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The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite



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# **ACPM Submission on Ontario's Target Benefit MEPP Framework**

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## **FOREWORD**

### **THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT**

The Association of Canadian Pension Management (ACPM) 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 more than 3 million 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**

We are pleased to provide ACPM's comments on Ontario's Target Benefit MEPP framework (the "Framework"). In March 2012 and September 2014, ACPM released policy papers on Target Benefit Plans (TBPs). In these papers, ACPM recommended TBPs as a viable alternative to traditional DB and DC pension plans, and urged the provincial and federal governments to take the necessary steps to amend pension and tax legislation to make TBPs widely available. We are very pleased that the Government of Ontario has initiated a consultation process that will help inform the development of Ontario's Target Benefit MEPP framework and subsequent Target Benefit SEPP framework.

ACPM continues to believe that the TBP is an innovative and viable pension model which has a high likelihood of providing adequate pension income to members. We also believe that a move to TBPs could improve pension sustainability, coverage and adequacy in the third pillar of Canada's retirement income system. For these reasons, we strongly support the development of a workable framework for TBPs in Ontario. We therefore congratulate you on taking this important initiative on behalf of the Canadian pension industry.

## **ANSWERS TO QUESTIONS POSED**

### **1. FUNDING**

#### **1.1 *How should a plan's PfAD be calculated? What aspects of the plan (e.g., plan maturity and demographics) should determine the PfAD, and how much weight should be given to each factor?***

Trustees should be given the discretion to determine the appropriate PfAD for their particular plan's circumstances after taking into account the plan's benefit deal, maturity, demographics, employers and profiles, investment policy, industry type and stability/volatility, etc. Such circumstances can vary widely not only among plans, but also within a plan from valuation to valuation. Furthermore, the PfAD should be allowed to vary up or down at the discretion of the Trustees in order to accommodate a prudent degree of funding stability.

Trustees should also be provided the discretion to structure the PfAD in a manner that best suits their plan's funding and benefits policy. Some examples of PfAD structures that could make sense include:

- a reduction in the discount rate assumption;
- a percentage of best estimate results with the ability to assign a different percent to current service and past service liabilities.

The regulator can require a minimum level of PfAD so that members can expect a reasonable probability of receiving the target benefits. However, the minimum level of PfAD should not overly restrict sponsors' ability to make the appropriate choice between the need for benefit and contribution stability on one hand, and the need to manage the intergenerational transfer if the minimum is too high. Larger TBPs should have the option of using probability measures with stochastic models rather than a fixed level of PfAD.

**1.2 How frequently should Target Benefit MEPPs file valuation reports? Do triennial valuations for a well-funded Target Benefit MEPP provide sufficient disclosure to plan participants?**

There should be a formal valuation required at least every three years. In addition, the actuary should conduct estimates no less frequently than annually to assist the parties in monitoring trends in the contribution/benefits relationship. The estimates could be required to be filed with the regulator as part of the annual information reporting. On the basis of the estimates, a formal actuarial valuation could be required before the triennial review date if a deteriorating trend was developing or if a specified trigger would be indicated based on the plan's estimated funding, e.g., the current estimated funding situation does not exceed the targeted level by at least a prescribed margin (e.g. 5%). Note that this margin should not be used to improve benefits or be included in termination payments.

**1.3 What limits should there be on uses of excess assets? Should there be a required order of priority for using excess assets (e.g., previously reduced benefits must be restored before additional benefit improvements can be made or a contribution holiday is taken)?**

Trustees should be given significant flexibility to decide what is best for their plan with guidance being documented in a plan's funding/benefit policy. Regardless, prescribing a restriction that previously reduced benefits would be restored in the reverse order that they were reduced before further benefit improvements or contribution holidays could be considered. However, we would suggest that only benefit reductions made in the previous five years be subject to such a mandated restoration and only apply to current plan members.

**1.4 Should a plan be required to maintain a funding reserve larger than the PfAD after making a benefit improvement?**

The appropriate PfAD level is highly dependent on a plan's circumstances and therefore the trustees are in the best position to judge the appropriate PfAD level. Such discretion would also apply in situations when benefits have been improved. A somewhat related question, however, is whether a benefit improvement could increase the plan's unfunded liability. Our view is that benefit improvements should not be precluded provided the funded ratio does not fall below a prescribed threshold, such as 90%, after the improvement and after restoring any benefit reductions made within the five previous years.

**1.5 If employees are making contributions, should there be a requirement that members share contribution holidays with employers?**

As MEPP contributions are determined through the collective bargaining process, in our view, no contribution holidays should be permitted to be taken by employers and/or members unless they are bargained or otherwise permitted by the applicable collective agreement.

**1.6 Are there any other funding rules which should be considered to encourage plans to develop a substantial reserve to reduce the risk of benefit reductions?**

The reserve level that is deemed appropriate for a plan must align with the underlying objectives and benefit deal of a plan, which in turn reflects the extent to which a plan allows risk to be pooled across generations of participants. For plans that target providing a high degree of assurance that accrued benefits will be protected, greater reserves will be required. On the other hand, lower reserves may be quite appropriate where there is a greater sensitivity to transferring costs across generations.

**1.7 Should special payments for going concern unfunded liabilities be amortized over 12 years, or a different period of time, e.g., 10 years?**

Unfunded liabilities should be permitted to be amortized over a maximum period of 15 years. However, a plan's benefit/funding policy could stipulate a shorter period in circumstances that are seen to be appropriate for the plan.

**1.8 Should new funding rules for Target Benefit MEPPs differ from the funding rules for SOMEPPs in ways different from the description above? How would these changes help promote benefit security?**

We see no reason why there should be any stricter funding rules for Target Benefit MEPPs than for SOMEPPs.

**1.9 How should the regulations ensure that Target Benefit MEPPs reduce benefits in a timely way when needed to meet funding requirements? For example, should the regulations include a default method for reducing benefits?**

The mechanism for reducing target benefits should not be dictated by regulation. Rather, trustees should be guided by the benefits policy and funding policy for the plan in determining when and the extent to which benefit reductions are warranted. The regulations prescribe the amortization period over which unfunded liabilities are to be amortized. The benefits or funding policy may define maximum contribution levels that could be tolerated by plan sponsors and the membership as well as the minimum funding ratio for the plan's overall stability as triggers for the mandatory reduction of benefits. In order to allow time for communicating benefit reductions, the effective date for any benefit reduction should be up to one year from the valuation date that established the shortfall resulting in the benefit reduction.

**1.10 To guide Target Benefit MEPPs in developing funding policies, should the regulations establish a priority sequence for which benefits should be reduced?**

No. Pension plan trustees should have the flexibility to determine the priority sequence based on the pension deal with the employees and/or their bargaining agents and the benefits policy established for the plan.

**1.11 Should lump-sum values paid from Target Benefit MEPPs be calculated using the CIA commuted value standards or using the plan's going concern assumptions? Should lump-sum values be reduced to reflect the funded ratio of the plan, and if so, how?**

The lump sum value of the benefit paid to a terminating member should reflect the nature of the pension deal. Unlike a true defined benefit plan in which a specified benefit is promised at retirement and the plan sponsor is on the hook for funding that benefit, a target benefit plan involves the collective sharing of risk among the plan members and plan sponsors. As there is no promised benefit at retirement, a terminating member who elects to transfer the benefit outside the plan should not receive an advantage over those remaining in the plan. The fairest approach to determining a transfer value for a member electing to transfer a benefit out of a target benefit plan is to calculate the value of the member's vested benefit on the going concern basis (as a terminated vested member), based on the current level of benefits being provided, multiplied by the proportion funded.

This approach raises new questions: should this value include the PfAD taken into account in the funding basis, and should a member be entitled to excess assets if they exist at the time of termination? We believe legislation should allow both approaches, as determined by each plan's provisions or funding and benefit policy. Since the legislation is intended to define the minimum requirements while allowing plans to be more generous if desired, then we would suggest that legislation define termination benefits as excluding PfADs and excluding excess assets. Given that members can elect to leave their deferred pension in the plan, we believe this approach to be reasonable.

**1.12** *Given plan participants of a Target Benefit MEPP could only be entitled to receive a commuted value that reflects the funded status of the plan on termination of membership, should Targeted Benefit MEPPs be required to file periodic updates on their funded position (e.g., every three months) to ensure that commuted value transfers better reflect the funded position of the plan at the time of transfer?*

We believe that annual updates for this purpose should suffice.

**1.13** *What options for entitlements should different plan participants have when a Target Benefit MEPP winds up?*

In the case of a plan windup, transfer values should be based on the CIA commuted value standards even though a different value might have been used for terminations before plan windup. If a MEPP being wound up has insufficient assets to pay out all target benefits, the plan members will get a reduction in their benefits, determined in accordance with plan rules and the benefit policy mentioned in a different section. In this case, for members who would receive an insured annuity as opposed to a lump sum transfer (i.e. all current retirees as well as non-retirees who prefer to receive an insured annuity instead of a lump sum transfer), the MEPP administrator should have the possibility to offer different forms of reductions among the plan's ancillary benefits, for example between the level of indexing and the level of pension reduction, but without producing a higher lifetime pension than the normal pension (e.g. allow them to give up part of their indexing to avoid a cut in their current pension, but not to obtain a higher current pension).

**1.14** *How should the value of entitlements of plan participants be determined when a Target Benefit MEPP winds up?*

In the case of a plan windup, transfer values should be based on the CIA commuted value standards even though a different value might have been used for terminations before plan windup. If a MEPP being wound up has insufficient assets to pay out all target benefits, the plan members will get a reduction in their benefits, determined in accordance with plan rules and the benefit policy mentioned herein. It should not be specified in legislation that all benefits must be reduced pro-rata, (i.e. it should be permitted for each plan to reduce various benefits in different ways, as long as this was previously specified in the plan rules or the plan's benefit policy, and clearly communicated to plan members).

**1.15** *What adjustments should be made to the "50% rule" for Target Benefit MEPPs?*

The 50% rule is applicable to single employer defined benefit plans and provides that if a plan member's contributions to a defined benefit plan and any earned interest or investment income equal more than 50% of the commuted value of the pension benefit, the difference or "excess" is refunded to the member.

However, due to the differences between Target Benefit MEPPs and single employer defined benefit plans (namely, that MEPP contributions are fixed through collective bargaining and benefits may be reduced), MEPPs should be exempted from compliance with the 50% rule. For example, in some cases members' contributions to MEPPs may be negotiated to be higher than their employer's contributions. Also, the key characteristic of Target Benefit Plans is the sharing of risk between members and their employer. Requiring MEPPs to adhere to the 50% rule would be inconsistent with the shared risk nature of these plans by essentially providing members with a guarantee. However, we believe legislation should impose a minimum benefit equal to the member's own contributions accumulated with the fund's investment return.

**1.16 *Should other limits be placed on the extent to which member contributions may fund benefits? For example, should there be an explicit requirement that member contributions be required to be limited to, at most, employer contributions?***

No. Contribution rates or limits should not be prescribed. The parties should be free to bargain contribution rates.

**1.17 *What regulations, if any, are needed regarding actuarial assumptions?***

Regulations should not impose restrictions on actuarial assumptions, but the actuarial valuation should certify that the funding policy adopted by the plan has been followed. As mentioned in a different section, this funding policy should be adopted by the plan's Board of Trustees and its main features should be communicated to plan members and employers.

**1.18 *If Target Benefit MEPPs reduced their best estimate interest rate assumption by a margin for adverse deviations, should that affect the calculation of the plan's PfAD?***

The funding policy adopted by the plan should describe how to determine the margin for adverse deviations and the PfAD; those two details are intertwined and should not be determined independently.

**1.19 *Under what circumstances should the regulator be able to order the board of trustees of a Target Benefit MEPP to prepare a new valuation report because of inappropriate assumptions?***

The current authority to question reports and retain an alternate actuary is appropriate, subject to following the funding policy adopted by the plan.

## **2. GOVERNANCE**

**2.1 *Should the PBA continue to require at least half of the board of trustees of a Target Benefit MEPP be representatives of plan members?***

We do not see a reason to alter the current requirement that at least half the trustees be representative of plan members.

**2.2 *Should retired member representation on the board of trustees of a Target Benefit MEPP be required? How could representatives be selected to ensure retired member representation is effective?***

No. Appointing trustees to represent any particular class runs counter to a trustee's duty to treat all beneficiaries even-handedly. Every trustee must represent all plan beneficiaries and act in an even-handed manner among classes of beneficiaries. It would set an inappropriate precedent to designate any trustee as only being a representative of any single class of beneficiary.

**2.3 *What measures could be taken to ensure that the board of trustees adequately considers the interests of former members? Should former members have representation on the board of trustees?***

No. As stated earlier, every trustee must represent all plan beneficiaries and act in an even-handed manner.

**2.4 *What protections from legal liability, if any, should be given to trustees to encourage members' and retired members' participation in governance?***

Trustees should be protected from personal liability (including litigation costs) except in cases of fraud or criminal conduct. However, due to the legal nature of a pension trust fund, trustees may be exposed to personal liability. Accordingly, trustees should have an indemnity from the pension trust fund and should be permitted to use fund assets to purchase appropriate fiduciary liability insurance. In addition, consideration should be given to limiting trustees' liability exposure through amendments to the PBA that would limit the ability to seek redress from a trustee's personal assets.

**2.5 *Should the proportion of representation on the board of trustees of members, former members and retired members be related to the proportion of liabilities for each group?***

No. As stated earlier, every trustee must represent all plan beneficiaries and act in an even-handed manner between classes of beneficiaries. It would not be appropriate to designate any trustee as a representative of a single class of beneficiary.

**2.6 *Would independent trustees improve the governance of Target Benefit MEPPs? If so, how should independent trustees be selected?***

Whether independent trustees are appropriate should be a decision made by the plan sponsors and set out in each plan's trust agreement. The appointment of independent trustees should not be mandated.

**2.7 *Should stress testing of Target Benefit MEPPs be required? For what factors (e.g., investment returns) should the regulations require stress testing?***

Stress testing may provide useful information about the plan's financial stability and potential risks for members' benefits, and to that end, stress testing should be encouraged. However, we would advise that stress testing not be required of all plans by legislation. Some plans may have a funding and benefit policy that addresses risk analysis and communication in different manners that may be sufficient and potentially more useful than a standardized legislated stress test. For example, in some cases, it may be more appropriate to examine the potential impact of a significant change in future active membership than the potential impact of a potential reduction of 1% in asset returns.

Nevertheless, if the government believes it would be useful to require stress testing for all plans, analyzing investment returns would be a factor to consider, as well as a reduction in discount rates, which is already required by actuarial standards of practice.

**2.8 *If required, how frequently should Target Benefit MEPPs be required to perform stress testing?***

If required, either by legislation or by the plan's funding and benefit policy, it would be appropriate to perform stress testing at every valuation date, and especially when benefits are either reduced or increased.

**2.9 *If required, should the regulations specify whether the plans should perform deterministic or stochastic tests?***

We do not believe it would be appropriate to require stochastic tests for all plans.

**2.10 *How should Target Benefit MEPPs be required to use the information provided by stress tests? For example, should the regulation specify what a plan should do to address problems identified in a stress test?***

No. Trustees should be given discretion to decide how to proceed when problems are identified through stress testing.

**2.11 *Should stress tests also be used in determining contribution requirements for Target Benefit MEPPs?***

Contributions are typically fixed in collective agreements so this would mean lowering benefits. If the stress testing is future oriented and speculative, it may not be appropriate to reduce benefits based on the results.

**2.12 *Should Target Benefit MEPPs be required to establish a governance policy, and if so, what issues should it address?***

No. Current industry standards (for example, the CAPSA Governance Guidelines) are sufficient.

**2.13 *Should the governance policy also outline the roles of delegates, such as external service providers and consultants, with whom the board has contracted to help fulfil governance responsibilities?***

N/A.

**2.14 *Should filing of governance policies be required? How frequently should reviews of governance policies be required?***

Filing of governance policies should not be required.

**2.15 Should a target benefit MEPP framework require all trustees to complete training? If so, what topics should be addressed?**

Trustee training should not be prescribed. Trustees will have different skills and knowledge. However, training and education should be encouraged. We recommend that the MEPP's governing document(s) highlight the importance of trustee training and require that the board of trustees discuss and review their training needs at least annually.

**2.16 What information not currently required for SIPPs should be included in the investment policy for Target Benefit MEPPs, and why?**

The current requirements for SIPPs are sufficient for Target Benefit MEPPs.

**2.17 What methods of managing risk and promoting intergenerational equity could be included in an investment policy for a Target Benefit MEPP?**

Risk management is already considered in developing SIPPs. The SIPP and the Funding/Benefit policy should be designed to work hand-in-hand in order to manage risk and promote intergenerational equity, with the latter being covered more (if not exclusively) in the Funding/Benefit policy. The regulations should not be too prescriptive but should allow each plan to address those objectives in a manner that reflects the plan's own characteristics and constraints.

**2.18 Should Target Benefit MEPPs be required to develop a funding policy? If so, what information should funding policies contain?**

"Funding" is usually predetermined or fixed through collective bargaining or participation agreements. It is also not a fiduciary matter. A policy addressing how benefits would be improved or reduced based on corridors of funding levels is recommended. This policy is referred to herein as the Funding/Benefits Policy.

**2.19 Should funding policies and amendments be filed with the regulator?**

No.

**2.20 How often should the funding policy of a Target Benefit MEPP be reviewed?**

We recommend annually.

**2.21 Should the regulations specify a priority sequence for benefit reductions in Target Benefit MEPPs to manage concerns such as intergenerational equity?**

No. MEPPs should have the flexibility to determine sequencing of benefit reductions based on circumstances of the particular plan.

### 3. DISCLOSURE OF INFORMATION

#### **3.1 Do the proposed additional requirements listed above address the type of disclosure that would be of assistance to members who are new to a Target Benefit MEPP? Should additional information also be provided?**

It is a defining feature of a TBP that benefits can be reduced if the assets in the pension fund are insufficient to cover the target pension benefits. Accordingly, it is crucial that this possibility be adequately communicated to the members of the plan. In addition to the above, ACPM recommends that the following be included in communications to new members:

- in addition to clear, plain language describing that employer contributions are fixed and that benefits may be reduced if the assets of the pension fund are insufficient to pay the pension benefits, it is important that members understand that the reduction may apply to both accrued benefits and the future accrual of benefits;
- the current funded ratio, on both a going concern and wind-up basis;
- factors, if determined, which would be used by the administrator in reducing or increasing benefits (e.g., differentiating between active and retired members, reduction of accrued benefits versus future accrual of benefits, and any protection of pre-conversion DB benefits in a converted plan).

#### **3.2 Do the proposed additional requirements listed above address the type of disclosure that should be included on an Annual Statement for members of a Target Benefit MEPP? Should additional information also be provided?**

Communication of the target nature of the benefit should also be made to the member at regular intervals (at least annually) during the person's membership in the plan (as an active member, deferred vested member and retired member). Required elements of the communication may be prescribed, and should include:

- the funded status of the plan, on both a going concern and wind-up basis;
- the investment performance of the pension fund;
- sources of significant changes in plan liabilities;
- the results of any required stress testing of the plan;
- the administrator's assessment of the need to reduce benefits, or the opportunity to increase benefits, including a discussion of the risk factors affecting the plan (e.g., investment performance, changes in interest rates, and changes in mortality rates);
- what would happen if the plan were terminated immediately.

The administrator should also be required to communicate the information described above to the employer.

**3.3 When should the statements for Target Benefit MEPPs be sent so that members receive timely notice of benefit adjustments, whether reductions or increases? Would notice in addition to the formal periodic statements be needed?**

Benefit reductions may affect active and retired plan beneficiaries in different ways. For example, pensioners are typically less able to mitigate the impact of a benefit reduction than active members. As such, pensioners may need time to make necessary adjustments to their expenses and maybe even to their lifestyle expectations. To ensure that such plan beneficiaries are not caught off-guard, we believe that the legislation should require that the MEPP administrator provide members with advance notice of planned benefit reductions and/or contribution rate increases. We propose a reasonable period of notice taking into consideration our earlier recommendation that required benefit reductions be implemented effective on the first anniversary of the valuation date. In timing the notices to be provided to plan beneficiaries, priority should be given to retirees and then active and deferred vested members.

**3.4 What additional information, if any, should be included on termination, retirement and survivor benefits statements?**

In addition to the communication content outlined in the Consultation Paper and the recommendations of the ACPM above, we would also suggest that if assets are transferred out of the plan pursuant to a portability option, the rules governing the computation of the transfer amount should be clearly communicated.

**3.5 Do the proposed additional requirements listed above address the type of disclosure that should be included on a wind-up statement for a member of a target benefit MEPP? Should any additional information also be provided?**

Between the suggestions in the Consultation Paper and the recommendations of ACPM above, the type of disclosure that should be included on a wind-up statement would be addressed.

There is no discussion in the Consultation Paper about how communication to all members should be executed. ACPM's 2012 Target Benefit Plan Paper (attached to this submission) did discuss the types of communication, which we have chosen to reiterate here.

Disclosure should be in writing, and electronic disclosure should be permitted, subject to the same safeguards as apply to electronic communication generally. Additional disclosure in person (individually or in groups) might be encouraged but should not be required. We suggest that the form of disclosure mirror the existing requirements for defined benefit plans.

#### **4. REGULATORY OVERSIGHT**

##### ***4.1 Under what circumstances should the regulator be able to order the wind-up of a Target Benefit MEPP?***

The circumstances in which this power is exercised should be limited to the most extraordinary circumstances only.

The Superintendent's power to wind up a plan when the enumerated criteria are met should be discretionary so as to allow for flexibility to work out solutions that are in the best interests of the members and employers.

Additional circumstances justifying a wind up beyond those already enumerated in the PBA are not numerous but could include:

- there is a significant deficit that, based on current contribution levels, is likely to deteriorate and not be rectified within a reasonable period of time (this trigger should be based on actuarial opinion);
- in the event the administrator cannot act, such as when trustee resignations result in too many vacancies that are not filled within a reasonable period of time and are not likely to be filled in the circumstances;
- in cases of employer withdrawals that significantly reduce the plan's active membership, the regulator should be allowed to order a partial windup when this withdrawal may be considered to compromise the plan's financial security.

##### ***4.2 Under what circumstances should the regulator be able to replace the administrator of a Target Benefit MEPP?***

In the event the administrator cannot act, such as in the case where resignations lead to too many vacancies that cannot be filled and are not likely to be filled (this should be exercised only in conjunction with a wind-up), the regulator should be able to replace the administrator where there are repeated failures to follow the plan's official investment and funding policies in conjunction with a deterioration of the plan's funded status, where steps to correct such failures are not taken within a reasonable amount of time after a request by the Superintendent to remedy the breaches.

##### ***4.3 Under what circumstances should the regulator be able to issue a special order for a Target Benefit MEPP to file a new valuation report?***

If the assumptions used in the report are not in accordance with accepted actuarial practice and/or the Regulations (e.g. prescribed requirements), the regulator should be able to issue a special order for a MEPP to file a new valuation report. The Superintendent should not otherwise be substituting its own judgment for that of the actuarial professionals involved in producing a valuation report, particularly where they are subject to regulation by their own governing body.

**4.4 To what extent should the regulator be able to enforce the terms of filed governance, investment and funding policies of a Targeted Benefit MEPP? For example, should the regulator be able to ensure that the benefit reductions are carried out as specified in a plan's funding policy?**

Policies are not set in stone and must be fluid and able to change over time. We see no benefit to being required to file governance policies. If the regulator can enforce policies, whether filed or unfilled, the result will be that policies will be drafted so as to be vague and capable of multiple interpretations, making the policy potentially weak and making it difficult to determine if the policy is not being correctly applied. This could lead to increased litigation. Another possible outcome is that where over time the practice has strayed from the policy, the policies will simply be changed to reflect the practice. Arguably, if members or plan sponsors do not believe that the administrator is applying a policy correctly, it may not be the Regulator's role to intervene; many subjects can more appropriately be dealt with by the courts.

However, as noted above, it may be appropriate where there are repeated failures to follow the plan's official investment and funding policies in conjunction with a deterioration of the plan's funded status, where steps to correct such failures are not taken within a reasonable amount of time after a request by the Superintendent to remedy the breaches, for the administrator to be replaced.

Being required to proactively communicate or share policies covering topics such as governance, funding, and investment to members and beneficiaries (beyond their existence) will simply increase the cost of administration without a corresponding benefit. Most members will not have the skill or ability to understand these complex topics and how they affect the operation of the plan, and many policies involve the application of judgment and skill to apply, making it not obvious on their face how they are or not being applied. However, including such policies in the list of documents available for inspection may serve to enhance transparency without adding to the burden of administration and regulatory compliance.

**4.5 Are there disadvantages to allowing the regulator to enforce plan policies?**

Please see the response under question 4.4.

**5. ISSUES FOR MULTI-JURISDICTIONAL TARGET BENEFIT MEPPs**

**5.1 Would either of the options described above allow multi-jurisdictional Target Benefit MEPPs to operate effectively while minimizing the disproportionate risk to Ontario members retired members and former members, both while a plan is ongoing and on wind-up?**

Any option that forces the split of a Target Benefit MEPP would be inappropriate and could have the effect of ultimately forcing a plan to wind-up as it is no longer practical to administer. This would have the unintended effect of reducing rather than enhancing pension coverage. Trustees and plan sponsors should have the ability to design creative solutions to these problems if they wish to do so and the regulations could compel that, on a plan wind-up, there would have to be a pro-rata distribution of assets based on liabilities and jurisdiction.

**5.2 Under the first option, what measures may be needed for Target Benefit MEPPs whose membership changes so that the plan no longer passes the test?**

The CAPSA Multi-Jurisdictional Agreement should be amended to provide equitable treatment to participants in MEPPs from different jurisdictions.

**5.3 Are there other options that should be considered that would reduce the additional risk to Ontario members in multi-jurisdictional Target Benefit MEPPs?**

Revising the CAPSA Multi-Jurisdictional Agreement to prevent a jurisdictional change from affecting benefits already accrued would be desirable. It may also be appropriate for trustees to provide lower benefits to participants in jurisdictions that have dissimilar regulatory frameworks from Ontario. In effect, employers and participants in those jurisdictions would be "pre-funding" for potential future "benefits" to them of jurisdictional differences.

**6. TRANSITION**

**6.1 What transitional measures may be needed for SOMEPPs once a new framework for regulating Target Benefit MEPPs is enacted?**

Plans will need a significant amount of time to transition (see question 6.4 below). The process for the trustees to draft and agree to various new policies that may be required will be a lengthy one. Three years may not even be enough to finalize contentious policies like funding policies. If the composition of the board of trustees will change under the new regime, significant communications to employers and members may be required to elicit nominees and complete any necessary election process, along with appropriate training for the board members (new and old).

For plans that are currently SOMEPPs but will not move to the new regulatory regime and are underfunded at the effective date of the new regulatory regime, a substantial period of time (e.g. at least 5 years) should be allowed before full solvency funding is imposed (i.e. the amortization period will not start until 5 years from the effective date), to give time to unions and employers to negotiate changes to contributions and/or withdrawal rates before benefits are reduced. It may also be appropriate to offer some continued funding relief to these plans, such as solvency funding over 10 years instead of 5.

**6.2 Would transitional measures be required to MEPPs that would be eligible for Target Benefit status but were not previously SOMEPPs?**

These plans would be treated in the same manner and given the same transition period as other MEPPs moving to the new regulatory regime.

**6.3 How should the regulations accommodate MEPPs that wish to be regulated as defined benefit plans?**

They should continue to be administered by a board of trustees and permit the reduction of accrued benefits as is the case now. Consideration should be given to providing different prescribed solvency assumptions and/or a longer amortization period to fund solvency deficits (e.g. 10 years) to provide some funding relief through the recognition that contributions under collective agreements are fixed and the likelihood of wind-up low. Otherwise, such plans face harsh benefit reductions that are not in the interest of plan members and might not have been necessary if a more long-term view of the plan was taken.

**6.4 Is a three-year transition period sufficient for MEPPs to comply with a new Target Benefit regulatory regime?**

No. It should be the greater of three years and the expiry of each collective agreement of every employer participating in the plan. Employers and unions may need time to negotiate any adjustments necessary under the new regulatory regime and if agreement cannot be reached, for the employer to withdraw from the plan if necessary.

**7. BROADER TARGET BENEFIT ISSUES**

**7.1 How much interest from MEPP plan participants and contributing employers would there be in Target Benefit MEPPs without the participation of a union?**

In our view, MEPPs should be available to pension plan members and sponsors in all industries, public and private sector, and to both the unionized and non-unionized workforces. They should not be restricted to the unionized sector.

**7.2 What challenges to proper plan governance could arise if members are not represented by a union? How might they be addressed?**

The legislative framework for MEPPs must produce a level playing field with other pension plan design options (i.e., DB plans and/or DC plans), regardless of whether or not members are represented by a union. In other words, the regulation and oversight of non-union MEPPs should not be unduly onerous or complex when compared to the rules applicable to union MEPPs or traditional DC and DB plans and the risks borne by plan members and sponsors in relation to such plans.

**7.3 What additional requirements would be needed in a regulatory regime for Target Benefit MEPPs outside of a unionized environment in order to ensure effective joint governance outside of the collective bargaining context?**

In order to increase the chance that TB MEPPs will improve pension plan coverage, a specific governance model should not be mandated, but the regulations should provide sufficient flexibility to accommodate different circumstances.

**7.4 In the absence of collective bargaining, how would employer contributions be determined?**

The plan documents of the TBP should clearly set out how employer contributions are determined. We support having the ability (if specified in the plan text), but not the requirement, to vary employee and/or employer contributions within a specified corridor. The corridor used in New Brunswick (+/-25% of original contribution amount, up to +/-2% of earnings) seems reasonable, but plan texts could be allowed to specify greater corridors.

**7.5 How much interest would there be from employer sponsors and employees in Target Benefit SEPPs?**

ACPM continues to believe that the TB SEPP is an innovative and viable pension model which has a high likelihood of providing adequate pension income to members. We also believe that a move to TB SEPPs could improve pension sustainability, coverage and adequacy in the third pillar of Canada's retirement income system. For these reasons, we strongly support the development of a workable framework for TB SEPPs in Ontario. ACPM has produced two papers on the subject of TB SEPPs. We have attached them to this submission for informational purposes.

**7.6 Should the regulations for Target Benefit SEPPs differ from regulations for Target Benefit MEPPs, and if so, how? For example, should regulations recognize the increased risk of a plan wind-up due to employer insolvency in a Target Benefit SEPP? Should stronger funding rules be required?**

We see all Target Benefit pension plans (whether MEPPs or SEPPs) not as one specific type of pension plan but rather as part of a range of plan designs. Legislation permitting the creation of plans using the TB SEPP model should allow plan sponsors to tailor a TB SEPP design that is best suited to their needs. In our view, this flexibility will be key to the success of TB SEPPs so the rules should not be more restrictive than those for MEPPs. Any framework for TB SEPPs must take into account this objective, and not be unduly restrictive (or prescriptive) so as to deter innovative plan designs that will improve pension coverage and sustainability.

**7.7 If Target Benefit SEPPs were made available to non-unionized workplaces, what, if any, additional requirements could plans have to satisfy to protect their interests of members, former members and retired members?**

See answer to 7.6.

**Conclusion**

We appreciate the opportunity to provide the ACPM's comments on the Proposed Regulations. We would be pleased to make ourselves available to discuss or expand upon our recommendations.