

November 18, 2020

Attn: Caroline Blouin
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, Ontario M2N 6L9

Submitted online via the Financial Services Regulatory Authority of Ontario [website](#).

Re: FSRA Supervisory Approach to Asset Transfers under the Pension Benefits Act

Dear Caroline Blouin,

The CAAT Pension Plan thanks the Financial Services Regulatory Authority of Ontario (FSRA) for the opportunity to comment on its draft *Supervisory Approach to Asset Transfers under the Pension Benefits Act* (the “Guidance”). The CAAT Pension Plan appreciates FSRA’s continued commitment to stakeholder engagement and collaboration, ensuring effective outcomes-based financial services regulation for pension plans.

The CAAT Pension Plan is supportive of the Guidance as it illustrates a level of progress in burden reduction associated with the single employer pension plan (SEPP) to jointly sponsored pension plan (JSPP) asset transfer (or “merger”) process. The Guidance provides a fulsome analysis of FSRA’s discretion with regards to asset transfer applications and highlights FSRA’s commitment to being a prudent and outcomes-focused regulator.

With that in mind, we are providing additional recommendations below aimed at further clarifying the Guidance and ensuring its consistent application across the pension sector.

Recommendations for further clarification of the FSRA’s asset transfer Guidance

1. Ensure a consistent application with respect to issuing Notices of Intended Decisions (NOIDs).

Section 4.4.8 of the Guidance speaks to FSRA’s consent to asset transfer applications and specifically notes that the regulator “may exercise its discretion and chose to issue a NOID in advance of consenting to an asset transfer application.” Given our experience with asset transfers in accordance with section 80.4 of the *Pension Benefits Act* (PBA), section 4.4.8 of the Guidance seems to indicate that NOIDs are required to be issued under section 80.4 asset transfers, but not necessarily required for asset transfers under sections 80 and 81 of the PBA.

While we recognize this could be FSRA’s historical interpretation of the PBA’s requirements regarding the Chief Executive Officer (CEO) of FSRA’s orders and issuance of NOIDs, this raises concern as to the equitable application of this section of the Guidance. The importance of

the equitable application of the use of NOIDs can be found in FSRA's revised approach to section 80.4 transfers as outlined in FSRA's October 22, 2020 news update. FSRA has revised its approach for section 80.4 transfers whereby following a 10-day notice period for impacted plan members, FSRA will provide its consent (subject to comment received by affected members) by way of a letter of consent rather than issuing a NOID prior to issuing its consent. Our concern with such an approach is that a single member voicing a complaint may hinder FSRA's consent to a section 80.4 transfer despite the fact that the majority of plan membership would have already provided consent to a merger and given that all members would have been placed on notice of the results and that an application is then being made for consent. If a member wishes to express concern with the merger process, it should be made during the application and not at the end of the application process. As a result, such an approach could delay section 80.4 transfers in particular. As such, the CAAT Pension Plan encourages FSRA to ensure a consistent approach to the issuance of NOIDs associated with all asset transfers across the pension sector as this will allow for increased predictability and transparency.

2. Consider previous experience prior to initiating a thorough review of an asset transfer application involving multi-jurisdictional pension plans.

Under section 3 ('Principles'), the Guidance suggests that transactions involving multi-jurisdictional pension plans may invoke a detailed review of an asset transfer application by FSRA. While we recognize that there are inevitably asset transfer applications which may be more complicated in nature than others, we recommend FSRA consider whether a JSPP has a standard practice and previous experience with more complicated asset transfers when deciding whether or not to take a more lengthy review of an application.

According to the PBA and *Ontario Regulation 311/15*, the CEO of FSRA will ultimately approve an asset transfer application if the prescribed requirements as set out in the legislation are met. As we understand it, FSRA's role does not change in this regard should an asset transfer application include members of a pension plan(s) from jurisdictions outside of Ontario. In our experience with asset transfers, the merging of multi-jurisdictional plans into the CAAT Pension Plan is becoming more prevalent over time. We anticipate that as the market realities of the COVID-19 crisis unfold, more employers with SEPPs will increasingly seek out JSPPs such as the CAAT Pension Plan to transfer their employee's pension benefits to a more financially secure plan and reduce financial risk. Delays resulting from a prolonged asset transfer application review will result in additional costs to a SEPP including Pension Benefit Guarantee Fund (PBGF) fees if a transfer is not approved within a calendar year. Furthermore, the Guidance notes that multi-jurisdictional asset transfer requires the consent of each pension regulator that has members impacted by the merger. A complex review of a multi-jurisdictional asset transfer application could not only cause delays to the transfer, but also call into question the level of regulatory harmonization across jurisdictions required for such transfers. It is with this in mind that we suggest FSRA consider whether a JSPP already has a demonstrated standard of practice with multi-jurisdictional asset transfers prior to initiating a thorough review, and that FSRA clarifies such a distinction in the Guidance.

3. Consider privacy issues when publishing details of accepted variance and waiver requests.

The CAAT Pension Plan is encouraged by the ability to request to waive or vary asset transfer consent notice requirements as outlined in the Guidance. We feel this is a positive step toward

providing information to plan members in a way that is familiar and easy to understand and will allow for a simpler and streamlined approach to developing asset transfer notices.

The Guidance states in section 5.5 that FSRA will publish approved variances as a means of supporting transparency, consistency, and effective plan administration. Although we agree that publishing such information is ultimately beneficial for pension plans, the CAAT Pension Plan is concerned with potential privacy issues that may arise as a result. For example, in our experience with asset transfers, employers that are publicly traded are oftentimes sensitive to the content and timing of public communications related to a merger, as this could affect the overall market valuation of a company. In a more general sense, *all* employers are concerned with the type of communications made public regarding a merger, which is why the CAAT Pension Plan develops and thoroughly reviews any public-facing communications (including notices) along with input from employers' experienced consultants. As such, we recommend FSRA consider a more conservative approach to publishing information concerning variance and waiver requests that does not include any sensitive information that may be of concern to those parties involved in a merger.

4. Need for more specificity regarding responsibilities in variance and waiver requests.

The CAAT Pension Plan encourages FSRA to consider revising the Guidance to be more direct as to which plan administrator is responsible for variance and waiver requests. When referring to variance and waiver requests, section 5 of the Guidance refers generally to "Applicants" but does not specify whether the administrator of a SEPP or the JSPP would be required to submit the application. When speaking to asset transfers under section 80.4, the PBA notes that the administrator of the SEPP is responsible for providing notices to the plan's members. As a result, given legislative requirements, it may be assumed that the SEPP administrator is also responsible for notice variance and waiver requests. Noting potential resourcing issues on an employer level, it may be beneficial to expressly enable JSPPs to make such variance and waiver requests, especially as JSPPs have pension expertise which transferring-in SEPP plan sponsors may actively rely on.

Once again, we appreciate the opportunity to comment on FSRA's asset transfer Guidance. We anticipate this Guidance will have a positive impact on the pension sector by significantly reducing the burden associated with the asset transfer process. CAAT Pension Plan staff will be more than happy to provide further comment on this and/or respond to any questions you may have in response to this submission.

Sincerely,



Evan Howard
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CAAT Pension Plan

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