



January 4, 2019

Submitted via website posting: <https://www.fsrao.ca/en/consultations/assessment-and-fees>

Financial Services Regulatory Authority of Ontario
130 Adelaide Street West, Suite 800
Toronto ON M5H 3P5

Dear Sirs/Mesdames:

RE: Proposed FSRA Rule 2019 – 001 Assessments and Fees (Including Proposed FSRA Rule 2019 – 001B Fees and Assessments (Interim))

We have read each of the Notices and Requests for Comment in relation to the above-noted Proposed FSRA Rules (the “**Invitation to Comment**”), each dated October 5, 2018, published by the Financial Services Regulatory Authority of Ontario (“**FSRA**”) and are grateful for the opportunity to respond with our views and comments.

General Assessment Approach

We support FSRA’s stated intention to have a simple, consistent and fair funding model. We also support the proposed approach for the regulated sectors with larger participants (including the pension sector) on a basis that each sector continues to fund the costs they directly incur to avoid cross-subsidy issues. It is difficult enough to achieve and maintain fairness in fee assessments within a sector. An assessment system that allocates direct costs across two or more different sectors would almost certainly result in unfair sector cross-subsidization.

Since it reduces the possibility of inequities and cross-subsidization, we agree that a variable rate approach is preferred, at least in the short term, even though it will likely involve more variability in fees. There is no question that FSRA will need some flexibility with its budgeting and funding during its initial period of transition and transformation.

FSRA Vision Elements and Principles

We support and agree with the FSRA fee rule vision elements and principles for the pension sector: *Simplicity, Consistency, Fairness, Transparency, Future Focus and Effective and Efficient*. However, we would draw attention to some of the factors in the descriptions of the principles of “*Fairness*” and “*Effective and Efficient*”:

1. The explanation for the removal of the maximum assessment (cap) states that it is to ensure “that the pension sector assessments appropriately reflect that large plans benefit from strong regulation.” In fact, pension plans of all sizes benefit from strong regulation. Moreover, everyone benefits from strong regulation of pension funds when the result is a strong and sustainable pension system.

We do not believe, however, that there is a basis for asserting that larger pension plans benefit more from strong regulation than smaller pension plans; and, certainly, there is no basis for asserting that larger pension plans benefit more from strong regulation than smaller pension plans in proportion to their size. Simply because one pension plan has twice as many beneficiaries as another doesn’t mean that it benefits twice as much from strong regulation. That



stated, the value to any pension plan of strong regulation is very difficult to determine unless it is based on the amount of regulatory activity that is expended on that pension plan in relation to the regulatory activity expended on all others.

On the other hand, there is a basis for asserting that larger pension plans, because they tend to be better governed than smaller pension plans, may instead benefit less than smaller plans from strong regulation because they may depend less on the regulator's interventions.

We believe a transparent evidence-based approach is required to draw conclusions regarding which plans – large or small – benefit more from regulatory interventions and from strong regulation more generally.

2. The explanation for the removal of the cap also references “the principle that smaller and mid-sized plans should not pay more to subsidize very small and large plans.” In assessing the relative fairness of the FSRA fee rule, if there is subsidization, it depends on how it is measured. We submit that any subsidization ought to be measured based on the relative regulatory effort which FSRA is required to expend on pension plans of varying sizes. Once again, if larger pension plans are better governed and therefore require less regulatory intervention, arguably the proposed FSRA fee model represents subsidization of small and mid-sized pension plans by the larger plans.

At the very least, we believe more research and data is required before reliable conclusions can be drawn on the question of subsidization. We believe the historical experience of the Financial Services Commission of Ontario (“FSCO”) referred to in the description of the principle of fairness within the 6,000 to 12,000 beneficiary range requires validation based on actual “ordinary course” regulatory effort.

3. There are both advantages and disadvantages to a fee model for the pension sector with assessments based on the number of plan members, but we agree that a member-based fee approach is likely the simplest and most straight forward to implement and administer.

However, it's not clear that a single member (or single beneficiary) classification is the most fair approach: in the description of the principle of “Fairness” in the Invitation to Comment, it states “[t]he removal of different rates for different types of plan beneficiaries further ensures that rates are better aligned to actual work effort required by FSRA to regulate all types of plan members.”

We believe research and data is required before reliable conclusions may be drawn to confirm that the actual work effort required by FSRA to regulate active, deferred and retired members and other beneficiaries is the same or at all comparable. The results of such research and data may clearly demonstrate that FSRA is required to expend a significantly higher proportion of its regulatory work effort on certain categories of beneficiaries than it does for other categories (e.g. active members versus retired members). If this is proven, this may be an entirely valid basis for differential rates of fee assessment among pension plans.

4. The stated principle under “*Effective and Efficient*” is that, by removing the cap that applies to larger plans, the “minimal additional regulatory effort associated with larger memberships is captured by a tiered assessment approach”. This, of course, assumes that the tiered assessment approach is calibrated appropriately based on the relative regulatory effort that is expended in the ordinary course of FSRA's activities.

While reference is made to “historical FSCO experience”, we believe it is vitally important that FSRA undertakes the necessary research at the earliest possible time, to support a long-term fee rule based on a fairly calibrated tiered approach.

Research

As mentioned, we believe there are elements of the proposed fee rule which will require review and validation through research determining the actual regulatory work effort expended by FSRA according to different types and sizes of pension plans and for the types of plan members or beneficiaries in each. Reliable data will be necessary to determine the actual amount of regulatory work effort:

- that is used to support each of the following:
 - the use of a single rate for active, deferred, retired and other plan beneficiaries; and
 - in using a tiered approach, the calibration of the member/beneficiary thresholds (e.g. is the regulatory effort for a pension plan with 6,000 significantly different from a plan with 60,000 or 150,000?); and
- that determines:
 - whether large plans (which tend to be better governed) benefit more from strong regulation than small plans; and
 - whether there is subsidization of pension plans of a certain size by different sized pension plans.

We believe this research is necessary to validate the proposed FSRA Fee Rule over the long term on the basis of several of the various stated vision elements and principles.

One of the challenges which FSRA will no doubt encounter in undertaking research and collecting reliable data on its regulatory work effort in relation to pension plans of different types and sizes is to decide, in the interests of fairness, what sort of regulatory work effort ought to be measured for the purposes of validating the FSRA fee model. We believe, for example, that any regulatory work effort undertaken for pension plan transactions that have been initiated by Ontario government action perhaps should not be included in the FSRA data: should government-initiated SEPP to JSPF transfers be included? should new legislative or regulatory rules that require certain types of pension plans to make new filings with FSRA be included? Fairness dictates that careful thought must be paid to this validation process. Perhaps only “ordinary course” regulatory effort should be measured for purposes of determining fee levels and special transactions, especially those transactions that are government-initiated or encouraged and in the public interest more broadly, should be excluded from measurement.

Impact of Proposed Fee Model on Large Ontario Plans

For HOOPP and the other large broader public sector pension plans (the “**Large Ontario Plans**”), the material difference in impacts between FSCO’s current assessment process and the proposed FSRA funding rule is that the proposed FSRA approach will result in the Large Ontario Plans paying materially higher annual assessments in comparison to all other regulated Ontario pension plans. It is estimated that each of the Large Ontario Plans will, at least on an interim basis, be paying FSRA fees in an amount of approximately 4-1/2 times the amount of their current FSCO assessment. This increase may be attributed to the following factors, the first two of which have already been addressed above:

- removal of the cap that applies to the current FSCO assessment;
- a tiered approach in the proposed FSRA rule designed “to better reflect regulatory burden associated with the addition of plan members in different sizes of plans”; and
- the elimination of, and replacement funding for, the subsidy currently paid by the Government of Ontario.

We believe the elimination of the Ontario government subsidy of FSRA, while consistent with FSRA's new independent governance model, nonetheless overlooks the important contribution to the public interest which an effective pension regulator provides. Leaving aside FSRA's independent governance model and the fiscal challenges which the Ontario government may currently be operating under, we believe there is a compelling case for continued government subsidization of pension regulator fees given the many public benefits achieved with strong pension regulation and a healthy pension sector.

In addition, the FSRA fee model, imposing as it does the highest financial burden on Large Ontario Plans, fails to credit the significantly larger contributions made by the Large Ontario Plans in helping in the development of regulatory and policy changes and other similar industry initiatives. The Large Ontario Plans invest more resources overall in the Ontario pension system, including providing informed commentary on policy and legislative proposals – activities which most smaller plans do not engage in. We believe the fee structure ought to recognize these other direct contributions made by the Large Ontario Plans to the success of FSRA's regulatory efforts through their high level of engagement and participation in the system overall.

Finally, as previously stated, if the funding model is meant to impose the largest fee burden on those pension plans who are the heaviest users of regulatory services, FSRA must undertake an effective program of collecting and analyzing its pension regulatory interactions and activities to ensure an assessment regime that is evidence-based.

FSRA Mandate

HOOPP notes the proposed objects for FSRA set out in Section 3(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "**FSRA Act**") and the additional objects in respect of pension plans under Section 3(3) thereof. HOOPP believes that FSRA's mandate, based as it is on these objects, could be significantly improved in relation to pension plans if the legislature in future adopts all of the relevant recommendations from the *Review of the Mandates of the Financial Services Commission of Ontario, the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario Final Report* dated March 31, 2016 (the "**2016 Mandate Review**"). Specifically, we believe the FSRA Act objects for pension plans should also promote:

"a strong and sustainable pension system that would operate in an efficient and fair manner, balancing the interests of all parties." (2016 Mandate Review, Recommendation 4, p. 15)

It is not clear why all of the recommendations in relation to pension plans in the 2016 Mandate Review, including this one, were not included in Section 3(3) of the FSRA Act. We are hopeful, nonetheless, that the FSRA Act will ultimately be amended to include this as an object and that, until this happens, FSRA will operate in a manner that takes account of these additional objects. We believe that, in the short term, FSRA could achieve this result by adopting a principles-based approach to regulation of pension plans which recognizes the importance of maintaining a sustainable pension system through the efficient, fair and balanced operation of pension plans under FSRA's regulatory authority. We also believe it is very important that FSRA, as part of its principles-based approach, consider the interests of all parties including members, employers, sponsors and plan administrators.

About HOOPP

Founded in 1960, HOOPP helps build a financially secure retirement for Ontario's healthcare workers. HOOPP currently has over 339,000 active, deferred and retired members, 540 participating employers and approximately \$78 billion in net assets. In 2017, our funded status was 122%, meaning for every dollar owed in pensions, the Plan has \$1.22 in assets.

In 1993, HOOPP was established as an independent private trust by the Ontario Hospital Association (OHA), the Canadian Union of Public Employees (CUPE), the Ontario Nurses' Association (ONA), the

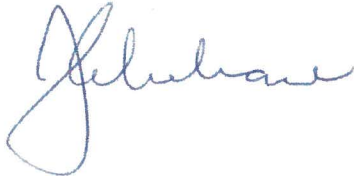
Ontario Public Sector Employees' Union (OPSEU) and the Service Employees International Union (SEIU) under an Agreement and Declaration of Trust for the benefit of eligible employees of participating employers.

HOOPP is a contributory, jointly sponsored, multi-employer, defined benefit pension plan, where factors such as earnings and years of service define members' benefits. HOOPP independently manages all aspects of the pension provision, not only administering the plan, but also investing member and employer contributions to ensure that pensions can be paid now and in the future.

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Once again, HOOPP is very grateful for the opportunity to share its views and comments on the Invitation to Comment and looks forward to supporting FSRA to achieve a successful transition to a more principles-based regulatory authority and to fulfill its statutory objects.

Sincerely,
HEALTHCARE OF ONTARIO PENSION PLAN



Jim Keohane
President and CEO