January 30, 2024

Financial Services Regulatory Authority of Ontario
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contactcentre@fsrao.ca

Dear Sir or Madam,

Re: WTW Submission on FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters

WTW welcomes the opportunity to comment on the FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters (Consultation Paper).

WTW designs and delivers solutions that manage risk, optimize benefits, cultivate talent and expand the power of capital to protect and strengthen institutions and individuals. WTW employs 45,000 colleagues worldwide, with approximately 450 engaged in providing services to sponsors of Canadian pension plans. The undersigned have prepared our response with input from others in the company.

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We have the following comments with respect to the Consultation Paper. We address the questions in each topic in order.

Topic #1: Lift and shift

1. **Would creating a new rule and moving some, but not all, provisions currently in the Regulation into a rule via the "lift and shift" approach achieve the desired outcome of reducing uncertainty and improving efficiency? Please provide feedback as to whether FSRA should adopt a "lift and shift" approach with respect to all areas over which it has rule-making authority, subject to government decision-making, or whether a potential FSRA rule should only include requirements in areas where policy changes are being considered.**

   We do not have a strong opinion as to whether certain family law requirements from Regulation 287/11 should be moved into a FSRA rule using a "lift and shift" approach.

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We do, however, recommend that, if new rules are created, it be very clear where to find them and which aspects of family law matters, currently in the Regulations, are covered by the rules.

Topic #2: Fees that plan administrators may charge for a DB Statement of Imputed Value

2. **Are the existing maximum fees currently set out in regulations under the PBA sufficient to recover the costs incurred in preparing statements? If not, what should the new maximum fees be? Please provide any details relating to cost experience (e.g., administrative and professional service costs associated with the statements) which may be relevant to support your responses.**

   The current fees are not sufficient to recover the costs for preparing statements. We would, therefore, recommend that the maximum fees be $1,200 per statement, double the current amount. We note that, for some statements, even doubling the maximum will likely only cover approximately 50% of the cost.

3. **Should special considerations be made for low-income applicants (e.g., a fee waiver), in order to mitigate the impact of the revised maximum fees?**

   If the maximum fees increase, we agree that there should be special considerations for low-income applicants.

Topic #3: Payment of arrears – division and revaluation of a retired member's pension

4. **Do you agree that uncertainty exists with respect to the division and revaluation of a retired member's pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division?**

   Yes, we agree there is some uncertainty in the interpretation of section 39 of the Regulations in such situations.

5. **If so, should FSRA make a rule to prescribe how this must be done or expand on its Guidance to address the uncertainty?**

   Yes, a rule would be appropriate. As well, the Guidance could be expanded to include some examples of this situation. We suggest that the parties be able to decide on the date for commencing the payments to the former spouse by including this date in the order or agreement and, if no such date is included, the default would be the family law valuation date and arrears would be calculated from this date.

Topic #4: Payment of interest on lump sum transfers

6. Is there uncertainty as to when interest should be added on a lump sum transfer to a member's spouse as a result of Heringer?

We believe the parties and the family law bar are not always aware of *Heringer* and its implications. This leads to ambiguities in settlement agreements or orders, some of which refer to both a specific amount and a percentage. However, we do not think that the actual criteria under *Heringer* for determining when to apply interest to the spouse's entitlement is unclear. Therefore, when we determine that the terms around interest in an agreement or order are ambiguous, we require the parties to clarify the ambiguous language.

7. If so, could this uncertainty be adequately addressed by revisions to the Administration of Pension Benefits Upon Marriage Breakdown Guidance or new FSRA Interpretation Guidance?

We think that the uncertainty because of *Heringer* could be at least partially addressed by revising the current Guidance to set out examples of incorrect determination concerning interest commonly seen in settlement agreements and orders.

8. If not, should FSRA propose a rule that sets out the treatment of interest as described in the Heringer decision such that:

a. Interest is to be applied where the amount to be transferred is expressed as a percentage of the imputed value, and

b. Interest is not to be applied where the amount to be transferred is expressed as a specified amount unless the settlement instrument expressly requires that interest be added.

We think that setting out the requirements in *Heringer* in a rule makes sense. However, we think that this should be a complement to, not in place of, the Guidance because the Guidance can set out additional details (including the examples set out above). There should also be better communication of the *Heringer* rules to the family law bar.

9. If you disagree that FSRA should propose a rule that sets out the same treatment of interest as the *Heringer* decision, as described above, should FSRA propose a rule that provides for an alternative treatment of interest? If so, what should that treatment be?

As noted above, we agree that FSRA should have a rule. However, we note that it would be simpler for plan administrators if the *Heringer* rule did not apply and interest was provided in all cases, though we

acknowledge that this may have negative implications for some of the parties involved in a pension division.

Topic #5: Forms

10. Should FSRA allow for greater flexibility with respect forms used by stakeholders. If so, what should be the scope of that expanded flexibility?

We do not recommend allowing for greater flexibility with respect to the forms used by stakeholders. The forms should remain in a structured, prescribed format, as they currently are. If stakeholders were allowed to modify forms, there would be inconsistencies between different plan administrators, which could result in important sections being overlooked. Furthermore, inconsistent forms would likely increase the time administrators would require to ensure all items are complete and compliant, thereby causing delay and increasing costs.

However, to improve efficiency, we recommend that FSRA provide a mergeable version of its forms. These could be partially locked to ensure that they are not modified but they would also allow certain sections of the form (such as the administrator address and member details) to be merged into the form from a database. The current PDF form requires this information to be entered manually.

11. If expanded flexibility is desired, please share any views as to whether that would be better achieved through the use of existing CEO discretion or through the development of a FSRA rule.

As noted above, we do not think there should be more flexibility with respect to forms.

Topic #6: Variable benefits

12. Should FSRA develop a rule relating to family law matters in the area of variable benefits? Why or why not and what considerations should FSRA take into account?

We agree that FSRA should develop a family law rule relating to variable benefits due to the distinct nature of such benefits. However, as we have not yet had much exposure to such benefits, we cannot, for now, provide further considerations for such a rule.

13. Should FSRA adopt a similar approach to rule-making for plans that offer variable benefits as for plans that do not offer variable benefits? Are there reasons why variable benefits should be treated differently for family law purposes?

See our answer in Q12 above.

We greatly appreciate the opportunity to comment on the Consultation Paper and would be pleased to answer any questions you may have on this submission.

Sincerely,

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