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VIA E-MAIL capasa-acor@fscs.gov.on.ca

CAPSA Secretariat
5160 Yonge Street
16th Floor,
Toronto, ON M2N 6L9

RE: Consultation on Guideline No. 2 - Electronic Communication in the Pension Industry

Dear Sirs/Mesdames:

I. INTRODUCTION

We are pleased to provide this submission ("**Submission**") on CAPSA's consultation in respect of the draft revised Guideline No. 2 – Electronic Communication in the Pension Industry (the "**Guideline**"). The Submission is made on behalf of the Pensions, Benefits & Executive Compensation Group ("**Pensions Group**") at Blake, Cassels & Graydon LLP ("**Blakes**"). The Pensions Group consists of lawyers in Toronto, Montreal, Calgary and Vancouver whose practices are devoted to pension, benefits, and compensation law. The Pensions Group is supported by lawyers with pensions and benefits sub-specialties in the employment, corporate tax, litigation, and securities law practice groups at Blakes.

We appreciate the opportunity to comment on the Guideline. Our Submission has been made from the perspective of practicing lawyers in the pension law field. We are not writing on behalf of, or to express the views of, any client of Blakes. Nothing in this Submission is intended to express any legal opinion or legal interpretation of existing or proposed legislation.

Our comments are set out below, addressing the issues in the order they appear in the Guideline.

II. GENERAL

We strongly support the use of electronic communication in the pensions industry. The Guideline is a positive development in CAPSA's efforts to support and promote the use of electronic communication. However, there are some aspects of the Guideline which we believe should be clarified or revised, as described herein.

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E-communication

The Pensions Group agrees with CAPSA's approach to recognizing "deemed consent" where permitted in the applicable jurisdictions. However, we believe that the concept of "e-communication" is somewhat unclear. As a result, the Pensions Group urges CAPSA to revise the Guideline so as to define "e-communication" in more precise terms.

More specifically, we recommend that the Guideline be revised to recognize that the ability to use e-communications should also apply to communications which are initiated by members or other beneficiaries of a pension plan, and not just communications initiated by the plan administrator or sponsor.

We also recommend that the Guideline more specifically describe the types of communications which may be made by electronic means. We note that the Guideline states that it "is intended to apply to any communications required under pension legislation". It is not entirely clear which communications would be considered to be "required" under pension legislation. For example, if a plan member asks the administrator a question about his/her entitlements under the plan, would the response to such question be considered a communication which is "required" by pension legislation? In our view, e-communications should be permitted for any pensions-related communications between a plan administrator or sponsor and plan members or other beneficiaries or spouses or trade unions (regardless of which party initiates the communication).

Also, the Guideline appears to assume that e-communications will only be made using certain types of technology, such as e-mails and other forms of electronic documents, which are capable of being viewed or printed. However, we recommend that the Guideline also recognize the use of other technologies, such as webinars and video-conferences (as well as future technologies) which may not be capable of being "viewed" or "printed."

Consent

We recommend that section 2.2 of the Guideline be revised to provide that where pension legislation permits deemed consent and a recipient designates an information system to the plan administrator, the recipient be considered to have provided deemed consent to e-communication. This would be consistent with section 3.1 of current Guideline No. 2, which provides that the designation of an information system by a plan member is considered deemed consent.

Requirement for Information to be in Writing

The Pensions Group believes that section 3.2 of the Guideline should be revised to recognize that the right of a recipient to request "any" e-communication be provided in paper format should not apply where the particular form of e-communication that was utilized cannot be provided in hard-copy written form (for example, a video conference).

Section 3.3 of the Guideline deals with the situation in which electronic delivery fails. We recommend that the Guideline be revised to include a provision which recognizes that plan members and other recipients of e-communications have an obligation to keep their contact information up-to-date and to promptly notify the administrator or sponsor of any changes to their designated information system or other contact information.

Providing Information in a Specific Form

We recommend that section 4 of the Guideline be revised to make it clear that an e-communication need only mirror the content of the paper version where there is in fact a paper equivalent of the e-communication.

Electronic Signature

Section 5.2 is somewhat unclear, specifically with respect to the statement that “an electronic signature should be able to identify the recipient.” We assume the intention is that the recipient of the electronically signed document should be able to identify the individual who signed the document based on his or her electronic signature. If this is the case, we recommend that section 5.2 be revised to clarify such intention.

Retaining E-communication

We recommend that section 7.3 of the Guideline be revised to specify that the obligation to retain information about an e-communication applies not only to the plan administrator and sponsor, but also to plan members and other beneficiaries who are sending or receiving information electronically.

Data Security

We recommend that the Guideline be revised to recognize that, by agreeing to communicate electronically, plan members and other beneficiaries accept responsibility for the security of their own data and information systems.

Use of Website or Other Electronic Technology

It is our expectation that as technology evolves, new means of electronic communication will be developed. We recommend that CAPSA consider specifying in the Guideline that where consent to electronic communications has been provided by a member or other beneficiary, such consent would automatically continue to apply to any new information system designated by the member or other beneficiary unless the individual expressly revokes such consent.



The Pensions Group would be pleased to meet with CAPSA to share our experience and expertise and to assist in the development of the guideline in respect of electronic communication.

Should you have any questions, please do not hesitate to call any member of our group.

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Yours very truly,

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