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

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ACPM Response to the Alberta Pensions Questionnaire

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ACPM OVERVIEW

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.

INTRODUCTION

ACPM would like to thank the Alberta government for the opportunity to provide our thoughts and responses to the Alberta Pensions Questionnaire. Our submission has been produced by the ACPM Alberta Council whose membership consists of plan sponsors, administrators and service providers with a wealth of experience in the design and governance of private and public sector retirement plans.

It is important to note that we have provided the federal government and various provincial governments with guidance on many of the issues that are addressed in the questionnaire. We also regularly provide guidance and participate on consultative initiatives with regulatory agencies including the Office of the Superintendent of Financial Institutions (OSFI), Canadian Association of Pension Supervisory Authorities (CAPSA), BC Financial Services Authority (BCFSA), Financial Services Regulatory Authority of Ontario (FSRA), Retraite Québec and other federal and provincial entities.

We encourage the consideration of our submission which represents the consolidated effort of numerous practitioners in the pension and retirement industry. If there are areas where more detail may be required, we can be available for further consultation.

Thank you for your consideration.

ACPM (Association of Canadian Pension Management)
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QUESTIONS AND ANSWERS

FUNDING RULES

1) *Please identify any issues you experience with the current pension funding rules in the Employment Pension Plans Act (EPPA) and the Employment Pension Plans Regulation (EPPR).*

   - *Please include comments on the requirement for certain defined benefit plans to fund for 100 per cent solvency, as well as amortize solvency deficiencies over five years, as appropriate.*

   - *For collectively bargained multi-employer plans (CBMEPs), please include comments regarding provision for adverse deviation (PfAD) funding requirements, as appropriate.*

Funding Rules Require Rebalancing

ACPM believes the current defined benefit pension plan funding requirements do not represent an appropriate balance between member benefit security, and the sustainability and affordability of defined benefit (DB) pension plans.

Due to the extreme decrease in interest rates and resulting increase in prices of annuities offered by insurance companies, the solvency pendulum has swung too far towards benefit security at the expense of the wellbeing of the plans and plan sponsors themselves. By taking a longer-term view of DB plan funding, pension legislation has been adapted in other pension jurisdictions (British Columbia, Ontario, Quebec, Nova Scotia and New Brunswick) to reflect the important role of those few plan sponsors who continue to provide DB plans.

We suggest that funding rules should facilitate a reasonable and appropriate level of risk sharing between plan sponsors and plan members.

WHY THE STATUS QUO MUST CHANGE

When solvency funding rules were first designed in the 1980s, coincidental with the introduction of portability rules in pension legislation, their primary objective was to protect plan members' benefits in the event of plan termination. This benefit security was to be achieved by requiring additional employer contributions to the plan (over a 5-year horizon) if a solvency test, required to be conducted at each actuarial valuation, revealed a deficit.

Unfortunately, the theory behind solvency funding rules has not turned out as well in practice as was hoped. When solvency funding rules came into effect, it was probably never contemplated that solvency valuations could result in a measurement of liabilities that far exceeds the going-concern liabilities, but that is what has occurred. Corporate plan sponsors with otherwise healthy balance sheets are being put into difficult financial situations because of the higher capital shorter term funding requirements of their pension plans, resulting in repeated rounds of solvency relief granted by governments. As DB pension plans mature in a low interest rate environment, "as and when needed" exemptions and "temporary" funding relief measures have become a band aid solution.

ACPM believes that this situation presents an opportunity to re-think solvency funding – a funding measure from which "relief" has been granted at the bottom of nearly every economic cycle and market shock since its inception in the 1980s, in economic circumstances that differ greatly from the current persistent low long-term interest rate environment. We urge similar measures to what other pension jurisdictions either have already adopted or are in the process of adopting. Key measures would include funding based on a going-concern "plus" model and eliminating solvency requirements except for a minimal solvency ratio floor.

There are a number of unintended consequences of the current solvency funding rules:

I. Contribution Volatility – Due to the volatility of capital markets, the solvency funded positions of pension plans and resulting contribution requirements can vary considerably from one valuation to the next. This makes annual budgeting, long-term planning and balance sheet management a difficult exercise, particularly at times when plan sponsors can least afford it.

II. Share Price Uncertainty – Investors in entities that sponsor DB pension plans are uncertain as to how to value these entities and which measure of the pension obligation is considered a liability of the entity. Measurement uncertainty represents a potential overhang on market valuations of these companies and a potential obstacle to merger and acquisition transactions.

III. Terminating or Amending DB Plans – Corporate sponsors are walking away from the burden of solvency valuations by either amending plan provisions (e.g., elimination of post-retirement indexing) or by closing DB plans in favour of Capital Accumulation Plans (CAPs). These actions are often motivated by short-term solvency funding pressures, even when going-concern valuations indicate reasonably healthy funded positions. The recent introduction of single employer target benefit plans in legislation is a positive move that will help sponsors and members potentially find some common ground (although this would be greatly enhanced if retroactive conversion were permitted), but we still require a better measurement of the obligation than the solvency basis.

Many research papers have demonstrated that DB plans, or alternate forms of plans leveraging DB characteristics like target benefit plans (TBPs), Multi-Employer Pension Plans (MEPPs) and Jointly Sponsored Pension Plans (JSPPs), are a valued part of Canada's retirement income system as an efficient vehicle delivering pension benefits optimally. Funding rules should not create disincentives to sponsoring DB plans.

IV. Capital Drain – Requiring funding of solvency liabilities for plans that have sound going-concern funding ratios represents over-funding and potentially stranded capital as the contributions may not be able to be withdrawn when interest rates rise and such plans are in a solvency surplus. Furthermore, cash contributions due to solvency funding are often higher than other provinces that have eliminated solvency funding in favor of going-concern plus, thereby putting Alberta based sponsors at a competitive disadvantage. While the introduction of solvency reserve accounts and alternative settlement methods (e.g., permitting the use of a fixed increase instead of a Consumer Price Index-related increase) for purposes of solvency funding have been beneficial to mitigate this impact, financially sound companies may still be borrowing to fund large cash injections into their plans or obtaining letters of credit to satisfy solvency funding requirements. Both represent potentially significant uses of capital that could otherwise be invested in a productive economy to fund future economic growth.

V. No Greater Benefit Security in Risky Plans – Plan sponsors that are unable to access capital markets to fund cash injections or to obtain letters of credit and are unable to meet solvency funding requirements are at risk of defaulting on these obligations. This could be placing companies that were already in a financially tenuous situation even closer to failure. With many past temporary solvency relief measures granted in various jurisdictions and special ad-hoc relief measures for some major Canadian corporations, the plan members who face the greatest risk of benefit security are not being protected by the very rules designed to protect them.

VI. Pressure on Interest Rates – Canada's position as a safe-haven country and its current monetary policies are said by some to be placing downward pressure on Government of Canada (GOC) yields. Pension plans themselves are fueling the demand for GOC bonds and exacerbating the solvency funding problem further. Pension plans, in an attempt to limit the consequences of volatility from mark-to-market accounting and solvency valuations, are investing plan assets in the very GOC bonds that are used to value solvency obligations. Plans are also turning to annuity purchases, indirectly having the same effect on market yields. The cycle is adding to the overwhelming demand that is already driving interest rates lower. Locking in record-low yields to protect against further solvency volatility does not bode well for future recovery in the health of DB pension plans.

VII. Commuted Value Payments Harm Remaining Members – Plan members leaving before entitlement to immediate pensions are being paid commuted values at amounts that, if invested at rates closer to going-concern rates of return over the long-term, could deliver a better retirement income stream than the promised pension. It is inconsistent with the concept of risk pooling among plan members to calculate and pay commuted values at near risk-free rates to members who exercise portability while remaining members are exposed to risk. This is resulting in a transfer of plan value from members that remain in the plan to those that are leaving and, at the margin, reducing the benefit security of the remaining plan members.

CBMEP CONSIDERATIONS

Similar to the solvency funding situation, the expected outcomes arising from the introduction of PfAD requirements for CBMEPs in Alberta and British Columbia have not evolved as expected. At their core, the PfADs were designed to ensure all additional benefit accruals were reasonably funded while promoting the build-up of adequate overall plan PfADs over time. For most CBMEPs, the implementation was anticipated to be reasonable and promote benefit security for all plan members.

The ongoing decline in bond yields has perverted the expected outcomes with the PfAD requirements potentially increasing risk for plan members. With many PfAD requirements now exceeding 30% and some north of 40% of liabilities, they are a deterrent to ongoing participation and support for the arrangements, even for plans funded soundly on a going-concern basis. This in turn exposes all plan members to greater risk as existing investment risk tolerances and return expectations will both decline if contributions are curtailed. While the details and mechanisms differ for pension plans that are not CBMEPs, the current economic realities for CBMEPs are the same and an appropriate balance between benefit security, sustainability and affordability should be assessed.

2) *What approaches and opportunities for improvement do you suggest to treat the above identified issues? How might we best balance funding rule changes with member expectations for benefit security?*

THE SOLUTION: A NEW FUNDING MODEL

ACPM believes Canada, and in particular Alberta, needs a long-term solution to DB plan funding rather than additional rounds of tinkering with existing rules. If we are truly seeking a better long-term funding model, we should be examining alternatives from the ground up – what are we aiming to achieve and is there a better way to get there than our current approach?

We are supportive of the review of funding rules that pursue the dual goal of sustainability (heavily influenced by contribution affordability and stability) and benefit security (as measured by the funded status on a wind-up basis).

The new funding model that ACPM recommends has four objectives:

i. To be clear to all stakeholders,
ii. To not increase the cost burden on plan sponsors,
iii. To be based on sound funding and risk management principles, and
iv. To be reflective of the long-term nature of DB pension plans.

Most of the issues we highlighted in the previous section relate specifically to traditional employer-risk DB pension plans. The first evolution in plan design to deal with these issues was the employee-risk CAP. There are also plan models that share risks (jointly sponsored, target benefit and shared-risk pension plans). For more recently implemented shared risk plans, the pension promise is being re-crafted, and sponsors and employees are going in with eyes wide open that either the pension benefit is not guaranteed or required contributions may increase solely to maintain the existing pension benefit.

With these types of plans, there seems to be little need for mandated solvency valuations. The stakeholders for these DB plans have the ability to define and manage their desired level of benefit security and risk exposure. Most such plans have adopted robust risk management frameworks that strive for a high probability of meeting the benefit obligations, including appropriate pension plan governance, structured policies that cover funding, benefits and investments policies, and clear frequent reporting to stakeholders.

NEW FUNDING MODEL

ACPM proposes replacing the current solvency and going-concern funding rules for DB plans with a new funding model, one that eliminates the need for solvency funding while requiring a Provision for Adverse Deviation (PfAD). The new model would consist of a single funding regime with the features described below.

We also recognize benefit security as an important element in designing a funding regime. A funding floor concept could be introduced as a benefit security test. For example, a minimum 85% solvency ratio test could be introduced (as used or proposed in other jurisdictions, including B.C.) which would trigger additional contribution requirements if not met, as a reasonable compromise between the dual objectives of a pension funding framework.

COMPONENTS OF THE NEW FUNDING MODEL

i. Discount Rate – The new going-concern plus funding model would evaluate liabilities using discount rates that are based on long-term expected investment returns of the asset classes as reflected in the plan's investment policy, with adequate level of PfADs reflecting the plan's risk profile. This acknowledges that the pension promise is not without some recognized risks by all stakeholders.

ii. Provisions for Adverse Deviations (PfADs) - ACPM suggests that PfADs should be determined in accordance with the plan's funding policy as set by its sponsor. These PfADs would be just one part of a robust risk management framework. That framework would reduce the volatility of the plan's funded position and contribution demands. It would also create an environment where the funded status of the plan would have less chance of resulting in severe cash flow problems for the employer sponsor while protecting plan members' pensions through prudent risk management.

ACPM believes that legislated fixed PfADs will not produce optimal results for DB stakeholders. PfADs only enhance sustainability if they can be built up in times of favourable experience and released in times of adverse experience. PfADs that are fixed or must increase in times of financial stress can actually be detrimental to the plan.

Instead, we recommend a more flexible approach, based on factors such as (i) the asset allocation of the plan, (ii) the ratio of retiree liabilities to total plan liabilities (i.e., plan maturity factor), and (iii) the difference between the expected duration of retiree liabilities and the assets supporting these liabilities. We believe that proper consideration of such factors by plan sponsors will produce reasoned risk management decisions with respect to the funding level and asset allocation of their plans. It will also allow actuaries to calculate a plan-specific PfAD that meets the core policy objectives.

Alberta previously introduced the requirement for all plans to develop and maintain a funding policy. The ability to define plan-specific PfAD targets represents a consistent expression of funding policy formulation. It also permits the plan stakeholders of risk shared plans, which, for CBMEPs, is the board of trustees, to define the pension deal according to the risk tolerances of the stakeholders.

An important factor to be considered would be the expected investment return of the supporting assets, including expected equity risk premium where relevant to the plan's asset allocation. One option could be to require any expected investment return in excess of a desired bond index to be fully offset by an equivalent PfAD. However, this would effectively eliminate the equity risk premium from the expected investment return. Another option could be to set a level of PfAD that partially offsets the equity risk premium at a level defined by the funding policy. This level could be set to manage risk at an appropriate level given the totality of the plan's circumstances and characteristics. This concept is already captured within Alberta's Benchmark Discount Rate (BDR) applicable to the PfAD determination for target benefit plans. Contrary to the current approach, however, where the BDR is embedded within regulation, it would be preferable to adopt guidelines that could be revised more easily if and when warranted by evolving market conditions, similar to regulatory discretion models in use by both OSFI and Retraite Québec.

Once an appropriate level of PfAD is determined, it would be necessary to establish how it would be funded. In the context of a traditional single employer pension plan, one possibility would be to require that contribution levels consider the desired level of PfAD relative to liabilities. Another option would be to fund the PfAD only if and when experience gains are available for the purpose. A different approach more appropriate for target benefit plans simply incorporates a PfAD requirement relative to the current service cost, as is already the requirement in Alberta, noting however that the current derivation of the benchmark discount rate and resulting PfAD requirement is not achieving the desired outcomes in all circumstances.

iii. Amortization Periods - The appropriate amortization periods need to be considered when moving to a single (non-solvency) funding regime. One possibility would be to continue with a "fixed" amortization period as per current regimes; however, adopting a longer period than the current 5-year period for the solvency basis recognizing the longer-term view of the new funding regime, and potentially shorter than the current 15-year period on a going-concern basis to further enhance benefit security in this new going-concern plus proposed funding regime. For example, a 10-year amortization period has been introduced in other jurisdictions. Another possibility would be to adopt the Plan's expected average remaining service lifetime (EARSL) as the amortization period. It would be consistent with a goal of achieving a fully funded position for employees at their expected retirement, on average. Some additional consideration should be made for closed plans (that have no active members and zero EARSL) or very mature plans (with EARSL less than 5 years). For example, the greater of EARSL or 10 years could be used. A third possibility would be to dynamically increase amortization periods or to re-amortize as funding discount rates decrease for plans introducing de-risking strategies.

To encourage harmonization with other jurisdictions and for administrative simplicity, a fixed 10-year amortization period might be favored. In keeping with administrative simplicity, we would also recommend the deficiency payments to be calculated as a straight amortization without interest.

iv. Benefit Improvements - Under the new funding model, governments may want to impose some methods of restriction on benefit improvements unless the plan or plan sponsor(s) has (have) sufficient assets to cover the full cost of the improvement. Alternatively, improvements could be allowed with a requirement to achieve full funding of the incremental benefit over a relatively short period of time (e.g., 3 to 5 years, or a collective bargaining contract period) or in a "side-car" funding vehicle, like letters of credit or the solvency reserve account, such that the incremental funding shortfall created by the benefit improvement does not affect the benefit security of the benefits before the improvements.

For CBMEPs, it can be beneficial to grant exemptions permitting limited improvements in certain circumstances, even when the funding targets are not fully met.

OTHER COROLLARY CONSIDERATIONS

i. Notional Reserve Accounts – This is a repurposing of the existing solvency reserve account to include PfAD contributions. Employer contributions to fund solvency deficits and to fund the PfAD should be tracked through a notional reserve account that is available to employers for contribution holidays, to fund benefit improvements or be refunded on plan wind-up. This account can be used to address trapped surplus issues.

Furthermore, if the solvency funding target is lowered (to, say, 85%), the threshold to withdraw funds from a solvency reserve account could also be lowered from the current level of 105%.

ii. Contribution Holidays - A contribution holiday should be allowed if the PfAD is funded and the plan has a solvency ratio of at least 100%.

iii. Transition Period – An appropriate transition period should be permitted or a gradual phasing-in of the new funding regime in case it results in increased funding requirements.

iv. Portability and Commuted Value (CV) Basis – When pension portability was introduced, it was never the intent to provide terminating and transferring members a premium over the long-term cost of keeping the deferred pension in the plan. The current exercise provides the government with an opportunity to address this longstanding issue, and we suggest that Treasury Board and Finance explore the alignment of CV calculations with the way in which the plan is funded. This would put plans on a more sustainable footing.

Minimum standards for commuted values should be more reflective of the underlying risk associated with the pension benefit and be aligned with the funding regime. Therefore, CV calculations should be revisited, including minimum standards that reflect the intent of portability and vesting concepts, as well as balancing the interests of departing and remaining members. ACPM would welcome the opportunity for further consultation on this topic.

Other than for some public sector and non-collectively bargained multi-employer plans, the existing commuted value basis in Alberta reflects the Canadian Institute of Actuaries (CIA) long-standing approach of treating accrued pension benefits as being quasi-risk free from a member's perspective.

Under the proposed funding approach however, an additional element of risk is being introduced for members and it would be appropriate that the commuted value basis reflect that incremental risk. This change, including the rationale for such a change, would need to be clearly communicated to all stakeholders in a transparent fashion.

v. Income Tax Rules – A funding regime may be compromised in achieving its objectives if limited by other legislation such as the Income Tax Act and Regulations. For example, ITA limits on member contributions, including margins, and excess surplus rules may hinder the full deployment of the funding regime concepts. A revision of the ITA rules in alignment with funding regime reform would be beneficial; understanding this revision would require a joint approach by the regulators.

vi. Target Benefit Plans (TBPs) – Consider allowing defined benefit plans the option to convert to target benefit plans including past service accruals.

vii. Harmonization – ACPM encourages harmonization of pension legislation across Canada. The Superintendent should consider the advantages of harmonization with other jurisdictions to the extent possible, particularly the existing larger degree of harmonization between the Alberta and British Columbia pension legislation.

3) *Over the past number of years, other jurisdictions have revised their funding rules for pension plans.*

    - *What has been your experience with the funding rules used in other Canadian jurisdictions?*

British Columbia, Ontario, Quebec, Nova Scotia, and New Brunswick have all made major funding reforms, and Manitoba has proposed such reforms. Quebec does not require solvency funding. The other provinces only require funding on a solvency basis up to 85% of a plan's solvency liability.

Our experience is that plan sponsors/administrators have, generally, had a positive experience with these changes. We do note, however, that the majority of these changes have been very recent. While it is expected that these changes should provide a better balance going forward between the sustainability/affordability of DB pension plans and benefit security, we would encourage regulators to periodically assess whether the funding rules have indeed met these goals over various time periods and economic conditions.

- *What do you find effective about their funding rules?*

We have found the decrease in the solvency funding requirement to 85% of solvency liability (or removal of solvency funding, as in Quebec) has, generally, meaningfully decreased the contribution volatility and potential over-funding and stranded capital for plans that have sound going-concern funded ratios, while still maintaining a reasonable level of benefit security for plan members.

- *What do you find not effective about their funding rules?*

Each jurisdiction that requires a PfAD has separate rules on how this should be calculated. There have been numerous alternative viewpoints on this topic, and whether regulations treat each asset class (particularly non-traditional categories) appropriately for this purpose, e.g., interest rate hedging.

Further, regulations or other regulatory guidance should address "glidepath" situations where the asset mix is generally de-risked over time as certain thresholds are met.

Secondly, our experience is that plan sponsors/administrators have found the contribution holiday rules to be more complicated and/or severe than under the prior funding rules.

INNOVATION AND MODERNIZATION

1) *As with funding rules, rules regarding life annuity purchases and liability discharge have also been updated in a number of jurisdictions in recent years. Please identify issues you have experienced with current annuity purchase rules in the EPPA and EPPR, as well as possible approaches for resolving these issues. In particular, we invite you to comment on the following:*

    − *What should be the requirements of the annuity in order to permit discharge (e.g., generally same form and manner as pension from the originating plan)?*

        - *How to resolve situations in which an annuity that matches the plan provisions (e.g., indexation) is not available? For example, what are your thoughts on allowing the unavailable characteristics to be replaced by an annuity providing similar characteristics (e.g., fixed indexation as opposed to indexation based on the pension fund return)?*

ACPM supports the discharge of liabilities upon an annuity buyout transaction that meets the requirements of the EPPA and EPPR. In particular, the administrator and the plan sponsor should be discharged of the pension liability for the following reasons:

I. Legislative protections for the prospective annuitants and the remaining plan members are already in place in the form of the top up payment and/or approval of the relevant regulator;

II. Life annuities are already recognized within pension statutes as a portability option for plan members because of their benefit security features;

III. It is the expectation of plan sponsors that the plan be discharged in respect of the liability and the expectation of annuitants that their benefits are not subject to reduction as a result of the subsequent wind up of a plan in deficit. Since the annuity obligation is in the name of the annuitant, and not the plan, this expectation is reasonable. It is also not typical for the certificates issued to annuitants to make provision for benefit reduction in the event of the wind up of the pension plan;

IV. The need to make provision for a possible liquidity event would lead to an increase in the cost of annuities; and

V. Harmonization with other jurisdictions. British Columbia, Ontario, Québec and Nova Scotia have recently amended their respective pension legislation that include a discharge for the administrator and the employer, subject to prescribed conditions. The Federal government has also passed an amendment to this effect, but it is not yet effective.

We also believe that such a measure could enhance the retirement security of Canadians by allowing employers the option to strategically parcel off portions of pension liability, while at the same time reducing the size of the remaining pension fund and keeping it manageable (large enough to be efficient, but not so large that it could someday threaten the health of the employer). If an employer could periodically discharge liabilities for retirees, then all those retirees who are covered by a group annuity transaction would not be affected by the insolvency of the employer, and the remaining pension fund would be smaller and potentially make it easier for the employer to restructure itself and exit insolvency as a stronger employer.

We are in agreement that the annuity generally be in the same form and manner as a pension from the originating registered pension plan (RPP). In providing our position on this issue, we acknowledge the Government of Canada's Newsletter 20-1, Registered Pension Plan Annuity Contracts[1] ("Newsletter"). The Newsletter reiterates three conditions to ensure the individual is not immediately taxed when an annuity is acquired, the primary one being to ensure the rights provided under the annuity contract are not materially different than those provided under the RPP[2]. On the issue of materially different, the Newsletter indicates that consideration must be given to the terms of the RPP as registered (for example, available forms of payment).

In regard to situations where provisions of the RPP may not be precisely available, such as certain indexation provisions, we agree replacement of such provision with a "proxy" is a reasonable and rational approach. As it relates to indexation, we note the Newsletter sets out acceptable approaches, but also indicates other methods may be acceptable and encourages written requests that outline the rationale for a proposed approach. For example, appropriate adjustments to implied rates of indexation to reflect the likelihood that a "floor" or "ceiling" provision may apply. We would encourage that any such approaches acceptable to Canada Revenue Agency (CRA) also be acceptable under the EPPA and EPPR.

As it relates to specific purchases under the EPPA and the EPPR, we have appreciated the flexibility and collaboration with Alberta Treasury Board and Finance to develop workable solutions and would encourage the continuation of the same. As an example, in a plan wind-up situation for a "healthy" sponsor, which included the purchase of deferred annuities where members'[3] benefits would ultimately be determined based on the defined benefit (DB) maximum pension limit in effect at the member's future retirement date, it was agreed that annuities be purchased based on the DB maximum pension limit at the date of plan wind-up and any difference in the members' pension benefit at the date of ultimate retirement and the date of plan wind-up be provided by the plan sponsor from general operating revenues.

For other specific provisions that are unable to be precisely replicated within the annuity contract, we support the "trading" of such ancillary benefits (e.g., bridge to 65, survivor benefits, post-retirement spouse) on an actuarial equivalent basis similar in concept to the operation of a "flexible pension plan."

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[1] https://www.canada.ca/en/revenue-agency/services/tax/registered-plans-administrators/newsletters-technical-manual/no-20-1.html

[2] The other two conditions are that no further premiums will be paid after the contract is acquired, and, unless waived by the Minister, at the time of the acquisition, the registration of the RPP is not revocable.

[3] A small number of members were impacted by the DB maximum pension limit at the date of plan wind-up.

To ensure that the actuarial value of an annuity is not considered materially different following an ancillary benefits trade, as clarified by the Registered Plans Directorate (Newsletter 20-1), we recommend that an actuarial equivalency be determined on a commuted value basis.

- *Should there be any limitation to the discharge provided or transitional features?*
  - *Should retroactive discharge be permitted (i.e., discharge for annuities purchased before the legislation is amended)?*

There should not be any limitation to the discharge provided of buy-out annuities. ACPM also supports the retroactive discharge of liabilities upon an annuity buyout transaction that meets the requirements of the EPPA and EPPR. We also support retroactive discharge due to the financial stability of insurers which in most cases is stronger than the plan sponsor.

- *For what members should annuity discharges be allowed (e.g., retirees, former members, and survivors)?*

We believe all members should be treated the same. It would be unfair to provide different “security” to some membership categories over others.

- *Should annuity discharges be required to be filed with the regulator (e.g., require an actuarial valuation at the date of the buy-out; require actuary to file a certification that discharge is in compliance with legislation; require administrator to provide a copy of the contract(s) under which the benefits will be provided; or other)?*

The requirement for an updated valuation should depend on the materiality of the annuity purchase. If material (e.g., major shift in demographics, risk profile of the liabilities), an updated cost certificate or actuarial valuation should be required, with confirmation that the purchase does not impair the financial position of the plan, similar to the assessment as to whether the payout of a commuted value would have "impaired" the solvency position of the plan (same considerations as were set out in 2020).

On a prospective basis, we are in concurrence with filing a certification or notification indicating the annuity purchase was in accordance with legislation, including who the insurance company(ies) was (were) in order for the Regulator to monitor the transfer of assets and liabilities from the pension plan. If an actuarial valuation or cost certificate is filed (see immediately above), the information related to the insurance company(ies) would be included therein in order to provide duplicate filing.

We do not see a need to provide a copy of the annuity contract to the Regulator, subject to the certification or notification being provided.

- *Should disclosure to affected members be required? Should member consent be required?*

Given that the insurance company(ies) will need to communicate with affected members, disclosure of the transaction, the name of the insurance company(ies) and who to contact for questions should be provided to members. Transparency with members is important and could be facilitated through the existing annual pension / retiree statement process.

We do not recommend member consent. Such a process would be a potentially lengthy and result in a cumbersome administrative burden. Member consent also does not align with the five principals set out at the outset of this section for annuity discharges.

In situations where the benefit is substantially, but may not be exactly, the same (e.g., difficult benefit provisions), we still would not encourage member consent.

- *What funding requirements should there be (e.g., solvency ratio for the plan to be maintained at the lesser of one and the solvency ratio reported in the latest filed valuation report; if the cost of annuities exceeds the product of the commuted value times the solvency ratio then an additional contribution is required before the annuity is purchased)?*

For plans that are not fully funded, the top-up payment for an annuity buy-out should be based on the most recent funding valuation. The funded ratio of the plan after the annuity (buy-out) purchase should not be adversely impacted for the remaining members of the plan.

We note that for these purposes, the "funded ratio" would depend on the funding regime in effect at the time of such purchase (currently, it would be solvency, but, in the future, it could be something different, such as a going-concern "plus" funded ratio).

We do not believe that the commuted value should come into play in determining funding requirements – only the annuity premium in relation to the funded status, based on either a new or the most recently filed valuation, as applicable.

2) *In the Budget 2019, the Federal Government announced their intention to amend legislation to permit the purchase of an Advanced Life Deferred Annuity (ALDA) from a registered plan. The budget also proposed a Variable Payment Life Annuity (VPLA). While federal legislation is still pending, would you support the EPPA being similarly amended to provide for those products (e.g., as a potential portability option)?*

We generally support the EPPA being similarly amended to provide for these new and innovative products.

Since an Advanced Life Deferred Annuity (ALDA) would permit an individual to allocate a portion of their deferred tax savings beyond the end of the year in which they attain age 71 (in a similar approach to the QLAC in the U.S.), it is anticipated that a significant portion of such allocations will be from assets that had been previously transferred from a registered pension plan. As a result, the requirements for purchasing an ALDA would ideally apply consistently among all eligible registered plan accounts (e.g., DCPP, PRPP, DPSP, LIRA, LIF, RRIF etc.). In addition, consideration should be given to permit large defined contribution pension plans to be issuers of an ALDA.

While it is not mandated for an employer sponsored CAP (e.g., DCPP, PRPP) to provide post-retirement income benefits directly from the plan, it is estimated that a Variable Payment Life Annuity (VPLA) would be commercially practical for only a minority of such plans.

To promote broader access to this innovative decumulation option, it is recommended that the requirements for eligibility and for hosting a VPLA would apply equally to (i) a single "VPLA Enabled DCPP or PRPP" and (ii) an external financial institution for a "Group Plan VPLA" comprised of registered plan assets originating from a variety of retirement savings plans, including commuted values from registered defined benefit (DB) pension plans.

Additional information concerning ACPM's formal position on these new products may be found within a written submission to the Tax Policy Branch dated October 10, 2019.

3) *Many of Alberta's CBMEPs are currently classified as defined benefit for accrued benefits but have been exempted from that requirement by s.10.1 of the EPPR. What are your thoughts on the ability of a defined benefit plan to convert benefits – including accrued benefits – into target benefits? Consider:*

   - *How would member consent be obtained prior to conversion? That is, what conditions should be imposed (e.g. union can consent on behalf of all members; if not represented by a union, then some threshold of consent or deemed consent, unless respond in the negative).*

ACPM supports Target Benefit Plans (TBP) as a viable alternative to traditional defined benefit (DB) and defined contribution (DC) pension plans. Within a supplemental policy paper issued by the ACPM in September 2014, a framework for facilitating the conversion of DB and DC benefits into a TBP was outlined. With respect to a traditional DB plan where solvency funding applied and there was no risk of reductions in accrued benefits, requirements for a benefit conversion would ideally reflect the following principles and recommendations:

- Conversion rules must be balanced, manageable and flexible;
- Plans must be permitted to convert accrued past service benefits;
- Rules should permit conversions with the consent of affected plan beneficiaries where appropriate;
- Conversions without affected beneficiary consent should only be permitted provided strict requirements on risk management are imposed or in the limited scope of CBMEPs as discussed below;
- Rules permitting conversions with affected beneficiary consent should be based on the one-third of affected member objection standard. There is precedent for this approach in the rules applicable to surplus sharing and solvency relief. Requiring 100% or other level of positive affected beneficiary consent to a conversion would be completely impractical, rendering most if not all conversions impossible to implement;
- Partial conversions should also be permitted where only certain benefits provided under the DB plan are converted to target benefits. While base DB benefits would be protected, maintained and funded under this model, some portion of the optional, non-core DB benefits could be converted to target benefits. A variant on this partial conversion option is to permit conversion for some groups of plan beneficiaries only, but not others (e.g., permit for active members but not retirees); and finally

- Full funding of DB plan deficits should be required in cases where a converted TBP winds up within 5 years after converting from DB to TBP. The objective of such a rule would be to dissuade parties from converting a DB plan mainly (or partly) to avoid funding an existing solvency deficit.
  Such full funding should be based on the solvency deficit that existed at the conversion date, calculated as if the DB plan had been wound up at the conversion date.

As noted earlier, ACPM recommends that the conversion of a DC plan to a TBP be permitted and supported. For multi-employer plans, in both unionized and non-unionized environments, ACPM is supportive in principle for converting all benefits to a TBP.

In respect of Alberta's existing CBMEPs, where reductions in accrued benefits are required in the event of inadequate funding, Alberta should mirror the approach adopted by British Columbia and not require the consent of members on conversion. Converting would increase the ability of governing boards to define and manage their funding policies properly. It would also serve as a mechanism to educate members about the target nature of their entitlements and inform the members that such entitlements do not share the same prohibitions against benefit reductions applicable to traditional DB plans.

From a regulatory oversight perspective for a small subset of Alberta's pension plans that nonetheless represent a large proportion of the province's plan members, there may be merit in maintaining homogeneity in the regulatory and funding framework applicable to CBMEPs.

4) *Do you have other ideas to support innovation and modernization with regards to pension legislation and regulator requirements?*

Section 57 of the EPPA does not permit inclusion of all service such as previous buybacks when calculating a termination benefit. To ease administration and communication to members, including all service would be beneficial. The end result for the member is the same as they receive the full amount but in a different format.

<u>RED TAPE REDUCTION</u>

1) *In 2014, the EPPA was amended to provide for the establishment of the Alberta Employment Pensions Tribunal. While members have been appointed to the Tribunal, the Tribunal has not been used since its establishment. Do you think it is an effective mechanism to address appeals? What other approaches might be taken to the review of a certain decision of the Superintendent of Pensions to determine if the decision is consistent with the requirements and intent of the EPPA?*

In view of the fact that the Pension Tribunal has not been used since its establishment, and that we do not anticipate a significant volume of activity before it in the short to medium term, we are supportive of amending the EPPA to remove references to the Pension Tribunal and to provide a right to seek judicial review by the Court of Queen's Bench of any decision of the Superintendent. The evidence to date indicates that the need for a full-time Pension Tribunal is quite limited, and we are concerned that its utility as an independent tribunal comprised of subject matter experts may be undermined by its lack of use. Under the current regulatory framework, the volume of highly contentious matters is quite limited and we do not think that the maintenance of the Tribunal and its associated administrative apparatus is required to promote the fair application of the EPPA.

We note that in the event the Pension Tribunal is engaged, rules and procedures governing the Tribunal would need to be developed and socialized, and expect that in the short term, at least, that allowing parties the opportunity to seek judicial review of decisions of the Superintendent would not lead to significantly lengthier timelines for dispute resolution or higher costs to the participants.

2) *The EPPR prescribes different pension partner waiver forms, used in different instances depending on certain circumstances. What are your views on the potential consolidation of waiver forms (similar to the waiver forms which existed prior to 2014) or the potential elimination of all waiver forms (replaced, instead, by an obligation that the plan administrator obtain "pension partner consent" without a prescribed form)?*

We are strongly opposed to eliminating all waiver forms and replacing them with an obligation that the plan administrator simply obtains "pension partner consent". Doing so would likely result in uncertainty on the part of plan administrators and their service providers, along with the need to spend additional time and effort to draft, and then regularly review and update such forms. If waiver forms were eliminated, we foresee a significant increase in plan member disputes and litigation over issues, many of them technical, regarding the validity of the consent.

We therefore support the notion of prescribed waiver forms. However, we are of the view that the current array of forms should be consolidated. There are presently thirteen pension partner waiver forms spread across five general categories of waivers: 60% joint and survivor pension; 50% unlocking; death benefits; unlocking due to shortened life expectancy or non-residency; and establishment of a life income fund or account. In many cases the differences within a given category are relatively minor, such as for example, statutory references. We appreciate that having a unique waiver form for each possible situation could be viewed as being convenient. In practice, though, the sheer number of forms has proven to be more of an administrative hindrance than a help. We are of the view that having a single form for each general situation (e.g., 50% unlocking) with the ability to, for example, check a box indicating whether the form is for a pension plan or locked-in account provider, will reduce time, effort and confusion on the part of plan members and administrators. As a result, we anticipate that the number of forms could be reduced by at least half.

Lastly, we are of the view that all prescribed forms should be reviewed and refreshed in order to simplify some of the language and improve clarity, and to confirm that the information required of plan administrators serves a necessary regulatory purpose (e.g., any information or certification requirements that, in the regulator's view, are not or are no longer strictly required to assist the regulator in performing its functions could be eliminated).

3) *The EPPR requires member disclosure statements, used in different instances depending on certain circumstances. What are your views on:*

   - *Replacing the member disclosure requirements in the regulation with an obligation on plan administrators to disclose information to members (but not prescribe the content)?*

   - *Changing the annual pensioner statement from a mandatory statement issued to all retired members of a pension plan to a statement where members must "opt-in" to receive it.*

While we appreciate the additional flexibility that less prescriptive rules pertaining to member disclosure statements would provide administrators, we do not think that this would be to the advantage of plan administrators nor do we think that administrators would necessarily welcome such a relaxation of requirements.

The current requirements, having been in place for several years now, are well understood and provide administrators a clear understanding of what they are required to disclose to members regarding their benefit and the plan itself, and removing these requirements while retaining a broad obligation to make disclosures to members will increase uncertainty as to the nature and extent of an administrator's duty under the EPPA and associated litigation risk. We also note that, in the main, these disclosure statements are prepared on an automated basis and the investments made by administrators and their service providers in the infrastructure necessary to prepare these standard forms and collect and input the information necessary to complete them would be potentially undone by removing the prescriptive rules (and thus would not result in "red tape reduction"). Our view is that it would be of greater utility to administrators for a continued emphasis on facilitating electronic transmission of member statements, including removing "opt-in" requirements which serve as a barrier to administrators being able to send documents electronically to certain members (in particular retirees and deferred vested members) in favour of presumed consent requirements, or ideally, rules affirming that consent (presumed or otherwise) is not required to send communications electronically and that members are obligated to provide administrators with an electronic address in order to receive required statements.

4) *Do you have other ideas that reduce inefficiencies with regards to pension legislation and regulator requirements?*

While we support the maintenance of the prescribed documents (see above), we observe that a significant burden is imposed on administrators in processing, and on occasion verifying the completeness and accuracy, of the forms received from members and pension partners (for example, forms which have been signed but not witnessed, or forms which contain information contradicting other information in the member's file, such as spousal status). Certain of these issues can be addressed through the streamlining of the forms recommended above, but we believe it would also be to the advantage of plan administrators to be able to rely on provisions added to the EPPA which discharge it from further liability in the event that it relies on forms completed by the member and/or pension partner, as the case may be. By way of example, where a member completes a form attesting that, at the date of pension commencement, he or she does not have a pension partner, the administrator should be entitled to rely on the accuracy of such information and receive a clear discharge under the EPPA from any further responsibility in the event that the member's attestation is or is alleged to be false. Currently, it is unclear what responsibility an administrator has to verify this information, particularly where there may be conflicting evidence presented to it, and the administrative burden associated with addressing this potential legal liability could be reduced through the introduction of discharge provisions. In addition, the ability to rely on discharge provisions would in many cases facilitate a speedier settlement of pension benefits, to the advantage of plan members and beneficiaries.

There appears to be some confusion as to whether or not there is a regulatory policy generally requiring the restatement of a plan text after five amendments have been filed (or concurrent with the filing of the fifth amendment). We would recommend that such policy be suspended (if it exists), in favour of a collaborative approach between the regulator and plan administrators to identify when the volume of amendments filed since the last restatement warrants the filing of a complete restatement.

We note that there has been administrative flexibility applied in the past on this point, but its application is somewhat uncertain and a blanket rule of this sort does not adequately take into account the fact that it is not the number of amendments, per se, which make plan documents unwieldy to administer but rather the complexity and form of amendments (e.g., the deletion and replacement of whole sections versus more surgical amendments to individual sentences).

Consistent with our submissions in May 2020 to the President of Treasury Board and Minister of Finance regarding potential COVID-19 related relief measures, we continue to believe that there are other opportunities to relax the administrative burden on plan administrators without negatively impacting the benefit security of plan members and beneficiaries (and indeed, in some cases, improving the pension experience for plan members and their pension partners by reducing the “red tape” these individuals encounter in marriage breakdown situations, for example). We draw your attention in particular to the following items from the Appendix to that submission:

- We recommend continuing focus on efforts to streamline the division of pension on marriage breakdown processes, including reducing the number of statements provided to members/pension partners and moving to a simplified model based on the federal PBSA approach without limits on the amount that can be shared between pension partners in order to reduce the burden on administrators needing to confirm that marital property orders or agreements conform with EPPA limits. At a minimum, to limit confusion we would recommend that the dates of Matrimonial Property Orders and Matrimonial Property Agreements that are subject to the EPPA rules be corrected, as the current dates were inadvertently preserved from the prior legislation.

- We also suggest that wording in the EPPA regarding the list of financial institutions where pension funds can be transferred be generalized, as the list becomes out of date with branding changes.

- Improving EPPA wording around prohibition against amendments that reduce accrued benefits in order to better clarify the extent to which benefits are “accrued” and protected and reduce the amount of analysis required by plan sponsors to confirm that proposed amendments are EPPA-compliant.

- Simplifying missing members and unclaimed benefits wording, including working with other government departments to augment the province’s existing unclaimed property regime to accommodate transfers of unclaimed benefits from Alberta-registered pension plans. Amended language should include how plan administrators can discharge their obligations to plan members who refuse to accept their pensions, so as to assist plan administrators in meeting their obligations to plan members under the EPPA while providing a means of reducing the administrative burden associated with uncooperative plan members.

CONCLUSION

Thank you for the consideration of our submission. Our belief is that a sustainable and equitable retirement system is a combination of proper plan design, effective and consistent administrative processes and a productive relationship between the plan and its members. We believe that, in conjunction with legislative and regulatory changes, the guidance provided in our submission can support the achievement of all of those goals. If required, we are available for further consultation.