at an early stage without the issuance of a Notice of Proposal or Notice of Intended Decision are not generally considered Enforcement Action under this Approach Guidance. However, FSRA retains the discretion to publish such actions consistent with its statutory objectives and the need to protect consumers and pension plan beneficiaries.

## Mortgage sector

In the mortgage sector, FSRA publishes Enforcement Information when it takes any of the following Enforcement Actions:

- issues a Notice of Proposal to:
  - revoke, suspend or refuse a license
  - impose conditions on a license
  - impose a general administrative penalty
  - impose a Compliance Order or Order to Cease & Desist
- freezes assets

This Approach Guidance does not generally apply to Orders imposing summary administrative penalties, revoking a license where a notice of proposal is not required, or license conditions and undertakings entered on consent, subject to the considerations referred to under Discretionary Circumstances. All license conditions are reported in the public [Licensing Listing for Mortgage Brokerages, Administrators, Mortgage Agents, and Mortgage Brokers licensed in Ontario](#).

## Insurance sector

In the insurance sector, FSRA publishes Enforcement Information when it takes any of the following Enforcement Actions:

- issues a Notice of Proposal to:
  - revoke, suspend or refuse a license
  - impose conditions on a license
  - impose a general administrative penalty
  - impose a Compliance Order or Order to Cease & Desist
- disciplines an insurer by Order, including by suspending or cancelling a license, or imposing conditions or limitations on a license
- prohibits an insurer from issuing or using a form of insurance policy or application
- requires disposition of a loan, investment, or interest

This Approach Guidance does not generally apply to Orders imposing summary administrative penalties, revoking a license where a notice of proposal is not required, or license conditions and undertakings entered on consent, subject to the considerations referred to under Discretionary Circumstances. All license conditions are reported in the [public Licensing Listing](#).

## Pension sector

In the pension sector, FSRA publishes Enforcement Information when it takes any of the following Enforcement Actions:

- issues a Notice of Intended Decision to:
  - refuse or revoke plan registration
  - order a pension plan, administrator, or other person to take action in respect of a pension plan or fund
  - require an administrator to accept an employee as a member

- wind-up a pension plan
  - require an administrator to return assets to a pension plan
  - require an administrator to return contributions to a member
  - impose a general administrative penalty
- requires an administrator of a pension plan to hold a meeting or provide specified information to members

This Approach Guidance does not apply to Orders imposing summary administrative penalties or actions initiated by a Notice of Intended Decision that are not Enforcement Action. Notices of Intended Decision to wind-up a pension plan on consent or to refuse to order a pension plan or administrator to take action in respect of a pension plan or fund, are generally not Enforcement Actions covered by this Approach Guidance. Certain Notices of Intended Decision and Orders, including Orders imposing summary administrative penalties, are available on the Pension page of FSRA's web site.

### **Discretionary circumstances**

Where FSRA takes Enforcement Action that is not captured above, it weighs the benefits of transparency against any potential harms of publication and determines whether publication is appropriate on a case-by-case basis. Circumstances where publication may be considered include:

- Enforcement Action in respect of a credit union, or in respect of the officers, directors or employees of a credit union
- supervisory and remedial action regarding a regulated entity or individual by agreement, including agreed licensing conditions or undertakings to FSRA

In these circumstances, FSRA may decide to publish some or all Enforcement Information to the general public, or specific sector participants. FSRA makes this determination by applying its statutory objects and the principles articulated in this Approach Guidance.

## Investigation information

FSRA does not ordinarily disclose to the public or confirm the existence of an investigation while it is ongoing or closed with no resulting Enforcement Action. This is because:

- Investigations may be compromised if disclosure is made before an investigation is complete. Confidentiality minimizes this risk.
- Confidentiality also minimizes potential harm to the reputations of those to whom the investigation relates, if no Enforcement Action is taken.

FSRA may in its discretion notify the general public or specific sector participants of the existence and nature of an investigation. This will be limited to exceptional circumstances where FSRA is of the view that disclosure is necessary to protect consumers and that consideration outweighs the usual reasons for non-disclosure. The circumstances where FSRA in its discretion may choose to disclose an investigation include:

- Consumer protection outweighs the factors favouring non-disclosure. This may occur where there is credible evidence of ongoing behaviour that is likely to result in immediate harm to consumers which potentially can be avoided by the disclosure.
- The investigation relates to conduct or issues which are substantially in the public domain and there are credible allegations which engage FSRA's enforcement jurisdiction. This may occur where another regulator or law enforcement agency has disclosed an investigation, proceeding(s), or charge(s).
- The subject of the investigation has publicly disclosed information about the investigation and FSRA believes it is necessary to correct the public record if the disclosed information is not accurate or potentially misleading.

Disclosure of an investigation will be extremely rare for the above reasons. If an investigation is disclosed while it is ongoing and no Enforcement Action is ultimately taken, FSRA will notify the public or sector participants accordingly.

## Transitional phase

This Approach Guidance is effective on January 11, 2022. For Enforcement Actions initiated prior to January 11, 2022 and which are pending on that day with no final Order issued, FSRA will publish related Enforcement Information when a final Order is published.

## Effective date and future review

This decision becomes effective on January 11, 2022 and will be reviewed no later than January 11, 2027.

## About this guidance

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.