



November 25, 2020

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Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

Submitted online via the Financial Services Regulatory Authority of Ontario [website](#).

Re: FSRA Supervisory Approach to Asset Transfers Under the Pension Benefits Act

Dear Ms. Blouin:

As you know, the Association of Canadian Pension Management (ACPM) is the leading advocate for Canadian plan sponsors and administrators in the pursuit of a balanced, effective, and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees, and service providers. Our membership represents over 400 companies and retirement income plans that cover millions of plan members. The Ontario Regional Council (ORC) represents plan sponsors and administrators with hundreds of plans registered, and millions of members reporting to work, in Ontario.

The ACPM appreciates the opportunity to respond to FSRA's *Supervisory Approach to Asset Transfers under the Pension Benefits Act* (PBA) and provide its comments and feedback to the consultation below.

Consistent Approach to the Use of Notices of Intended Decisions (NOIDs)

The proposed guidance document suggests that FSRA may use NOIDs prior to issuing its consent to a section 80.4 asset transfer [single employer pension plan (SEPP) to jointly sponsored pension plan (JSPP)], but that this step is not necessarily required for asset transfers under sections 80 and 81. Furthermore, the use of NOIDs is applied to SEPP to JSPP transfers without a clear rationale as it is not required by legislation either. The consequences of issuing a NOID with a 30-day comment period stem from the opportunity for one member to issue a complaint while the required majority of members have already consented, thereby negatively impacting FSRA's consent to the merger. Based on existing legislation and regulations, for a merger to proceed, first the majority of the SEPP membership must consent to the pension transfer. Next, FSRA will evaluate the application to transfer the assets and liabilities based on the prescribed requirements in the PBA. If all of the requirements are fulfilled, it is expected that FSRA will issue its consent. At no point does the legislation provide an opportunity for one member to hinder this process. Therefore, it is surprising that FSRA has instituted the process of issuing a NOID on past SEPP to JSPP transfers.

Subsequent to the release of the draft guidance FSRA has revised its approach to issuing consent to section 80.4 asset transfers and will temporarily only require a 10-day comment period for impacted members prior to issuing its consent. FSRA should be commended for this revision and encouraged to make it permanent as it will shorten its approval timelines. However, the same dangers of the NOID process exist within this revised approach. One impacted plan member can still delay or deter FSRA's consent even if all of the legislative requirements have been fulfilled.

To ensure consistency across all types of asset transfers, ACPM recommends that FSRA no longer requires any comment period (10-day period or NOID period) prior to issuing its consent to SEPP to JSPP asset transfers. Alternatively, administrators should make it clear within consent notices and notices to members of an asset transfer application that they can comment to FSRA at any point in time regarding a merger.

Multijurisdictional mergers initiating a more thorough review

Section 3 of the draft guidance suggests that transfers involving an Ontario registered plan with members in other provinces could initiate a more thorough application review by FSRA. In such transfers, Ontario rules would need to be followed for FSRA's consent to the merger, however where the plan has additional members outside of Ontario, FSRA requires plans to seek out approval from the respective regulators. It is unclear why an asset transfer involving multiple jurisdictions would require a lengthier review, with FSRA already requiring each regulator to consent to the transfer and since FSRA only evaluates whether legislative requirements have been followed for Ontario members.

If FSRA chooses to maintain this approach, ACPM encourages it to take into account a plan's experience and if it has received consent for multi-jurisdictional asset transfers in the past when evaluating whether a longer and more detailed review is required. Delays in approvals can lead to additional administrative fees and/or PBGF fees. As a result, as plans gain experience in constructing such transfers, FSRA should utilize this experience to avoid always conducting a detailed review.

Filing Documents / Reports After FSRA's Consent

With regards to section 80.4 transfers, items 4.4.9.1 and 4.4.9.2 of the guidance are problematic as some transfers involve the SEPP joining the JSPP as of an effective date prior to an application being submitted and approved by the regulator. In such cases, while the past benefit may remain with the SEPP, members are active participants in a JSPP (which is solvency exempt). Should FSRA's consent to the merger occur in the calendar year after the effective date of the asset transfer then the SEPP sponsor would be forced to pay the full PBGF fees for the year. This increases costs and places unnecessary burden on employers, especially during the current sensitive economic environment.

Thus, ACPM recommends that FSRA should use its discretion and, in instances where a transaction is not completed within the same calendar year as the effective date, the PBGF fees for that year are only to be applied up until the effective date of a merger.

Additional feedback on the Section 80.4 asset transfer application summary

ACPM is providing the following feedback to help ensure that the Application Summary form for section 80.4 transfers is clearly understood by the applicant:

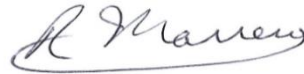
- Question 4(a): should refer to “active” members explicitly to ensure it is clearly understood which members are being referred to. In addition, the requirements under section 80.4 (13)(7)&(8) should be referred to;
- Question 5(a): the second bullet should refer to the “commuted” value and include a box for YES or NO;
- Question 5(b): the first bullet should refer to the language in section 80.4(13)(8), specifically using the phrase “at a minimum, the same as” and not “replicated or improved”.

We thank you for the opportunity to provide input to the Asset Transfer Guidance and would be pleased to discuss any aspect of this submission with you further.

Yours truly,



Danelle Parkinson
Chair, Ontario Regional Council
ACPM



Ric Marrero
Chief Executive Officer
ACPM