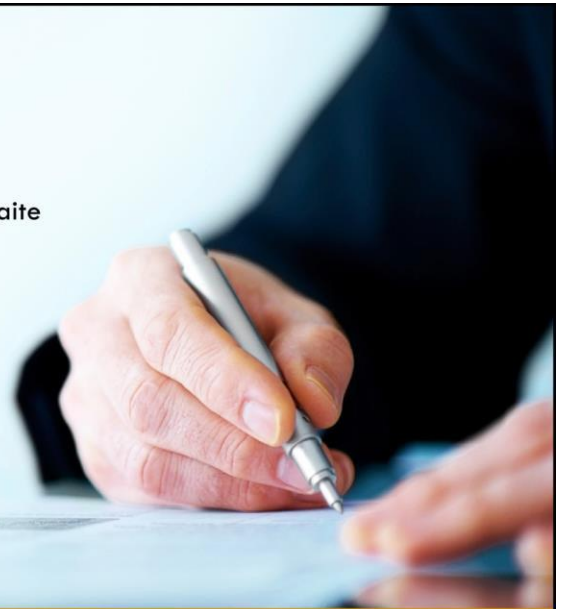




ACPM | ACARR

The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite



December 13, 2018

ACPM Response to CAPSA Consultation on Guideline No. 2 – Electronic Communication in the Pension Industry

ACPM CONTACT INFORMATION

Ric Marrero
Chief Executive Officer
Association of Canadian Pension Management
1255 Bay Street, Suite 304 Toronto ON M5R 2A9
Tel: 416-964-1260 ext. 223
Fax: 416-964-0567
Email: ric.marrero@acpm.com; Web: www.acpm.com

TABLE OF CONTENTS

Foreword	3
E-communication	4
Consent	5
Providing information in a specific form	6
Electronic signature	6
Data Security	6
Other requirements	7
Other Considerations	7

FOREWORD

ACPM (The Association of Canadian Pension Management) is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover more than 3 million plan members.

ACPM believes in the following principles as the basis for its policy development in support of an effective and sustainable Canadian retirement income system:

Diversification through Voluntary / Mandatory and Public / Private Options

Canada's retirement income system should be comprised of an appropriate mix of voluntary workplace and individual savings arrangements ("Third Pillar") and mandatory public programs ("First and Second Pillar").

Empowering Choice in Coverage

Third Pillar arrangements should be encouraged and play a meaningful, ongoing role in Canada's retirement income system.

Adequacy, Security and Affordability

The components of Canada's retirement income system should ensure a healthy balance between these three objectives to enable Canadians to receive adequate and secure retirement incomes at a reasonable cost for members and employers.

Innovation in Plan Design

Canada's retirement income system should encourage and permit innovation in plan design in all three Pillars.

Adaptability

Canada's retirement income system should be able to adapt to changing circumstances without the need for comprehensive legislative change.

Harmonization

Canada's pension legislation should always strive for better harmonization.

Clarity and Transparency

Legislation, regulations and retirement income arrangements should be clearly defined, and pension plan beneficiaries should be appropriately informed of risks, costs and benefits.

Good Governance

Excellence in governance and administration in the retirement income system.

ACPM supports the Canadian Association of Pension Supervisory Authorities (CAPSA) reviewing its Guideline No. 2 – Electronic Communications in the Pension Industry (Guideline) to promote a common regulatory approach for plan administration as it relates to electronic communications and to update the Guideline to reflect technological advances in communications and electronic commerce since the original Guideline was published.

In general, ACPM agrees with the revisions that have been proposed in the draft Guideline. We offer the following comments and suggested edits that we believe may enhance the efficacy and the clarity of certain sections of the Guideline.

E-Communication

1.1 – this statement implies that the Guideline only covers e-communications originating from the sponsor or administrator addressed to a recipient. We appreciate that the Guideline is focused on electronic distribution of compulsory communications as prescribed in pension legislation but we are also cognizant that members and beneficiaries have a role to play in ensuring their pension related confidential information is kept secure and protected. Similar to how CAPSA has identified member responsibilities in other guidelines, we believe it appropriate for CAPSA to articulate that plan members, beneficiaries, and other stakeholders have a responsibility to ensure they take appropriate steps to ensure any e-communications they originate addressed to the plan sponsor or administrator are done in a suitably secure manner.

We note that the “Context for the Guideline” section of the Guideline (paragraph 3 on page 2) indicates that the Guideline only applies to “any communications required under pension legislation from a pension plan administrator” (ACPM emphasis). However, statement 1.1 defines e-communications as “communication...by a pension plan sponsor and/or pension plan administrator...”. There is an inconsistency between the stated intention of the Guideline and the definition of the communications to be covered by the Guideline.

1.3 – ACPM agrees that e-communications present opportunities for more efficient and effective communications with recipients. Although the term “encourages” is used in statement 1.3 in the draft Guideline, it is unclear whether this statement means that CAPSA is suggesting best practice, in jurisdictions where pension and other applicable legislation allows it, is to use e-communications as the default for all compulsory communications with recipients. It is also unclear what CAPSA would expect of plan sponsors or administrators if they adopt e-communication as the default in jurisdictions where it is allowed. For example, today the default is paper and there is no required alternative to paper that needs to be available to recipients. If tomorrow the default is e-communication, then we anticipate that a paper alternative would be necessary especially for individuals who do not wish to or are not able to accept e-communications.

1.4 – The term “deemed consent” should be changed to “inferred consent” to be consistent with terminology used in e-commerce legislation. It would also be helpful if a definition of “inferred consent” was provided in the Guideline.

We suggest reference be made to an existing legislative definition or that the following be considered: “A recipient’s consent to receive electronic communications from a plan sponsor or administrator, as the default form of communication from the sponsor or administrator, may reasonably be inferred from the recipient’s conduct.”

In other words, if a recipient has demonstrated a willingness or desire to use e-communications with the sponsor or administrator (e.g., by initiating communication with the sponsor or administrator using electronic means, registering to use an electronic communication channel of the administrator or sponsor, or in some other way demonstrates their desire to communicate electronically), the sponsor or administrator can reasonably infer that the default means of communicating with the recipient can be electronic.

Notwithstanding the comment in the previous paragraph, while we appreciate the benefits to sponsors, administrators and recipients in being able to rely on the “inferred consent” of the recipient, and that the concept currently exists in some jurisdictions’ e-commerce legislation, the concept seems inconsistent with recent changes that have been introduced in privacy legislation such as the General Data Protection Regulation (GDPR) where consent must be given through affirmative act (i.e., opt-in). We wonder about the risk of the Guideline becoming stale or ineffectual if privacy legislation in Canadian jurisdictions is modified to be consistent with global privacy legislation such as the GDPR and assuming privacy legislation prevails in cases where it conflicts with other legislation.

We do, however, agree that electronic communications should be an acceptable default for administrators and suggest that CAPSA encourage jurisdictions to explicitly state in legislation that electronic communications as the default is an acceptable choice for plan sponsors and administrators to fulfill their communications obligations unless the member or recipient indicates that they prefer to receive paper communications.

We also agree with statement 1.3 of the Guideline that e-communications as a default can result in reduced administration costs, which benefits all beneficiaries of the pension plan. However, if a recipient does request a continuation or conversion to non-electronic communications, they should not have to incur any additional fees.

Consent

2.1 – the phrase “by the recipient” should be added to the end of this statement.

2.2 – The statement currently explicitly states “Where pension legislation permits deemed consent...” (ACPM emphasis added). We believe this should be changed to “Where legislation permits inferred consent...” to ensure that in cases where a jurisdiction’s pension act is silent but the e-commerce legislation allows inferred consent, there is no confusion that CAPSA believes that the e-commerce legislation should apply.

Providing information in a specific form

4 – to accommodate cases where e-communications is adopted as the default, we believe that this statement could be modified to “Where e-communications have been adopted by the plan sponsor or administrator as the default means of communication, there is no requirement for e-communications to mirror a paper version of the communication. Where e-communications have not been adopted by the plan sponsor or administrator as the default means of communication, information provided through e-communications must be provided in substantially the same form as the paper version of the communication, or mirror the paper version if so prescribed.”

Electronic signature

5 – This section of the Guideline appears inconsistent with the stated objective in the “Context for the Guideline” section of the Guideline (paragraph 3 on page 2) which indicates that the Guideline only applies to “any communications required under pension legislation from a pension plan administrator” (ACPM emphasis). Presumably, communications coming from the administrator would not require a signature of the recipient, electronic or otherwise, before being distributed. It is unclear whether CAPSA is including this section to provide for the case of a recipient providing an electronic signature as part of providing consent to receive e-communications as a default.

Nonetheless, this highlights an opportunity for CAPSA to clarify the scope of Guideline 2 and we provide further comments on this opportunity in the Other Considerations section later in this document.

Data Security

9.1 – besides cyber-attacks, unintended disclosure (e.g., through employee error or system failure) is also a vulnerability that administrators need to protect against. The wording in 9.1 could be changed from “...information vulnerable to cyber-attacks.” to “...information vulnerable to cyber-attacks and unintended disclosure.”

9.2 – we suggest the following alternate wording: “E-communications that contain confidential information should only be delivered to or made accessible by the intended recipient(s) through secure information systems.” The definition of a secure information system and the specific methods of securing systems and authenticating recipients will continue to change over time as information security and privacy standards continue to advance. Rather than identify passwords or other identification systems in the Guideline, a more general statement such as the one suggested here suitably puts the onus on the sponsor or administrator to ensure the security and ability of the communications channel to protect confidential information and accurately identify intended recipients is kept current as technology continues to evolve. Assuming the Guideline also applies to e-communications originating from the member or beneficiary, it puts a similar onus on them when communicating confidential information to their plan sponsor or administrator.

Other requirements

11 – we note a minor typographical error in the final sentence of this section (“...then sending an e-mail sent would not suffice.”)

Other Considerations

ACPM believes CAPSA has an opportunity in reviewing and updating the Guideline to:

a. Expand the scope of the Guideline to not only include communications required under pension legislation from a pension plan administrator, but to all communications interactions between plan sponsors and administrators and plan stakeholders (subject to legislative restrictions that may exist). For example, CAPSA could indicate that any communications requirements and best practices described in any other CAPSA guideline may be satisfied by using e-communications as an acceptable default.

b. As technological advances continue to emerge and mature, blurring the lines between humans and machines, we wonder if the use of the term “information systems” in the Guideline will sufficiently cover future advancements. We note the use of the term “electronic agent” in some jurisdictions’ e-commerce legislation to mean any electronic means used to initiate an action or to respond to electronic information, documents or actions without review by an individual at the time of response or action. It may be advisable for CAPSA to incorporate the notion of communications occurring between the plan sponsor or administrator and the plan member or beneficiary through the medium of electronic agents appropriately designated to act on behalf of one or both of them. This may reduce the risk of future technological advances making a refresh of the Guideline prematurely necessary.

Thank you for the opportunity to comment on this consultation and please contact us if we can be of further assistance.