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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

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Via email

RE: Pension Plan Administrator Roles and Responsibilities

To Whom It May Concern:

ACPM is the leading advocacy organization for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We are the voice of retirement plan sponsors, administrators and trustees in the private and public sector and our membership represents retirement income plans that cover millions of plan members.

ACPM is pleased to respond to the proposed Guidance on Pension Plan Administrator Roles and Responsibilities ("Guidance"), which incorporates guidance pertaining to a variety of topics and replaces prior policies relating to plan expenses, records retention, member inquiries and complaints, and electronic communications.

We wish to offer the following feedback and suggestions:

1. FSRA's Guidance Framework includes distinct classifications for Interpretation, Information and Approach. This Guidance is classified as Interpretation, which sets out FSRA's view of requirements under the *Pension Benefits Act* Ontario ("PBA") that may lead to enforcement or supervisory action. The Guidance acknowledges that it also includes FSRA's views on good or best practices, and we note that this extends to commentary on civil and administrative law considerations that fall outside the mandate of a pension regulator. While recognizing that pension administrators perform their duties in a legal environment that is broader than just the PBA, this approach blurs the lines between statutory guidance related to FSRA's mandate and general commentary on best practices and other legislation that is not within FSRA's mandate. We suggest FSRA more clearly indicate this distinction in the Guidance and consider whether this document would be better classified as "Information" rather than "Interpretation Guidance", or that its focus be narrowed to align with the current classification.

2. The Guidance is framed as providing FSRA's interpretation of the roles and responsibilities of pension plan administrators, which includes a diverse range of pension plan designs and governance structures.

   The Guidance acknowledges in footnote 1 that specific aspects of an administrator's roles and responsibilities can vary on this basis, yet this distinction is not reflected in the statement in Section 2.3 that "The responsibilities of the employer include… providing sufficient funding to provide the promised pension benefits". While this may be true in an employer-sponsored defined benefit provision, the statement would not apply to other types of arrangements, such as defined contribution or certain multi-employer plans.

3. Section 5.3 of the Guidance describes the standard of care applicable to pension plan administrators under sections 22(1) and (2) of the PBA and states that section 22(2) increases the minimum standard of ordinary prudence. We suggest that Section 5.3 be re-worded to note that section 22(1) imposes a basic standard of ordinary prudence applicable to administrators generally, and section 22(2) creates supplementary obligations requiring administrators to use their actual relevant knowledge and skills, along with any knowledge and skills that would be expected of them as members of a particular profession, business or calling.

4. Sections 5.6 and 5.7 of the Guidance discuss the management and disclosure of potential conflicts of interest in relation to an administrator's fiduciary duties, and specifically comments upon this topic in relation to service provider engagements. The provision of professional, external advice to both a plan sponsor/employer and plan administrator by an actuary or lawyer does not inherently engage a conflict of interest and it is important that the Guidance not imply or assume that this would be the case. The terms of engagement and professional standards that guide the provision of such advice may also serve to help manage any such potential conflict.

5. Section 6.1 references the types of activities that may be provided by a third-party service provider. We suggest that the second sentence should not imply that the administrator has no role in investment decisions. Commonly, if the administrator does not have its own Chief Investment Officer and investment team, it may engage an investment consultant to advise on asset allocation (but the administrator still has to make the decision on the target allocation and the Statement of Investment Policies and Procedures) and it will typically hire investment managers to select the securities to hold in the portfolio (either directly or through the use of pooled funds). Such activities include, for instance, the preparation of a valuation report, advice on asset allocation (where the administrator still has to select the target asset allocation) and selection of securities to implement the chosen target asset allocation, for the plan fund or for the selection of members' investment options, as applicable.

6. As per the commentary above, we suggest greater clarity and consistency of the distinction between statutory guidance and general commentary, particularly in the sections on records retention and complaints and inquiries.

For example, the statement in Section 9.2 that "Beneficiaries should feel respected and fairly treated even if they disagree with a decision" strays from a principles-based approach and is ill-suited to inclusion in Interpretation Guidance, which is intended to summarize FSRA's view of requirements breach of which could lead to enforcement or supervisory action. To the extent such commentary is intended to be educative in nature, please consider whether such suggestions may be better suited to channels other than the Guidance.

Also, an administrator is not required by the PBA to direct a complaint to FSRA where it is not resolved to the satisfaction of the claimant, and we suggest that this reference in Section 9.3 be clarified to indicate that this is not mandatory.

7. We wish to offer the following suggestions in relation to records management and electronic records in Section 8:

    a. It is helpful that FSRA has acknowledged that not all records need to be retained indefinitely upon settlement of benefits following member termination where sufficient records exist to demonstrate fulfillment of the administrator's duties and appropriate discharge of benefits. We encourage FSRA to articulate this as a general principle that may apply in other situations, such as historical records relating to completed asset transfers.

    b. The Guidance should clarify that the retention periods discussed in the first bullet point of Section 8.4 also apply to digital records and refer explicitly to any legal obligations relating to document retention.

    c. We encourage FSRA to reconsider the third bullet of Section 8.4, which implies that longer retention of electronic records should be the default approach "given the relative ease and expense of electronic document retention". The premise for this statement may not hold true and does not reflect other considerations, such as the management of cyber risk.

    d. The statement in Section 8.2 of the Guidance which suggests that the administrator may be in breach of section 22 of the PBA where it does not maintain relevant records may be viewed as overly broad. It would be helpful to indicate that beneficiaries also have a responsibility to maintain their information and records, noting that a claimant bears the onus of demonstrating a prima facie case and entitlement to a benefit.

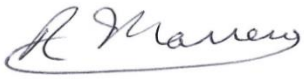
        An administrator's failure to produce records does not create an entitlement under a plan and any determination of a failure to administer in accordance with section 22 of the PBA would have to be supported by the facts of a particular circumstance.

8. The Guidance in Section 10 on provision of information to beneficiaries is not entirely consistent, as Section 10.1 states that administrators must "provide appropriate information to beneficiaries that… reflects any changes to the plan within a reasonable amount of time" but Section 10.2 goes on to state that administrators should "put in place written policies and procedures to ensure that information accessed by beneficiaries is always current and complete" (emphasis added). We suggest that the principle of timely notification in section 10.1 is sufficient for this point, and that any risks associated with inadvertent communication errors or gaps that may arise from time to time would best be assessed based on the facts of the situation.

   In addition, Section 10.2 suggests that inadvertent errors in communications may impact the rights and entitlements of beneficiaries, referencing case law from the courts involving negligent misrepresentations. We suggest this reference be clarified as pension entitlements are governed by the plan terms, whereas a claim for damages is a separate action that would generally be dealt with through the courts, not FSRA.

We appreciate the opportunity to provide input and hope that these comments are helpful as FSRA finalizes its guidance.

Sincerely,



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