



OBA Submission on the Consultation on FSRA Guidance Documents on Missing Members

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Authority of Ontario (FSRA)

Submitted by: Ontario Bar Association



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General Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide submissions on the two Guidance documents put forward by the Financial Services Regulatory Authority of Ontario (“FSRA”): *Principles and Practices Regarding Missing Members*, and *Waiver of Biennial Statements for Missing Former and Retired Members* (the “Guidance Documents”). Our comments primarily focus on the first of the two Guidance Documents.

The Ontario Bar Association

Established in 1907, the OBA is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides dozens of submissions to government for the profession and the public interest, and delivers over 325 in-person and on-line professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission has been prepared on behalf of the OBA’s Pensions and Benefits Law Section. This Section represents lawyers who serve as legal counsel to stakeholders in the pension and benefits industry, including pension and benefit plan administrators, employers, plan members, bargaining agents, pension and benefit consultants, investment managers, actuarial firms and other stakeholders. Our members have analyzed and provided assistance to decision makers over the years on several important legislative and policy initiatives in the pension field.

Flexible and Principles-Based Approach

Plan administrators, sponsors, trade unions, and other industry stakeholders are frequently confronted with the issue of missing members. The OBA is pleased to see that the Guidance Documents are principles-based and provide plan administrators with the flexibility they need to develop their own missing member plan governance tailored to their plan’s specific needs and experience. As we have stated in our previous submissions, the OBA supports principles-based rule-making authority for



FSRA as a means of allowing for greater flexibility to deal with new circumstances and new challenges that are unique to each pension plan, administrator and sponsor.¹

There are substantial administrative costs associated with searching for missing members in order to provide information and ultimately make payment of benefits. The OBA agrees that plan administrators are best positioned to determine when to start, discontinue or re-start searching for missing members, taking into account the relevant considerations provided under section 3.5.2 of the draft Guidance document, *Principles and Practices Regarding Missing Members* and the plan administrator's statutory and fiduciary duties. While we understand that the list of relevant considerations is not exhaustive, the size of the plan and resources available should also form part of the considerations in determining the steps to be taken.

Solutions for Unlocatable Members

The OBA appreciates the draft Guidance provided by FSRA for providing suggestions as to how to locate missing members. However, the fact remains that some members will remain unlocated even after the plan administrator has taken all reasonable steps to locate them. Additional principles-based guidance from FSRA on how to deal with unlocatable members in the context of asset transfer applications, plan wind-ups, and other situations where plan administrators are required to notify members and former members would also be appreciated.

The OBA also urges FSRA to continue efforts to explore partnerships with ministries, departments and agencies of the governments of Ontario and Canada to investigate information sharing arrangements that would improve administrators' ability to locate members.

Conclusion

Once again, the OBA appreciates the opportunity to provide comments to the call for consultation on the two Guidance Documents put forward by FSRA and would be pleased to answer any questions that may arise. We look forward to participating in future consultations as FSRA moves forward.

¹ Ontario Bar Association, Letter to the Minister of Finance re: *Feedback on the Implementation of the Financial Services Regulatory Authority*, October 26, 2017. Online: <https://www.oba.org/CMSPages/GetFile.aspx?guid=8d636eef-cf60-4d56-bdf9-a644ed2d7092>