

April 29, 2022

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
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RE: Proposed Principles-Based Regulation Guidance

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 principles-based regulation (“Approach”). The CAAT Plan applauds FSRA’s ongoing commitment to transparency and continuously working to promote the highest standards across the financial services sector.

The CAAT Plan recognizes FSRA’s commitment to regulatory effectiveness as evidenced through this Approach. With that in mind, we are providing additional recommendations below for your consideration aimed at further refining the Approach for the pension sector.

Recommendations for further refinement of principles-based regulation Approach

1. Ensure an appropriate balance between Principles-Based Regulation and being Outcomes-Focused

The CAAT Plan is supportive of FSRA’s initiative to further develop and expand its principles-based regulatory framework and commitment to balancing its rules and prescriptive requirements with a broadened principles-based and outcomes-focused approach to regulation. With that in mind, the CAAT Plan is supportive of FSRA’s utilization of Interpretation Guidance in conjunction with its Framework Principles in order to create compliance obligations on which to base enforcement.

While we agree that Interpretation Guidance can help define FSRA’s Framework Principles, FSRA should ensure that such Interpretation Guidance be consistent with its outcomes-focused approach. Put differently, FSRA should ensure that such Interpretation Guidance avoid being prescriptive as to limit the ability of industry stakeholders to innovate in developing efficient, plan-specific processes. Given the wide variability in plan design within the pension industry, such Interpretation Guidance should simultaneously ensure wide applicability while avoiding imposing process-oriented compliance obligations that may place restrictions on the range of possibilities with respect to internal plan processes and dispute resolution.

That said, our position is that for some regulatory areas - particularly those that relate to the more complicated aspects of pension administration (for example, family law related situations) - FSRA should consider instead creating Information Guidance (as outlined in FSRA's Guidance Framework) that does not automatically trigger enforcement or supervisory actions. Such an approach would align with FSRA's perspective on industry best practices while avoiding imposing any unnecessary compliance obligations on industry stakeholders. Such an approach can also support plan innovation (as supported in Framework Principle 2) and ensure the needs of different stakeholders are met. In the context of a regulatory framework that balances a principles-based approach with a rules-based approach, we recommend FSRA provide regulated entities with both information relating to compliance obligations, as well as informational materials on best practices and the goals which sponsors/administrators should be seeking to achieve when contemplating a regulated matter. In this way, FSRA can help support industry stakeholders in distinguishing between minimum standards as identified in Interpretation Guidance, and industry best practices through Information Guidance, without imposing any associated compliance obligations.

Furthermore, in situations where risk of non-compliance and negative impact to plan beneficiaries is low, providing Information Guidance on a particular regulatory topic is an effective means of guiding and informing pension sector stakeholders with limited risk to plan beneficiaries. With innovation occurring across the pension sector, including the CAAT Plan's creation of DBplus, such an approach to regulating the pension sector is required to ensure benefit security while adapting to an environment where plan innovation is occurring.

2. Ensure that the “Consumer-Centric” Framework Principle is consistent with pension plan beneficiary interests and plan sustainability as a whole

We appreciate that prioritizing the interests of individual consumers and in our context, pension plan beneficiaries, is at the heart of the Framework Principles that FSRA has identified in this Approach. However, pension plans are not a consumer product – they are part of a workplace benefit package and reflect a variety of administrative and legal structures. Thus, an individual-focused consumer lens may not be appropriate in many pension plan situations. Furthermore, the administration of pension plans is subject to fiduciary duty which requires plan administrators to act in the best interests of plan members as a whole. Introducing a consumer lens in a fiduciary setting could lead to conflicting outcomes and confusion for plan administrators.

Administering a pension plan involves a delicate balance between considering the interests of individual plan beneficiaries and the interests of all plan beneficiaries as a whole. This differs from other regulated sectors, such as mortgage brokers, where transactions are voluntary and made between one consumer and one broker. A consumer focus in a pension plan context may thus have too heavy an individual focus – when the focus should be the equitable treatment of all pension plan beneficiaries – and by extension overall plan sustainability. In other words, it would not be in the best interests of all plan beneficiaries, for example, if a decision that may only be beneficial

to a small group of plan beneficiaries results in a negative effect on a plan's funded status and therefore impacts the majority of members. As such, when taking a consumer centric approach for pensions, FSRA should evaluate opportunities where educating consumers may be a better approach, rather than taking a consumer centric lens to adjudicating disputes between plan member and the plan itself.

Conclusion

The CAAT Plan values its collaborative relationship with FSRA. We support the goals of this principles-based Approach and recommend FSRA consider balancing enforcement and compliance obligations with a level of supervision in the form of goal-based regulation, education and information (best practices). As such, we suggest FSRA consider further refining the Approach by considering a principles-based regulatory framework developed in the form of both Interpretation Guidance as well as Information Guidance in a manner that continues to balance a principles-based approach with outcomes-focused decision-making.

While we appreciate the clarity of well-defined rules, our position is that the most effective approach to pension plan regulation involves complimenting compliance obligations with providing information to regulated entities on industry best practices in a manner that does not impose additional enforcement obligations that may stifle plan innovation. We recognize that balancing such a principles-based regulatory approach in this way must also consider any risk to plan beneficiaries, and in doing so we recommend FSRA consider the interests of all plan beneficiaries collectively along with any effect on plan sustainability when providing guidance and direction to the pension sector.

Once again, the CAAT Plan appreciates the opportunity to provide comment on this Approach 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,



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