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## Frequently Asked Questions pertaining to Annuity Purchase and Discharge

New legislation and regulations came into effect on July 1, 2018, which support a discharge for the purchase of a pension, deferred pension, or ancillary benefit for a retired member and former member of a pension plan where certain conditions under section 43.1 of the PBA and Regulation 193/18 have been met.

The Financial Services Commission of Ontario (FSCO) has developed frequently asked questions (FAQs) and other communication materials to address questions concerning the new discharge legislation and requirements.

The FAQs are organized as follows:

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### Background

**NOTE: Bill 57 has introduced several amendments to section 43.1, although not all of the amendments have been proclaimed. These FAQs do not reflect the amendments that are yet to be proclaimed.**

Under section 43.1 of the Pension Benefits Act (PBA), plan administrators can obtain a discharge in the case of former members and retired members with respect to pensions, deferred pensions, and ancillary

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benefits that were purchased from an insurance company. The discharge comes into existence upon filing with the Superintendent of Financial Services (Superintendent) a certificate prepared by an actuary certifying that the administrator has complied with section 43.1 and the requirements of Ontario Regulation 193/18, although these vary depending on the nature of the discharge.

The effect of such a discharge is that the former member or retired member for whom the annuity was purchased is no longer a former member or retired member of the plan for any purpose under the PBA, with one exception, being a possible right to any surplus on the potential future wind up of the plan, as set out in section 43.1(9).

The discharge only applies to former members and retired members, and does not cover active members of a plan, or spouses receiving a survivor pension, dependent children receiving survivor benefits, or beneficiaries receiving payments during a guarantee period at the time of the annuity purchase.

Discharge is available for annuities purchased before July 1, 2018, and for those purchased on or after July 1, 2018, although different conditions apply. The administrator and its advisors are expected to carefully review section 43.1 and Regulation 193/18 for complete details of the certificate to be filed under sections 43.1(5) and (6) and to determine all other requirements.

**Note:** Discharges are not approved or issued by the Superintendent under section 43.1. The existence of a discharge is a question of law; there either is a discharge or there is not a discharge based on whether the required steps have been taken (or not) and depending on the status of the annuitant at the time those steps are taken.

However, FSCO will acknowledge receipt of the certificates, and may from time to time, review such certificates to determine the level of compliance with the PBA and Regulation 193/18.

The following FAQs reflects FSCO's current interpretation of section 43.1 and Regulation 193/18. However, the Financial Services Tribunal or a court of law could reach a different position on some of these questions. Administrators and employers should consider obtaining their own legal advice for greater certainty.

## Discharge Legislation

### **Q100. What are the filing requirements in order for an annuity purchased on or after July 1, 2018, to qualify for a discharge under section 43.1 of the PBA?**

**A100.** In order to obtain a discharge under section 43.1 of the PBA, section 43.1(5) requires the filing of a certificate prepared and signed by an actuary, which verifies compliance with the requirements of section 43.1. FSCO's expectation is that the actuary's certification will specify the name and registration number of the plan, the date of the annuity purchase and the section under which the discharge is being sought (in this case, section 43.1(5)). The certification should also confirm compliance with the following key requirements of section 43.1 and Regulation 193/18:

- a. Notice has been sent to all affected persons in accordance with section 43.1(3) and the requirements in section 2 of Regulation 193/18;
- b. Pensions, deferred pensions, and ancillary benefits provided for under the annuity are the same as those that would have been provided under the plan had the purchase not been made;

- c. The insurance company from which the purchase is made is authorized to undertake life insurance in Canada and to sell annuities;
- d. The annuity contract sets out contractual terms prescribed in section 3 of Regulation 193/18; and
- e. The plan meets the solvency test under section 4 of Regulation 193/18. In doing so, the certificate should comply with the Canadian Institute of Actuaries' Standards of Practice, where appropriate, and include the following information:
  - i. the solvency ratio on the day after the annuity purchase as required under section 4 of Regulation 193/18, and the work to support the development of that ratio;
  - ii. the opinion statements on the data, assumptions and method employed in the calculations under (i) above;
  - iii. the solvency ratio from the most recently filed report under section 3, 4, 13 or 14 of Regulation 909, before the date of purchase; and
  - iv. the amount and date of any payments made in accordance with subsection 2 of section 4 of Regulation 193/18.

In addition, section 4 of Regulation 193/18 requires that other information be filed with the Superintendent, including a copy of the annuity contract and the names and addresses of those covered by the annuity purchase.

The administrator and its advisors are expected to carefully review section 43.1 and Regulation 193/18 for complete details of the information and documents required to be filed under section 43.1(5) and to determine all other requirements.

Please note, the certificate requirements differ slightly when seeking a discharge for an annuity purchased prior to July 1, 2018, under section 43.1(6) of the PBA. See FAQ #101 in this regard.

**Q101. Can a plan administrator obtain a discharge for buy-out annuities purchased before July 1, 2018?**

**A101.** A plan administrator can obtain a discharge for buy-out annuities purchased before July 1, 2018, if it meets the requirements under section 43.1 of the PBA and the specific requirements under Regulation 193/18, which differ from the requirements for an annuity purchased on or after July 1, 2018.

The administrator may need to make a subsequent adjustment to the original annuity contract, and an associated payment to the insurance company, to ensure that pension or ancillary benefits provided under the contract meet the requirements of section 43.1(4).

FSCO's expectation is that the actuary's certification will specify the name and registration number of the plan, the date of the annuity purchase, and the section under which the discharge is being sought (in this case, section 43.1(6)). The certification should also confirm compliance with the following key requirements of section 43.1 and Regulation 193/18:

- a. Notice has been sent to all affected persons in accordance with section 43.1(3) and the requirements in section 2 of Regulation 193/18;

- b. Pensions, deferred pensions, and ancillary benefits provided for under the original annuity or subsequent adjustments to the annuity are the same as those that would have been provided under the plan had the purchase not been made;
- c. The insurance company from which the purchase is made is authorized to undertake life insurance in Canada and to sell annuities; and
- d. The plan meets the appropriate solvency test under section 5 of Regulation 193/18. The solvency test to be applied under section 5 of Regulation 193/18 will depend on whether a subsequent adjustment is required.

The solvency test under subsection 2 of section 5 of Regulation 193/18 is to be applied if a payment is made to the insurance company from the pension fund for the purposes of making a subsequent adjustment to an original purchase. Where this test is applied, the certificate should comply with the Canadian Institute of Actuaries' Standards of Practice, where appropriate, and include the following information:

- i. the solvency ratio immediately after the date of the subsequent adjustment to the annuity under section 5 of Regulation 193/18;
- ii. the opinion statements on the data, assumptions and method employed in the calculations under i. above;
- iii. the solvency ratio from the most recently filed report under section 3, 4, 13 or 14 of Regulation 909, before the date of subsequent adjustment; and
- iv. the amount and date of any payments made in accordance with subsection 3 of section 5 of Regulation 193/18.

The solvency test under subsection 4 of section 5 of Regulation 193/18 is to be applied if a subsequent adjustment to the original purchase is not required. In this case, the certificate must include the solvency ratio from the most recently filed report under section 3, 4, 13 or 14 of Regulation 909.

The contractual requirements referred to in paragraph 5 of section 43.1(4) of the PBA, and prescribed in section 3 of Regulation 193/18, would not apply to an annuity purchase that occurred before July 1, 2018.

The administrator and its advisors are expected to carefully review section 43.1 and Regulation 193/18 for complete details of the certificate required to be filed under section 43.1(6) and to determine all other requirements.

**Q102. Can the administrator still purchase an annuity under section 43 of the PBA?**

**A102.** Yes. The administrator can still purchase an annuity under section 43 of the PBA, but it will not obtain a discharge as described in section 43.1 of the PBA unless the applicable conditions of section 43.1 are met.

**Q103. Our plan administrator wants to purchase pensions for active, former and retired members. However, the discharge provided for under section 43.1 of the PBA is only available to former and retired members. Which section of the PBA should guide the purchase of the annuities – section 43 or section 43.1 of the PBA?**

**A103.** It is FSCO's position that the administrator could purchase annuities for active, former, and retired members in a single transaction under the authority given in both sections 43 and 43.1 of the PBA.

However, the discharge provided under section 43.1 would only apply to former members and retired members, and only where the administrator has met the requirements set out in 43.1 and in Regulation 193/18. With respect to all other persons, the administrator would have to meet the requirements in section 43, including the limitations prescribed in relation to transfers of funds from pension funds referred to in section 43(3).

**Q104. Can the administrator obtain a discharge in the case of a spouse of a retired member, where a pension was purchased by the administrator for the spouse for a specified amount or a proportion of the pension instalment otherwise payable to the retired member in accordance with section 67.4 or 67.6 of the PBA (relating to division of pension for family law purposes), and that meets the requirements of section 43.1(4).3 of the PBA?**

**A104.** Yes. It is FSCO's view that the discharge provided under section 43.1(5) or (6) for a retired member would also extend to the spouse of a retired member, where a pension was purchased for the spouse for a specified amount or a proportion of the pension instalment otherwise payable to the retired member in accordance with section 67.4 or 67.6, assuming the requirements for a discharge under section 43.1 and Regulation 193/18 have been met.

**Q105. Can the administrator obtain a discharge with respect to spouses receiving a survivor pension, dependent children receiving a survivor benefit, or beneficiaries receiving payments for a guarantee period, as at the time of the annuity purchase?**

**A105.** No. Section 43.1 does not provide for a discharge with respect to spouses receiving a survivor pension, dependent children receiving a survivor benefit, or beneficiaries receiving payments for a guarantee period at the time of the annuity purchase.

That said, in situations where a beneficiary or spouse ultimately receives a benefit as a result of the death of a person for whom there was already a section 43.1 discharge, it is our view that the discharge continues to apply regardless of who payments may be made to as a result of that death.

In any event, we note that Bill 57 will provide a discharge with respect to surviving spouses. Bill 57 received Royal Assent on December 6, 2018, but the relevant sections that address discharges for surviving spouses are not in effect at the time of drafting this FAQ.

**Q106. Would the purchase of buy-out annuities under section 43.1 of the PBA trigger "transfer deficiencies" rules (as set out in the section 19(6) of Regulation 909) that apply to a buy-out annuity purchased under section 43 of the PBA?**

**A106.** No. The transfer deficiency test under section 19(6) of Regulation 909 does not apply to an annuity purchased under section 43.1 of the PBA. Instead, sections 4 and 5 of Regulation 193/18 set out the funding requirements specific to such annuity purchases.

**Q107. Is a plan amendment required before entering into a buy-out annuity?**

**A107.** Whether a plan needs to be amended in order to be able to purchase annuities pursuant to either

section 43 or 43.1 of the PBA, depends at least in part on existing plan provisions and governance arrangements – which may necessitate a plan amendment. While the PBA itself does not specifically require permissive plan language regarding annuity purchases, it is not certain what a tribunal or court might decide in this regard should an annuity purchase be challenged.

As a result, plan sponsors should consider the additional certainty that may be gained by ensuring that the plan text does in fact contemplate and permit such unilateral purchases of annuities in settlement of accrued defined benefit pensions.

## Regulatory Requirements

### **Q200. What is the “date of the purchase” of an annuity as referred to under 193/18?**

**A200.** In Regulation 193/18, the “date of the purchase” is defined as day on which a contract to purchase a pension, a deferred pension or an ancillary benefit from an insurance company is entered into between an administrator of a pension plan and the insurance company.

Under industry practices, this is the date the administrator provides the insurance company with a written commitment to the transaction indicating its acceptance of the substantive terms of the purchase. In most cases this is when the administrator selects the winning bid and accepts the “binding offer” of that bid; it does not necessarily mean the date the contract is executed or the date the premium is paid. The acceptance of a commitment can be communicated electronically.

### **Q201. If, following an annuity purchase, the funding position has improved (as demonstrated in an actuarial cost certificate), will the sponsor be permitted to reduce special payment contributions, or would a full valuation report need to be filed?**

**A201.** Section 6 of Regulation 193/18 provides that employer contributions can be reduced if an actuarial cost certificate filed under that section shows an improvement of the funded position and a reduction in special payments after the annuity is purchased and discharged. The actuarial cost certificate would have to include sufficient information to determine the new contributions and special payments going forward. A full actuarial valuation report would also be acceptable for purposes of section 6 of Regulation 193/18.

### **Q202. If a plan filed an actuarial cost certificate the day before an annuity purchase, would that become the most recently filed report to establish the solvency ratio for the purposes of sections 4 or 5 under regulation 193/18?**

**A202.** No. An actuarial cost certificate filed under Section 6 of Regulation 193/18 or under section 7.1 of Regulation 909 is not a report filed under sections 3, 4, 13, or 14 of Regulation 909 (i.e., the most recently filed valuation report) for purposes of sections 4 or 5 of Regulation 193/18.

### **Q203. Can a discharge be obtained when a buy-in annuity is converted into a buy-out annuity? What would be the “date of purchase” in this scenario?**

**A203.** Yes. The conversion from a buy-in annuity to a buy-out annuity can be considered an annuity purchase for purposes of section 43.1 of the PBA and Regulation 193/18. The administrator could obtain a discharge if it files a certificate that meets the requirements of section 43.1 and complies with all other

requirements of section 43.1 and Regulation 193/18. For purposes of Regulation 193/18, the “date of purchase” would be the date of the conversion (or such date as when the parties enter into a binding commitment to the buy-out annuity).

**Q204. Our plan purchased annuities for its members prior to July 1, 2018. We would like to obtain a discharge with respect to those annuities under Section 43.1(6) of the PBA. Section 5(4) of Regulation 193/18 says that where no adjustment to the original purchase is needed, a discharge is permitted as long as the solvency ratio of the most recently filed valuation is at least 0.85. Is a top-up permitted to meet this ratio?**

**A204.** A top-up contribution can be made to meet the 85% threshold in paragraph 4 of section 5 of Regulation 193/18, but a new valuation report in respect of the plan would have to be filed prior to the date the certificate is filed under section 43.1(6) of the PBA showing that the solvency ratio meets the 85% threshold.

## Multi-jurisdictional Plans

**Q300. For a multi-jurisdictional plan registered in Ontario, would the discharge only apply to the Ontario members? If the discharge is limited to Ontario members, does the solvency ratio test in sections 4 or 5 of Regulation 193/18 apply to the entire plan?**

**A300.** The discharge provided under section 43.1 of the PBA is only applicable to Ontario former members and retired members. However, the solvency test in section 4 or 5 of Regulation 193/18 (as applicable) must be measured against the entire plan, not just the Ontario liabilities and assets.

**Q301. In respect of a multi-jurisdictional plan registered in another province but with Ontario members, can a discharge be obtained for Ontario members? If so, how does the solvency ratio test in sections 4 or 5 of Regulation 193/18 apply?**

**A301.** A discharge provided for under section 43.1 of the PBA would be available with respect to Ontario former members and retired members, but the administrator would need to be able to demonstrate compliance with the various requirements of the Ontario PBA. This would include demonstrating compliance with the solvency test in sections 4 or 5 of Regulation 193/18 (as applicable). Further, the solvency test would have to be measured against the entire plan, not just the Ontario liabilities and assets.

## Treatment of Annuitized Pensions

**Q400. Once an administrator obtains a discharge under section 43.1 of the PBA, how does it affect the following filings with respect to former members and retired members covered by the annuity and subject to a discharge:**

**A400.**

### a) Biennial Statements

Biennial statements would not need to be provided to former members and retired members for whom an annuity is purchased for the fiscal year in which the annuity is purchased and discharged, or for any year

thereafter, as these persons would no longer be considered to be former members or retired members of the plan.

Any outstanding biennial statements for fiscal years preceding the annuity purchase would still have to be provided to those persons.

**b) Annual Information Return (AIR)**

Former members and retired members subject to discharge in section 43.1 will no longer be reflected in the AIR starting with the fiscal year in which the annuities were discharged, as those members would no longer be considered members of the plan (even though they retain surplus rights pursuant to section 43.1(9) of the PBA).

**c) Actuarial Valuation Report and Actuarial Information Summary (AIS)**

The liabilities of former members and retired members subject to discharge in section 43.1 will no longer need to be included in the liabilities of the pension plan in the next section 14 valuation report filed with FSCO, or in the accompanying AIS. However, a record of the annuity purchase and discharge will need to be reflected in the first valuation report and the AIS that follows the purchase.

**d) PBGF Assessment Certificates**

The PBGF Assessment Certificate that must be filed in the same year as the annuity purchase should include the number of all Ontario plan beneficiaries with defined benefits at the previous fiscal year-end (including the former members and retired members covered by the annuity for whom a discharge was obtained), as that field is based on the number of such members at the previous fiscal year-end.

The PBGF Assessment Certificate filed in the years following the year of the annuity purchase would not include the number of Ontario former member and retired members covered by the annuity for whom a discharge was obtained.

For purposes of the PBGF Assessment Certificate, the PBGF assessment base may only be reduced if a new section 3 or section 14 valuation report is filed with FSCO, showing the decrease in the PBGF assessment base.

For further clarification, contact FSCO.

**Q401. Our plan is a 'frozen' defined benefit (DB) plan (i.e., no continuing accruals of credited service or recognition of earnings beyond the 'freeze date'). There are no active members in the plan. If an annuity is purchased for the former members and retired members, and the discharge is obtained, will this necessarily trigger a wind-up of the pension plan or can the plan continue to exist?**

**A401.** Winding up a plan under section 68 of the PBA is at the discretion of the employer, or in the case of a multi-employer pension plan, the administrator. Pursuant to section 69(1) of the PBA and section 28.2 of Regulation 909, the Superintendent can wind up a plan under various conditions, including where:

- there is a cessation or suspension of employer contributions to the pension fund; or

- the plan has no members. It has only former members, retired members and other beneficiaries who are not members; or
- members no longer accrue benefits under the plan and employees are no longer permitted to become members of the plan.

If any of the above scenarios were to occur, the Superintendent can consider whether to order the wind up of the plan (whether or not annuities have been purchased and whether or not a discharge with respect to the annuities is obtained). The Superintendent will need to consider all the relevant facts of any specific scenario and exercise discretion accordingly.

**Q402. If a discharge is obtained under section 43.1 of the PBA with respect to an annuity purchase, will the annuity need to be reflected in the calculation of the provision for adverse deviation (PfAD)?**

**A402.** No. Where there is a discharge under section 43.1 of the PBA, the assets and liabilities for which there is a discharge are no longer considered part of the assets and liabilities of the plan and are therefore not subject to any continuing contribution or reporting requirements (beyond what is required under section 43.1 or that is otherwise based on a funding requirement that references a time period before the annuity purchase). As a result, the PfAD will not apply to such annuities (except with respect to any active members or beneficiaries to whom the discharge did not apply).

## Combination Defined Benefit (DB) and Defined Contribution (DC) Plans

**Q500. The following question pertains to a pension plan with a “frozen” DB component and an active DC component, where the administrator wishes to purchase an annuity for all benefits accrued under the frozen DB component. If the administrator files a certificate that complies with section 43.1 of the PBA, will the discharge apply to “frozen” DB members who are still active in the DC component of the same plan?**

**A500.** Section 43.1 does not provide a discharge with respect to liabilities related to active members of a plan. This would include members whose benefits are frozen under the DB component, but are active under the DC component of the same plan or even to those who are no longer accruing benefits under the plan but who remain employed by the same employer.

However, annuities can be purchased for active members under section 43. The administrator could purchase annuities for active, former, and retired members in a single transaction pursuant to sections 43 and 43.1. The discharge provided under section 43.1 would only apply to former and retired members.

Upon termination or retirement of one or more of the active members, such that benefits are no longer being earned under any component of the plan and they qualify as retired or former members, the administrator could then file a new certificate with the Superintendent pursuant to section 43.1 of the PBA, which meets the requirements of that section and Regulation 193/18. The certificate would have to be prepared by an actuary, and clearly specify the persons whose benefits the discharge would apply to. As well, the administrator would have to provide notice under sections 43.1(3) or (7) of the PBA that meets the requirements of section 2 of Regulation 193/18, prior to filing the certificate with the Superintendent.

## Individual Pension Plans

**Q600. Individual Pension Plans (IPPs) are generally restricted in their funding assumptions under the Income Tax Act (ITA), namely that they are limited in the amounts the sponsor can contribute. If an IPP cannot contribute to meet the solvency requirements under Regulation 193/18 because of limits in the ITA, would FSCO accept a lower solvency ratio for purposes of the discharge?**

**A600.** Note that there is no “approval” or “issuance” of a discharge by the Superintendent or FSCO under section 43.1 of the PBA. The discharge is simply the result if the requirements in the PBA and Regulation 193/18 have been met.

Given this scenario, if the IPP cannot meet the solvency test of Regulation 193/18, for whatever reason, then the liabilities would not be discharged under section 43.1 of the PBA.

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