



Regulatory Authority Issues New Information Guidance on Decumulation Products

On January 10, 2024, Ontario’s Financial Services Regulatory Authority (FSRA) issued new information guidance for consumers and the general public. This guidance addresses financial products outside FSRA’s regulatory authority concerning insurance and pension plans.

FSRA’s information guidance documents like this one communicate the regulator’s nonbinding policy guidelines without creating compliance obligations for entities regulated by FSRA.

This policy document aims to advise consumers that what FSRA calls “decumulation products” are neither insurance nor pension plans. However, they are designed to make payments to investors through retirement and are based on life expectancy. Ontario consumers who invest in these products will not enjoy the same level of regulatory protection applicable to insurance and pension plans. Although FSRA does not regulate these products, many members of defined contribution (DC) pension plans must rely on decumulation products to turn their DC pension account balances into retirement income.

Overview of Uninsured Decumulation Products

Per this guidance, a *decumulation plan* is a financial product aimed at investing and paying out an individual’s savings during retirement while minimizing the risk of outliving their savings.

FSRA defines an *uninsured decumulation product* as a financial product that (1) “is not a contract

between a consumer and an insurer”; (2) “is designed or purports to make payments that depend on how long the investor lives”; and (3) “results in or requires the investor to bear the risk of the investment return not providing sufficient income to support the investor during retirement.”

The information guidance identifies two broad categories of uninsured decumulation products: (1) regular payments for life and (2) future payments (tontine).

A *regular payments-for-life* plan may be structured as a mutual fund that makes monthly payments to investors as long as they remain invested in the fund. Investment growth that accumulates as members die or sell their shares funds payments to the fund’s remaining investors. As plan members die or sell their shares, payments to surviving members may increase.

Payments to investors from these funds depend on the investment fund’s performance, with



the attendant risk of losses or poor returns. Investors are not guaranteed to receive a certain amount at each payment interval, and payments may decrease or stop if the investments perform poorly.

A *future payment* or *tontine* plan involves a pooled investment fund, which makes periodic payments to investors but reserves payment only for the last investor alive or all the investors who live to a specific date. A tontine may not begin to make payments until a specified date. Only the investors still alive at that time receive the scheduled payout.

An insurance company may administer a tontine; such products are considered insurance and thus subject to oversight by FSRA.

The guidance notes that both types of products are, in fact, mutual funds rather than insurance contracts. Investors risk losing their investment in these plans, receiving less than the projected return or dying before any payments are made.

Misleading Marketing

The guidance notes that marketing materials for uninsured decumulation products may use language like “annuity,” “pension” or “tontine” to describe their products, but these descriptions are misleading. FSRA notes that although these products purport to pay investors as long as they live in the same manner as an annuity or pension plan, these products differ in important ways.

Legal Frameworks

FSRA notes that consumer protection and regulatory oversight, including the applicable legislation and level of regulatory supervision, varies according to the applicable legal framework. The law that governs uninsured decumulation products differs from insurance and pension law.

Insurance contracts are sold by a licenced insurance agent and are subject to the standards in the Insurance Act. FSRA regulates the sale of insurance products in Ontario, while the Office of the Superintendent of Financial Institutions (OSFI) regulates insurers.

Pursuant to FSRA’s regulation of insurance contracts, insurance providers that offer life annuities must have sufficient monies available to satisfy the insurer’s obligation to make regular payments as long as the investor is alive.

Further, pension plans subject to the minimum standards set out in the Pension Benefits Act (PBA) and overseen by FSRA must provide regular filings to the regulator to prove the plan’s solvency.

Decumulation products, on the other hand, are often structured as mutual funds. These products are governed under securities legislation like the Securities Act and regulated by the Ontario Securities Commission.

Further, the guidance notes that annuities and pension plans, unlike uninsured decumulation products, are subject to standards that require that these plans be adequately funded to guarantee that benefits can be paid to beneficiaries. Further, FSRA cautions that only regulated pension plans are subject to the statutory duty of care owed by pension plan administrators to act in the best interests of plan beneficiaries.

Conclusion

This guidance emphasizes that consumers should consult with a professional, such as a financial advisor or financial planner, regarding the risks outlined above before making investments in uninsured decumulation products, many of which have only recently been introduced in Ontario.

The document concludes with an appendix, which sets out a series of questions for consumers to consider when investing in a decumulation product. These include personal questions concerning an individual’s financial and lifestyle-related circumstances that affect retirement savings plans. The appendix also asks questions to guide consumers in choosing between an insured plan like a life annuity and an uninsured decumulation product. 📄

Financial Services Regulatory Authority of Ontario, Information Guidance, No. PC0048INT, Understanding Decumulation Products (10 January 2024), www.fsrao.ca/regulation/guidance/understanding-decumulation-products.