Information

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Understanding Decumulation Products

Purpose

This Information Guidance identifies new and existing products consumers use to draw down on their savings during their retirement while not outliving those savings. These are generally referred to as decumulation products and can be structured in a variety of ways and, depending on how they are structured, will be afforded different regulatory treatment and protections for consumers.

While the Financial Services Regulatory Authority of Ontario ("FSRA") supports responsible innovation in the sectors it regulates, this Guidance informs consumers that some of these products are not insurance products or pension plans. FSRA, therefore, does not regulate them, even though they are designed to make payments based on the projected life expectancy of the consumers or may refer to themselves as pensions. As well, this Guidance clarifies that these products are not protected under Ontario's *Pension Benefits Act* ("PBA"), even though the products may be described as pension plans or pension funds.

To assist consumers, this Guidance describes factors consumers should consider before choosing whether to invest in these decumulation products, which are not regulated by FSRA.

Consumers should consult with a life insurance agent, financial planner/advisor[1], or securities advisor about whether a decumulation product is suitable for their situation, what risks and benefits it offers, and how it meets their needs.

Scope

This **Guidance applies to the following stakeholders:**

- consumers of decumulation products
- general public

Information

Background

A number of decumulation products have recently been introduced in Ontario which are designed to help investors find ways to live on their savings without outliving them. People who have saved money and accumulated assets for retirement can use these products to help make their savings last their entire lives. Withdrawing and spending savings during the retirement phase of life is called “decumulation.”

In this Guidance, “Uninsured Decumulation Product” means any product that:

- is not a contract between a consumer and an insurer

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[1] In March 2022, the *Financial Professionals Title Protection Act, 2019* came into force, limiting the use of the Financial Planner (FP) and Financial Advisor (FA) titles in Ontario. FSRA’s role is to ensure individuals using FP or FA titles in Ontario are subject to a minimum level of education and supervision by a FSRA-approved credentialing body. The credentialing bodies are responsible for granting the use of FP and/or FA titles to individuals who meet specific education and examination standards and abide by a code of conduct that requires them to put the client’s interest first and ensures the fair treatment of consumers. For more information, see Financial Planners and Financial Advisors

- is designed or purports to make payments that depend on how long the investor lives

- results in or requires the investor to bear the risk of the investment return not providing sufficient income to support the investor during retirement

Uninsured Decumulation Products are regulated under securities law, not insurance or pension law, and are therefore overseen by the Ontario Securities Commission ("OSC"), not FSRA. Insurance products (such as life annuities issued by insurance companies that make payments as long as a person is alive), registered pension plans, and securities follow different rules which provide different protections to consumers and pension plan beneficiaries. For more information, please see "What Laws apply to Decumulation Products", below.

Some of these new investments may use words such as "annuity", "pension", or "tontine" in their marketing materials. However, these new investments are in fact not annuities, pensions, or insured tontines and are, therefore, not insurance products or registered pension plans. For example, these products may be offered as mutual funds. Consequently, consumers who invest in these decumulation products do not have the same regulatory protections that exist for insurance products or registered pension plans. Consumers should carefully review marketing materials and other information to determine what regulatory oversight applies.

With respect to insurance products or pensions:

- A life annuity is an insurance contract where an insurer agrees to pay money to the investor regularly, such as once a month, as long as the investor is alive. The insurer is regulated and required to have a minimum level of capital available to ensure that it is available to honour this obligation.

- A "tontine" is an investment product, that may or may not be issued by an insurer (and therefore may or may not be insurance), pools investments from a number of investors and makes a payment either to the last investor alive or to all investors who are still alive on a specific date.

- FSRA, Ontario's insurance regulator, supervises life insurance companies and life insurance agents' business conduct. FSRA protects the rights of consumers by ensuring that insurance companies and life insurance agents are properly licensed to operate in

Ontario, and that they comply with Ontario's *Insurance Act*. This includes ensuring that they do not engage in any unfair or deceptive act or practice.

- Registered pension plans are regulated under the PBA. While it may be possible for a decumulation product to be offered as an investment option within a defined contribution registered pension plan, that does not mean that the decumulation product would itself be regulated under the PBA. The PBA requires that pension plan administrators act in accordance with a specific standard of care, which requires them to act in the best interests of pension plan beneficiaries. This includes when making decisions with respect to the selection of investment options in DC plans.

- FSRA, Ontario's pension regulator, promotes good plan administration and protects the rights and benefits of plan beneficiaries. This includes supervising Ontario registered pension plan administrators against the required standard of care, assessing the funding adequacy of plans, and enforcing member rights established by the PBA.

The above points regarding insurance and registered pension plans do not apply to decumulation products.

Types of Uninsured Decumulation Products

Uninsured Decumulation Products include investments that purport to offer regular payments to investors as long as they live. These products do not guarantee an investment return and are subject to various risks, including the complete loss of capital. However, marketing materials for some of these products may suggest that these investments are comparable to annuities or pension plans, when they are in fact much different. Annuities and registered pension plans are regulated to ensure that there is adequate capital to protect the consumer's annuity payment or pension benefit, whereas Uninsured Decumulation Products are not regulated by FSRA to ensure this outcome.

Another type of uninsured decumulation product is an investment designed to make some payments only to the investors who live until a certain date. This product is often referred to as a "tontine" and is designed to allow investors to share the risk of living a longer life by combining certain features of a group annuity with a kind of lottery based on life expectancy. Each investor may invest a sum into a trust and thereafter receive a periodic payout, but as investors in the

“pool” die, their payout entitlements are transferred to other participants until the death of the final investor. Where these products are not offered by insurance companies, they are not insurance.

The following are examples of how an Uninsured Decumulation Product can be structured.

Example 1: Regular payments “for life”

An investor buys units in a mutual (investment) fund. The fund is designed to make regular monthly payments to investors as long as they live and own their units. The fund promises it will pay back part of the initial investment if the investor dies or sells the units, less any amounts that it has already distributed to the investor, but it will not pay the investor any investment growth in those situations. Instead, any growth is used towards the monthly payments the fund makes to the other investors who remain living and have not sold their investment in the fund. These payments can therefore be higher than if they were based only on the investment growth of the units owned by the surviving investors. The more people who die or sell their units early, the higher the payments can be to the surviving investors, because the investment growth of those who have died or sold their units in the fund remains in the fund.

The fund may be designed to increase the monthly payments over time, based on projections of how many people will die and when, but it does not promise to pay any particular amount each month and is subject to the risk of investment returns being less than projected. The payments to the investor from the fund will depend on how well the fund’s investments perform; how many investors die, and when; and how many sell their units, and when. The investors accept the risk that their payments may not increase, and that they may even decrease or stop, if more people live longer than expected and/or the investments do not perform well – or that additional fees may be charged. These changes are at the fund’s discretion and do not have regulatory oversight.

This investment is an Uninsured Decumulation Product because:

- It is a mutual fund, not a contract with an insurer.
- It does not legally guarantee an amount and is subject to various risks, including that investors can lose their entire investment.

- The investor, not the fund or fund manager, assumes the risk that payments may decrease or stop depending on when other investors die.

Example 2: Future payment ("tontine")

A "tontine" is designed to make a periodic payment to an investor and pool the risk associated with outliving a consumer's investments through the following features:

- Investors pay a lump sum to buy units in a mutual fund.
- The fund does not make payments until a specific year.
- All of the investors who are still alive and invested when the payout year starts will receive four quarterly payments that year.
- Investors who die or sell their units before the start of that year will receive less than what the investments would normally be worth based on its market value; for example, between 50% and 95% of the normal net asset value:
    - If someone dies or sells their units in the final ten years before the quarterly payments commence, they may receive only 50% of the normal net asset value.
    - In earlier years, they may receive up to 95% of the normal net asset value.
    - The balance of the value not paid to the investor who has died or sold their units is used to increase the quarterly payments for the investors who are alive and hold their units until the payout year.

This investment is an Uninsured Decumulation Product because:

- It is a mutual fund, not a contract with an insurer.
- It is designed to make payment to investors who live until the specified year and have not sold their units.

- The investors assume the risk that they will die before the year in which payments are projected to be made and may therefore receive significantly less from their investment than if they had lived.

What laws apply to decumulation products?

Different laws and investor protections apply to decumulation products, depending on whether they are considered to be insurance products (such as annuities), pensions, or Uninsured Decumulation Products such as mutual funds or other securities.

Insurance is a contract with an insurer that is sold by a licensed life insurance agent. FSRA oversees how these products are sold and administered, and the Office of the Superintendent of Financial Institutions ("OSFI"), which is the federal solvency regulator, oversees the insurer which provides this product.

Uninsured Decumulation Products are typically structured as mutual funds or other securities, which are designed and sold according to the provisions of the Ontario *Securities Act*. These products are overseen by the OSC.

Some mutual funds or other products may be described as pension funds or pension plans in their marketing materials but do not offer the protections found in Ontario's *Pension Benefits Act* ("PBA") and are not actually supervised by FSRA, which is Ontario's pension regulator. This means, for example:

- No filings are required to be made with FSRA, including actuarial valuations.
- FSRA does not scrutinize the methods and assumptions relied on by the provider in determining its payments to participants and adequacy of available assets.
- The product is not required to meet any of the minimum standards established by the PBA.

This means that FSRA does not assess the ability of the provider to make benefit payments at a certain level or enforce the same standards and rights that members of workplace registered pension plans enjoy.

Before a consumer invests in any decumulation product, they should think about what laws and protections apply. A consumer can ask the person who offers the investment for more information, including whether the investment is insurance or a security, and whether it is registered under the PBA.

Effective date and future review

This Guidance became effective on January 10, 2024 and will be reviewed no later than January 10, 2027**.**

About this Guidance

This document is consistent with FSRA's Guidance Framework. As Information Guidance, it describes FSRA's views on certain topics without creating new compliance obligations for regulated persons.

Appendix

Questions to consider about decumulation products

When you choose how to use your **savings after you retire, here are some important questions to consider:**

- How much do you have saved, and what do you owe?
- How much do you need for your regular expenses, and how do you expect those numbers to change over the rest of your life?
- What do you want to do during your retirement?
- What will your retirement plans cost, and when will you have to make those payments?
- When you die, what loved ones might you leave behind, and what money or other assets (e.g., a home) do you want or need to leave them?

- How much will you need to leave for your final expenses, such as your funeral or space in a cemetery?

If you're choosing between investing your savings in an insured solution like an annuity and an Uninsured Decumulation Product, consider the following:

- What guarantees do your options offer?
    - Be sure to look beyond the marketing materials and check the fine print. Some products appear to offer payments for life, but the fund manager may have discretion to change or stop the payments.
- If income from your investment is not guaranteed, can you afford to live without it?
- What assumptions were used to create any illustration of how your investment might perform?
    - Some investment illustrations assume you will pay fees from money outside the investment (e.g., from the monthly payments you receive or from other assets).
- If payments are not guaranteed, but depend on factors such as how many people die and when, how often will the person running the investment check the assumptions against what actually happens, and what will they do if their assumptions were wrong?
    - What information will you receive in the years after you invest to let you know if any of these assumptions were wrong?
- What happens to your investment if you go bankrupt or your creditors try to claim your investment because you have not paid money you owe them?
    - Insured products like annuities can be protected from creditors' claims if you name a protected beneficiary, such as your spouse.
- How likely are you to need to sell your investment after you buy it, and what happens then?

    - Some Uninsured Decumulation Products significantly limit the amount you will receive if you have to sell your investment at certain times.
    - Insured annuities typically do not allow you to sell your investment after you buy it.

- If your investment will allow you to sell it, how will the amount you receive be calculated?
    - What information will you receive in the years after you invest, such as in your annual statements, about how much you can sell your investment for?
- How likely are you to die earlier than average?
    - “Average” will depend on who you are compared to the other investors, taking into account age, gender, health, lifestyle and family history.
- What happens to your investment when you die?
- What laws apply to this investment and what protections do they offer?