

September 18, 2020

Financial Services Regulatory Authority of Ontario  
5160 Yonge Street, 16th Floor  
Toronto, Ontario  
M2N 6L9

**Re: Willis Towers Watson Submission on Draft Guidance for Consultation on the Issue of Missing Pension Members**

Dear Sir or Madam,

Willis Towers Watson welcomes the opportunity to comment on the Draft Guidance for Consultation on the Issue of Missing Pension Members (Draft Guidance). In this submission, we comment on both Information Guidance PE0203INF: Principles and Practices Regarding Missing Members, and Approach Guidance PE0204AOO: Waiver of Biennial Statements for Missing Former and Retired Members.

Willis Towers Watson designs and delivers solutions that manage risk, optimize benefits, cultivate talent and expand the power of capital to protect and strengthen institutions and individuals. Willis Towers Watson 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.

**PE0203INF: Principles and Practices Regarding Missing Members**

We generally support the updates to the missing member policy from the earlier FSCO policy. The Draft Guidance is more detailed than the former FSCO policies and we appreciate the added detail. However, we have some comments on certain aspects of the Draft Guidance which we set out below.

**Section 2. Rationale and Principles**

We agree with FSRA's view, under section 2.4, that there is a practical limit to the search process and that obligations to beneficiaries must be balanced against the cost of a search. This is a pragmatic approach that balances the administrator's fiduciary duties between individual beneficiaries and the beneficiaries as a whole.

**Section 3.2 Pension Plan Member Responsibilities**

We agree that plan members have a responsibility to notify their plan's administrator about changes to their personal information (including address changes). Members, however, are unlikely to be an audience to this Guidance. Therefore, we recommend that this section be amended so that it is applicable to plan

administrators (e.g., “plan administrators should communicate to members the requirement to notify the administrator about changes in their personal information, including contact details...”). We also recommend that the importance for members to communicate personal information changes be set out under the “For consumers” part of FSRA’s web page.

### **3.3 Administrative Practices**

We recommend that the wording in this section be strengthened and expanded in relation to the responsibility to maintain member records when there is a corporate restructuring (including sale of a business) or personnel turnover. This will decrease the risk that the plan administrator will not have any records on someone who, many years after the fact, inquires about a possible pension entitlement.

### **3.4 Communication Practices**

Section 3.4.1 includes electronic communications as a possible communication method. We recommend that this Guidance contain more details (perhaps in a footnote) about the requirements for electronic communications, particularly considering the recent amendments to the *Pension Benefits Act* (PBA).

We also recommend that the suggestion in section 3.4.2 on member consent be reworded to clarify what kind of information the administrator can publish or ask government offices to release. Otherwise, plan administrators may seek an overly broad consent that members may not want to give.

### **3.5 Things to Consider when Searching for Missing Members**

We recommend expanding section 3.5.3 to provide some detail or examples as to what would be considered “professional advice” with respect to searching for missing members.

### **3.8 Dealing with Missing Members on Plan Wind Up**

We recommend adding further details under section 3.8.3 to expand on other approaches that have been acceptable in the past as well as what FSRA considers to be an *Income Tax Act* implication with respect to any proposed approach.

#### **Appendix 1: Example Search Tools**

The Ontario Death Registry is mentioned as a possible search tool. However, it is our understanding that there is no such single Ontario-wide registry that can be accessed by plan administrators and, therefore, we recommend that this reference be removed or qualified.

#### **Appendix 3: Missing Members – Example Search Approaches**

With respect to Example 1, under “Administrator’s proposed actions”, it states that the administrator will “cease further searches until member is found or member is six months from the plan’s earliest retirement age (55)”. We do not understand this statement as it implies that searches would begin after the member is found and we, therefore, recommend that it be reworded.

**Other comments**

We recommend that this Guidance set out, perhaps after section 3.6, additional considerations for multi-jurisdictional plans. For example, Revenu Québec has stated that its unclaimed property rules extend to plans registered outside of Quebec if the missing member or beneficiary's last known address was in Quebec, and to members of Quebec registered plans who were employed outside Quebec unless employed in a jurisdiction that has its own unclaimed property legislation. There can be substantial fines for not complying with Quebec's legislation.

As well, one question not addressed in this Guidance is what a plan administrator should do if it is ultimately unable to locate missing members or other beneficiaries. This is an issue in respect of which plan administrators would benefit from additional guidance. For example, in Example 3 of Appendix 3, under "Administrator's proposed actions", it states that the administrator will cease further searches on the basis that the member has passed away. But how should the administrator address the fact that \$75,000 of unclaimed benefits would remain in the plan? This is particularly an issue with respect to a plan that is winding up. We recommend that this Guidance contain a section that sets out some guidelines on this issue.

**PE0204A00: Waiver of Biennial Statements for Missing Former and Retired Members**

It is unclear why an administrator would apply for a waiver under this process, particularly, as noted under section 1.5, there is no requirement for an administrator to do so. Furthermore, as section 2.5 notes, an administrator should not send a biennial statement if it has good reason to believe the address is incorrect and this would be the case even if it does not have a waiver. That is, provided that an administrator has made a reasonable search for a missing member, there does not appear to be an advantage to applying for a waiver.

Furthermore, the waiver process is unnecessarily burdensome. For example, it is not clear why an administrator needs to notify FSRA if the administrator finds a missing member, particularly since the waiver application does not require the administrator to list individual names on the waiver application.

We appreciate that the waiver requirement follows the requirements set out under section 27 of the PBA and FSRA does not have the discretion to modify these requirements. However, we suggest that, at the next opportunity to do so, FSRA consider recommending to the Ministry of Finance that it amend section 27 of the PBA to address these issues.

While this Draft Guidance references section 27(4) of the PBA with respect to the factors that FSRA will consider when determining whether an administrator has made reasonable efforts to locate missing former or retired members, we believe that those factors should be set out in the Guidance. Furthermore, it would be helpful if the Guidance were to set out guidelines with respect to how FSRA will consider these factors when it reviews a waiver application. For example, the Guidance could set out some parameters as to when the cost of the search, compared to the size of the commuted value of the member's benefit, leads to the conclusion that a search would not be required.

Finally, as noted above and unlike FSCO's previous policies, the waiver application does not require an administrator to set out the name of the missing member and we are uncertain why this is no longer needed.

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

Sincerely,



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