



Financial Services Regulatory Authority of Ontario Proposed Rule 2019-001: Assessments and Fees

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Authority of Ontario

Submitted by: The Ontario Bar Association



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Introduction

The Financial Services Regulatory Authority of Ontario (“**FSRA**”) is proposing a new assessment and fee rule (a “**Fee Rule**”) to obtain funding from the financial services sectors it regulates. As stated in the Notice and Request for Comment for Proposed FSRA Rule 2019-001¹ (the “**Request for Comment**”) “FSRA is an independent agency that will be self-funded and operate on a cost recovery basis.” Accordingly, the Fee Rule will be an important aspect of FSRA’s operations, as it seeks to launch in Spring of 2019.

The Pensions & Benefits Section (the “**Section**”) of the Ontario Bar Association (the “**OBA**”) appreciates the opportunity to respond to FSRA’s Request for Comment. This submission will address three items in the Request for Comment: a) rule making authority, b) fees for different types of plans, and c) active and inactive members.

The OBA

Established in 1907, the OBA is Ontario’s largest legal advocacy organization, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

The OBA’s Pensions and Benefits Law Section represents lawyers who serve as legal counsel to virtually every stakeholder in the pension and benefits industry, including pension and benefit plan administrators, employers, plan members, bargaining agents, pension and benefit consultants, investment managers, actuarial firms and other stakeholders. Our members have analyzed and provided assistance decision makers over the years on several important legislative and policy initiatives in the pension field.

¹ FSRA, 2019-001: Assessments and Fees, online: <http://www.fsrao.ca/en/consultations/assessment-and-fees>. October 5, 2018.



The Request for Comment

Rule Making Authority

The OBA appreciates the ability to comment on the proposed fee rules, and supports FSRA having the authority to make rules in general. As we have stated in our previous submissions, the OBA supports principles-based rule-making authority.² We provide no comment on the quantum of fees, however, we do have a few comments on the applicability of the fees as they relate to pension plans.

Assessing Fees for DB and DC Plans

First, there is no distinction between different plan types (like defined benefit (“DB”), defined contribution (“DC”) or hybrid/combination plans) for the purpose of assessing fees in the pension sector. We recognize that FSRA considered and ultimately rejected different fees for DB and DC plans because there is no data or industry consensus about how to distinguish them in an equitable way. However, we encourage FSRA to continue to consider this issue, obtain the data necessary and consult with industry stakeholders to create an equitable mechanism to assess fees for registered pension plans, given the fundamental differences between plan types.

Active and Inactive Members

Second, there is no distinction as to the particular demographic of the registered pension plan between active and inactive members. We recognize that FSRA has chosen to reject the Financial Services Commission of Ontario’s approach of charging separate rates for active and retired plan members on the basis that “there was no cost justification for distinguishing between types of members”. Our Section is of the view that the costs of administering a plan with mostly inactive members is very different than a plan with mostly active members, and this could be recognized in the tiered marginal rates established by FSRA (either on a percentage or numbered basis).

² Ontario Bar Association, Letter to the Minister of Finance re: *Final Report of the Expert Panel – Review of FSCO, FST and DICO*, Nov 8, 2016. Online: <https://www.oba.org/CMSPages/GetFile.aspx?guid=44fc74d9-6d7f-4744-a272-0aca8070b8c6>.



Conclusion

The OBA appreciates the opportunity to comment on these matters. The OBA would welcome the opportunity to discuss these views in more detail, and to provide any other feedback as the process continues. Please do not hesitate to contact us in this regard.