



October 4, 2022

Caroline Blouin
Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9
Via email

Re: Consultation on Proposed Guidance: Pension Plan Amendments No. PE0301INT (the “Proposed Guidance”)

Dear Ms. Blouin:

We are writing to you on behalf of the Association of Canadian Pension Management (the “ACPM”) regarding the above-noted consultation on Proposed Guidance on Pension Plan Amendments.

ACPM is the leading advocacy organization for a balanced, effective and sustainable retirement income system in Canada. Our private and public sector retirement plan sponsors and administrators manage retirement plans for millions of plan members.

The ACPM Ontario Regional Council and the National Policy Committee have reviewed the proposed guidance and feel we must express our deep concern with the Proposed Guidance. In summary, the guidance does not appear to be consistent with the Pension Benefits Act (the “PBA”) or established jurisprudence.

Section 3.1 of the Proposed Guidance:

Subsection 13(2) allows for the possibility of retroactive amendments to a pension plan and the amendment filing requirement in subsection 12 is measured from the date the amendment has been made (i.e., when the decision is made by the employer or administrator with the necessary authority to amend the pension plan) as opposed to the effective date of the amendment itself.

The section in the PBA regarding void amendments provide for protection against the reduction of accrued benefits and the section on adverse amendments ensure that advance notice and opportunity for comment is afforded to affected beneficiaries before an amendment is registered.

The Proposed Guidance appears to be an attempt by FSRA to expand its regulatory powers beyond those which it has under the PBA. Aside from the additional litigation that would likely be generated (and the associated costs to administrators and employers who operate and/or sponsor pension plans), the vague and subjective nature of the language used in Proposed Guidance for when FSRA may “take issue” with an amendment will create a great deal of uncertainty in the industry.

ACPM advocates for a strong retirement system in Canada and guidance such as this would likely be viewed as more reason for employers not to sponsor a pension plan.

Section 3.2 of the Proposed Guidance

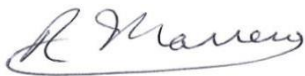
ACPM has similar concerns with Section 3.2. The positions in the draft guidance are either inconsistent with existing case law and/or the wording of the PBA and appear to also be an attempt to expand FSRA's regulatory powers beyond the boundaries of the PBA. For example, Section 14 does not void amendments that "have the potential" to reduce an accrued benefit or a commuted value, and there is case law dealing with the interpretation of Section 14 in the context of an amendment to an indexation formula that is explicit on this point.

Section 3.3 of the Proposed Guidance

Under Section 26 of the PBA, after an adverse amendment is filed, the CEO must require an administrator to send an adverse amendment notice. In the proposed Guidance, we believe that FSRA is attempting to outline how it will apply the notice requirement under section 26 of the PBA, but we feel that the Guidance could go further to better articulate FSRA's expectations of administrators under section 26. ACPM would be supportive of guidance regarding when the CEO will ordinarily require notice and to whom it must be sent. We stress, however, that failure to give such advance notice cannot invalidate an otherwise valid amendment where notice is sent after filing as directed by the CEO.

Thank you for the opportunity to comment on the Proposed Guidance. We would appreciate the opportunity to meet with you to expand upon and discuss our comments. Please contact Ric Marrero at the National Office and we would be pleased to arrange a meeting with the appropriate FSRA representatives.

Yours sincerely,



Ric Marrero
Chief Executive Officer
ACPM



Karen Burnett
Chair, Ontario Regional Council
ACPM