

Trends: The View from Our Offices

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Overview

1. ESG Factor Integration

- Cut through the confusion: collateral benefits vs. financial risk-reward

2. Ancillary Benefits

- When are they pension benefits?

3. Cyber-security

- Prepare and test an incident response plan

4. Surplus strategies

- What's Mine is mine and what's yours we share?

5. Industry-wide Pension Projects

- What we are working on

6. Service Provider Agreements

- Tips for Negotiating

ESG Factor Integration

1. Motive governs

- **Focus on financial risk and rewards** 😊
 - Consistent with duty of pension fiduciaries
 - ESG investing can provide superior risk-adjusted returns
- **Focus on collateral benefits** 😞
 - Inconsistent with duty of pension fiduciaries
 - Subject to some limited exceptions
 - Tie-breaker, directed by trust instrument ... etc

2. Proper Description in SIPP

- Direct and indirect investments
- Never say “never”

Ancillary Benefits

- When is an ancillary benefit a pension benefit?
- Amendments to change or terminate ancillary benefits?
- Using ancillaries as a buffer in targeted benefit plans.

Cyber-security Issues

- Plan member data collection and storage triggers privacy laws and fiduciary duty
- Data breach incidents are increasing in both numbers and sophistication
- Organizations subject to PIPEDA have reporting, notice and record retention obligations and are exposed to material fines
- Misuse of personal information can result in law suits for damages as well as violations of statutory fiduciary standards
- What should an administrator do? 🤖

Cyber-security Preparedness

1. Prepare a data map
 - How personal information flows to and through the plan
2. Prepare and test an incident response plan that includes:
 - Contact information for internal and external resources
 - Framework for assessing real risk of significant harm
 - Identify reporting obligations
 - Step-by-step plan for addressing a suspected breach
 - Regular testing, review and update procedures
 - A security breach log
 - Template notices (to meet statutory privacy requirements and any fiduciary obligations)
 - Review of vendor contracts, including their obligation to report

Surplus Strategies

Avoid trapped surplus and do not expose surplus to confiscation or sharing:

1. Fix “ownership” language ... if possible
2. Merge surplus plan with another plan
3. Convert plan to DC (rather than setting up new plan)
4. Convert plan to less volatile plan design
 - Consider CAE or flat benefit design
 - Consider target benefit or similar shared risk design
5. Consider new trust or funding structure for future contributions
6. Consider withdrawal from ongoing plan
7. Consider wind up to obtain access (without a successor plan defeating the wind up).

Association & Industry-wide plans

□ Consider MEPPs

- Targeted benefit
- Smart DC
 - Administrator directed investments
- Individual Choice DC

Service Provider Agreements

Purpose:

Create an enforceable contract that:

- achieves clarity about who is doing what, when, where, and how;
- sets out rights to own or access work product;
- allocates liability and indemnity roles.

Service Provider Agreements

Negotiating Tips:

1. Define scope, specs and service levels
2. Set out an objective and timely acceptance mechanism for work completed
3. Protect plan assets and other interests
 - IP Ownership
 - Confidential information
4. Build in timelines and penalties for delay
5. Obtain appropriate representations and warranties

Service Provider Agreements

6. Obtain specific performance metrics
7. Clarify payment terms
8. Consider all risk and liability allocation provisions carefully
 - Sales and RFP material not disclaimed or limited
 - Indemnification provisions
 - Reasonable limitations of liability
9. “Boilerplate” is negotiable too
10. Consider termination provisions
 - Notices, timing and who can initiate

Questions? Comments?



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