



May 31, 2023

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West,
Suite 100
Toronto, ON M2N 6S6

Dear FSRA Staff,

We are writing on behalf of the administrators of the Colleges of Applied Arts and Technology Pension Plan (CAAT), the Healthcare of Ontario Pension Plan (HOOPP), the Ontario Teachers' Pension Plan (OTPP) and the OPSEU Pension Plan Trust Fund (OPTrust).

Thank you for the opportunity to comment on FSRA's Proposed Guidance: Administrative Monetary Penalties (Guidance).

We share FSRA's goal of promoting strong pension governance and protecting member benefits. We also believe that a robust pension sector is important to both our plan members and all Ontarians. Our comments focus on the application of the multi-sector Guidance to the pension industry.

While the Guidance, at the outset, acknowledges that FSRA has different objects in the pension industry as opposed to other regulated sectors, the Guidance itself is not adapted to the pension sector. Specifically, FSRA's objects for the pension sector are to promote good administration of pension plans and protect and safeguard the pension benefits and rights of pension plan beneficiaries rather than the consumer-protection objects relevant to the financial services sectors. Following the initial reference to these objects, the Guidance does not differentiate between the pension sector and other sectors, referring only to consumer-protection objectives. It also refers to the role of a Pension Plan Administrator as a licensed role (see s. A.1), which is not the case under the Pension Benefits Act.

While the pension sector is itself diverse, it can generally be distinguished from the financial services sector in a number of respects. Pension plans contribute to the public good by helping Canadians with financial security in retirement. Access to a workplace pension plan is contingent on the participation of an employer, providing a benefit to its employees. Further, plan administrators do not seek to profit from participation by members. As such,



members and beneficiaries of pension plans are not traditional consumers like those who elect to purchase products from insurance companies, mortgage brokers, or credit unions.

Governance frameworks in the sector are also different. Plan administrators, who are responsible for paying benefits and investing funds, are subject to high fiduciary standards. In the context of jointly sponsored pension plans (“JSPPs”), like ours, plan members are represented in the governance and decision making of their pension plans and share risk with employers. For JSPPs (unlike for employer-administered plans), there is no “employer administrator” that has access to monies separate from plan funds to pay penalties. It is also important for plans to be able to attract strong board/committee members; while some of these roles are compensated, many are not, leading to disincentives to take such roles on where punitive regulatory frameworks apply.

In this context, it's important to appropriately calibrate the deterrence objectives of imposing AMPs with support for a robust pension sector and to focus on guidance and education rather than enforcement through penalties. We do not believe that the Guidance sufficiently does so.

Given the important differences between the financial services sectors and the pension sector, we would suggest that FSRA give consideration to developing stand-alone guidance applicable to pensions, with specific consultation of the various existing FSRA Pensions standing committees to help ensure that the guidance is responsive to the unique aspects of the pension sector.

Yours truly,

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