OPTrust

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November 24, 2020

Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, Ontario
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Submitted Electronically

Re: Draft Guidance for Consultation on the Supervisory Approach to Asset Transfers under the *Pension Benefits Act*

The OPSEU Pension Trust (OPTrust) welcomes the opportunity to provide comments regarding the draft Guidance document, Supervisory Approach to Asset Transfers under the *Pension Benefits Act* (the "Asset Transfer Guidance"), that outlines how FSRA will exercise discretion and provide consent to asset transfer transactions.

With net assets of almost $22 billion, OPTrust invests and manages one of Ontario's largest pension funds and administers the OPSEU Pension Plan, a jointly sponsored defined benefit plan with over 96,000 members and retirees.

Supervisory Approach to Asset Transfers under the *Pension Benefits Act*

We would like to commend FSRA for catering to the needs of plan beneficiaries and administrators in the Asset Transfer Guidance by taking meaningful steps to improve the efficacy of notices to plan beneficiaries and outlining details about FSRA's consent process. The discretionary and transparent approach that FSRA has proposed balances regulation with practicality in a way that will be mutually beneficial for all affected stakeholders.

We appreciate that FSRA does not limit when discretion may be provided to administrators seeking opportunities to simplify notices. By adopting a flexible approach as to when discretion will be used for the content and timing of notices, FSRA enables plan administrators to fulfill their duties as responsible fiduciaries and accommodates plans varying in size and design.

Particularly useful, are the examples when discretion may be granted which can, among other things, provide administrators the opportunity to leverage resources already developed rather than repeating information in the notices. The use of discretion is welcome to bridge the gap that can develop between a legislation's intent and its practical application.

Regarding the review of asset transfer applications, FSRA sets baseline expectations for the length of time it would take to complete a review of straightforward applications. FSRA favours transparency throughout the application review and consent process, extensively outlining what could delay consent or result in a more in-depth review. Armed with this knowledge, administrators should be able to proactively mitigate any delays.

FSRA sets similar expectations for the new Information Disclosure forms, stating that their use will not be mandatory but excluding them will result in a longer review. This ensures the forms will be used when ever they are appropriate while still maintaining FSRA's theme of flexibility. Not only will these forms aid FSRA in their review, we agree with the Technical Advisory Committee that the Information Disclosure forms can be a helpful checklist for administrators when preparing an application.

As part of the Information Disclosure, the Application Summary form is a useful list of many prescribed components of the application and we appreciate the simplicity of the "yes," "no," and "N/A" check boxes. However, for clarity and to align with the Asset Transfer Guidance, we believe it would assist FSRA in its review if the Application Summary included a space to indicate whether a variance or waiver is being requested.

Section 5.2 of the Asset Transfer Guidance indicates that applicants should inform FSRA of waiver or variance requests using the Information Disclosure forms, presumably via the Application Summary. Currently, the form permits applicants to attach supporting documents explaining the variance, but the inability to include this information on the Application Summary form itself could easily lead to confusion with applicants forced to check "no" to a regulatory requirement without an opportunity to explain.

Status of Previous Guidance

Regarding the previous guidance that the Asset Transfer Guidance would replace, FSRA indicates that FSCO's asset transfer FAQs and FSCO Policy A700-154 – Types of Asset Transfers will have no further effect and should not be relied upon. We note that the draft Asset Transfer Guidance largely addresses how FSRA may provide consent and the relatively new ability to waive or vary certain asset transfer requirements, which was not part of FSCO's previous guidance.

As the draft Asset Transfer Guidance contains considerably different information from the guidance it is replacing, we hope that FSRA will clarify their position on the information contained in FSCO's previous guidance. We also seek clarification on the status of FSCO's other A700 series of asset transfer policies, and whether these policies will be updated or replaced since the Asset Transfer Guidance is silent about whether they will continue to apply.

Outstanding Asset Transfer Limitations

The Asset Transfer Guidance presents real opportunity to streamline aspects of the asset transfer framework, the results of which will undoubtedly be appreciated throughout the industry. There remains a need, however, to address limitations that preclude partial SEPP to JSPP asset transfers under s. 80 of the *Pension Benefits Act* (PBA), which prevents affected members from consolidating their pension benefits. In our experience, the restructuring of employers in the public and broader public sectors is not uncommon and these types of transactions are expected to continue in the future.

Since s. 80.1 has been repealed and as partial asset transfers are not possible from a SEPP to JSPP due to s. 13 of Reg. 310/13, the effect of the limitation is detrimental to members who, as a result of an employer restructuring, are forced to keep their pension benefits split between two separate plans. We note that this limitation does not apply to asset transfers under s. 80.4 of the PBA, and OPTrust has raised the limitations of s. 80 and s. 13 of Reg. 310/13 with FSRA and the Ministry of Finance in the past. We would appreciate if FSRA could work with the Ministry of Finance to consider how to protect members caught by these limitations and allow them an avenue to transfer assets from an ongoing SEPP to a JSPP, preferably in accordance with the rules set out under s. 42 of the PBA.

Similarly absent from the current asset transfer framework, is a method under s. 80.4 to permit asset transfers from a JSPP to another JSPP. While we understand the purpose of s. 80.4 was to provide more stable and sustainable benefits in addition to the improved governance structure of a JSPP, we don't see why this logic should not be extended for JSPP to JSPP asset transfers. The need for stable and sustainable benefits is an issue facing JSPPs as well, and we believe it would be prudent and proactive to extend this ability to transfer assets between JSPPs.

In its mandate to safeguard the benefits of plan beneficiaries and promote good plan administration, we hope that FSRA can work with stakeholders to champion the changes necessary to ensure that no member is barred from equal access to benefits under the asset transfer provisions.

To conclude, we would like to commend FSRA for its flexible approach to exercising discretion and consenting to asset transfer applications, which is sure to mutually benefit plan beneficiaries and administrators.

Sincerely,

Julie Belair

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