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The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite



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Response to FSCO/FST/DICO Consultation Paper Results

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FOREWORD

THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT

The Association of Canadian Pension Management (ACPM) is a national, non-profit organization acting as the informed voice of plan sponsors, administrators and their service providers in advocating for improvement to the Canadian retirement income system.

Our membership represents over 400 companies and retirement income plans that cover more than 3 million plan members.

ACPM believes in the following principles as the basis for its policy development in support of an effective and sustainable Canadian retirement income system:

Diversification through Voluntary / Mandatory and Public / Private Options

Canada's retirement income system should be comprised of an appropriate mix of voluntary Third Pillar and mandatory First and Second Pillar components.

Third Pillar Coverage

Third Pillar retirement income plan coverage should be encouraged and play a meaningful ongoing role in Canada's retirement income system.

Adequacy and Security

The components of Canada's retirement income system should collectively enable Canadians to receive adequate and secure retirement incomes.

Affordability

The components of Canada's retirement income system should be affordable for both employers and employees.

Innovation in Plan Design

Canada's retirement income system should encourage and permit innovation in Third Pillar plan design.

Adaptability

Canada's retirement income system should be able to adapt to changing circumstances without the need for comprehensive legislative change.

Harmonization

Canada's pension legislation should be harmonized.

INTRODUCTION

The Association of Canadian Pension Management (ACPM) would like to thank the Expert Advisory Panel (“Panel”) for providing the opportunity to comment on its Preliminary Position Paper.

ACPM is a national non-profit volunteer-based organization acting as the informed voice of plan sponsors, administrators and their service providers, advocating for improvement to the Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of \$330 billion.

The Expert Advisory Panel’s Preliminary Position Paper

ACPM supports the Expert Advisory Panel’s goal of creating a more effective and efficient regulatory regime for the sectors under review. The focus of this submission will be on the Preliminary Position Paper’s impact on pension plans and how the proposed Financial Services Regulatory Authority (“FRSA”) would operate within the pension sector.

FRSA Board of Directors

ACPM supports the concept of FRSA oversight by an arms-length expert board of directors. ACPM recommends that this board should have at least one member with pension administration and funding expertise.

The Proposed FRSA Mandate

While the purpose of the Preliminary Report is to address the structure, governance and mandate of the proposed FRSA, we believe that the Advisory Panel should go further in its recommendations. We are concerned that there will be inconsistencies between the FRSA’s mandate and pension stakeholders’ needs if the FRSA’s mandate is developed without any reference to the policy objectives of the areas over which the FRSA will have jurisdiction.

ACPM supports a key recommendation of the Ontario Expert Commission on Pensions (OECF) that there should be a purpose mandate in the Pension Benefits Act (PBA) that provides a mandate to “maintain a balance among stakeholder interests, to keep pensions both secure and affordable, to both protect and promote the pension system, and to encourage innovation within the system.” ACPM urges that, in concert with this purpose mandate, the FRSA’s mandate should recognize that a pension regulator must be mindful of the system as a whole and seek to balance the interests of all stakeholders, not just members.

This latter point is especially important in order to enable the regulator to promote and encourage innovation within the pension system. There are a number of different pension structures – Target Benefit Plans, Multi-Employer Pension Plans, Jointly Sponsored Pension Plans, and Single-Employer Pensions Plans – operating within Ontario which all have unique requirements.

However, in the Panel's recommendation for the FRSA's Mandate 4(a), it appears to give the proposed FRSA a mandate that prioritizes a consumer protection agency-like function over the pension mandate envisioned by the OECP. Specifically, 4(a) states that the "mandate should strike a balance between strong and effective consumer protection and the fostering of a strong, vibrant and competitive financial services sector." This focus on consumer protection is also reflected in the language requiring the fostering of competitive financial services. ACPM cannot emphasize enough that pension oversight is much different than the oversight required for other financial sectors.

The FRSA's mandate and structure should be flexible enough to recognize the differences in the sectors it will oversee. It should not view pension plans as part of the consumer protection sphere. The FRSA's pension mandate and structure needs to enable regulatory oversight which recognizes that pension plans are different and that there are significant differences within the regulatory oversight requirements of the different pension structures. The FRSA's pension mandate should be risk-based, and consider all stakeholders, and the sustainability of the pension plan, rather than focusing solely on individual members.

Rule-making Authority

ACPM applauds the Panel's recommendation that the FRSA have rule-making authority. This is consistent with the OECP report vis-à-vis a pension regulator. However – as the OECP report noted – in order for such rule-making authority to function, the PBA must have a clear purpose mandate and express principles to govern and guide the rule-making function.

This would require considerable changes to the PBA as well as a change in the current approach towards pension legislation in Ontario, which has been to develop a more prescriptive regulatory framework. In short, the trend has been to remove discretion from the regulator and plan administrators.

ACPM recognizes that the Preliminary Paper is focused on the governance, structure and mandate of the proposed FRSA and not on how to implement and effect such change. However, the governance and mandate of the FRSA and the policy objectives of the PBA are, in ACPM's view, intertwined and should be recognized by the Panel. If changes to the PBA are not implemented in conjunction, and consistent, with the establishment and intentions of the FRSA, it may have the effect of undermining the care and attention that this panel has put into determining how a well-governed FRSA could be structured.

Self-Funding of the FRSA

ACPM believes that there should be clear methods of accountability for the sources of funding raised by the FRSA and how such funds will be directed within the FRSA. ACPM notes that the Preliminary Paper calls for various shared services to be built into the structure of the FRSA. While this could bring about efficiencies – we caution that the distinct nature of pension plans will require special skill sets that are dedicated to the oversight of pension plans and accountability to the Superintendent of Pensions. ACPM is concerned that the consolidated structure of the FRSA could result in cross-subsidization among sources of revenue. In short, revenue raised from pension plans to support the functions of the FRSA should only be used in support of the pension plan functions of the FRSA.

If the costs that support the non-pension functions of the FRSA are added to the fee structure imposed on pension plans as part of the proposed FRSA, this may only serve to disadvantage plan members and plan sponsors. For example, whether an employer establishes a pension plan is, in most cases, voluntary. Extra or unnecessary costs could dissuade employers from establishing, or continuing, their pension plans to the detriment of their employees' retirement savings or planning.

The ACPM thanks the Expert Advisory Panel for this opportunity to comment on its preliminary findings. Representatives of ACPM would be glad to answer any questions the Panel may have about this submission.