

Agenda Item 6(g)
October 5/21 Board Meeting

From: Brendan Wycks

Sent: September-24-21 6:04 PM

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Subject: CAFII Submission On FSRA's Proposed Approach Guidance Around Publishing Information Arising From Enforcement Proceedings and Investigations

Hello, Mark and Huston.

CAFII would like to bring to your direct attention our Association's brief submission on FSRA's *Proposed Approach Guidance Around Publishing Information Arising From Enforcement Proceedings and Investigations*, in addition to filing it via the Authority's engagement portal.

Please find below our single-point-for-consideration submission, beneath my signature block.

Thanks for this consultation opportunity and best regards,

Brendan Wycks, BA, MBA, CAE

Co-Executive Director

Canadian Association of Financial Institutions in Insurance

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Response from: Canadian Association of Financial Institutions in Insurance (CAFII)

Response to: Financial Services Regulatory Authority of Ontario (FSRA)

Subject: Consultation On *Proposed Approach Guidance Around Publishing Information About Enforcement Proceedings And Investigations*

Background

The Financial Services Regulatory Authority of Ontario (FSRA) has launched a public consultation on a *Proposed Approach Guidance* which outlines how and when FSRA intends to publish information arising from enforcement proceedings and investigations, including the sharing of Notices of Proposals, Notices of Intended Decisions, Final Orders, and Minutes of Settlement through News Releases to increase public and industry awareness.

CAFII Comments

In principle, CAFII supports FSRA's intention to be transparent and publish information about the actions it has taken in response to an industry player's misbehaviour or lack of compliance with legislation and/or Regulations. We generally concur that transparency in enforcement actions increases public awareness of misconduct and of the sanctions taken to improve consumer protection and deter future misconduct in the regulated sectors; and that a consistent and clear approach to transparency of enforcement also helps to ensure that non-compliant regulated entities and individuals are treated equitably and know in advance when and how FSRA will inform the public that it is taking action for non-compliant activity.

However, we are making this submission to draw out one particular concern. CAFII is concerned that implementation of FSRA's *Proposed Approach Guidance*, as currently worded, may lead to the publication of information arising from an enforcement proceeding or action taken against an industry player even when that business has proactively self-reported an issue to FSRA, taken prompt corrective action, and made restitution to any harmed customers to make them whole.

CAFII members are strongly of the view that when it comes to industry players with a strong track record of regulatory compliance, a policy of publishing information arising from enforcement proceedings and investigations should not penalize nor create a disincentive for such companies to come forward proactively, self-report, and correct the situation when they discover a lapse in regulatory compliance.

When such a lapse does occur and is discovered internally, CAFII members give careful and due consideration to self-reporting the matter to the relevant regulatory authority. Furthermore, such an incident is promptly self-corrected, with a focus on rectifying the situation for any affected customers.

In CAFII's view, to have a 'naming and shaming' publication result from responsible and proactive self-reporting of a regulatory compliance lapse seems inconsistent with the overarching intent of FSRA's *Proposed Approach Guidance*.

We therefore urge FSRA to give careful consideration to the scenario described above; to possible unintended consequences that might arise from "letter of the law" implementation of the *Proposed Approach Guidance*; and to the wisdom of giving itself flexibility and room for judgment to take into account case-by-case circumstances in applying the final *Approach Guidance*.

Sincerely,



Rob Dobbins
Board Secretary and Chair, Executive Operations Committee