

**FSRA**Financial Services Regulatory  
Authority of Ontario**ARSF**Autorité ontarienne de réglementation  
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March 29, 2021

David D'Agostini  
[ddagostini@lpfcec.org](mailto:ddagostini@lpfcec.org)  
Plan Administrator  
Board of Trustees  
LiUNA Pension Fund of Central & Eastern Canada  
P.O.Box 9002  
Lakeshore West PO  
Oakville, ON L6K 0G1

Dear Mr. D'Agostini:

**Re: LiUNA Pension Fund of Central and Eastern Canada  
Registration Number 0573188**

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Enclosed, please find the Notice of Intended Decision with respect to the above noted pension plan.

Yours truly,

A handwritten signature in black ink, appearing to read "Mitzi D'Souza".

Mitzi D'Souza  
Administrative Assistant, Pensions

Enclosure

c: SK, Plan Member  
Virginia D'Souza, Financial Services Regulatory Authority of Ontario

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “Act”), in particular sections 18, 26, 87 and 89;

**AND IN THE MATTER OF** the Rules and Regulations of the LiUNA Pension Fund of Central and Eastern Canada, Registration Number 0573188 (the “Plan”).

### NOTICE OF INTENDED DECISION

**TO: SK**

*Plan Member*

**AND TO:** Board of Trustees of the LiUNA Pension Fund of Central and Eastern  
Canada  
PO Box 9002, Lakeshore West PO,  
Oakville ON L6K 0G1

Attention: David D’Agostini

*Administrator*

**TAKE NOTICE THAT** pursuant to sections 87 and 89 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“Chief Executive Officer”), the Head, Pension Plan Operations and Regulatory Effectiveness (“Head”) intends to refuse to make an order against the Administrator either to revoke the registration of Amendment No. 4 to the Plan or to require the Administrator to provide the Plan Member with relief from the application of Amendment No. 4. Details of this intended decision are described below.

**SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS**, veuillez nous envoyer votre demande par courriel immédiatement à: [contactcentre@fsrao.ca](mailto:contactcentre@fsrao.ca).

**YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SUBSECTION 89(6) OF THE ACT.** A hearing by the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal  
25 Sheppard Avenue West  
Suite 100  
Toronto ON M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: [contact@fstontario.ca](mailto:contact@fstontario.ca)

**TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, an order will be issued as described in this Notice of Intended Decision.**

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. The Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at (416) 590-7294, or toll free at 1-800-668-0128 extension 7294.

## **REASONS FOR INTENDED DECISION**

1. SK is a member of the Plan. SK is seeking relief from the application of the return to work rules that were made through Amendment No. 4 to the Plan.
2. The Plan is a multi-employer defined benefit pension plan that is administered by the Board of Trustees of the LiUNA Pension Fund of Central and Eastern Canada.
3. Before Amendment No.4 was filed, the Plan terms included a provision that offered retired members who returned to work in covered employment the following option:
  - a. The retired member could elect to continue collecting a monthly pension while working but not accrue additional pension credit under the Plan; or
  - b. The retired member could choose to suspend their monthly pension and earn additional pension credit from the covered employment.
4. On November 30, 2017, SK started to complete a retirement application online, cancelled that application and called the Administrator for assistance. SK inquired about attending the Administrator's office to fill out the retirement application in person the following week. The Administrator told him that this was not a problem and asked him to bring in proof of age, banking information and other required documents.

5. On December 1, 2017, SK received a newsletter from the Administrator, explaining that the return to work election under the Plan was to be amended. Effective January 1, 2018, pensioners who returned to work in covered employment could no longer choose to continue collecting a pension. Instead, their monthly pension payments are suspended for each calendar month in which they are re-employed and they accrue additional pension credit for their work in covered employment.
6. The amendment included limited grandfathering provisions for both retired and active members. To be eligible, active members were required to submit a retirement application on or before November 30, 2017 and make a re-employment election before November 30, 2017.
7. The Administrator filed Amendment No. 4 together with the newsletter notice for registration with the regulator on December 7, 2017. FSRA registered the amendment on April 22, 2020.
8. SK complained about the short notice period. SK asserts that:
  - a. The change to the return to work provision in the Plan should have been delivered to all members in a timely manner, in order to give members enough time for decision making; and
  - b. The Administrator should have specifically advised SK of the changes during the November 30, 2017, phone call.
9. SK has requested relief from the application of Amendment No. 4, so that SK could continue to receive retirement pension payments while working in covered employment.
10. Section 18(1)( e) of the Act states that the Chief Executive Officer may revoke the registration of an amendment that does not comply with this Act and the regulations. Amendment No. 4 to the Plan complies with the Act. The Act does not require pension plans to permit members to continue to receive a pension while re-employed.
11. Section 87(1) of the Act states that the Chief Executive Officer may issue an order if the Chief Executive Officer is of the opinion, upon reasonable and probable grounds, that a pension plan is not being administered in accordance with the Act or that the administrator is contravening the Act.
12. SK's submissions do not support a finding that the Plan was not administered in accordance with the Act and the terms of the Plan or that the Administrator's amendment process contravened the Act.

13. According to the Plan terms, even if SK had submitted a pension application by November 30, 2017, SK would not have been eligible to continue collecting a monthly pension while working, for the following reasons:
  - a. SK did not stop working in employment covered by the Plan by November 30, 2017. Section 5.6 of the Plan terms requires that a member refrain from work for at least the full calendar month in which his retirement date occurs to be considered retired; and
  - b. SK did not submit the re-employment election by November 30, 2017.

As a result, the Administrator has governed the Plan in accordance with its terms.

14. Further, the notice provided by the Administrator of Amendment No. 4 complied with the requirements of section 26 of the Act. Even if the notice process was inadequate, failure to give sufficient notice does not necessarily result in an amendment being non-registerable or void.
15. The Administrator did not lack authority to make Amendment No.4 and there is no evidence that improper factors were considered in the plan design process. The return to work election was introduced in 2013. It was intended to provide flexibility to members who stopped working early but occasionally returned to covered employment. The Administrator noted that the re-employment election was not being used for this limited purpose and decided to amend the provision, in part to support the sustainability of the pension fund as a whole. Significant advance notice would have thwarted this objective.
16. Accordingly, the preconditions for the issuance of an order under either section 18(1)(e) or section 87(1) of the Act have not been met in this case and the Head intends to refuse to issue an order.
17. Such further and other reasons as may come to my attention.

**DATED** at Toronto, Ontario, March 29, 2021.



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Jennifer Rook  
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer