

May 31, 2023

Caroline Blouin, Executive Vice President, Pensions  
Financial Services Regulatory Authority of Ontario  
**Via email:** Caroline.Blouin@fsrao.ca

Dear Ms. Blouin,

**Re: Proposed Guidance – *Administrative Monetary Penalties* (ID 2023-004)**

We are pleased to provide OPB's submission in response to the current consultation by the Financial Services Regulatory Authority of Ontario ("FSRA") on its proposed Guidance on Administrative Monetary Penalties (the "draft AMP Guidance"). OPB commends FSRA's willingness to receive industry feedback on this matter.

### **About OPB**

OPB is the administrator of the Ontario Public Service Pension Plan ("PSPP"), a major defined benefit, single employer pension plan sponsored by the Government of Ontario. Our membership is made up of certain employees of the provincial government and its agencies, boards and commissions. With \$33.7 billion in assets, 45,251 active members, 40,521 retired members and 7,324 former members, the PSPP is one of Canada's largest pension plans. It is also one of the country's oldest pension plans, successfully delivering the pension promise since the early 1920s. Our commitment is to protect the long-term sustainability of the PSPP, invest assets astutely and with discipline, keep contribution levels stable and affordable and deliver exceptional service to our stakeholders.

### **Principles-based approach**

FSRA has stated that it embraces principles-based regulation ("PBR"), which entails a flexible approach to achieving desired outcomes based on the particular circumstances of any given case. We are pleased to note that the draft AMP Guidance confirms that FSRA will take a principles-based approach to imposing AMPs, and in particular that decisions will be made on a case-by-case basis. However, certain aspects of the draft AMP Guidance appear to adopt a more prescriptive or mechanical approach to imposing AMPs. For example:

- Non-compliance with minor or technical provisions (Section A.1)(1)(iv): While we agree in principle that all regulatory provisions have a purpose, it does not follow that an AMP is warranted for every breach of such a provision. The statement that a regulated entity's failure to comply with even seemingly "minor" or "technical" provisions creates concerns about the entity's diligence and competence tends to suggest that relatively minor infractions may attract AMPs. Paragraph (iv) is particularly concerning in relation to summary AMPs, given that the draft AMP Guidance contemplates a more "streamlined" process for imposing those AMPs (discussed in more detail below). We therefore recommend that paragraph (iv) be deleted.
- Summary AMPs (Section A.2): The draft AMP Guidance states that for the provisions in respect of which summary AMPs may be imposed, those AMPs are a critical compliance tool, and therefore that where such a provision is breached, a summary AMP will typically serve its statutory purpose of promoting compliance with regulatory requirements and deterring non-compliance. This proposition appears to be inconsistent both with a PBR approach and with the statement in Section A.2 that AMPs will be imposed on a case-by-case basis. In order to ensure that the statutory purposes of AMPs are achieved, FSRA must, before imposing a summary AMP, consider all relevant factors, including any proven track record of compliance. FSRA should also have regard to whether the breach in question was purposeful or negligent or, conversely, the result of factors outside of the regulated entity's control. Moreover, a general statement that summary AMPs are "typically" justified for wide classes of breaches also risks unreasonably fettering FSRA's statutory discretion. The second paragraph of Section A.2 should therefore be modified to reflect a more flexible and measured decision-making process for summary AMPs.

In crafting FSRA's approach to AMPs in the pensions sector, it is also essential to bear in mind that creating additional burdens for DB plan sponsors may ultimately dissuade them from providing DB plans for employees. Against that backdrop, the need to preserve retirement income security for workers in Ontario tilts strongly against a prescriptive or mechanical exercise of FSRA's power to levy AMPs.

### **Clarity on procedural matters**

Unlike the *Administrative Penalties Guideline* issued by the Financial Services Commission of Ontario in November 2018 (the "FSCO Guideline"), the draft AMP Guidance does not provide details on how FSRA will approach filing reminders and extensions, or if warning letters will be issued to administrators prior to imposing an AMP. Providing clear and transparent guidelines on these topics would assist administrators in understanding the process surrounding the imposition of a summary AMP. In this regard, greater clarity in the draft AMP Guidance on the following would be helpful:

- How many reminder notices will be provided to administrators prior to the filing due date and what will be the timing of these notices?
- Will FSRA continue to issue a Letter of Warning followed by a Letter of Proposed Action as outlined in the FSCO Guideline? If not, how will this process change? We would emphasize that providing such notices and warnings helps ensure that AMPs are not levied for trivial or one-off instances of non-compliance.
- We would also be grateful for confirmation that FSRA will not impose an AMP where an extension to a deadline has been granted and the administrator takes the required action during the extension period.
- When an administrator has been informed of FSRA's intention or decision to impose a summary AMP, the administrator has the right to provide a written submission to the CEO. The draft AMP Guidance should outline what information should be included in a written submission.


### **Stacking**

Imposing multiple AMPs in respect of a single contravention of the PBA may amount to a disproportionate or punitive use of FSRA's discretion. With this in mind, the draft AMP Guidance should clarify FSRA's approach where one act or omission results in a number of breaches (for example, where the same contravention affects multiple members).

Finally, to the extent that the concerns raised in this submission relate solely to the pensions sector, FSRA should consider developing separate AMP guidance applicable only to that sector.

Once again, thank you for the opportunity to comment on the draft AMP Guidance. Please contact me at 416 601 4234 or [patrick.simon@opb.ca](mailto:patrick.simon@opb.ca) if you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Simon', with a stylized flourish at the end.

Patrick Simon  
Manager (A), Policy & Procedures