

# Chapter 1

## Section 1.03

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

Follow-Up on VFM Section 3.03, 2014 Annual Report

RECOMMENDATION STATUS OVERVIEW					
	# of Actions Recommended	Status of Actions Recommended			
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented
Recommendation 1	2	1		1	
Recommendation 2	2	2			
Recommendation 3	6	4	2		
Recommendation 4	5	3	1	1	
Recommendation 5	4	1	1	1	1
Recommendation 6	5	2		3	
Recommendation 7	3			3	
Recommendation 8	5	4		1	
Recommendation 9	1			1	
<b>Total</b>	<b>33</b>	<b>17</b>	<b>4</b>	<b>11</b>	<b>1</b>
<b>%</b>	<b>100</b>	<b>52</b>	<b>12</b>	<b>33</b>	<b>3</b>

## Background

The Financial Services Commission of Ontario (FSCO) is an agency accountable to the Ministry of Finance (Ministry) and responsible in Ontario for regulating pension plans; the insurance industry; the mortgage brokerage industry; credit unions and caisses populaires; loan and trust companies; and co-operative corporations (known as co-ops). FSCO's mandate is to protect the public interest and enhance public confidence in Ontario's regulated

financial sectors through registration, licensing, monitoring and enforcement.

The Pension Division of FSCO administers and enforces the *Pension Benefits Act* (Act) and its regulations. Under the Act, every employer that establishes a pension plan in Ontario must register it with FSCO and comply with the reporting and fiduciary responsibilities set out in the Act. The Licensing and Market Conduct Division of FSCO administers and enforces the requirements of legislation pertaining to the financial service sector.

Underfunded pension plans are those that would not have enough funds to pay full pensions to their members if they were wound up immediately.

In our *2014 Annual Report*, we noted that the level of underfunding in defined-benefit pension plans in Ontario had become significantly worse during the previous decade. As of December 31, 2013, 92% of Ontario's defined-benefit plans were underfunded, compared to 74% as of December 31, 2005. The total amount of underfunding of these plans grew from \$22 billion in December 2005 to \$75 billion in December 2013.

However, during our follow-up, we found that the overall financial health of plans has improved from the time of our 2014 audit, with 83% of plans being underfunded as of December 31, 2015, down from the 92% in 2013. Similarly, the total underfunding of plans decreased from \$75 billion in 2013 to \$63 billion in 2015.

FSCO had limited powers to deal with administrators of severely underfunded pension plans, or those who do not administer plans in compliance with the Act. In contrast, FSCO's federal counterpart, the Office of the Superintendent of Financial Institutions (OSFI) had legal authority to terminate a plan, appoint a plan administrator, or act as an administrator, but FSCO could only prosecute an administrator (which is usually the employer company), issue compliance orders or take action after it orders the wind-up of a plan. As well, it could not impose fines on those who failed to file information returns on time.

In our 2014 report, we concluded that FSCO should make better use of the powers it already had under the Act to monitor pension plans, especially those that were underfunded. Regarding the oversight of pensions, other significant issues included the following:

- In the four years prior to our 2014 audit, FSCO had conducted on-site examinations of only 11% of underfunded plans on its solvency watch list. At this rate, it would take 14 years to examine them all. As well, FSCO took little or no action against late filers of information.
- It was uncertain whether the Pension Benefits Guarantee Fund (PBGF), designed to protect members and beneficiaries of single-employer

defined-benefit plans in the event of employer insolvency, was itself sustainable.

With respect to the Licensing and Market Conduct Division's (Division's) oversight of regulated financial services, we had the following significant issues:

- FSCO undertook minimal oversight of co-ops, which raise millions of dollars from investors each year for ventures such as renewable energy initiatives. FSCO did no criminal background checks of key members before a co-op was registered and began raising money.
- Weakness in FSCO's online licensing system allowed life insurance agents to hold active licences without having entered proper information about whether they had up-to-date errors and omissions insurance to cover client losses arising from negligence or fraud by an agent.
- There were significant delays and weak follow-up enforcement actions in the Division's handling of several serious complaints.

In our 2014 audit, we recommended that FSCO conduct an analysis of the specific reasons for the increase in underfunded pension plans and the financial exposure to the province; assess the Pension Benefits Guarantee Fund's financial risk exposure to potential claims and to its continuation; ensure that its online licensing system has the necessary controls to identify and reject licences for insurance agents who do not meet minimum requirements; investigate complaints in a timely manner; and explore opportunities to transfer more self-governing responsibilities to financial services sectors.

We received commitments from the commission that it would take action to address our recommendations.

## Standing Committee on Public Accounts

In March 2015, the Standing Committee on Public Accounts (Committee) held a public hearing on

our 2014 FSCO Pension Plan and Financial Service Regulatory Oversight audit. In June 2015, the Committee tabled a report in the Legislature resulting from this hearing. The Committee endorsed our findings and recommendations. The Committee made 14 additional recommendations and asked FSCO to report back by the end of September 2015. The Committee's recommendations and follow-up on their recommendations are found in Chapter 3, **Section 3.03** of Volume 2 of our *Annual Report*.

## Agency Mandate Review

In early 2015, an expert panel was appointed by the Minister of Finance to review the mandates of FSCO, the Financial Services Tribunal (FST), and the Deposit Insurance Corporation of Ontario (DICO). The panel was charged with determining whether:

- each agency's mandate aligned with the province's goals and priorities;
- each agency was fulfilling its mandate;
- the functions of each agency could be better performed by another entity; and
- changes to the current governance structure were necessary to improve accountability and mandate alignment.

The panel released a consultation paper in April 2015, to which FSCO responded in June 2015. The panel released its preliminary position paper in November 2015, and presented its final recommendations to the Minister of Finance on March 31, 2016. The Ministry informed us that decisions based on these recommendations are expected in fall 2016. The panel made 44 recommendations, with the overall position that many functions performed by FSCO and DICO could be better performed by a single new and integrated entity—the Financial Services Regulatory Authority or FSRA. We reviewed the panel's final report, and noted that its findings and recommendations reflected our assessment of FSCO's functions in 2014. Specifically, the panel noted that the FSRA, if created, would need to:

- be more proactive in conducting investigations and taking enforcement action;
- have an obligation to work with other regulators to share information about disciplinary and enforcement action to eliminate regulatory overlap and gaps;
- have the authority to levy administrative monetary penalties in any sector it regulates; and
- structure co-operative offering statement review fees in a manner that reflects its review costs.

## Status of Actions Taken on Recommendations

FSCO provided us with information in the spring and summer of 2016 on the status of our recommendations. According to this information, 17 of 33 actions we recommended in our *2014 Annual Report* had been fully implemented.

With respect to pensions, these are:

- analyzing the reasons for the increase in the underfunding of defined-benefit pension plans
- assessing the Pension Benefits Guarantee Fund's (PBGF) financial risk exposure to potential claims and its continuation as an insurer of single-employer defined-benefit pension plans, and it using this information to recommend further possible changes to the *Pensions Benefits Act* and regulations to address the sustainability of the PBGF;
- seeking changes to the *Pension Benefits Act* to provide FSCO with powers similar to those of the federal Office of the Superintendent of Financial Institutions, including powers to terminate, appoint and act as a plan's administrator;
- establishing a staged approach for earlier monitoring and supervision of pension plans that have solvency deficiencies;

- introducing a program that regularly assesses the reasonableness of assumptions used in actuarial valuation reports;
- taking more proactive follow-up action against plan administrators that do not submit statutory filings on time;
- ensuring that its procedures for examining plans effectively address the risks associated with investments managed by plan administrators;
- ensuring it has the necessary information to identify plans at risk before employers launch bankruptcy proceedings;
- establishing an examination program for defined-contribution plans that provides effective monitoring and protection to plan members; and
- identifying and seeking to implement improvements to statutory annual disclosure requirements of a plan administrator that would provide more meaningful information to all members on the plan's performance and expenses.

With regard to financial services, FSCO has fully implemented our recommendations that:

- all approved co-ops offering statements are listed on its website; and
- it consult with the Ontario Securities Commission on the benefits of sharing or transferring the responsibility of reviewing offering statements.

With respect to market conduct, FSCO has fully implemented our recommendations that it:

- take timely action to investigate complaints, and have adequate systems and procedures in place to monitor the timelines and outcomes of its handling of complaints and investigations;
- identify common issues from its examination activities and share them with the industry, and consider action that can be taken to mitigate their causes; and
- establish systems and procedures to promptly identify, investigate and determine the con-

tinued suitability of registrants and licensees who have received sanctions from other associations.

FSCO had also made progress on four of the remaining actions we recommended. However, significant work is still needed to address our recommendations in areas that require legislative changes, including criminal background checks for co-op board members before the co-op is registered. Such policy decisions rest with the Ministry.

Each quarter, the Ontario Internal Audit Division (OIAD) reviews the status of our audit recommendations to monitor progress made by FSCO and assesses whether management's action plans can substantiate the status of implementation. Based on its latest review in August 2016, OIAD concluded overall that FSCO had made progress in implementing our recommendations. We reviewed the OIAD's report, and this is in line with our assessment of FSCO's progress to date.

The status of the actions taken on each recommendation is described in the following sections.

## Pensions

### Recommendation 1

*In view of the significant increasing underfunding of defined-benefit pension plans in Ontario, the Financial Services Commission of Ontario should conduct an analysis of the reasons for this increase, the potential for plans to recover based on a variety of predictions of economic growth in the province over the next several years, and the financial exposure to the province should the underfunding situation not improve in the next few years.*

**Status: Fully implemented.**

#### Details

In our 2014 audit, we found that as of December 13, 2013, 92% of defined-benefit pension plans were underfunded, with plan liabilities exceeding assets by \$75 billion. This was a significant increase from December 31, 2005 when 74% of plans were underfunded, with a total deficit of \$22 billion.

Due to the economic downturn in 2008, all types of defined-benefit plans saw an increase in their underfunding.

Since our audit in 2014, FSCO analyzed changes in the funded status of plans from 1992 to 2014 and the primary factors driving the change. The analysis showed that the primary factors affecting the change were long-term interest rates, investment returns and special payments to amortize funding deficiencies.

FSCO told us it had intended to calculate projected underfunding over the following few years, based on a range of economic growth scenarios. FSCO reviewed the province's GDP from 2005 to 2015 and found there was no correlation between the funded status of pension plans and economic growth.

*It should use this information to identify and recommend strategies and changes to the legislation that could help to inform and mitigate the financial risk to sponsors and members of pension plans, as well as to legislators and taxpayers.*

**Status: Little or no progress.**

#### Details

Since our 2014 audit, FSCO has not developed strategies or considered changes to legislation that would mitigate the financial risk to plan sponsors and members of underfunded plans. In July 2016, the Ministry issued a consultation paper about the solvency funding framework for defined-benefit pension plans, including how solvency is assessed and the minimum solvency funding requirements needed to balance the needs of plan sponsors, member, and retired employees. FSCO has told us that it will provide to the Ministry its analysis of the factors contributing to the underfunding of pension plans. Once the Ministry receives feedback to the consultation paper from stakeholders, it plans to draft the necessary legislative and regulatory amendments. FSCO is currently awaiting further information from the Ministry.

#### Recommendation 2

*The Financial Services Commission of Ontario should assess the Pension Benefits Guarantee Fund's (PBGF) financial risk exposure to potential claims and its continuation as an insurer of single-employer defined-benefit pension plans, and it should use this information to recommend further possible changes to the Pensions Benefits Act and regulations to address the sustainability of the PBGF.*

**Status of both actions: Fully implemented.**

#### Details

In our 2014 audit, we reported that the PBGF was intended to be self-sustaining through annual assessment fees it charged to certain defined-benefit pension plans. However, our audit found that the PBGF's financial risk exposure had increased significantly from 2008 to 2014. In 2008, the PBGF was exposed to the cumulative solvency deficiencies of the 2,258 pension plans it covered, which amounted to \$6.6 billion at that time. By March 31, 2014, these cumulative deficiencies had grown by more than 400% to \$28.9 billion, even though the PBGF covered only 1,894 plans, 19% fewer than in 2008.

Since our audit in 2014, FSCO's analysis of PBGF's financial risk exposure has shown there is one potentially significant claim on PBGF's funds. Although FSCO does not foresee any significant claims in the fiscal year ending March 31, 2017, it has projected that there is some likelihood of a significant claim in the fiscal years ending March 31, 2018 and 2019. Other than the one potentially significant claim, FSCO considers the overall liquidity risk to the PBGF for this time period to be low and will be using its analysis to consider how it can mitigate the PBGF's exposure to potential claims. It shared its analysis with the Ministry in August 2016, and the Ministry told us that it is reviewing these results while it considers revising the funding framework for defined-benefit plans in Ontario.

In our 2014 audit, we found that the PBGF's liability for paying claims of insolvent pension plans

was limited to the amount of the fund's own assets. As a result, since 1980, the PBGF had required loans and grants from the province totalling \$855 million to cover all eligible claims. As of March 31, 2014, the PBGF had loans payable to the province of \$220 million. Meanwhile, as of August 31, 2014, there were 15 employers with pension plans covered by the fund whose solvency deficiencies each exceeded \$200 million. Several studies since 2008 have questioned the PBGF's viability and recommended that the government assess its continuation.

Since our audit, FSCO has analyzed the legislative and procedural changes required to monitor the PBGF's exposure to potential claims and address its sustainability. In August 2016, FSCO 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. The Ministry told us it is reviewing FSCO's proposed enhancements to legislation together with recommendations from the mandate review. The Ministry expects to make its final decisions about FSCO's mandate and possible changes to legislation in the fall of 2016.

### Recommendation 3

*To ensure the Superintendent has sufficient powers, authority and information to effectively monitor the administration and solvency of pension plans, the Financial Services Commission of Ontario should make changes to its policies and procedures, and, where necessary, seek changes to the Pension Benefits Act, to:*

- *provide it with similar powers to that of the federal Office of the Superintendent of Financial*

*Institutions, including powers to terminate, appoint and act as a plan's administrator;*

**Status: Fully implemented.**

#### Details

In our 2014 audit we found that, for plans that were severely underfunded or not being administered in accordance with the *Pension Benefits Act*, the Superintendent could not take disciplinary action aside from prosecuting plan administrators, issuing compliance orders or ordering the wind-up of a plan. Even when an administrator was not meeting its obligations, the Superintendent could not appoint a new administrator, except for plans that were being wound up. On the other hand, the federal Office of the Superintendent of Financial Institutions (OSFI) had powers to remove a plan administrator and appoint a replacement for plans where there was an immediate threat to members' benefits.

After talks with FSCO, the Ministry posted a description in September 2016 of proposed changes to regulations in the *Pension Benefits Act* that would grant the Superintendent the power to act as or appoint an administrator. This included a proposal to expand the powers of the Superintendent to appoint a plan administrator where the employer is in receivership, or the subject of proceedings under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*. Any changes to legislation will be made by the Ministry once the agency mandate review is complete. The Ministry informed us that this should occur in the fall of 2016.

- *establish a staged approach for earlier monitoring and supervision of pension plans that have solvency deficiencies;*

**Status: Fully implemented.**

#### Details

In our 2014 audit, we noted that unlike FSCO, the OSFI had a five-stage rating system that determined the type of intervention required for pension plans at risk of insolvency to minimize the risk to members.

In June 2016, FSCO finished implementing a staged approach for monitoring and supervising all pension plans. A risk score assigned to each plan determines the level of intervention by FSCO to address issues, including solvency. FSCO bases the risk score on information about each plan's risk in its funding, investment, administration, governance, sponsor and industry. This allows FSCO to identify high-risk plans and intervene earlier. FSCO has identified 29 high-risk plans, 14 of which have since become compliant with regulations; the remaining 15 are still under review.

- *increase the Superintendent's power to order a plan administrator to provide an actuarial valuation report, particularly when a plan has a solvency deficiency, and introduce a program that regularly assesses the reasonableness of assumptions used in these reports; and*  
**Status: First part of the recommendation—in the process of being implemented by December 31, 2016; second part of the recommendation—fully implemented.**

#### Details

In our 2014 audit, we reported that under the *Pension Benefits Act*, plan administrators of defined-benefit plans must file actuarial valuation reports every three years if their plan does not have a solvency concern, such as when the solvency ratio is 0.85 or higher, or annually if the solvency ratio is lower. FSCO does not have the power to order an interim actuarial valuation of a pension plan. Federal pension legislation requires more frequent filing of actuarial valuation reports. This allows for more accurate and timely reporting on the funding status of pension plans.

At the time of our 2014 audit, amendments to the *Pension Benefits Act* to provide the Superintendent with the powers to order plan administrators to file revised or additional actuarial valuation reports had yet to be proclaimed into force by the government. During our follow-up, the Ministry told us that it was actively considering developing regula-

tions that would allow these changes to be enacted. These regulations are being considered together with recommendations from the mandate review. The Ministry expects to complete this work in the fall of 2016.

In our 2014 audit, we also found that in the previous five years, FSCO received approximately 1,700 actuarial valuation reports annually. However, since the fall of 2011, FSCO had carried out detailed reviews of only a small number of actuarial reports each year on a sample basis. FSCO does not externally report the results of these reviews. However, as of June 2016, FSCO includes the review of a pension plan's actuarial valuation report in its staged monitoring of pension plans, and since then it has reviewed 28 reports.

FSCO told us it reviews actuarial assumptions for plans it considers to be at risk and when it prepares and publishes its annual defined-benefit pension plan funding report. Through its online information return intake process, FSCO also continues to assess whether actuarial assumptions used by pension plans fall within pre-set parameters. It was assessing the appropriateness of these parameters and revising them as needed.

- *take more proactive follow-up action against plan administrators that do not submit statutory filings on time, and acquire powers to impose penalties for late filing.*  
**Status: First part of the recommendation—fully implemented; second part of the recommendation—in the process of being implemented by December 31, 2016.**

#### Details

In our 2014 audit we found that, as of May 2014, there were more than 1,300 plan administrators who had one or more statutory filings that were more than one year past due. FSCO had taken action against only 176 of these plans by sending a letter to the administrator.

In early 2015, FSCO started to monitor weekly whether filings were submitted on time, and it also

improved its follow-up process for plan administrators who did not submit statutory filings on time. FSCO now sends a second reminder letter and it attempts to call those administrators who do not respond within 45 days to its first warning letter. If the administrator does not submit required statutory filings after two call attempts, FSCO takes a risk-based approach to identify and correspond with pension plan administrators in a final attempt to get them to comply. If it still cannot get compliance, FSCO initiates legal action against the administrator under the *Provincial Offences Act*.

In our 2014 audit, we also reported that FSCO had the power to impose administrative monetary penalties in the mortgage and insurance sectors, but it did not have the power to do so in the pension sector, despite the fact that it recommended the required legislative changes to the Ministry in 2010.

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 *Pension Benefits Act*. 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 it was considering FSCO's report in conjunction with the results of the agency mandate review, which recommended that the authority to levy penalties should be transferred to the Financial Services Regulatory Authority. The Ministry expects to make decisions based on recommendations from the agency mandate in the fall of 2016.

#### Recommendation 4

*To ensure examinations of pension plans conducted by the Financial Services Commission of Ontario (FSCO) provide an effective level of assurance that plan administrators are operating in accordance with statutory requirements, FSCO should:*

- *conduct more plan examinations and select plans for examination based on risks to members of the plan;*

**Status: In the process of being implemented by March 31, 2017.**

#### Details

In our 2014 audit, we found that FSCO conducted 50 pension plan examinations annually in each of the previous three fiscal years. At that rate, we calculated it would take FSCO well over 100 years to examine the more than 7,300 plans it regulates, and about 14 years if it limited its examinations to plans on its solvency watch list.

At the time of our follow-up, FSCO had made some progress on our recommendation. In 2015/16 FSCO examined 55 plans and in 2016/17 it planned to examine more than 55 plans. In our 2014 audit, we found that plans selected for examination were chosen mainly because they had a record of investment concerns or late filings. FSCO now includes the results of its staged monitoring process for pension plans in deciding which plans to examine. In September 2015, FSCO retained a vendor to provide monthly data about the potential inability of plan sponsors to meet pension obligations. FSCO told us it was assessing how this information could be factored into selecting plans for examination.

- *ensure that its procedures for examining plans effectively address the risks associated with investments managed by plan administrators;*

**Status: Fully implemented.**

#### Details

Our 2014 audit found that plan administrators provided only a summary of their plans' investments to FSCO, rather than a detailed listing. Financial statements filed by administrators similarly provided only partial information. Without more detailed information, FSCO would be unable to verify that plans were in compliance with investment regulations unless it conducted on-site examinations. Even when it did conduct these examinations, FSCO's reviews were focused on plan policies, and

it did not sample individual investments to check for compliance with federal laws.

After our audit, FSCO expanded its examination procedures for defined-benefit plans and defined-contribution plans. The expanded procedures include verifying that a plan's expenses are reasonable given its total size, 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.

- *provide guidelines to auditors of pension plan financial statements that set out minimum expectations for ensuring compliance with key requirements of the Pension Benefits Act as part of these audits;*

**Status: Little or no progress.**

#### Details

In 2014, we found that FSCO did not provide guidance to auditors of pension plan financial statements so that they could ensure that plan administrators were complying with key requirements of the *Pension Benefits Act*. This would include verifying whether plan administrators exercised due diligence in the administration of pension plans, were paid reasonable fees, and that plan assets were invested as per federal investment rules. We noted that with auditors performing this work, FSCO would be able to allocate its limited resources to examining other risk areas of pension plans.

FSCO has made little progress in response to our recommendation. During our follow-up, it said it did not anticipate providing any additional guidelines to auditors until 2017 at the earliest.

- *ensure it has the necessary employer information to identify plans at risk before employers launch bankruptcy proceedings; and*

**Status: Fully implemented.**

#### Details

Our 2014 audit found that the majority of FSCO-ordered pension plans wind-ups occurred because the employer went bankrupt. To identify employers who were facing financial difficulties, FSCO would need access to employer records and financial statements. However, under the *Pension Benefits Act*, FSCO had limited authority to access these records.

In October 2015, FSCO hired a vendor to gather information about plan sponsors' solvency risk. During our follow-up, FSCO said it was assessing how best to use information provided by the vendor as a reliable predictor of a plan sponsor's potential insolvency and how it could be factored into the process of selecting plans for examinations. FSCO also told us it did not have authority under the *Pension Benefits Act* to require employers to file financial statements.

- *establish an examination program for defined-contribution plans that provides effective monitoring and protection to plan members.*

**Status: Fully implemented.**

#### Details

In our 2014 audit, we found that FSCO did very little to monitor whether defined-contribution pension plans were administered in accordance with the requirements of the *Pension Benefits Act* and the interests of plan members. We also noted that during the 14 examinations of defined-contribution plans that FSCO conducted over the previous three fiscal years, it did not assess the investments in detail or whether the plan invested assets in accordance with options selected by members.

Since our audit, FSCO has expanded its examination procedures for defined-contribution plans. In 2015/16, FSCO examined 15 defined-contribution plans. Three of these had service providers who administered the operations of the plans, and FSCO

verified that member contributions were invested as per members' selections, and that fees and expenses charged were appropriate and disclosed to members. In the other 12 plans, FSCO found deficiencies such as outdated policies and procedures and inadequate member benefit statements. FSCO told us that findings like these are common and recurring, and it would therefore examine 16 defined-contribution plans in 2016/17.

### Recommendation 5

To ensure that pension plan members get more detailed disclosures about their pensions, and about the regulatory oversight performance of the Financial Services Commission of Ontario (FSCO), FSCO should:

- identify and seek to implement improvements to statutory annual disclosure requirements of a plan administrator that would provide more meaningful information to all members on the plan's performance and expenses, and how their plan performed compared to other similar plans and relevant benchmarks; and

**Status:** First part of the recommendation—fully implemented; second part of the recommendation—little or no progress.

#### Details

In June 2016, FSCO completed a review of statutory annual disclosure requirements in other provinces and territories, such as the United States and the United Kingdom. It then prepared a report that recommended possible enhancements to current requirements, which it shared with the Ministry in October 2016. Additional disclosures recommended in the report include names and contact information of plan administrators and the earliest date a plan member is eligible to retire. Given the complexity of plan expenses and how they impact members, the report recommends that a public consultation be held to develop standardized reporting methods.

FSCO told us it would likely be impractical for it to recommend that plan administrators be required to assess their plan's performance against others because information about performance results and the underlying investment policies and strategies that would make the comparison meaningful are not required to be made publicly available; nevertheless, some plan administrators do assess their plan's performance against other plans when those plans do publish their performance results.

- reassess its annual public reporting on pension plans in Ontario to provide more useful information for assessing how FSCO protects members' pension interests and how well their plan performed and was administered in comparison to other plans.

**Status:** First part of the recommendation—in the process of being implemented by March 31, 2017; second part of the recommendation—will not be implemented. The Office of the Auditor General continues to believe that individual plan comparisons are important for plan members to see how their plan compares to others.

#### Details

In our 2014 audit, we found that although FSCO published annual data about the size and number of pension plans in Ontario, as well as the overall solvency position of defined-benefit plans, it did not publish detailed information on individual plans. Without this information, plan members would not be able to assess how well their plan performed compared with other plans and the effectiveness of FSCO in protecting their interests. In comparison, FSCO's counterparts in Australia and the United Kingdom publish such information.

In October 2015, FSCO began publishing online quarterly reports that show the overall solvency status of defined-benefit plans. During our follow-up, FSCO said it was reviewing what additional information it could also publish about pension plans that members might find useful. It planned to complete this review by the end of March 2017.

FSCO also said it did not intend to publish information about individual pension plans to preserve confidentiality. Plan members can compare their plan's performance against others in Ontario as a whole using information that is already public.

## Financial Services

### Recommendation 6

*To adequately protect members and investors of co-ops, the Financial Services Commission of Ontario (FSCO) should seek to have the necessary legislative authority under the Co-operative Corporations Act to allow it to ensure that:*

- *all board members have criminal checks before the co-op is registered and any offering statements are issued;*

**Status: Little or no progress.**

#### Details

In our 2014 audit, we reported that FSCO did not require criminal background checks for members of boards of directors, or officers of new co-ops prior to co-ops issuing offering statements.

In December 2015, FSCO provided to the Ministry draft amendments to the *Co-operative Corporations Act* that included a clause it believed would allow FSCO to conduct such criminal background checks. FSCO told us that with such legislation it would conduct standard criminal reference checks for people incorporating co-ops, and that if past offences were found, it would consider them on a case-by-case basis.

Since then, little progress has been made in response to our recommendation. The Ministry is still reviewing FSCO's recommendations and considering whether legislative changes are necessary.

- *all approved offering statements are listed on FSCO's website;*

**Status: Fully implemented.**

#### Details

In our 2014 audit, we noted that FSCO had not allocated any resources to ensuring that co-ops present to potential investors only approved (received) offering statements by, for instance, listing all approved offering statements on their websites for the public to check.

In May 2016, FSCO issued a bulletin to inform co-ops that basic information about co-op offering statements approved by the commission after July 1, 2016 would be posted on its website. FSCO started to post the information that month, but it told us that it did not plan to post any historical information from statements approved prior to July 1, 2016.

- *it conduct ongoing monitoring of co-ops; and*
- Status: Little or no progress.**

#### Details

In our 2014 audit, we found that FSCO did not conduct ongoing monitoring of co-ops to ensure that funds were invested in the projects outlined in the offering statements, nor did it conduct ongoing examinations of these co-ops to ensure they complied with the requirements of the *Co-operative Corporations Act*, including that FSCO approve offering statements.

FSCO told us that a legislative change would be required for it to have the authority to conduct ongoing monitoring of co-ops and that it provided the Ministry with recommended legislative amendments in December 2015. The Ministry told us it is reviewing FSCO's recommendations and considering whether legislative changes to the *Co-operative Corporations Act* are necessary, but did not indicate when it would make a decision. FSCO told us that it would continue to focus on verifying co-ops' information during the initial registration period.

- *fees charged to co-ops to review offering statements are commensurate with FSCO costs.*

**Status: Little or no progress.**

### Details

In our 2014 audit, we found that the fee that FSCO was authorized to charge for reviewing co-ops' offering statements was not commensurate with the amount of work it was doing. We also reported that FSCO received \$500,000 a year from the government to cover the costs of its activity in the co-op sector.

FSCO told us it would have been inappropriate to proceed with this recommendation during the mandate review, given the recommendation to move the oversight of co-ops to the proposed new regulatory body, the Financial Services Regulatory Authority. As of our follow-up, 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.

*In addition, FSCO should consult with the Ontario Securities Commission on the benefits of sharing or transferring the responsibility of reviewing offering statements.*

**Status: Fully implemented.**

### Details

In our 2014 audit, we reported that FSCO's review of offering statements was very similar to the Securities Commission's review of prospectuses, without the added protections that are provided to investors under the *Securities Act*. We noted that the Securities Commission had the expertise, experience and capacity to conduct reviews of prospectuses filed as part of public offerings, while FSCO had to develop expertise to review co-ops' offering statements, which are different from its other reviews.

In November 2015 and February 2016, representatives from FSCO and the Securities Commission met to conduct exploratory discussions about how a potential transfer of responsibility would be carried out. FSCO also said there was a standing offer in place from the Securities Commission to assist FSCO with reviewing complex offering state-

ments in future. However, discussions were put on hold until the Ministry makes decisions with respect to the recommendations from the mandate review. The Ministry told us that it plans to make these decisions in fall 2016.

### Recommendation 7

*In order to make its licensing system and procedures effective so that only qualified agents are given licences, the Financial Services Commission of Ontario (FSCO) should ensure that:*

- *its online licence system has the necessary controls to identify and reject licences for agents who do not meet minimum requirements;*

**Status: Little or no progress.**

### Details

In our 2014 audit, we noted that the insurance agent licensing system had weak controls. Life insurance agents whose information about errors and omissions insurance information was missing from the database or was incomplete, or those whose policies had expired, were still able to renew their licences or receive initial licences. Under the *Insurance Act*, all life insurance agents are required to have errors and omissions insurance.

Since our audit, FSCO added some controls to its insurance agent licensing system. For instance, free-form text fields for identifying insurance providers were removed and the system now automatically sends an email reminder to agents notifying them that their insurance is about to expire. FSCO was assessing if 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 that it would then decide if any additional controls were required. Although the added controls were a step in the right direction, overall FSCO had made little progress in response to our recommendation, as the system still did not automatically verify if the errors and omissions insurance information was valid at

the time it was entered by an agent, allowing for the licensing of agents who did not meet minimum licensing requirements.

- *it establishes agreements with all agents' errors and omission insurance providers to provide FSCO with timely information on agents' compliance with insurance requirements, and information about consumer claims made against agents; and*

**Status: Little or no progress.**

#### Details

In our 2014 audit, we noted that FSCO relied on insurance providers to notify it of insurance agents whose errors and omissions insurance had expired or been cancelled. However, it was not mandatory for errors and omissions insurers to provide this information to FSCO and only some of the 150 insurance providers voluntarily did this. We also noted from our testing of complaints that several agents had operated for up to three years before they were identified as not having errors and omissions insurance. FSCO was also not tracking information about how many insurance claims had been filed against agents by their clients and which claims were valid.

In 2016, FSCO assessed the feasibility of gathering information about claims filed against insurance agents using data collected by the General Insurance Statistical Agency and the Insurance Bureau of Canada to support consumer protection. However, FSCO found it was not feasible to use available industry data to obtain detailed information on errors and omissions claims against life insurance agents. FSCO has also committed to working with insurance industry stakeholders to collect additional data in 2016/17, but has not indicated that it will be establishing agreements with errors and omissions insurance providers.

- *it investigates all agents who do not meet minimum standards, particularly for errors and omissions insurance requirements.*

**Status: Little or no progress.**

#### Details

In our 2014 audit, we found that FSCO renewed numerous agents' licences without investigating their applications, even though they had previously declared bankruptcy, had criminal convictions, or had invalid insurance. As of August 2014, almost one quarter of active life insurance agents had missing or incomplete insurance information in FSCO's database.

During our follow-up, FSCO informed us that, due to limited resources, it has not yet been able to investigate all agents who did not meet minimum standards. During 2015/16, FSCO identified 1,200 agents who had a higher risk of non-compliance and investigated 214 of them. It found four agents who were not meeting minimum standards and, as of the conclusion of our follow-up, was determining the appropriate regulatory action to take in those cases. FSCO said that in 2016/17 it plans to investigate 200 more agents.

## Market Conduct

### Recommendation 8

*In order to ensure that the Financial Services Commission of Ontario (FSCO) meets its mandate to provide regulatory services that protect the public interest and enhance public confidence in the regulated financial sectors, FSCO should:*

- *take timely action to investigate complaints, and have adequate systems and procedures in place to monitor the timelines and outcomes of its handling of complaints and investigations;*

**Status of both actions: Fully implemented.**

#### Details

In our 2014 audit, we noted that FSCO had targets for closing 80% of consumer complaints within 75 days and 98% of all complaints within 365 days. Although most complaints were generally closed within these timelines, we found that several complaints about issues that posed high risk to consumers took years to close. For example, in one

case, a complaint was received in September 2010 about a life insurance agent allegedly forging client signatures. This complaint was not investigated until March 2012, and the final report was not completed until April 2014. FSCO dropped the case in June 2014, citing insufficient evidence.

During our follow-up, we found that in fiscal 2015/16, FSCO implemented monthly monitoring and reporting of complaint handling to measure whether it was meeting its targets, as stated above. We reviewed the results provided to us and noted that overall, FSCO met its targets for handling consumer complaints within 75 days, and its overall target of closing 98% of all complaints within 365 days.

FSCO also informed us that its Licensing and Market Conduct Division is reviewing successes against targets, reasons for unmet targets and practicality of measures developed. It said it would further refine the measures during 2016/17.

- *assess the need for proactive investigations in each of its regulated financial sectors that would allow for periodic examinations of all registrants and licensees;*

**Status: Little or no progress.**

#### Details

In 2014, we reported that FSCO only conducted proactive onsite examinations for mortgage brokers. It conducted examinations in the other regulated financial sectors and for insurance agents only if a complaint led to an investigation. We noted that this created a risk that lack of compliance with regulations by financial institutions and agents might go undetected.

Although in 2016 FSCO began using a risk-based method to identify licensees and registrants for periodic examinations, it had not assessed the need for proactive investigations in each of its regulated financial sectors. FSCO told us it did not have sufficient staffing to conduct proactive investigations in each of its regulated financial sectors.

- *identify common issues from its examination activities and share them with the industry, and consider action that can be taken to mitigate their causes; and*

**Status: Fully implemented.**

#### Details

During our follow-up, we noted that FSCO has published reports on its website with the overall results of its examinations of regulated entities and licensed individuals, such as mortgage brokers, life insurance agents and service providers. FSCO told us that it was considering actions to mitigate causes of common issues identified from its examinations.

- *establish systems and procedures to promptly identify, investigate and determine the continued suitability of registrants and licensees who have received sanctions from other associations.*

**Status: Fully implemented.**

#### Details

In our audit report, we noted that many life insurance agents, mortgage brokers and mortgage agents could be members of other associations or licensed by other bodies. We found that several agents and brokers had been disciplined or permanently banned by other regulatory authorities for serious breaches, such as misappropriation of clients' funds, failure to remit taxes, or sale of unapproved securities, with FSCO not aware of these infractions until months, or even years, after they had occurred.

Previously, FSCO did not receive updates from all Canadian regulators about agents who could also be licensed in Ontario, but who had been disciplined or banned in other jurisdictions. However, FSCO implemented a new process in 2016 to identify agents who have been sanctioned by any of the 36 other relevant regulators in Canada. With this new notification process, FSCO identified almost 50 sanctions from other regulators against its licensees from January to July 2016.

FSCO also established targets for closing investigations into these cases, including that 90% are closed or assigned to disciplinary officers within 150 days; 98% are closed or assigned to disciplinary officers in 365 days; and 85% are closed within 365 days of being assigned to disciplinary officers.

Since December 2014, FSCO has also signed memorandums of understanding with the Mutual Fund Dealers Association of Canada, the Real Estate Council of Ontario and the Investment Industry Regulatory Organization of Canada with regard to mutual assistance and sharing of information, including the regulatory action they may take against one another's licensees and registrants.

### Recommendation 9

*To ensure that regulatory processes exist commensurate with the size and maturity of the industries, the Financial Services Commission of Ontario (FSCO) should explore opportunities to transfer more responsibility for protecting the public interest and enhancing public confidence to new or established self-governing industry associations, with oversight by FSCO. Areas that could be transferred include licensing and registration, qualifications and continuing education, complaint handling and disciplinary activities. In addition, associations could be responsible for establishing industry-sponsored consumer protection funds to provide more confidence in their services by the public. FSCO should then submit such proposals to the Ministry of Finance for consideration of legislative changes that would make it possible.*

*For regulated financial sectors, including insurance companies, credit unions and caisses populaires that have fewer registrants, FSCO, in conjunction with the Ministry of Finance, should explore the possibility of transferring its regulatory responsibilities to the federal Office of the Superintendent of Financial Institutions.*

**Status: Little or no progress.**

### Details

In our audit report, we noted that FSCO was responsible for overseeing more than 55,000 registrants and licensees in the insurance sector, and more than 11,000 in the mortgage sector. Given the size of these industries, we stated that it might be beneficial for them to take on greater responsibility for self-regulation, similar to insurance brokers, who are regulated by the Registered Insurance Brokers of Ontario. With this transfer of responsibility, FSCO could instead allocate its resources to regulating the oversight bodies instead of individual entities. We found that FSCO regulates some financial sectors that have few registrants, such as insurance companies operating in Ontario, credit unions and caisses populaires, and that the federal OSFI could assume this responsibility instead.

As noted at the beginning of this report, an expert panel submitted its final report to the Ministry in March 2016. Decisions regarding transfer of FSCO's responsibilities and changes to its mandate rest with the Ministry. When we finished our follow-up, the Ministry told us it expects to make its decisions about FSCO's responsibilities and mandate in the fall of 2016.