

November 26, 2020

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

**Re: Willis Towers Watson Submission on Draft Guidance No. PE0205APP: Supervisory Approach to Asset Transfers under the Pension Benefits Act**

Dear Sir or Madam,

Willis Towers Watson welcomes the opportunity to comment on Draft Guidance No. PE0205APP: Supervisory Approach to Asset Transfers under the Pension Benefits Act (Guidance).

Willis Towers Watson designs and delivers solutions that manage risk, optimize benefits, cultivate talent and expand the power of capital to protect and strengthen institutions and individuals. Willis Towers Watson employs 45,000 colleagues worldwide, with approximately 450 engaged in providing services to sponsors of Canadian pension plans. The undersigned have prepared our response with input from others in the company.

Generally, we support the rules set out in the Guidance but have a few comments on some aspects of it which we set out below.

**Title:** Since Section 1.1 states that the Guidance applies only to defined benefit asset transfers, we recommend that the title to the Guidance be changed to refer to “Supervisory Approach to Defined Benefit Asset Transfers under the Pension Benefits Act”.

**Section 3.2:** Under the last bullet of this section, the Guidance indicates that one of the questions that FSRA may ask when conducting a detailed review of an application concerns plan sustainability, including the implications of the transfer on the financial stability of the plan sponsors. However, it is unclear to us where FSRA has the authority to require a review of the financial status of the transferee plan sponsor and we recommend that FSRA reconsider requiring this to be part of a transfer application review.

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**Section 4.1:** Advisors are not always fiduciaries. We, therefore, recommend that this section be reworded to make it clear that advisors may not necessarily have to comply with fiduciary duties.

**Section 4.3:** We recommend that the Guidance set out more detail regarding how administrators and their advisors would demonstrate that they have performed sufficient due diligence. Also, with respect to the second bullet, we recommend including additional details or examples of plan investments that would need special treatment and what this treatment would consist of.

**Section 4.4.2.1:** We recommend that the mandate of the FSRA Advisory Services Team, who will be on the team, and how they can be contacted, should be set out either in the Guidance or on FSRA's website. It would also be helpful if the Guidance provided one or two examples of what constitutes a larger or more complex transaction.

**Section 4.4.3.1:** As noted in section 5.1, FSRA has the power to vary the timing of notices with respect to transfers under section 80.4 and section 81.01.1 of the PBA. We recommend that this be noted in this section.

**Section 4.4.5:** Though not explicitly stated in this section, we understand that the reference to additional contributions to replace a letter of credit (LOC) reflects FSRA's position that the assets to be transferred cannot include LOC amounts. The section notes that administrators should carefully consider the implications of LOCs on original and successor plans, given that LOCs are uniquely written for an employer. However, there should not be a concern with respect to LOCs for a section 81 asset transfer since both predecessor and successor plans are sponsored by the same employer. Furthermore, we do not interpret Regulation 310/13 as preventing LOCs from being included in the assets to be transferred. We recommend that FSRA reconsider its position with respect to whether LOC amounts can be included in the assets to be transferred, particularly for section 81 transfers.

**Section 4.4.7.2:** We think that 150 days is a reasonable period by which FSRA can respond to completed applications, but we recommend that this section include additional details as to when FSRA will advise that more information is needed.

**Section 4.4.8:** We have some concerns and questions about the possibility of the Chief Executive Officer of FSRA issuing a NOID with respect to a transfer application. We are uncertain as to the purpose of issuing a NOID at this stage in the process since members and, if applicable, their union will already have been given the asset transfer notice and could have intervened in the process or made any objections following receipt of that notice. Members and unions are notified before the administrator even applies for consent and we believe that it is reasonable to expect them to take steps to participate in the process at that stage by making a submission. We recommend that FSRA not consider issuing a NOID in cases where no party has registered

an objection or sent a submission up to that point in the process. Issuing a NOID indicating that the CEO of FSRA intends to approve the transfer and inviting intervention at that late stage may encourage interested parties to wait until then to register their concerns which will cause further delays. However, if this remains part of the Guidance, we recommend that the Guidance include details or examples as to when FSRA would exercise its discretion to issue a NOID.

As well, the Guidance states that the administrators of both the original and successor plans must post the NOID electronically. This is a new requirement with respect to NOIDs and we do not see any authority under the *Pension Benefits Act* or its regulations that would require an administrator to do this.

Finally, we recommend that it be made clear that NOID stands for Notice of Intended Decision. While readers in the pension industry will know what NOID stands for, there may be other readers of the Guidance who do not.

**Section 4.4.9.2:** Shortly after Regulation 310/13 took effect, the Financial Services Commission of Ontario had suggested that PBGF filings/assessments were to be treated differently than noted under this paragraph of the Guidance. We believe the timing set out in the Guidance with respect to when asset transfers should be reflected in filing documents is reasonable for all filings including PBGFs, but please confirm whether the Guidance reflects a change in practice; if not, additional wording should be added for clarification.

**Section 5:** We believe that the variances under this section should apply to single employer plans as well, though we understand that this would require an amendment to the PBA. We recommend, therefore, that FSRA discuss such an amendment with the Ministry of Finance. Given that this recommendation would take time to implement, for now, it should be clearer that this section and, therefore, the variances only apply to plans that are transferring or converting to jointly sponsored pension plans.

**Section 7:** This section notes that, once the Guidance is effective, certain Asset Transfer FAQs previously released by FSCO will have no further effect and should not be relied upon. However, some of these FAQs would still be relevant and helpful for administrators even after the Guidance is effective because they clarify issues not addressed in the Guidance that often form the basis for approaches taken in asset transfer applications. Stating that the FAQs should no longer be relied upon could create uncertainty, particularly with regard to various technical issues. Therefore, we recommend that the FAQs that are still valid should remain, perhaps on a modified FAQ page.

#### **Asset Transfer Application Summary (Transfers under PBA s. 80 and 81)**

We recommend that the summary cover all the information that FSRA requires to complete its review and we are not certain that the current summary does so. For example, there is no question as to which, if any,

jurisdictions outside Ontario have members affected by the transfer (this is a question that FSRA often asks with respect to transfer applications). As well, the possible answers to the two questions on whether notices were transferred to unions or advisory committees (third and fourth bullet at 7(a)) should be expanded to YES, NO, or N/A as this would account for situations in which there is no union or advisory committee.

We also recommend that, as part of this Guidance, FSRA create a checklist of all the documents FSRA would normally expect to be included in an asset transfer application. This would assist plan administrators in ensuring that their application is complete.

**Actuary’s Certification: Defined Benefits Single Employer Pension Plan (SEPP) to SEPP Transfer under Section 80 and 81**

**Question 4:** We recommend removing this question as it will already have been answered in the Asset Transfer Report that is prepared as of the transfer’s effective date.

**Question 5:** Actuaries may not be comfortable signing off on the Certification with respect to this question because the actuary may not see the commuted value calculations if they are done by a third-party administrator that the actuary does not work for. We recommend that this question be removed from the Actuary’s Certification and, instead, be set out in the Asset Transfer Application Summary signed by the plan administrator.

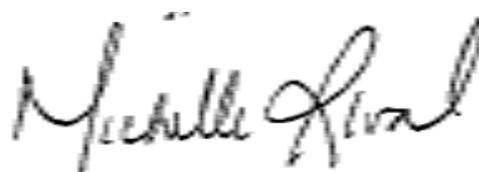
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We greatly appreciate the opportunity to comment on this Guidance and would be pleased to answer any questions you may have on this submission.

Sincerely,



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