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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

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Strengthening Canadians' Retirement Security - Proposals to Support the Sustainability of and Strengthen the Framework for Federally Regulated Private Pension Plans

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FOREWORD

ACPM (THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT)

ACPM (The Association of Canadian Pension Management) is a national, non-profit organization acting as the informed voice of plan sponsors, administrators and their service providers in advocating for improvement to the Canadian retirement income system. Our membership represents over 400 companies and retirement income plans that cover millions of plan members.

ACPM believes in the following principles as the basis for its policy development in support of an effective and sustainable Canadian retirement income system:

Diversification through Voluntary / Mandatory and Public / Private Options
Canada's retirement income system should be comprised of an appropriate mix of voluntary Third Pillar and mandatory First and Second Pillar components.

Third Pillar Coverage
Third Pillar retirement income plan coverage should be encouraged and play a meaningful ongoing role in Canada's retirement income system.

Adequacy and Security
The components of Canada's retirement income system should collectively enable Canadians to receive adequate and secure retirement incomes.

Affordability
The components of Canada's retirement income system should be affordable for both employers and employees.

Innovation in Plan Design
Canada's retirement income system should encourage and permit innovation in Third Pillar plan design.

Adaptability
Canada's retirement income system should be able to adapt to changing circumstances without the need for comprehensive legislative change.

Harmonization
Canada's pension legislation should be harmonized.

INITIAL COMMENTS

ACPM supports the federal government's review of approaches to achieve a strong and sustainable framework for federally regulated pension plans. It is ACPM's view that the hallmarks of "strength" and "sustainability" are achieved when pension coverage and benefit adequacy are prioritized. Transformational initiatives such as consolidation among DB plans, target benefit plans, and other cost-efficient methods of benefit delivery that are not funded and designed around traditional guaranteed annuity purchases as the default outcome on plan termination or member default are needed. VPLAs are a strong step in that direction and we applaud the government for this initiative.

However, more can and should be done to prioritize coverage and adequacy. DB plan coverage in the private sector has been on a strong decline over the past two decades, with many sponsors deciding to close plans to new members, cease benefit accrual, or wind-up plans entirely, often replaced by a DC plan. ACPM encourages the government to take a renewed look at the bold initiatives undertaken in other jurisdictions, both Canadian and otherwise, aimed at improving pension coverage and benefit adequacy. We urge the government to include solvency reform among those initiatives.

Regardless of whether the government chooses to take on "big" transformational ideas at this time, ACPM believes it to be core to a strong and sustainable federal pension regime that government initiatives and OSFI's supervisory approach be aligned. For example, OSFI's discretionary authority regarding the solvency funding methods and assumptions for DB plans should not be used to increase funding to DB plans at a time when the federal government is granting or contemplating solvency funding relief. Indeed, had OSFI implemented initiatives in 2020 regarding replicating portfolio methods and assumptions this would likely have more than offset any relief granted by the government in connection with the 2020 solvency funding moratorium for many sponsors and, if implemented in 2021, would similarly render ineffective any of the temporary relief measures contemplated in this consultation paper.

The consultation paper covers a number of topics. Among them, ACPM views the 2021 solvency funding relief, electronic communications and Solvency Reserve Accounts (SRAs) to be high-priority items. To enable government and plan sponsor resources to be effectively allocated, we urge the government to focus on these critical areas.

Though not part of the consultation paper, we also believe the government ought to correct, as a high-priority item, potentially ambiguous drafting in the PBSA which has led to the guidance offered by OSFI in *InfoPensions 23* under the heading "Entitlement to pension while employed". OSFI's position is that a member who has attained pensionable age must be permitted to commence receiving a pension without having to cease employment (i.e., to "double-dip"). For 35 years, the industry has interpreted the PBSA to permit such a plan design, but not to require it. Indeed, such interpretation is inconsistent with the provisions of many federal pension plans and has a major impact on their administration, their funding and their compliance. It is ACPM's view that this interpretation is an incorrect reversal of a long-standing and widely held interpretation of sections in the PBSA that have existed for 35 years and, moreover, that such interpretation is bad policy. We strongly encourage the government to correct the perceived ambiguity on this issue through a clarifying amendment to the PBSA that confirms that plans may, but need not, permit members to "double dip".

PART 1 - TEMPORARY BROAD-BASED SOLVENCY FUNDING RELIEF FOR 2021

We are supportive of measures that would support plan sponsors in these exceptional times. However, the consideration of special measures, yet again, is indicative of the need to seek a better balance between the going-concern basis on which pension plans operate and the need for funding of hypothetical plan terminations in corporate insolvency scenarios, which rarely occur in reality at the federal level.

QUESTIONS:

1) What are your views on the potential challenges that could be facing federally regulated DB plans in 2021?

The potential challenges can be grouped along two lines. First, the pandemic has had a very different impact on plan sponsors, dependent on their line of business. Indeed, some industries remain healthy while others have seen devastating impacts, such as air transport and certain service sectors. These diverging situations require flexibility in solutions. Second, interest rates have declined yet again in 2020, which translates into lower anticipated long-term returns, higher service costs and greater solvency special payments. Therefore, plans are facing increasing costs. On a going-concern basis, many of these plans are overfunded, leading to pension contributions, whether for special payments or unnecessary current service costs, becoming stranded capital, at a time when these funds would be better invested in the businesses and economy.

Despite significant drops in interest rates during 2020, many asset classes performed quite well by the end of 2020. Therefore, depending on asset mix, the solvency position of many plans may not have declined much since the end of 2019. However, with persistently low interest rates, such plans may only be one market correction away from significant increases in required contributions. This is of particular concern while the plan sponsor may still be struggling to recover from the business impact of the pandemic.

2) Should further temporary relief options be considered? What principles or criteria should guide the consideration of the relief measures?

Yes, we believe that temporary relief options should be considered. In fact, we believe that the review should go beyond temporary measures and revisit the need for solvency funding on a permanent basis for the reasons outlined above.

The guiding principles should include:

- **Transparency** for all stakeholders;
- Solutions which are **simple** and **easy to implement**;
- **Flexibility** for plan sponsors as there is a diversity of challenges within plans and industries;

- **Stability**: Consideration should be given not only to 2021 funding obligations but future years. First, the return to normal conditions will take time, likely years, for the industries that have been hardest hit. Secondly, with the smoothing built into the determination of solvency special payments, the economic impact will be recognized over a three-year period. Finally, stability is required to build objective business plans and have strong employers standing behind their pension plans as the economy emerges from these trying times;

- **Effectiveness** for plans and sponsors who are most in need; and

- **Security**: The impact on funding should not have a material detrimental impact on benefit security. In fact, the measures proposed do not *themselves* cause any reduction in benefit security; rather, they only lengthen the time for the plan to achieve fully funded status on a solvency basis.

3) If further relief measures are viewed as necessary, which potential temporary measures are best suited to address the challenges facing federally regulated DB plans?

Of the measures listed, the second one (the one-time extension of solvency amortization period from 5 years to 10 years) is of greatest interest as it is transparent, simple and easy to implement. It would be more effective if any reversion of the amortization schedule back to 5 years would occur only after at least three years.

There are elements of alternative valuation methodologies, such as skipping a valuation, which could accomplish some of the objectives.

Our comments on the outlined measures are as follows:

1. Extension of the solvency amortization period, with conditions: This measure is rooted in the 2009 relief, which occurred before the last funding reforms, and is overall ill-suited to the current situation. Using a letter of credit (LC) to cover the difference in payments resulting from longer amortization results in no relief whatsoever for plans who are below the 15% threshold (as the vast majority of plans are), as LCs are now already part of the funding regime, unlike in 2009. Requiring consent from plan beneficiaries will be a significant deterrent from the relief being used at all, as evidenced by the few plans who availed themselves of relief in this manner in 2009.

2. One-time extension of solvency amortization period: We are in agreement with a one-time extension of the five-year period. However, with the smoothing mechanism inherent in the solvency calculation (which did not exist in 2009) and the stability required to emerge from the current crisis, an expiry of this relief in 2022 is too short. We recommend that statutory solvency deficiencies be amortized over a period which declines gradually over time. For example, minimum solvency special payments could be determined by dividing by the period from the valuation date to the end of 2030, or five years, whichever is greater.

3. Extension of the letter of credit limit: We are not supportive of temporarily extending the current LC limit beyond 15% of solvency liabilities. Plans and sponsors who are most in need will not have easy access to LCs. As well, temporary relief could create a crisis in itself when such a temporary period expires. The 15% limit is arbitrary. Should it be increased, we recommend that such an increase be permanent.

4. Alternative valuation methodologies: We understand the alternatives considered in the paper would affect the contribution mechanism and not alter how solvency liabilities are determined using alternative settlement methods, such as replicating portfolios. Enlarging the alternative settlement methods permitted could provide another avenue of relief for some plans. For example, allowing

- a fixed indexation rate to be substituted for a floating rate (i.e. 100% of CPI), or
- an assumption that the plan may be amended as part of the termination scenario considered, such as assuming all active members could elect a commuted value, an approach which has been eliminated in OSFI's most recent actuarial guidance.

We also note that the 2019 budget undertook to review the funding of ancillary benefits. However, this subject is not addressed in the paper. Providing greater flexibility on the funding of ancillary benefits could provide funding relief with limited impact on the security of core benefit promises.

With respect to methodologies that affect the contribution mechanism only, in general, the use of such methodologies lack transparency. However, some of them may effectively support other objectives.

Using a discount rate averaged over three years would have a limited impact, given there is already a three-year smoothing of the solvency ratios. As well, averaging the discount rate would not be consistent with liability-driven investment (LDI) approaches which match asset behaviour with the effect of the discount rate on liabilities. Calculating the average solvency ratio over five years, instead of three, will reduce volatility. However, it may force plans to carry a below-average ratio for a longer period of time, causing more contributions to be made to fully funded plans. Alternatively, consideration could be given to using the greater of a spot and an averaged ratio. However, this approach would only potentially be effective for 2022 and later. Removing the requirement to file a valuation report at the end of 2020 would be simple and effective and is the preferred approach among those proposed. Any such deferral should be written into the regulations as the filing of valuation reports is subject to the OSFI Directives.

4) Is there one particular relief measure that is preferable, or should consideration be given to providing a suite of measures that plan sponsors could choose from?

Providing a suite of measures will allow plans and sponsors flexibility to meet their needs.

One particular relief measure which is not amongst the options listed is to retain the current five-year payment period and three-year smoothing, but only require the funding of deficits below a lower threshold, such as 85%, for a three or five-year period. This approach would provide relief to plans which are already well-funded and maintain an adequate level of security for beneficiaries of plans.

It is transparent, simple and promotes stability, allowing plan sponsors to concentrate on the ongoing challenges related to the pandemic by providing certainty during an economic recovery where so much remains uncertain.

5) For the one-time extension of the solvency amortization period (i.e., for 2021 plan year only), should consent from plan beneficiaries be required? Are there other conditions or requirements that should be considered?

To be effective, consent from plan beneficiaries should not be required for any options. Experience from the 2009 relief showed that few plans would pursue the required consent for temporary measures. When plans obtained consent in other relief situations, it was usually part of a multi-faceted solution involving not only the pension plan, but negotiations of collective agreements and/or corporate restructuring.

The pandemic has had widespread societal impacts, including severe measures that have been imposed to protect the most vulnerable, including many retirees. Plan beneficiaries should not be permitted to have undue influence on the measures taken to enable economic recovery.

In addition, a one-time extension will not cause a material decrease in solvency ratios. For example, in a plan with a solvency ratio of 100% at January 1, 2020, if the solvency ratio decreased by 5% due to 2020 experiences, only one-third of that would affect 2021 funding due to the smoothing. By granting a one-time extension for funding the average solvency deficiency over ten years, instead of five, the solvency ratio one year later would only be about 0.2% lower than under the current standard rules. (Note that such an extension does not itself result in a lower solvency ratio, only a very slightly lower pace of recovery toward full funding). A five-year extension should be permitted without consent.

Plan sponsors could be required to inform members of the changes in funding requirements through a simple disclosure within the annual statement. Complex disclosures are not readily understood by members, and as such do not increase transparency.

While a number of pension, corporate, and insolvency options can be explored, to the extent that some options could end up accelerating the insolvency of the employer may not be in the ultimate best interest of the employees and retirees. These options are inherently complex and we encourage the government to be cautious in its analysis of such options.

6) Should the qualified issuer determine the letter of credit limit, or should the limit be set by the special regulations? If the letter of credit limit is set by the special regulations, what are your views on an appropriate limit?

As noted above, we doubt that increasing the limit temporarily will be effective for plans and sponsors who are most in need. However, increasing the limit permanently will provide flexibility for plan sponsors without materially affecting the security of benefits. The 15% limit is arbitrary. For many plans, the size of any solvency deficit can be supported by the strength of the employer.

Should the limit be higher than what a qualified issuer deems acceptable, the LC would not be granted. Nonetheless, we believe having a limit set by regulations encourages transparency to plan members. A limit of 25% of solvency liabilities should be sufficient. Also, there is a de facto limit driven by the going-concern liabilities as the LC is not included in the going-concern position.

7) What are some alternative valuation methodologies that could be considered to mitigate the volatility in solvency funding contribution requirements? Which ones could be most effective at providing relief while maintaining adequate funding to protect benefits?

In addition to our comments above, spreading solvency deficits over 10 years instead of 5 years will reduce volatility with limited impact on benefit security. The impact on solvency ratios should remain under 5%. Using a discount rate averaged over three years would have a limited impact, given there is already a three-year smoothing of the solvency ratios. As well, averaging the discount rate runs counter to liability-driven investment (LDI) approaches which match asset behaviour with the effect of the discount rate on liabilities.

Calculating the average solvency ratio over five years instead of three will reduce volatility. However, it may force plans to carry a below average ratio for a longer period of time. Alternatively, consideration could be given to using the greater of a spot and an averaged ratio. However, this approach would only potentially be effective for 2022 and later. Deferring the requirement to file a valuation report at the end of 2020 would be simple and effective, though lacking transparency. Any such deferral should be written into the regulations as the filing of valuation reports is subject to the OSFI Directives.

PART 2 - MEASURES TO FURTHER STRENGTHEN THE FRAMEWORK FOR FEDERALLY REGULATED PENSION PLANS

2.1 Plan Governance and Administration

2.1.1 Plan Administrator

QUESTIONS:

1) What are your views on requiring plan member and retiree representation for all federally regulated pension plan Board of Trustees, for both single- and multi-employer pension plans?

While we are generally in favor of member and retiree representation on Boards of Trustees to aid in the transparency of (and participation in) the pension governance process, in our experience, Boards that currently include them as trustees often have difficulty finding such individuals willing to take on the role. In our view, if member and retiree participation on Boards of Trustees is made mandatory, many Boards may struggle to fill the positions resulting in administrative burden that could detract from the Board’s focus on important governance matters. As such, we recommend that member and retiree representation be encouraged but not required.

2) What other approaches could be considered to increase plan member and retiree representation in plan governance?

The PBSA already provides for pension councils that are intended to promote participation and transparency in plan governance. The functions of a pension council as set out in the PBSA include:

- to promote awareness and understanding of the pension plan among members and potential members
- to review, at least once a year, the financial, actuarial and administrative aspects of the plan; and
- to perform administrative functions and any other functions that are specified.

Pension councils are member-initiated, member-driven, and encourage member involvement in the operation of their plan. Where they are requested by members, they are highly effective at keeping members informed, creating a dialog between the company and members regarding pension governance and administration. However, they are not widely utilized or requested by plan members. This suggests that there may be a general lack of interest on the part of plan members and retirees in plan governance and, instead, they are relying on the plan administrator to administer and govern the plan prudently and in the interests of current and former members. In our view, the current pension council provisions of the PBSA already adequately enable member participation, should they choose to get involved.

2.1.2 Governance Policy

QUESTIONS:

1) Would it be appropriate to require all federally regulated pension plans to establish a governance policy with the minimum prescribed content? If yes, should the prescribed content align with the CAPSA Governance Guideline?

The requirement to establish a governance policy would be consistent with such measures enacted in other jurisdictions such as Alberta, British Columbia and Ontario. We think there is a value to codifying the requirement for a governance policy in order to require plan administrators to identify and manage risks, establish prudent plan administration processes and monitor compliance. We agree that aligning the content with that recommended by the CAPSA Governance Guidelines is the appropriate approach.

In light of the strains the pandemic has put on plan administrators, we recommend that any requirement to establish a governance policy be introduced with an 18-24 month period to implement. This lead time will provide administrators that currently do not have such policies with the time and resources to dedicate to the development of a thoughtful policy for their plans and not simply a compliance document to have in place in order to subsequently certify to OSFI that they have met the requirement.

2.1.3 Funding Policy

QUESTIONS:

1) To encourage a strategic and transparent approach to funding, should single-employer and non-NC multi-employer DB plans be required to establish and maintain a funding policy?

Generally, we support a requirement for funding policies for multi-employer and jointly sponsored pension plans that have fixed contributions and various levers to ensure the sustainability of the plan, such as changes in investment policy and the ability to reduce benefits. Funding policies are prudent for these plans as they guide them in determining which levers to pull in different circumstances.

However, we do not support such a requirement for single employer pension plans (SEPPs). In our experience with SEPPs registered in provincial jurisdictions that currently have funding policy requirements, in the majority of cases, the funding policies adopted simply reflect the minimum funding rules under applicable legislation. This is because the sponsors of single employer plans need the flexibility to respond to changing economic circumstances affecting their revenues and/or cash flow and do not want to be compelled by a funding policy to contribute more than the pension legislation governing their plan requires. As such, we do not believe that the implementation of a funding policy requirement for SEPPs would result in better plan governance or outcomes.

2.1.4 Environmental, social and governance factors

QUESTIONS:

1) In light of the growing international focus on ESG factors in investing, what would be an appropriate approach to encourage pension plans to consider ESG factors?

We support thoughtful government-led initiatives that would encourage pension plans to consider ESG factors, provided they are principles-based and not prescriptive. Any initiatives should consider practical limitations of corporate disclosure around ESG factors and the lack of standardization of methodologies to evaluate investments from an ESG standpoint. To this end, an endorsement of the 15 recommendations that came out of Canada's Expert Panel on Sustainable Finance would be an appropriate place to start.

2) What are your views on the relationship between ESG factors and a pension plan administrator's fiduciary duty?

In our view, it is in keeping with an administrator's fiduciary duty to consider ESG factors where relevant. Specifically, to discharge its fiduciary duty in investment decision making, the PBSA requires a plan administrator choose investments "in accordance with the regulations and in a manner that a reasonable and prudent person would apply in respect of a portfolio of investments of a pension fund." The prudent investor rule requires a pension plan administrator to select the investment that is expected to provide the best financial return within an appropriate risk profile.

ESG factors that affect the risk profile or that have the potential to affect the future performance of an investment over the short, medium or long term should be taken into account together with all other relevant investment assessment criteria.

2.1.5 Electronic Communications

QUESTIONS:

1) What are your views on allowing federally regulated pension plans to provide required information electronically to plan members and retirees on a deemed consent basis?

ACPM is highly supportive of this initiative for both plan members and retirees. We encourage the government to consider this item as a high priority.

2) What are your views on the current legislative requirement to make federally regulated pension plans provide required communications to spouses and common law partners? Is it feasible for plan administrators to provide electronic communications to spouses and common-law partners on a deemed consent basis? If not, what other options could be considered?

The current positive obligation to provide information on an on-going basis to a spouse or common law partner is overly burdensome for plan administrators. It is commonly managed by mailing paper communications to the member's home address to "[Member] and spouse or common law partner, if any". In an electronic environment, it is not clear how deemed consent could be achieved in a manner that has meaning where the administrator does not collect and maintain separate spousal or common law partner electronic contact information. We therefore think deemed consent in the context of on-going spousal communications is fraught with issues, though better than the *status quo*.

Instead of deemed consent for spouses and common law partners, we are supportive of the PBSA being amended to provide for the same information disclosure regime that exists for spouses and common law partners in other Canadian jurisdictions. Generally, other Canadian regimes entitle a spouse to request information, and obligates the administrator to provide it on request. ACPM believes that this is an appropriate burden to place on an administrator and provides adequate disclosure to spouses and common law partners.

2.2 Solvency Reserve Accounts

ACPM strongly supports the consultation document's proposal to introduce solvency reserve accounts ("SRAs"), as they will be an important step towards promoting the retention of DB plans and supporting retirement security for plan members and retirees.

We recommend expanding the definition of the SRA to include additional types of contributions. As such, a different name may be warranted, but for consistency with the consultation document, we refer to "SRA" in our submission. We also recommend modifications to the proposed restrictions on employer withdrawals that will improve the balance between benefit security and employer access to SRAs.

As employers continue to make solvency contributions and may face increasing contribution requirements in 2021, we encourage implementing this proposal without delay to ensure that these contributions are eligible for SRAs as soon as possible. Further comments and recommendations regarding SRAs for federally regulated pension plans are provided below.

2.2.1 Support for SRAs

Security of the pension promise is a key objective of a pension funding regime. However, it must be accomplished through reasonable and fair contribution requirements for employers. Unfortunately, Canada's federal pension funding requirements make unreasonable and unfair demands in certain situations.

A going concern valuation, using best estimate assumptions and without margins, is the best estimate of the financial position of a defined benefit pension plan that is not terminating. Nonetheless, we recognize the potential for adverse experience, and understand that it may be prudent to secure benefits at a level that is more conservative than the best estimate. This is the intention of the PBSA's requirements for solvency funding, and provisions for adverse deviation in going concern valuations. However, the PBSA does not provide a mechanism for recovering these required over-contributions when experience later reveals that they were unnecessary for securing pension benefits.

Contrast this requirement with Canadian reserving requirements for life insurance and annuities. Insurers are required to set aside reserves that are greater than the best estimate amount necessary to fulfill obligations for insurance and annuity payments, but when experience ultimately shows that those reserves were more than necessary, the excess is returned to the insurance company as return of capital and profit.

Without a mechanism for employers to recover required over-contributions to pension plans, the PBSA imposes unreasonable and unfair contribution demands in certain situations. SRAs will be an important step in correcting this flaw.

2.2.2 Contributions Eligible for SRAs

The consultation document proposes limiting SRA-eligible contributions to solvency deficiency payments, including both legislated minimum solvency special payments and additional payments in respect of a solvency deficiency. ACPM recommends expansion to include some additional types of payments.

Many federally regulated single employer DB plans have large going concern surpluses. Past solvency contributions from employers is one of the reasons. Many of these surpluses exceed the 25% "excess surplus" threshold under the Income Tax Act, such that employer normal cost contributions normally would be prohibited under the Income Tax Act, on the assumption they are not necessary to provide benefits. For some federally regulated plans, the going concern surplus is so large that just the interest on the surplus is more than sufficient to cover the going concern normal cost. On a going concern basis (i.e. the best estimate of an ongoing plan's financial position), these plans are perpetually self-sustaining, and no further employer contributions should ever be necessary to provide plan benefits.

However, the PBSA requires employers to make normal cost contributions if the solvency ratio does not exceed 105%, regardless of the size of the going concern surplus. As these contributions are not necessary to provide benefits, the only reason these contributions are required, or even permitted, is to support the plan's solvency position, making them de facto solvency payments. As long as the PBSA continues to require normal cost contributions into a plan with an "excess surplus", or into a plan where the interest on the surplus exceeds the normal cost, ACPM recommends these contributions should be eligible for SRAs.

A similar argument applies to the portion of going concern normal cost contributions and special payments that are required to fund a provision for adverse deviation ("PfAD"); i.e., where the plan is fully funded on a best-estimate basis but not fully funded when the actuarial liabilities include a PfAD. If an adverse deviation does not occur, the contributions to fund the PfAD will have been unnecessary to provide benefits, but there is no mechanism for the employer to recover those over-contributions. ACPM recommends that the portions of going concern contributions to fund a PfAD also be eligible for SRAs.

QUESTIONS:

1) To encourage more prudential employer funding, should consideration be given to permitting employer normal cost contributions to be made to a SRA where an employer is in a position to reduce normal cost contributions under subsection 9(5) of the PBSR?

Subsection 9(5) allows employers to reduce/eliminate normal cost contributions to the extent there is going concern surplus and solvency surplus in excess of a 105% solvency ratio.

ACPM supports allowing such contributions to be eligible for SRAs in order to remove barriers for employers who wish to contribute more than the statutory minimum.

2) What would be an appropriate legal structure for SRAs – for example, establishing a SRA as a separate account of the pension fund within the same trust agreement, or under a separate trust agreement? Would different arrangements pose administrative or operational difficulties? Should employers be permitted to choose their preferred approach?

ACPM would encourage flexibility in the types of trust or custodial arrangements that may be used for SRAs. Some employers may prefer to have a notional account within the plan's main trust, as it may be difficult to duplicate the main plan's investment structure for a separate SRA trust. Other employers may prefer to have a separate trust for SRA assets in order to establish more strongly the entitlement to withdraw the funds.

3) The proposed SRA framework would apply to single-employer DB plans. Should the SRA framework also apply to multi-employer DB plans, other than negotiated contribution plans? How might this work in practice?

The SRA framework should extend to multi-employer DB plans that are not negotiated contribution plans, with each participating employer having its own SRA, tracked separately from the others.

2.2.3 Withdrawals from SRAs

We appreciate that the proposals in the consultation document for SRA withdrawals seek an appropriate balance between allowing employers access to withdraw SRA funds, and limiting access in order to maintain additional benefit security. We agree with the general concept of the proposals, but recommend modifications as described in our responses to the consultation questions below.

QUESTIONS:

1) Would it be appropriate to set a minimum required solvency ratio threshold of 105 per cent before and after any SRA withdrawal is permitted for on-going pension plans? Should a similar threshold apply to the plan's going concern funded level?

Any minimum thresholds should not exceed 105% of solvency liabilities or 100% of going concern liabilities.

2) Would limiting annual withdrawals from a SRA to one-fifth of the eligible surplus be appropriate? This would align with the approach in Alberta and British Columbia, and would mirror the 5-year amortization period allowed for solvency deficits.

The margins outlined in our response to Question 4 provide appropriate security. Requiring withdrawals to be spread over a period of, say, five years serves no real purpose and is unnecessarily complicated.

Regarding alignment with Alberta and British Columbia, we believe their approach to SRA withdrawals are overly restrictive, and applying their approach to federally-regulated plans would be even more restrictive, given that federal plans are required to file actuarial valuations annually rather than triennially. Regarding a comparison to 5-year amortization of solvency deficits, it is not clear what objective would be accomplished by limiting SRA withdrawals to one-fifth of the eligible solvency excess. The purpose of 5-year solvency deficit funding is to give employers time to plan their cash requirements, and reduce the financial stress that immediate funding of solvency deficits would create. We do not see a corresponding objective for limiting SRA withdrawals.

If there is a desire for symmetry between SRA withdrawals and deficit funding, as the concept of mirroring implies, the proposed approach would not provide it. First, a 105% solvency liability threshold for withdrawals is not symmetric with a 100% threshold for funding. Second, employers are required to contribute one-fifth of the deficit, but are permitted to contribute up to the full deficit. True symmetry would require the employer to withdraw one-fifth of the SRA, but permit withdrawing up to all of it. Without a clear objective, such a restriction is arbitrary.

3) Should additional restrictions or safeguards apply to SRA withdrawals?

We believe the proposed approach, as modified in our comments, provides an appropriate balance between benefit security and employer access to SRAs. No additional restrictions should be imposed.

4) Should any specific disclosure requirements to plan members and beneficiaries or OSFI apply in respect of withdrawals from or payments to a SRA? Should the notice provided to plan beneficiaries be separate from their annual statement?

We believe it would be appropriate to disclose, on an annual basis, the amounts withdrawn or transferred from the SRA during the year, and the SRA balance at year-end. The annual statement would be the appropriate medium for this information.

5) Should other limits or restrictions apply to SRA withdrawals to help ensure that withdrawals are based on up-to-date information (e.g., withdrawals only allowed within six months following the AVR being filed, or prohibiting SRA withdrawals if the employer had reason to believe that the plan's funded position had changed significantly to the downside)?

We believe that annual actuarial valuations provide employers, administrators and regulators with timely information on a plan's financial position. As stated in our response to Question 6, we believe the proposed approach, as modified in our comments, provides an appropriate balance between benefit security and employer access to SRAs.

We believe that the principle of funding asymmetry should be respected and we do not believe that any other limits or restrictions should be imposed. For example, if a valuation report shows a solvency deficit and the employer ought to know that the plan is in a surplus when the report is filed, the employer is required to fund the deficit. The same principle should apply when the plan is in surplus.

2.3 Variable Payment Life Annuities

ACPM strongly supports the government initiatives with respect to VPLAs and has previously written to the government regarding VPLAs.

QUESTIONS:

1) Are there other timing requirements that could be considered for VPLA actuarial valuation reports? For example, should the frequency of required actuarial valuation reports be linked to a VPLA's chosen funding approach (i.e., PfAD)?

We think that a requirement for triennial valuations is appropriate, but depending on the parameters of the VPLA, it may be appropriate for the VPLA to be valued more frequently. We suggest that this be a matter that is left to the administrator of the VPLA.

2) Does the proposed approach for partial annuitization, unlocking, and withdrawal from a VPLA strike an appropriate balance between providing flexibility to members while preserving the risk pooling nature of the VPLA?

We believe so.

3) To allow for earlier VPLA purchases, should members of a PRPP or DC pension plan also be able to enter a VPLA offered by the plan at any time, rather than limiting the option to enter a VPLA to only when members are at retirement?

We would be supportive of plan designs that allow for members to transfer funds to a VPLA prior to achieving their early retirement date to support a “phased retirement”. This would align well with the PBSA regime regarding phased retirement. As with phased retirement, such a plan design should be left to the sponsor’s discretion.

4) Are there any other circumstances where new disclosures could be needed for VPLAs, in addition to what is being proposed?

We don’t believe so.

5) What are your views on the proposed requirement for PRPP and DC plan retirees to obtain spousal consent before entering a VPLA?

This approach is consistent with the PBSA regime for commencement of other benefit types. However, we would urge the government to consider allowing plan sponsors to designate a VPLA as a “default” where the member does not elect an option under a DC plan, instead of a traditional guaranteed annuity. In such case, as with the default option under pension standards legislation more generally, no spousal consent should be required.

6) Are there any other portability options that could be considered for VPLA retirees and beneficiaries on plan termination?

Transfer to another VPLA should be supported. We encourage the government to consider bulk transfers to a VPLA on employer insolvency as a solution that could provide better outcomes to the plan as a whole.

7) What would be an appropriate approach to the calculation of commuted values for VPLAs? For example, should plans be free to choose between different methodologies prescribed in regulation or follow a methodology proposed by the Canadian Institute of Actuaries (CIA) for target benefit arrangements?

We think it is appropriate for the administrator to choose the appropriate basis.

8) What are your views on the PBSA’s principles-based approach to administrator’s fiduciary duty? Are additional clarifications necessary to ensure that the fiduciary duty principles apply to both the accumulation and decumulation periods?

We think the fiduciary framework in place for other types of plans is appropriate for VPLAs.

PART 3 - MINISTERIAL GUIDELINES FOR DEFINED BENEFIT PENSION PLAN SPONSORS

QUESTIONS:

1) What are your views on the proposed Ministerial guidelines? Are there any additional components or considerations that should be included in the draft Ministerial guidelines?

ACPM believes that the framework in the PBSA that allows for negotiated solutions to difficult financial situations facing plans and sponsors ought to be made as flexible as possible so as to be capable of being used. To date it has been used very little. Placing more restrictions on the process and outcome will not assist in encouraging the proactive, early intervention that the regime is designed to promote. It will instead make it more likely that a formal insolvency will occur, a scenario in which plan deficits are compromised as unsecured claims.

In addition, perceived prior “bad behaviour” or a failure to carve back benefit accruals should not be a factor in whether the Minister allows for a going-forward solution that benefits all stakeholders, many of whom will have had nothing to do with the behaviour or failure, yet will bear the brunt of a deal being disallowed. While we would not object to giving the Minister the authority to attach conditions regarding behaviour or plan design, this should be determined on a case-by-case basis.

Thank you for the opportunity to participate in this consultation and we can provide additional guidance as required. This submission was prepared in conjunction with the ACPM Federal Council and the ACPM National Policy Committee.