



FSCO/FST/DICO Mandate Review

Comments on the Expert Advisory Panel's Preliminary Position Paper

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The CAAT Pension Plan thanks the Expert Advisory Panel (“Panel”) for holding consultations on its mandate review of the Financial Services Commission of Ontario (FSCO), the Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO) and for providing the opportunity to comment on its Preliminary Position Paper, published November 4, 2015. The CAAT Pension Plan is pleased to have this opportunity to provide feedback on the Panel’s initial findings.

About the CAAT Plan

Created at the same time as the Ontario college system in 1967, the CAAT Pension Plan assumed its current jointly sponsored governance structure in 1995. The CAAT Pension Plan is a modern defined benefit pension plan with equal cost sharing between members and participating employers. Decisions about benefits, contributions, and investment risk are also shared equally by member- and employer-appointed representatives to our governing bodies. The Plan is sponsored by the College Employer Council (CEC), the Ontario College Administrative Staff Association (OCASA), and the Ontario Public Service Employees Union (OPSEU). This governance model fosters cooperation and flexibility, and encourages prudent and responsible decision-making.

With assets of over \$8 billion, the CAAT Plan is Ontario’s only postsecondary sector pension plan. The CAAT Plan has 37 participating employers drawn from the Ontario college system and related employers and serves over 42,000 members. In its actuarial valuation as at January 1, 2015, the CAAT Plan is 107.2% funded on a going-concern basis with a funding reserve of \$773 million.

The CAAT Plan’s well-diversified investment portfolio has earned a 5-year average annual rate of return of over 10.5%, net of investment management fees. The CAAT Pension Plan is recognized by many as a model of a well-managed and well-governed defined benefit pension plan. The success of the CAAT Plan is built on its shared governance and collective focus on benefit security at stable and appropriate contribution rates.

The Expert Advisory Panel’s Preliminary Position Paper

Overall, the CAAT Pension Plan is supportive of the Panel’s goal of creating a more effective and efficient regulatory regime for the industry sectors under review, namely:

- insurance companies
- pension plans
- loan and trust companies
- credit unions and caisses populaires
- mortgage brokering
- co-operative corporations, and
- service providers who invoice auto insurers for listed expenses in relation to statutory accident benefits.

Understandably, the focus of the CAAT Plan’s comments will be on the Preliminary Position Paper’s consequences for pension plans and how the proposed Financial Services Regulatory Authority (“FRSA”) would operate within the pension sector.

The CAAT Plan agrees with the goal, articulated in the Preliminary Position Paper, to have a well-governed, well-resourced regulator with an appropriate mandate. Accordingly, in keeping with the foregoing, the CAAT Pension Plan wishes to raise a number of specific concerns for the Panel’s consideration.

FRSA Board of Directors

The CAAT Pension Plan supports the concept of FRSA oversight by an arms-length board of directors. The CAAT Plan recommends that this board should have at least one member with pension administration and funding expertise (i.e. someone who has hands-on experience in the ongoing administration and management of pension plans in Ontario). Furthermore, from the perspective of one of Ontario's Jointly Sponsored Pension Plan (JSPPs), and because JSPPs collectively encompass close to half of Ontario's registered pension plan members, this person should also ideally have JSPP or Multi-Employer Pension Plan (MEPP) experience.

FRSA Mandate

While the CAAT Plan recognizes that the purpose of the Preliminary Report is to address structure, governance and mandate issues for the proposed FRSA, in the view of the CAAT Plan, the proposed mandate for the FRSA requires further consideration. Inconsistencies could arise if the FRSA's mandate is arrived at without reference to the policy objectives of the areas over which the FRSA will have jurisdiction.

As was noted in the CAAT Pension Plan's initial submission to the Panel, a key recommendation of the Ontario Expert Commission on Pensions (OECPE) was that there should be a purpose mandate in the *Pension Benefits Act* (PBA), one that provides a mandate to "maintain a balance among stakeholder interests, to keep pensions both secure and affordable, to both protect and promote the pension system, and to encourage innovation within the system."¹ Along with this purpose mandate, there should be a recognition that a pension regulator is not akin to a consumer protection agency, but rather a pension regulator must be mindful of the system as a whole and seek to balance the interests of members and employers.

This latter point is especially important in order to enable the regulator to promote and encourage innovation within the pension system. It also needs to be recognized that JSPPs are different from other pension plan structures, in that their joint governance model provides an inherent balancing mechanism for competing employer and member interests. In JSPPs, members and employers share in the decisions about how the plan is administered and interpreted through their appointed representatives. Since member representatives are a fundamental part of the JSPP decision-making process, the role of the regulator governing JSPPs is quite different from traditional private sector pension arrangements where members are not represented.

More specifically, the Panel's recommendation for the FRSA's Mandate 4(a), appears to give the proposed FRSA a mandate that prioritizes the consumer protection agency function. It states, that the "mandate should strike a balance between strong and effective consumer protection and the fostering of a strong, vibrant and competitive financial services sector."² This focus on consumer protection is also evidenced by the language requiring the fostering of competitive financial services – the purpose of which we assume is to benefit consumers. A pension oversight function is much different than the oversight required for other industry sectors. The FRSA's mandate and structure should be flexible enough to recognize these differences and not have a systemic bias towards viewing pension plans as part of the consumer protection sphere. In short, the FRSA's pension mandate and structure needs to enable regulatory oversight which recognizes that pension plans are different and that there are significant differences among the regulatory oversight requirements of the different pension structures.

¹ Ontario Expert Commission on Pensions, *A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules: Report of the Expert Commission on Pensions* (Queen's Printer for Ontario, 2008), Recommendation 7-17.

² Expert Advisory Panel, *Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal, and the Deposit Insurance Corporation of Ontario: Preliminary Position Paper* (November 4, 2015), 9.

Rule-making Authority

The CAAT Pension Plan applauds the Panel's recommendation that the FRSA have rule-making authority. This is consistent with the OECF report. However – as noted in the OECF report – in order for such rule-making authority to function, the PBA must have a clear purpose mandate and express principles to govern and guide the rule-making function.

This would require considerable changes to the PBA as well as a change in the current philosophy towards pension legislation in Ontario. The trend in the pension reforms undertaken by the province since the publishing of the OECF report has been to develop a more prescriptive regulatory framework for pension transactions and the related regulatory approval requirements for such transactions. In other words, the trend has been to remove discretion from the regulator and plan administrators.

The CAAT Plan recognizes that the Preliminary Paper is focused on the governance, structure and mandate of the proposed FRSA and not on the steps necessary to implement and effect such changes in respect of each of the industry sectors to be covered by the proposed FRSA. However, the inter-connected nature of the governance and mandate of the FRSA and the policy objectives of the PBA should be recognized. If changes to the PBA are not implemented in conjunction, and consistent, with the establishment and intentions of the FRSA, it may have the effect of undermining the care and attention that this panel has put into determining how a well-governed FRSA could be structured. In short, without the underlying levers or tools given to the FRSA under the PBA – along with a clear direction of policy intent and principles – the anticipated benefits of the proposed FRSA structure may not be realized in the pension plan sector.

Self-Funding of the FRSA

The CAAT Pension Plan believes that there should be clear methods of accountability for the sources of funding raised by the FRSA and how such funds will be directed within the FRSA. The CAAT Plan notes that the Preliminary Paper calls for various shared services to be built into the structure of the FRSA. While this could bring about efficiencies – the CAAT Plan cautions that the distinct nature of pension plans will require special skill sets that are dedicated to the oversight of pension plans and accountability to the Superintendent of Pensions. Along with the consolidated nature of the structure of the FRSA, the CAAT Plan is concerned that the consolidated structure of the FRSA could result in cross-subsidization among sources of revenue. In short, revenue raised from pension plans to support the functions of the FRSA should only be used in support of the pension plan functions of the FRSA.

If the costs that support the non-pension functions of the FRSA are added to the fee structure imposed on pension plans as part of the proposed FRSA, this may only serve to disadvantage employees or plan members. For example, whether an employer establishes a pension plan is, in most cases, voluntary. Extra or unnecessary costs could dissuade employers from establishing or continuing their pension plans to the detriment of employees' retirement savings or planning. Furthermore, as Ontario moves toward more shared-funding pension plan models (Target Benefit Plans, Multi-Employer Pension Plans, and JSPPs), where employers and members share in the costs of administration and funding the pension plan, higher regulatory fees that are not dedicated to the appropriate regulation of pension plans would impose a burden on plan members either through higher contributions or through less funds being available under the plans to secure their pensions.

The CAAT Pension Plan thanks the Expert Advisory Panel for this opportunity to comment on its preliminary findings. The CAAT Plan hopes that the concerns it has raised will help the Panel shape its final

recommendations. Representatives of the CAAT Plan would welcome the opportunity to speak to the Panel about this submission.