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February 24, 2020

Mr. Mark White
Financial Services Regulatory Authority
5160 Yonge Street, 16th floor
North York, Ontario M2N 6L9

Dear Mr. White:

RE: Proposed Supervisory Approach for Single Employer Defined Benefit Pension Plans that are Actively Monitored

I am writing this letter to you because, although this consultation is posted on your website, there is no person and no address to send the response to. I presume that the consultation was posted because FSRA would like a response.

The term “actively monitored” might have been meant to refer to pension plans in trouble. However, I believe all pension plans with FSRA are actively monitored, though some may be more actively monitored than others. My comments below apply to pension plans in general, not just plans having difficulties, as I think it is important that it is important to minimise the possibilities of a plan running into problems. Much of the issues that I identify are about communications. I hope my points help to ensure that the fewest number of registered pension plans run into trouble.

1. From the Rationale and Context section, it would seem to me that the protection that FSRA and the Act provides applies also to the quantum of retirement savings of the members and plan sponsors of pension plans, in addition to the identified safeguarding of rights and “benefits”. With organisations like Canada Revenue Agency, and others, attacking pension plans funds to seize assets, to utilise assets for other purposes, or to force reduce contributions below a sustainable level. It is important to protect sufficiency of plan assets.

The assets of the pension plan are what the plan members have to count on for the delivery of benefits. Part of the assets may also come from member contributions, which is different from the portion that are employer assets (which funds members’ deferred compensation).

The assets of the pension plan are also what the employer, and the members, have set aside to provide benefits in the future — and for a defined benefit plan they may be

substantial. Seizing all or some of the accumulated assets may well put the employer in the position of providing the benefits with no savings, bankrupting the employer and leaving no benefits to the members.

This is a position that FSRA should make clear is important. An attack on the sufficiency of the assets of a most DB plans will certainly be problematic to the plan, and for DC plans it will be problematic for the retirees.

2. FSRA should be encouraging the establishment of registered pension plans which provides a vehicle for retirement savings that should be inviolate to other influences. This would include the federal government allowing personal long term retirement money to be diverted to buy houses and other short term physical products rather than solving their federal policy issues.

To encourage pension plans, a straightforward, simple (“effective and efficient”) system with rules that are fully disclosed to *ALL* stakeholders (see next point) (“collaborative and transparent”) is important. Simplification of the rules, rather than adding more complexity, is required. I realise that this is usually the opposite of what regulators do, but FSRA is in a unique position to both simplify and recommend reductions in the rules.

Straightforward rules help to ensure the minimisation of the number of plans with difficulties resulting from contradictory compliance issues.

3. FSRA should recognised that most employers are not in business to run employee benefit programs although they may be plan sponsors and, as defined under the PBA, as “Administrators”. Businesses have their specialty (eg. food production, construction, engineering, accounting) and don’t understand the technical jargon or specialised terminology of pension plans. While very large companies may hire a specialised pension department, most employers end up hiring third parties to assist with, and at least notify them of, their pension obligations. I personally have worked on very large plans, and very small plans. The outside expertise was needed, and retained, on all those plans. In many cases, the “problems” were often a case of misunderstood communications while, in a few cases, intervention by the regulator was required.

As a result, to be “collaborative and transparent”, it is important to recognise that *all* of those consultants, actuaries and other third parties should be included as *stakeholders when disseminating or gathering information*, in addition to the “Administrators”. Only then can any pension plan be informed if a problem arises from changes in regulation, or identify possible non-compliance with changed regulations, and proactively seek to resolve the problems when possible. This is currently how the pension system has worked, and how Administrators expect it still works. Administrators only send on information to consultants when they think that the consultant has not been copied on the correspondence.

Pension plans are of many sizes, and their consulting needs are diverse. If FSRA is only consulting with large law and actuarial firms who have little or no experience with small and medium size plans, and not with the broader pension industry, FSRA will have problems meeting its the guidelines concerning promoting good administration, being facilitative for smaller plans, being efficient and effective for all plans. Being collaborative and transparent through the plan sponsors' communication channels — the pension consulting community — better ensures that the plan members' rights are protected.

For a specific plan, the consultants dealing with that plan should be informed as they may well be aware of difficulties as the issue may be able to clear up any bad communications or provide insight into other possible problems.

It is extremely important for small and medium size plans that an efficient, simple, understandable and predictable regulatory environment be in place. One does not want to require the overuse of expensive third party accountants, actuaries or lawyers, for simple tasks. Otherwise plans will run into problems. Frankly a small or medium-sized plan has a real problem with expenses if a lawyer is required to be involved. This applies to both DB and DC plans.

The current FSRA approach of not communicating or consulting with the broader pension community is potentially detrimental to the pension system and will prevent efficiencies and risk minimisation. It is important in a risk-based system that the regulators not become the risks.

Communication to all stakeholders will help minimise the number of plans that run into problems, or plans where the problems are longer term issues.

4. FSRA should meet with the pension community for feedback, and not just the fiduciaries. There already appears to be committees and meetings of non-fiduciaries composed of people that are not part of the broader pension community, including the lawyers and consultants to very large plans. FSRA's directions seem to be preventing itself from receiving input about the bulk of the pension plans (by number if not by membership). Most plans do not work like a large, mostly government plans.

FSRA needs a broad base to meet its goals and principles. The smaller and medium plans with problems will not be able to afford the ultra-expensive consultants that FSRA has involved so FSRA will not find out about the issues of most plans. FSRA should want input from more consultants. Those consultants need to understand the FSRA issues, that the client's issues can be adequately communicated to FSRA, and collaborative solutions can be found.

Similarly, engagement should not be just with the Plan Administrators but also with their agents (which seems to be what consultants and actuaries are classed as). The Relationship Management and Prudential Supervision team should be in active communication with the entire pension service industry in respect of a plan. They should

not limit their interaction to a group that does not understand the pension terminology or implications from the legislation, from the Regulations and from FSRA.

FSRA's engagement does talk about working with plan administrators and their professional advisors. FSRA has done on a very limited and somewhat narrow basis. FSRA should recognise that any "tools" will have to work through the professional advisors in order to be functional. Even the PSP tool is generally set up by the consultants just as the paper from before the PSP was completed by the consultants and reviewed by the clients.

This additional communication, and the understanding of the functioning of most pension plans, will allow the addressing of pension plan issues, and for the technical work to be appropriately allocated, so that many problems to be resolved quickly and efficiently.

5. I note that FSRA is taking a risk-based approach to pensions.

Financial risk is related to "statistical variance" as it is usually defined. A 10 life pension plan has a different mortality risk consideration (one death is 10% of the membership) than a 100 life plan, and than a 10,000 life plan (without even getting into the longevity risk side of the matter). Similarly, a 10 life case with \$5 million in assets has a much different investment risk profile than the 10,000 life case with \$500 million in assets (cash flows are less predictable in a smaller case).

FSRA should be identifying, and providing, risk-based solutions for the pension plans with less than 10,000 lives. FSRA should be promoting proper tax handling of the funds pursuant to the province's constitutional powers and terms in the Income Tax Act to recognise that power.

Similar considerations would be with respect to improper plan classifications by CRA limiting the choice of projection assumptions, and investment PfADs, in some plans. CRA clearly seeks to ensure that registered pension funds are underfunded, creating significant risks to the plan members (and sponsors). FSRA should take an active role to ensure that the CRA risk is minimised, and that less plans run into the problems from regulator risk.

Risk is not solely a characteristic of a plan sponsor.

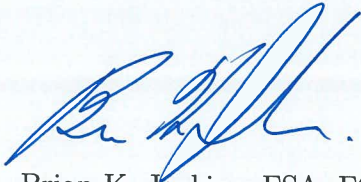
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I thank you in advance for your attention in this matter. I am happy to discuss these issues further if you desire, or any other issues related to the mandate of FSRA to which I can knowledgeably contribute.

Yours truly,

A handwritten signature in blue ink, appearing to read "B. K. Jenkins".

Brian K. Jenkins, FSA, FCIA
BKJ:ltx