Supervisory Approach to DB Asset Transfers under the PBA

FSRA
Financial Services Regulatory Authority of Ontario

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Presenters: Mark Eagles, Tim Thomson

Ontario

Our Presenters

Mark Eagles
Director
Advisory Services

Tim Thomson
Senior Manager
Special Transactions

Agenda

- Context & Desired Outcomes
- The Application
- The Review Process
- The Decision & After
- Closing
- Q&A

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Context & Desired Outcomes

Why the Focus on Asset Transfers?

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Asset transfers are important transactions to:

- Address purchase and sale situations
- Carry out corporate restructurings / reorganizations
- Combine plans for greater efficiencies

There have been thousands of asset transfers over the past 30 years that have identified challenges:

- Ontario amended asset transfer rules in the PBA in 2010
- FSCO / FSRA review times have often been too long
- Member communication is too lengthy and complicated
- Transfer rules and timing can be difficult to comply with

Leading up to FSRA's launch in 2019, the Pension sector identified asset transfers as a priority for FSRA to improve regulatory efficiency and effectiveness

- FSRA created an Advisory Committee which met in 2019/20
- FSRA's new Guidance was created in collaboration with this Committee

Ontario

What has changed?

The Regulator

- FSRA is a principles-based and outcomes-focused regulator (see Objects and Principles next page)

Regulatory Guidance

- Principles-based, less procedural

Notice Variance (FSRA given authority under PBA)

- Content and timing

Electronic Submissions

- Email or File Transfer Protocol (Portal submissions coming soon)

New Review Process

- Streamlined review - focused and risk-based
- Administrator and Actuary certifications
- Team approach - staff dedicated to asset transfers
- Enhanced 2-way dialogue with applicants
- Commitment to service standards

Harmonized Consent Process (s.80, 81 and 81.4)

- Letter of consent vs. Notice of Intended Decision (NOID)

FSRA – Objects and Principles

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FSRA Objects (under the FSRA Act):

- Promote good plan administration
- Protect and safeguard beneficiary rights and benefits

FSRA is committed to working with the pension sector to yield better outcomes:

- We assess **risks** by their nature, size, complexity and potential impact on stakeholders
- Our regulatory responses are **reasonable**, proportionate, and taken with a view to protecting benefits and enabling the effective operation of our pension system.
- We are **aware** of the complexities within the pension sector and respective stakeholder roles
- We are **adaptable** and acknowledge that sometimes “one size does not fit all”
- We aim to educate and enable, and to make use of regulatory tools and powers in order to **facilitate** appropriate outcomes
- We regularly assess the **effectiveness** and **efficiency** of our guidance documents
- We commit to on-going **collaboration** and **transparency** with the pension sector

Desired Outcomes

Plan Beneficiaries

- Protect the value of beneficiaries' entitlements
- Enable beneficiaries to be informed and understand the impact of the asset transfer on their past and future benefit entitlements
- Allow consolidation of members' pension benefits in one plan
- Support the stability of the original and successor plans and their ability to deliver pension promises over the long-term

Desired Outcomes

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Plan Sponsors & Administrators

- Facilitate efficient pension plan management for plan sponsors and administrators
- Streamline the application review process to focus on the key aspects of asset transfers
- Simplify and improve member communication
- Clearly communicate our expectations for applicants
- Harmonize regulatory approach to transfers under sections 80, 81 and 80.4 (where possible)

The Application

The Types of DB Asset Transfers

Section 80
O. Reg 310/13

- Transfer of assets due to sale or assignment of all or part of an employer's business

Section 81
O. Reg 310/13

- Transfer of assets between plans with the same or related employer

Section 80.4
O. Reg. 311/15

- Conversion and transfer of assets from a SEPP to a JSPP

Overview

Preparation → Notices → Amendments → Actuarial Reports → Certifications → Submission

The Application Steps – Preparation

Preparation → Notices → Amendments → Actuarial Reports → Certifications → Submission

- Engage early with FSRA for larger, more complex applications
- Address unresolved regulatory issues that may impact the asset transfer in any of the plans involved in the transfer of assets
- The application must include agreements and consents required under the PBA or Regulation
- Transfer amounts must reflect any letters of credit (LOC) and LOC implications must be determined since LOCs:
  - Are unique to specified legal entity; and
  - Could trigger a funding requirement

Common Issues

- Failing to address pre-existing regulatory issues
- Incomplete applications can cause delays in the review process

The Application Steps – Notices

Preparation → **Notices** → Amendments → Actuarial Reports → Certifications → Submission

- Applicants must prepare and issue notices to ensure that affected persons are informed about the transaction, their rights and how their benefits will be affected
- Notice content and timing are prescribed under the PBA and Regulations
- Notices should be straight forward and understandable
- Applicants can request that FSRA vary or waive notice requirements (to be discussed in the Review Process section)

Common Issues

- Notices do not contain all prescribed requirements
- Notices are complicated and lengthy
- Member notices are not issued in the prescribed time
- Unions were not provided notice

The Application Steps – Amendments

Preparation → Notices → **Amendments** → Actuarial Reports → Certifications → Submission

- The applicant must file signed and adopted plan amendments for the asset transfer along with a completed Form 1.1
- If the amendments are filed separate from the application, the application should note this
- Amendments to cease benefit accruals in the original plan, are adverse amendments under the PBA. These amendments must be filed prior to their effective date and applicants must ensure that notice requirements are complied with

Common Issues

- Original plan not amended to cease accruals and/or contributions before effective date
- Amendments are not signed and not filed with a Form 1.1
- Plan amendments prior to (and unrelated to) the transfer were not filed (discovered during FSRA review)

The Application Steps – Actuarial Reports

Preparation | Notices | Amendments | **Actuarial Reports** | Certifications | Submission

- For section 80 and 81 transfers, demonstrate compliance with the solvency ratio test
- Funding of each plan continues on a pre-transfer basis until assets are transferred
- Actuarial assumptions and methods for solvency valuations need to be consistent for the original and successor plans
- If transferred benefits are not replicated in the successor plan, then it must demonstrate that the commuted value of a member's pension benefit is at least as great in the successor plan as it was in the original plan. Actuaries should provide sample calculations with the application

Common Issues

- Assets not correctly allocated for partial transfers in multi-jurisdictional applications
- Valuations are not prepared as of the effective date of the transfer, or they use projections, as opposed to real data

The Application Steps – Certifications

Preparation → Notices → Amendments → Actuarial Reports → **Certifications** → Submission

- The Information Disclosure is a helpful tool for applicants and facilitates FSRA's review
- The Information Disclosure is not a PBA requirement, but applications filed with it will have quicker review times. It includes:
    - the Application Summary, certified by each plan administrator; and
    - the Actuary's Certification, signed by each plan actuary
- Information Disclosures should be completed for each original plan and the successor plan

Possible Issues

- Other jurisdiction's legislation(s) not fully considered
- Certifications not submitted or not fully completed

The Application Steps – Submission

Preparation → Notices → Amendments → Actuarial Reports → Certifications → **Submission**

- Applicants can request filing extensions of 60 days if there are **reasonable grounds** and over 60 days if there are **extraordinary grounds**
- Please file your applications electronically (email or FSRA's secure file transfer protocol). Hard copies are not required

Common Issues

- Applicants request filing extensions after the original due date has already passed
- Applications are filed piecemeal which can result in a staggered, less efficient review

The Review Process

FSRA's Role

- Asset Transfer applications require FSRA's consent under the PBA
- The PBA prescribes many requirements that plan administrators must follow. It is FSRA's role is to determine whether the PBA and Regulations have been complied with
- FSRA will strive to process complete applications within 150 days of receipt, unless it has advised the applicant that more information is required
  - Initial 10-day completeness review
  - Incomplete applications may result in delays
  - 30-day response due date for FSRA requests
- FSRA is also committed to working with applicants before and during the review process to clarify what applicants need to do to ensure their application is complete and compliant

Reach out to us (email is best) if you have any questions or potential issues.
Let's work together to ensure your application is complete and compliant.

FSRA's Role

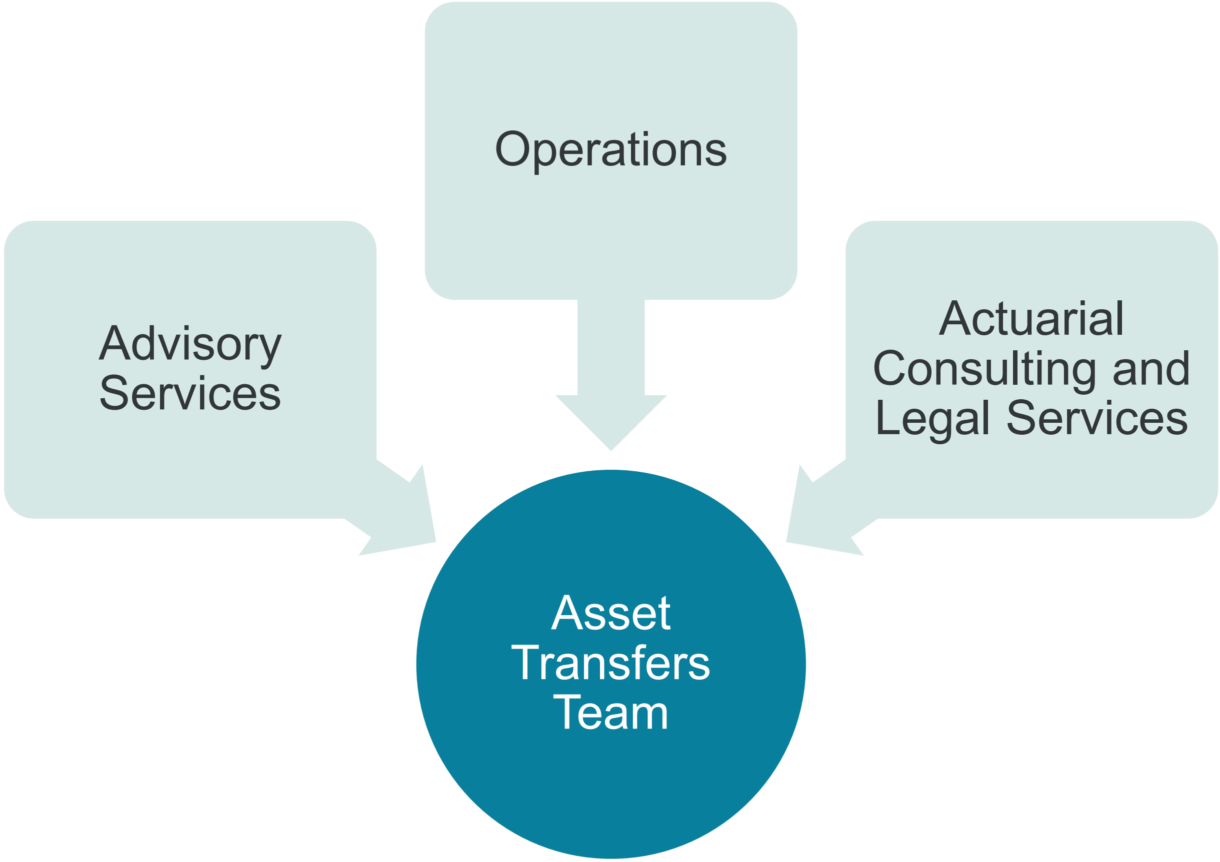
- FSRA can decide to conduct a more detailed review and ask questions depending on:
  - The application's nature, size, complexity and impact on beneficiaries
  - If there are concerns that the requirements of our Approach Guidance or the PBA are not satisfied
- Our detailed review or questions may focus on:
  - Communications (especially if unclear of misleading)
  - Changes to member benefits earned before the asset transfer effective date (if applicable)
  - Consents (SEPP to JSPP applications) or objections
  - Complexity: if more than two plans are involved or multi-jurisdictional membership
  - Impact on financial position of the plans
  - Sustainability of the plan and sponsor
  - The fiduciary responsibility of plan administrators and sponsors in relation to the application
- FSRA will do targeted spot checks on aspects of applications from time to time
- FSRA will notify the applicant if it anticipates that the review might be delayed

How are Members Protected?

The rules and requirements applicants must adhere to under the PBA and Regulations are written to protect member benefits by:

- Protecting accrued benefits
  - Pro rata transfer of assets (including any surplus)
  - 5% rule tests
  - Commuted value test
- Making sure the member is well informed and can voice concerns with FSRA
  - Notices must be given to members and collective bargaining agents (if any), within prescribed time
  - Notices must contain required information but be written in a way that is easy to understand
  - Notices must contain FSRA's contact information and advise members that they can contact FSRA with any legitimate concerns with the application
- Applicants must follow the asset transfer notice and benefit calculation rules of the applicable jurisdiction for members who are not Ontario members

FSRA's Team Approach



Pension Officers & Analysts, Technical Consultants, Management Team
(support from Actuarial Consulting and Legal Services)

The Team

- In Fall 2020, FSRA established an Asset Transfer Team
- This collaboration approach allows FSRA to develop an in-depth understanding of potentially diverse and complex transactions
- This results in a more focused and meaningful review that better protects member rights while demonstrating FSRA's commitment to be an outcomes focused, principles-based regulator
- Our internal review processes are being changed to align with our new Guidance and recent discretionary powers for notices

Special Considerations - Variance of Notice Timing and Content

- The PBA now allows FSRA to vary or waive content and timing requirements for asset transfer notices
- Applicants should inform FSRA of any request for waiver or variance before notices are issued
- FSRA will review and will communicate if it accepts the requests
- When filed, the Application and/or Information Disclosure should disclose the waiver or variance request
- Some examples of what FSRA might accept include:
  - Using the most recently distributed annual pension statements and employee booklets where appropriate
  - Referring members to where they can access more detailed information (e.g., administrator's website)
  - Providing a timing extension for the notice if there are logical challenges
  - Accepting immaterial variances to the notice content that is technically non-compliant

Special Considerations – Multi-Jurisdictional Asset Transfers

- Applications are filed with the regulator where the original plan is registered, and that regulator will determine whether the requirements of all affected jurisdictions are followed
- Only benefits accrued in Ontario are subject to the Ontario PBA and Transfer Regulations
- Transfer applications that include members whose benefits are regulated by other jurisdictions must ensure compliance with those jurisdictions' notice and benefit calculation rules. These applications should clearly identify all the jurisdictions whose laws must be complied with for affected beneficiaries
- For **partial, multi-jurisdictional transfers**, the actuarial report must clearly outline the asset allocation in accordance with the 2020 Agreement Respecting Multi-jurisdictional Pension Plans (if applicable)
- For asset transfers that involve non-Ontario members transferring into an **Ontario-registered JSPP**, applicants should ensure that the legislation of the jurisdiction(s) governing non-Ontario members allows for the transfer to the JSPP
  - If not, FSRA may need to contact the other regulatory agencies to confirm their acceptance. This could delay FSRA's review

The Decision & After

Consent/Refusal Process

- When FSRA determines an asset transfer application is compliant and there are no reasons to withhold its consent – FSRA will give its consent
- Generally, FSRA will issue its consent in a letter addressed to the applicant(s)
- However, FSRA <u>may</u> issue its consent using a Notice of Intended Decision (NOID), followed by an order, in any situation where FSRA determines that its use might be beneficial
  - Applicants will be advised in advance in those situations
- FSRA <u>must</u> issue its consent using the NOID process, if
  - Terms and conditions are attached to FSRA's consent or
  - FSRA is going to refuse to consent to the transfer
- FSRA will provide applicants ample opportunity to address any issues during FSRA's review process but if those issues cannot be addressed or if the application otherwise does not meet the requirements of the PBA and Regulations and/or the principles outlined in our Guidance, FSRA will not consent to the transfer. In such cases, a NOID to refuse to consent would be issued
  - Or the application may be withdrawn by the Applicant

Notice of Intended Decision – Process

- When FSRA issues a NOID in order to deliver its consent (or refusal to consent) to an asset transfer, the administrator of all plans involved in the transfer are required to post the NOID electronically so that members can easily access it
  - Applicants should discuss posting details with FSRA
- When a NOID is issued, there is a 30-day period where impacted persons or entities may request a hearing before the Financial Services Tribunal (FST)
  - If no request for an FST hearing is made within the 30-day period, FSRA may issue a final order consenting or refusing to consent to the transfer
  - If an FST hearing request is made, no final order in respect of the NOID will be issued by FSRA until a final decision is issued by the FST, or any court hearing if an appeal is made of an FST decision

Filing Documents and Reports After Consent

- Until substantially all assets have been transferred to the successor plan, all plans involved in the asset transfer continue to operate as separate plans and the liabilities of each plan remain the responsibility of that plan and each plan remains responsible on a pre-transfer basis for;
  - Plan funding
  - Benefit payments; and
  - Submission of required filings to FSRA
- For a full asset transfer, if the actual transfer of substantially all assets has not occurred by the end of the transferring plan's fiscal year end, all filings, fees and assessments are required for that completed fiscal year

Example

An original plan has a fiscal year end of December 31st. FSRA's consent for the transfer was issued on November 23, 2021 but the assets were not transferred until March 14, 2022. All filings, fees and assessments for the 2021 fiscal year are generally required by the applicable 2022 deadlines.

Closing

What's Next?

- Continue enhancing internal review process and addressing backlog
- FSRA will launch an online application tool on the Pension Services Portal, to guide DC asset transfer applicants through the application process
  - This will help ensure that all required documentation and information is provided to FSRA
  - It will also cut down the review process time which historically has been delayed due to incomplete applications
- FSRA also intends to develop an online application tool for DB asset transfer applications

Your Questions Answered