



October 4, 2022

Caroline Blouin
Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9
Via email

Re: Comments on proposed Interpretation PE0302INT: Proposed guidance on actions to avoid deregistration of a pension plan under the Federal Income Tax Act

Dear Ms. Blouin:

ACPM is the leading advocacy organization for a balanced, effective and sustainable retirement income system in Canada. Our private and public sector retirement plan sponsors and administrators manage retirement plans for millions of plan members.

Proposed Interpretation PE0302INT (“Interpretation”) sets out FSRA’s guidance on the application the exemptions in sections 47(11) to 47(16) of Regulation 909 (General) under the Pension Benefits Act (“PBA”). These provisions enable an Ontario registered pension plan to make a refund of member contributions, payment to an employer, or plan amendment that is not otherwise permitted under Ontario’s pension standards, where such action is “necessary to avoid revocation” under the Income Tax Act (Canada) (“ITA”).

ACPM encourages the development of guidance that enables pension plan administrators to take appropriate steps to bring the plan terms and administration into compliance with the ITA, consistent with FSRA’s objectives of reducing regulatory burden and protecting the public interest. Such guidance should facilitate effective and efficient plan administration and be proportionate to the risk to members and the plan.

ACPM encourages FSRA to apply a broad interpretation of the regulatory reference to ITA revocation, such that it may be applied where a risk of such revocation has been identified but no revocation action has been initiated by the Canada Revenue Agency (“CRA”), or where CRA may not be aware of such non-compliance. It is rare for the federal Minister of National Revenue to revoke the registration of a pension plan pursuant to subsection 147.1(13) of the ITA and this process involves a notice of intention by CRA. Situations of pension administrative non-compliance are often identified and resolved prior to reaching this stage. FSRA’s Interpretation should facilitate a plan administrator to mitigate the potential risk of revocation by proactively and promptly addressing situations where it has identified that contributions or plan terms are not compliant with the ITA.

The FSRA guidance should also align with the ITA framework that authorizes plan administrators to proactively rectify member or employer contributions that are not in accordance with the plan terms or ITA limits. For example, subsection 147.1(19) of the ITA enables administrators to automatically refund ineligible contributions, subject to specified timeframes and conditions, without advance notice to, or consent by, the CRA. In addition, as encouraged by ACPM, the proposed ITA amendments to permit corrective contributions in money purchase plans will assist plan administrators and members. Recognition of such practical realities of day-to-day administration should be considered. This appears to have informed the Interpretation's modified guidance for multi-employer pension plans in Clauses 3.3 and 4.3, although it is somewhat unclear whether these are intended to replace, or are in addition to, those elements of clause 4.2. We submit that these considerations should also inform FSRA's notice and evidence requirements set out in Clause 4.2.

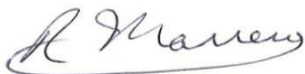
ACPM recommends that the Interpretation avoid creating unnecessary administrative obligations or legal risk for plan administrators. We appreciate that former requirement to include a copy of a letter from the CRA which confirms that the plan is in a revocable position (found in PE0273ORG) would be eliminated under the proposed Interpretation. ACPM also supports the position stated in Clause 4.5.e that administrators are entitled to act upon an exemption after at least 60 days have passed since notice is given.

The guidance on member communications in Clauses 4.4 and 4.5.f includes FSRA's interpretation of an administrator's fiduciary obligation, as noted in Clause 4.1. The requirement in Clause 4.4 for "advance communication to members who will be immediately affected by the exempted activity" and provision of a "detailed explanation" to impacted members "describing the effect" of the plan amendment or refund/payment goes beyond the statutory requirements for provision of information and may not be proportionate to the risk or impact in all cases, particularly where the member can immediately see corrected information via a secure portal, pension estimator, etc.

In addition, in relation to Clause 4.4.i, an entitlement that is contrary to the ITA is arguably not an "accrued benefit" but rather represents an error in the determination or characterization of an entitlement, which is rectified by the action taken by the administrator – e.g., to amend/clarify the Plan terms in this regard, or to make a refund or payment from the plan. ACPM suggests that further consideration be given to these clauses.

Thank you and we would be pleased to meet with you to discuss this information.

Yours sincerely,



Ric Marrero
Chief Executive Officer
ACPM



Karen Burnett
Chair, Ontario Regional Council
ACPM