

SENT BY WEBSITE SUBMISSION

December 27, 2018

Financial Services Regulatory Authority of Ontario
130 Adelaide Street West, Suite 800
Toronto ON M5H 3P5

Dear Sir or Madam:

RE: Proposed Financial Services Regulatory Authority of Ontario (FSRA) Rules 2019-001 & 2019-001B under the *Financial Services Regulatory Authority of Ontario Act, 2016*

We are the Ontario Teachers' Pension Plan Board (the Board). The Board is the administrator of the Ontario Teachers' Pension Plan (OTPP), an Ontario-registered, jointly-sponsored defined benefit plan. OTPP has over 300,000 active, former and retired members and, as of June 30, 2018, approximately \$193.9 billion in assets. We are Canada's largest single-occupation pension plan and a significant institutional investor at home and around the world.

We are pleased to provide our comments on Proposed FSRA Rule 2019-001 (the Proposed Fee Rule) and Proposed FSRA Rule 2019-001B (the Proposed Interim Fee Rule).

First and foremost, we support and commend FSRA's outreach efforts to date, both with respect to potential fee assessments and other transitional matters. Going forward, we encourage FSRA to continue its consultation and conversation with regulated sector opinion leaders, industry associations, and, where the magnitude of an issue or proposal warrants it, special-purpose industry advisory groups (IAGs). In short, we believe that meaningful consultation, dialogue and proactivity will be a key to FSRA's initial and ongoing success.

The Proposed Fee Rule

We support FSRA's vision of a fee rule based on the five principles of: **simplicity, consistency, fairness, transparency** and **future focus** (the Five Fee Principles). Against this backdrop, our specific comments on the Proposed Fee Rule are as follows.

(a) Fees Based on Budget

The Board believes that FSRA's proposed approach to base annual assessments for the coming fiscal year on budgeted expenses published in advance of the fiscal year will contribute to the principles of simplicity, transparency and future focus.

In particular, we agree that FSRA's proposed approach will be simpler than the current approach of truing up assessments *after* the fiscal year has ended, the existing assessment model for the Financial Services Commission of Ontario (FSCO).

(b) Direct and Common Costs

The Board understands the need for the Proposed Fee Rule to distinguish between "common costs" and "direct costs". In particular, the Board recognizes that certain FSRA expenses will be necessary for FSRA to incur in order for it to be in a position to regulate *all* regulated sectors. The Board supports this distinction in Section 2.2 of the Proposed Fee Rule.

(c) A Variable Rate Approach for the Pension Plan Sector

In principle, the Board supports a variable rate approach for the pension plan sector if the variable rate approach continues to operate through the lens of the Five Fee Principles. In particular, the Board accepts that fee assessments may vary from one year to the next as FSRA's budgeted expenditures and plan membership headcount increase or decrease.

(d) Fee Levels

While FSRA's proposed removal of the current annual assessment cap per plan of \$75,000 and the introduction of uniform per member rates for all members, former members, retired members and other beneficiaries would, based on OTPP's current membership levels, increase its annual assessment, the Board nevertheless supports FSRA's mandate and desires an efficient, innovative, adaptive, technologically-equipped regulator staffed with appropriate levels of pension sector expertise.

The Board understands that plans like the OTPP may need to pay assessments at such a level to ensure this kind of effective regulation, even if those assessments end up being higher than what OTPP pays currently.

(e) *Definition of "Other Beneficiary"*

Subsection 7.1(1) defines "beneficiaries", with respect to an assessable pension plan, to mean "the aggregate number of members, former members, retired members and other beneficiaries of the pension plan". In turn, per capita fees under subsection 7.1(3) are based on the number of the plan's "beneficiaries".

While it is reasonably clear who will constitute a "member", "former member" or "retired member", given corresponding definitions in the *Pension Benefits Act* (PBA), the PBA *does not* define "beneficiary". It is therefore unclear whom the phrase "other beneficiaries" is meant to include and exclude. Potential non-member beneficiaries (as that term is colloquially used) under a pension plan could include:

- Spouses contingently entitled to or actually receiving a survivor pension.
- Former spouses contingently entitled to a share of a member's, former member's or retired member's pension under a family law arrangement.
- Dependent children contingently entitled to or actually receiving dependent children's pension benefits, for those plans (including OTPP) that provide for dependent children's pension benefits.
- Designated beneficiaries of members' pre-retirement death benefits, when such benefits have yet to be paid.
- Estates of members entitled to pension benefits on the death of the member, when such benefits have yet to be paid.

FSCO's currently-approved form of Annual Information Return (AIR), upon which FSCO assessments are currently based, similarly requires a headcount of "other beneficiaries". FSCO's current instructions to administrators for completing the AIR clarify that the term "other beneficiaries" is limited to: "...any person who is the surviving spouse or beneficiary of a former member of a pension plan, if the surviving spouse or beneficiary is receiving a pension from the plan as a result of the death of the former member." (emphasis added)

Given that it is uncertain whether FSRA will maintain the current form of the AIR or the definition of "other beneficiaries" included in FSCO's current instructions to the AIR, we recommend adding a definition to the Proposed Fee Rule limiting "other beneficiaries" to the persons *actually* in receipt of a pension from the plan as a result of the death of a former member, similar to the above.

(f) *Timing to Pay Fees*

Subsection 7.1(5) of the Proposed Fee Rule would shorten the time that administrators have to pay annual assessments from 30 days from the date of the invoice (under the current FSCO model) to 14 days from the date of the invoice. As a practical matter, the Board accordingly encourages FSRA to consider timely methods of transmitting invoices, including electronically, to ensure that administrators are able to meet the shorter turnaround time.

(g) *Continued Consultation*

The Board is encouraged to see that FSRA anticipates posting and consulting on its 2019-20 draft budget in early 2019. As noted above, the Board believes that continued consultation will lead to better regulation, both for the regulated sectors and for FSRA itself.

As well, although the Proposed Fee Rule anticipates that FSRA may review its fee rule in the “near-to-midterm (e.g. in three years’ time)”, we expect that FSRA will also engage in earlier, more informal assessments of how the fee rule has operated, what has worked, and what could be improved, especially after FSRA’s inaugural fiscal year. FSRA suggests as much in its discussion of the Proposed Fee Rule, in which it envisions “dialogue between FSRA and its stakeholders... particularly following FSRA’s first budget cycle”.

These more informal assessments could provide a further opportunity for stakeholder consultation and “taking the pulse” of the regulated sectors. The Board anticipates that it would be able to participate meaningfully in any such conversations.

The Proposed Interim Fee Rule

The Board supports the fallback of the Proposed Interim Fee Rule if the adoption of the Proposed Fee Rule is delayed. However, given the additional lens of the Five Fee Principles applicable to the Proposed Fee Rule, as well as the Proposed Fee Rule’s comparative robustness, the Board is hopeful that it will not become necessary for FSRA to revert to the Proposed Interim Fee Rule.

The Board encourages FSRA and the Government of Ontario to work toward timely approval and implementation of the Proposed Fee Rule, so that it may be applicable to FSRA’s operations from day one.

Next Steps

We welcome continued dialogue with FSRA as it develops, potentially revises and begins to implement the Proposed or Interim Fee Rules. The Board also encourages additional stakeholder consultation, including on matters of potential improvement and pain points, after a fee rule has been finalized and made effective.

Sincerely,

A handwritten signature in black ink, appearing to read "R Mock." The signature is written in a cursive style with a large, looping "R" and a smaller "Mock." following it.

Ron Mock
President & Chief Executive Officer