

Chapter 3
Section
3.03

Financial Services Commission of Ontario— Pension Plan and Financial Service Regulatory Oversight

Standing Committee on Public Accounts Follow-Up on Section 3.03, 2014 Annual Report

The Committee held a public hearing in March 2015 on our 2014 audit of the Financial Services Commission of Ontario’s (FSCO’s) Regulatory Oversight of Pension Plans and Financial Services. The Committee tabled a report in the Legislature resulting from this hearing in June 2015. The full report can be found at www.ontla.on.ca/committee-proceedings/committee-reports/FSCO.

The Committee made 14 recommendations and asked that FSCO report back by the end of

September 2015. FSCO formally responded to the Committee on September 30, 2015. Many issues raised by the Committee were similar to those in our audit observations in 2014, which we have also followed up on this year (see Chapter 1). The status of each of the Committee’s recommended actions is shown in **Figure 1**. **Figure 2** shows the recommendations and the status details that are based on responses from FSCO, and our review of the information provided.

Figure 1: Status of Actions Recommended in November 2015 Committee Report

Prepared by the Office of the Auditor General of Ontario

	# of Actions Recommended	Status of Actions Recommended			
		Fully Implemented*	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented
Recommendation 1	1			1	
Recommendation 2	1			1	
Recommendation 3	2	1		1	
Recommendation 4	1	1			
Recommendation 5	1		1		
Recommendation 6	1	1			
Recommendation 7	1		1		
Recommendation 8	1	1			

	# of Actions Recommended	Status of Actions Recommended			
		Fully Implemented*	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented
Recommendation 9	3	1		2	
Recommendation 10	1			1	
Recommendation 11	1	1			
Recommendation 12	2		1	1	
Recommendation 13	4	2	1	1	
Recommendation 14	2			2	
Total	22	8	4	10	0
%	100	37	18	45	0

* Some recommendations required the Ministry and FSCO to provide information to the Committee. The cases in which the Ministry and FSCO provided the information as requested we have counted as “fully implemented.”

Figure 2: Committee Recommendations and Detailed Status of Actions Taken

Prepared by the Office of the Auditor General of Ontario

Committee Recommendation	Status Details
<p>Recommendation 1 FSCO identify strategies to help inform and mitigate financial risk of underfunded plans, including potential impact of varying levels of economic growth. Status: Little or no progress.</p>	<p>FSCO has not developed strategies or considered changes to legislation that would mitigate the financial risk to plan sponsors and members from underfunded plans. In October 2016, FSCO completed an analysis that covered changes in the funded status of plans from 1992 to 2014 and the primary factors driving the change. FSCO had intended to calculate projected underfunding levels over the following few years, based on a range of economic growth scenarios. However, FSCO’s analysis of the province’s GDP from 2005 to 2015 showed there was no correlation between the funded status of pension plans and economic growth.</p>
<p>Recommendation 2 Based on these identified strategies, FSCO provide the Ministry of Finance with recommended legislative changes. Status: Little or no progress.</p>	<p>In July 2016, the Ministry issued a consultation paper about the solvency funding framework for defined benefit pension plans. FSCO was to provide its analysis of the factors contributing to the underfunding of pension plans to the Ministry. Once the Ministry received feedback to the consultation paper from stakeholders, it planned to draft the necessary legislative and regulatory amendments. As of our follow-up, FSCO was awaiting further information from the Ministry.</p>
<p>Recommendation 3 FSCO complete analysis of ways to improve monitoring of the Pension Benefits Guarantee Fund, such as:</p> <ul style="list-style-type: none"> developing risk indicators for the fund; and incorporate expanded disclosure in the financial statements of the fund to better reflect plan exposure. <p>Status: Fully implemented.</p> <p>Status: Little or no progress.</p>	<p>FSCO completed an analysis of the legislative and procedural changes it would need to monitor the Pension Benefits Guarantee Fund’s (PBGF’s) exposure to potential claims and address its sustainability. In August 2016, FSCO prepared and shared with the Ministry a report with several possible enhancements to legislation, including allowing the PBGF to seek external financing to meet short-term cash flow needs, requiring parent companies of insolvent plan sponsors to provide those sponsors with financial support, and allowing the Superintendent greater discretion to order the wind-up of insolvent plans that could potentially file significant claims against the PBGF.</p> <p>FSCO noted that since its current financial statement disclosure for the PBGF is in compliance with accounting standards, it did not expand its disclosure in 2015 and 2016. It said it will reassess disclosure requirements on an annual basis going forward.</p>

Committee Recommendation	Status Details
<p>Recommendation 4 FSCO provide recommended changes to the <i>Pensions Benefits Act</i> and associated regulations based on this analysis [of the PBGF]. Status: Fully implemented.</p>	<p>As a result of the PBGF, FSCO shared its recommendations with the Ministry in August 2016. The Ministry told us it will be consulting with FSCO to ensure that possible changes to legislation would help to better manage the PBGF. The Ministry told us that this consultation is happening concurrently with the agency mandate review. The Minister of Finance appointed an expert advisory panel in early 2015 to review the mandates of FSCO, the Financial Services Tribunal and the Deposit Insurance Corporation of Ontario. The panel reviewed whether each agency's mandate aligned with the Province's goals and priorities; whether each agency was fulfilling its mandate; whether the functions of each agency could be better performed by another entity; and whether changes to the current organizational structure were necessary to improve accountability and mandate delivery.</p> <p>The Ministry informed us that it expects to make its final decisions about FSCO's mandate and possible changes to legislation in the fall of 2016.</p>
<p>Recommendation 5 FSCO identify the powers that the Office of the Superintendent of Financial Institutions has that FSCO does not, as well as differences in plan administrators' mandatory reporting, such as requiring annual actuarial reports from plans that are funded less than 120%, and provide the Committee an analysis of the risks of not having similar powers and requirements. Status: In the process of being implemented by December 31, 2016.</p>	<p>FSCO said it has started reviewing the extent of the Superintendent's powers and how they compare with those of the federal Office of the Superintendent of Financial Institutions. This analysis is expected to be completed by the end of 2016.</p>
<p>Recommendation 6 FSCO identify and recommend areas where monetary penalties would be effective for enforcement purposes. Status: Fully implemented.</p>	<p>In June 2015, FSCO submitted a report to the Ministry that proposed using penalties as a regulatory tool in cases of late filings and other contraventions of the <i>Pension Benefits Act</i>. The report also contained the legislative changes that would be required to impose these penalties. This report proposed fixed penalties for violations such as late or missing filings and variable penalties for all other offences. The Ministry told us that it is considering FSCO's proposed legislative changes together with recommendations from the agency mandate review. The Ministry informed us that it expects to complete this work in the fall of 2016.</p>
<p>Recommendation 7 FSCO provide an update on whether more examinations can be conducted with existing resources and the changes it plans to make to its examination methodology to ensure key risks are covered. Status: In the process of being implemented by March 31, 2017.</p>	<p>FSCO now considers the results of its staged monitoring process for pension plans, which was fully implemented in June 2016, in deciding which plans to examine. FSCO also updated its examination procedures for both defined-benefit and defined-contribution plans. The expanded procedures include verifying that a plan's expenses are reasonable given its total size, that permitted asset classes in which members can invest are clearly established, and which default investment options exist for members if they do not choose their own investments. These additional procedures allow FSCO to check whether plan assets have been invested in accordance with federal investment regulations and that plan members have appropriate information about the risks associated with their investments. The expanded procedures were used by FSCO to examine 55 plans in 2015/16.</p> <p>Further, in September 2015, FSCO retained a vendor to provide monthly data about the potential inability of plan sponsors to meet pension obligations. As of our follow-up, FSCO was assessing how to use this information as part of its existing risk analysis to identify additional plans whose members are at risk for examinations. FSCO examined 55 plans in 2015/16 and planned to examine more than 55 in 2016/17, an increase from the 50 plans examined in recent previous years.</p>

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<p>Recommendation 8 FSCO complete its analysis of new information plan administrators can provide to members and make recommendations to government, as well as the new information FSCO can make public regarding its annual public reporting on pension plans. Status: Fully implemented.</p>	<p>In June 2016, FSCO reviewed statutory annual disclosure requirements in other provinces and territories, such as the United States and the United Kingdom. In October 2016, FSCO submitted to the Ministry recommendations for possible enhancements to current statutory annual disclosure requirements. Some additional disclosures recommended in the report include names and contact information of plan administrators and the earliest date plan members are eligible to retire.</p>
<p>Recommendation 9 FSCO work with the Ministry of Finance to identify regulatory amendments as required to ensure that:</p> <ul style="list-style-type: none"> • all co-op board members have criminal checks before the co-op is registered and offering statements are issued; Status: Little or no progress. • all approved offering statements are listed on FSCO's website; and Status: Fully implemented. • FSCO conduct ongoing monitoring of co-ops. Status: Little or no progress. 	<p>In December 2015, FSCO submitted legislative amendments to the Ministry to help protect members and investors of co-ops. This included a legislative change to allow FSCO to conduct criminal checks of co-op board members at the licensing stage and/or before the co-op was registered or any offering statements issued.</p> <p>The Ministry is reviewing FSCO's recommendations and considering whether legislative changes were necessary. No date had been set for completion of this review.</p> <p>FSCO began posting all approved co-op offering statements receipted on or after July 1, 2016. FSCO had not committed to posting all historical approved offering statements, but said it would continue to make these available to the public upon request.</p> <p>A legislative change is required for FSCO to have the authority to conduct ongoing monitoring of co-ops. FSCO provided the Ministry with recommended legislative amendments in December 2015. The Ministry was reviewing FSCO's recommendations and considering whether legislative changes to the <i>Co-operative Corporations Act</i> are necessary. It had not indicated when it would decide on FSCO's recommendations.</p> <p>In the meantime, FSCO said it would continue to focus on verifying co-ops' information during the initial registration period.</p>
<p>Recommendation 10 FSCO provide the government with recommendations regarding the level of the fees it collects for reviewing co-op offering statements. Status: Little or no progress.</p>	<p>FSCO said it would be inappropriate to proceed with this recommendation during the mandate review, given the recommendation to move the oversight of co-ops away from FSCO and/or the newly proposed regulatory body. FSCO planned to begin an analysis of its costs in the co-op sector and recommend possible fee changes to the Ministry in 2017, subject to any announcement by the government on the mandate review. These announcements are expected in fall 2016.</p>
<p>Recommendation 11 FSCO provide an update on discussions with the Ontario Securities Commission on the benefits of sharing or transferring responsibility of reviewing offering statements. Status: Fully implemented.</p>	<p>In November 2015 and February 2016, representatives from FSCO and the Ontario Securities Commission met to conduct exploratory discussions about how a potential transfer of responsibility would be carried out. There is a standing offer in place from the Commission to assist FSCO with reviewing complex offering statements in future. However, as of our follow-up, discussions had been put on hold until FSCO received further policy direction from the Ministry. The Ministry was reviewing the recommendations made by the expert panel for FSCO's mandate review, including the recommendation about the transfer of responsibility. The Ministry expected to make its decisions from the mandate review in fall 2016.</p>

Committee Recommendation	Status Details
<p>Recommendation 12 FSCO provide an update on:</p> <ul style="list-style-type: none"> • implementation of programs to support data-gathering, internal controls and risk assessment related to the licensing system; and Status: In the process of being implemented by December 31, 2017. • agreements with insurers related to receiving data on which agents have purchased errors and omissions insurance, as well as insurance that has lapsed. Status: Little or no progress. 	<p>FSCO has implemented several enhancements to its online licensing system:</p> <ul style="list-style-type: none"> • Insurers can download a list of their sponsored agents to verify that they have valid insurance. • The system sends email reminders to agents when their insurance is about to expire or has expired. • The online system no longer has free-form fields. • There is a new comment field that publicly identifies agents whose insurance has lapsed. <p>However, the system still does not automatically verify if errors and omissions insurance information is valid at the time it is entered by an agent; this lets agents get licences without having to meet minimum licensing requirements.</p> <p>FSCO was assessing whether these controls and some other process improvements it had made improved the accuracy of the errors and omissions insurance information in its database. The assessment was expected to be completed sometime in 2017. FSCO said it would then decide if any additional controls were required.</p> <p>FSCO staff prepared an errors and omissions insurance compliance position paper in December 2015, recommending that, before any further action was taken, the enhancements above be monitored for 12 to 18 months to see whether they were providing accurate compliance rates. The Superintendent accepted this recommendation.</p> <p>In 2016, FSCO assessed the feasibility of gathering information about errors and omissions claims filed against life insurance agents using data collected by the General Insurance Statistical Agency and the Insurance Bureau of Canada. FSCO found it was not feasible to use available industry data to obtain detailed information on these claims. FSCO has committed to working with insurance industry stakeholders to collect additional data in 2016/17, but it has not indicated that it will be establishing agreements with errors and omissions insurance providers.</p>

Committee Recommendation	Status Details
<p>Recommendation 13 FSCO provide an update on:</p> <ul style="list-style-type: none"> the implementation of its framework that documents how FSCO identifies, assesses and deploys compliance resources; Status: In the process of being implemented by March 31, 2017. steps taken to monitor timeliness and outcomes of complaints and ensure holders of sanctioned licences by other regulators that also hold FSCO licences are assessed quickly; Status: Fully implemented. its assessment of the need for proactive investigations in each regulated sector to allow for periodic examinations of all registrants and licensees; and Status: Little or no progress. how FSCO will provide more timely publication of compliance and examination reports to the industry. Status: Fully implemented. 	<p>In 2016, FSCO developed the draft Market Regulation Branch’s Supervisory Framework, which lays out its nine-step supervisory model and provides guidance to staff on market supervision best practices and tools. The model is intended to help FSCO develop and execute its Annual Supervisory Plan, which includes complaint resolution, desk reviews, onsite examinations, and sector reviews. The framework has been substantially implemented, and gaps were to be fully addressed by March 2017.</p> <p>In 2015/16, FSCO implemented monthly monitoring and reporting of complaint handling to measure whether it was meeting its targets of closing 80% of consumer complaints in 75 days and all complaints within 365 days. It found it was meeting those targets.</p> <p>In 2016, FSCO implemented a new process so it would receive regulatory sanction notifications from the 36 other relevant regulators in Canada. FSCO stated that through this process, it identified almost 50 sanctions against its licensees imposed by other regulators. FSCO uses monthly performance measure reporting to monitor whether these complaints are resolved in a timely manner.</p> <p>Since December 2014, FSCO has also signed memorandums of understanding (MOUs) with the Mutual Fund Dealers Association of Canada, the Real Estate Council of Ontario, and the Investment Industry Regulatory Organization of Canada. The purpose of these MOUs is mutual assistance and sharing of information among the regulators, including the regulatory action they may take against one another’s licensees and registrants.</p> <p>FSCO has not assessed the need for proactive investigations in each of its regulated financial sectors. FSCO implemented risk-based supervisory approaches to improve its proactive assessment of the regulated financial services sectors. It told us it did not have sufficient staffing resources to conduct proactive investigations of all registrants and licensees in each of its regulated financial sectors.</p> <p>On its website, FSCO has published multiple reports regarding the overall results of its examination of regulated entities and licensed individuals, such as mortgage brokers, life insurance agents and service providers.</p>
<p>Recommendation 14 FSCO provide a formal recommendation on:</p> <ul style="list-style-type: none"> the transferring of some responsibility for protecting the public interest and enhancing public confidence to new or established self-governing industry associations; and Status: Little to no progress. the transferring of regulatory responsibilities for regulated financial sectors to the federal Office of the Superintendent of Financial Institutions. Status: Little to no progress. 	<p>The expert advisory panel conducting FSCO’s mandate review presented its final report to the Ministry in March 2016. It contained 44 recommendations. The overall position of the panel was that many functions performed by FSCO and DICO could be better performed by a single new and integrated entity, the Financial Services Regulatory Authority.</p> <p>FSCO was awaiting further direction from the Ministry regarding the transfer of its responsibilities and changes to its mandate.</p>