

September 18, 2023

VIA ONLINE SUBMISSION

Ministry of Finance
Agency Relations and Regulatory Policy Unit
Frost Building N 4th Floor
95 Grosvenor St.
Toronto, ON
M7A 1Z1

Re: *New Regulation made under section 19(2)(b)(iii) and 36 (0.1) of the Securities Commission Act, 2021 that prescribes additional purposes for which the Ontario Securities Commission (the “Commission”) can use enforcement money (the “Proposal”)*

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposal, which seeks to broaden the scope of purposes for which the Commission can allocate reserved funds collected through enforcement efforts.

At a broad level, we agree there is a need to revisit the process and specified purposes for disbursement from the reserve funds that the Commission has received via the enforcement process. This is a timely consideration given the current Designated Funds balance of over \$120 million, and the slow pace and small amounts of recent disbursements from the Designated Funds, particularly those disbursements external to the Commission.

As a preliminary consideration, we query whether the Commission has sufficiently searched for, considered, and funded eligible and worthwhile disbursement opportunities within the existing permitted purposes for enforcement monies, and whether the scope of permitted purposes therefore needs to be expanded to make sufficient and acceptable use of idle funds. We believe the pre-existing purposes set by the government should be satisfied and prioritized before other allowable purposes for funding are added. One area in which we believe improvements can be made is with respect to the process for and amounts the Commission currently disburses to investor education and advocacy organizations external to the Commission.

As it stands today, to our knowledge there is a nearly complete deficit of transparency on the process by which investor advocacy groups (or any others) could seek funding from the Commission from the Designated Funds for purposes inside the existing designated purposes. We submit that the Proposal offers a broader opportunity to provide a clear procedural and

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 20,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on LinkedIn and Twitter at @CFAInstitute.

evaluative framework on how investor education and advocacy groups (and any others with eligible projects) can petition the Commission for funding inside the existing designated purposes. This could improve procedural transparency (a desirable and arguably overdue policy consideration in isolation) and help to accelerate disbursement to external funding opportunities that fall within the bounds of the Commission's existing mandate for use of the Designated Funds.

With respect to the expansion of the acceptable purposes for the Designated Funds, we would expect any new purposes to be primarily concerned with protecting or promoting the interests of investors or with market integrity. We are concerned with the concept of potentially levying disciplinary fines against financial industry participants, only to collect and potentially reinvest those fines in initiatives that primarily benefit the business interests of industry. We believe that any appropriate use of these funds must be anchored in balancing the commercial interests of industry participants through a demonstrable link to the promotion of the interests of investors or the integrity of our capital markets.

We believe any expansion of the purposes to which funds can be applied should also come with a detailed and fully transparent application and evaluation process which would outline eligible projects and purposes (with examples), the application process, and transparency as to how the expenditures further the Commission's public interest mandate, as well as follow-up and accountability through public reporting on the use of funds and efficacy of funding allocation decisions. This is particularly important when the contemplated expansion of purposes includes relatively expansive and hard to define objectives like "fostering innovation, capital formation, and competition" in Ontario's capital markets, and where new and existing funding decisions could be made towards internal divisions at the Commission, potentially crowding out other actors.

With respect to permitting the use of Designated Funds for the enhancement of regulatory software or hardware deployment at the Commission, we are unaware of outstanding unfunded needs and are not aware of any evidence that indicates a lack of funding has constrained the Commission's successful deployment of technologies in the past. We find this additional contemplated purpose for the Designated Funds particularly puzzling given that the Commission has amassed significant operating surpluses, as well as very large surpluses accrued in the CSA National Systems Partnership, ostensibly earmarked in part for regulatory technology. It is entirely unclear to us how the availability of more funds would result in any improvement to the deployment or efficacy of regulatory technology at the Commission. We have concerns that simply throwing additional funds at technology shortcomings that are unconstrained by existing funding but instead potentially constrained due to other organizational features such technology specification, deployment, or oversight processes is counterproductive to regulatory ends and the public interest, particularly given the source of these potential new funds.

We have additional concerns with the proposal to use Designated Funds to finance activities undertaken by the Commission's Office of Economic Growth and Innovation. Given the implicit internal spending incentives at the Commission, we reiterate our transparency and accountability concerns relating to this proposed purpose. We have questions as to the realizable goals and measures of success relating to this purpose, and whether this funding would be one-time/special purpose or potentially become a recurring source of funding. As a general statement, we have questions as to the effective use of funds by this Office in pursuit of

public interest policy goals, highlighted by a recently externally commissioned online polling campaign, the results of which will ostensibly be used to help form policy decisions, but without standard controls as to the respondent's targeting profile, or protections from multiple or automated responses by interested businesses and/or their actors. We have strong reservations concerning the appropriateness of applying public funds generally towards these purposes, particularly those funds derived from enforcement efforts and currently earmarked for the advancement of investor interests and the integrity of our markets.

Alternative Purposes for Consideration

Part of evaluating the appropriateness of these proposed new purposes for Designated Funds should include a consideration of additional unaddressed issues which may have a stronger case than those proposed. We are concerned with a multitude of issues in the capital markets in Ontario, such as the state of registrant proficiency, and inclusion and diversity in the capital markets, particularly amongst registrants. As part of the Ontario government's recognition of the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, we would support the inclusion of Indigenous reconciliation, financial education, and outreach as suitable initiatives to which these funds could be applied by the Commission.

As an additional idea, we would support the use of these funds towards the improvement of audit standards and auditor performance, which would reinforce the value of audit as a public good that would benefit all investors. This would be timely given the sustained increase in enforcement activity being undertaken by the Canadian Public Accountability Board in response to deficiencies in audit quality and ethics-related issues.² An improvement in the quality of audits and auditor conduct in Ontario would stand to benefit all investors in the province and improve overall market integrity.

Concluding Remarks

While we are receptive to the idea that new purposes may need to be added to make greater use of excess funds collected through the Commission's enforcement efforts, we have not seen a compelling case to demonstrate that improvements cannot be made to better fund existing core purposes at greater scale. In the event an increase in permitted purposes is deemed necessary, we would hope that it would come with prescribed guidelines prioritizing accountability, transparency, and a requirement to ensure that funds are used to promote the interests of investors and market integrity.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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² See for example the enforcement overview provided at page 17 of [CPAB's Regulatory Oversight Report: 2022 Annual Inspections Results](#)