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

May 26, 2020

Caroline Blouin
Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto ON
M2N 6L9

Dear Ms. Blouin:

Re: Providing the Pension Industry with Certainty in Uncertain Times

The COVID-19 crisis has had a significant impact on pension plans in Canada and around the world, both with respect to funding and day-to-day administration. We, the Ontario Regional Council (ONRC) of the Association of Canadian Pension Management (ACPM), invite you to view the crisis with a dual lens: we are indeed in unprecedented times, but we also have an opportunity as an industry to weather the storm and emerge in a stronger position.

ACPM is the leading advocate for Canadian plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers. Our membership represents over 400 companies and retirement income plans that cover millions of plan members. The ONRC represents plan sponsors and administrators with hundreds of plans registered, and millions of members reporting to work, in Ontario.

We present these submissions for consideration by the Financial Services Regulatory Authority of Ontario (FSRA) as prospective avenues for immediate relief for plan sponsors and administrators as well as improvements to administration in response to the COVID-19 pandemic. While we have tried to focus on actions squarely within FSRA's control and legislative authority, we have not limited our comments to these items. We know that FSRA is in regular, close contact with the Ministry of Finance (copied) and other government decision-makers, and we believe it would be incomplete to not also include suggestions for legislative reform.

1. <u>FUNDING</u>

Potential Relief from Special Payments

On April 15, 2020, the federal Minister of Finance announced a moratorium on solvency payment requirements for federally regulated defined benefit plans. This measure was designed to ensure that plan sponsors have adequate financial resources to continue their operations. Many Ontario employers are facing similar liquidity challenges as those faced by their federally regulated counterparts.

While we recognize that any legislative solution will need to balance funding relief with benefit security, we encourage FSRA to work closely with the Ministry of Finance to explore potential avenues for funding relief.

As you are aware, each plan has its own funding profile, whether from a going concern and/or solvency perspective, and different plans are subject to different funding requirements under Ontario Regulation 909 (Reg. 909). In our view, the simplest approach for relief would entail a moratorium on all special payments. This solution would provide relief to all plans, irrespective of the plan's specific funding requirements. As is the case in the federal jurisdiction, the moratorium would continue throughout 2020, with the possibility of extension into 2021 if such an extension is deemed necessary. Following the moratorium, special payments could recommence according to the payment schedule established at the last valuation, with no catch-up contribution required in respect of the missed payments.

However, a moratorium is not the only approach, and more targeted funding relief by industry sector or plan funding profile could achieve the same results—provided that more targeted relief is still rolled out quickly. Given that each plan has its own specific funding requirements, we suggest that there be consultation with the industry on any blanket or targeted funding relief.

Provision for Adverse Deviations (PfAD)

The sharp fall in interest rate assumptions also has implications for the calculation of the PfAD. A plan's PfAD consists of: a fixed component depending on whether the plan is closed or open; a component dependent on the plan's asset mix; and a component based on the plan's going concern discount rate assumption, added only if that assumption exceeds the plan's benchmark discount rate (BDR).

The starting point for the BDR calculation is the CANSIM Series V39056 (Government of Canada Long Bond Yield). The precipitous drop in this yield over the first few months of 2020 (from 1.76% at December 31, 2019 to 1.07% as at May 1, 2020) could generate dramatic increases in PfADs, placing further pressure on plan sponsors filing valuations dated at this time. We propose that, as a means of stabilizing PfADs, FSRA adopts an interpretation of subsection 11.2(2) of Reg. 909 under which the reference to CANSIM Series V39056 is taken to refer to the yield in place on the valuation date or, if greater, the average of that yield over the 12 months preceding the valuation date.

Commuted Value Calculations

Events like the COVID-19 crisis highlight existing inequities in the way commuted value (CV) payouts are paid out or transferred. As noted above, different plans are subject to different funding requirements; however, all plans are required to pay out CVs on the same basis. This imbalance has been recognized by the Canadian Association of Pension Supervisory Authorities (CAPSA), ex.: 2019's Recommendations - Funding of Benefits for Plans Other than Defined Contribution Plans. CV payout standards should be more reflective of Ontario's move away from solvency funding. Such a change would better balance the interests of those remaining in the plan and those electing a payout, without requiring the employer to add additional funding above minimum funding standards. While we fully appreciate that current Ontario CV payout rules under section 19 of Reg. 909 allow the plan to pay out less than the full CV based on the plan's transfer ratio, these rules ultimately require the plan to make up the difference, which can result in contributions to the plan above minimum funding standards.

The current COVID-19 pandemic provides the government with an opportunity to address this long-standing issue, and we suggest that FSRA explore, with its Ministry of Finance counterparts, the alignment of CV payout standards with the way in which the plan is funded. This would put plans on a more sustainable footing.

2. <u>PLAN ADMINISTRATION</u>

A number of hurdles, for both administrators and members, are squarely within FSRA's power to rectify.

E-Signatures

Section 11 of the *Electronic Commerce Act, 2000* (ECA) recognizes the validity of electronic signatures (subject to prescribed exceptions not applicable in this case), which had previously been upheld to be valid at common law. The ECA defines "electronic signature" to mean "electronic information that a person creates or adopts in order to sign a document and that is in, attached to, or associated with the document." The definition is open-ended. It is not confined to a particular format or software. In other words, an e-signature does not need to be a digital reproduction of a signature that a person would have written in his or her own hand.

However, despite 20 years of the ECA, we are aware of recent anecdotes in which administrators and service providers have refused emailed documents with scanned wet signatures; forms executed via signing software that attributes unique identifiers to the signature (such as DocuSign); and recorded, authenticated telephone directions from members (who may be unable to affix a signature by hand). Strangely, we are also aware that faxed documents continue to be viewed by some as "more" authentic or legally binding than documents sent by email or signing software. It would greatly benefit the industry at the present time if FSRA could rearticulate what the law already provides, namely that, as long as an administrator does not have actual notice that a signature may not be genuine and has implemented sufficient controls to validate all signatures that it receives, the form of the signature is largely irrelevant. It would be regrettable if members or spouses experienced delays in processing pension plan transactions on top of any delays arising from the COVID-19 pandemic itself simply because of misunderstandings over legal formalities.

Unlocking for Shortened Life Expectancy

Given the unprecedented pandemic and its unfortunate dire and serious effects on the health of many plan members, we urge FSRA to explore with the Ministry of Finance temporary amendments to section 51.1 of the Reg. 909 (or alternative relief through an emergency order) relaxing the criteria for a signed physician's statement that a member's illness is likely to shorten their life expectancy to less than two years. With hospital physicians overwhelmed, a statement of the diagnosis from any hospital administrative staff should be sufficient.

Member Statements and Former and Retired Member Biennial Statements

We recognize FSRA's announcement of March 20, 2020, that it would refrain from imposing administrative monetary penalties (AMPs) for late member annual statements and former and retired member biennial statements.

However, given that the deadlines themselves are embedded in the PBA, we urge FSRA either to explore legislated extensions with retroactive relief with the Ministry of Finance or, at the least, to work with the Canada Revenue Agency (whether directly or through CAPSA) to develop an industry-wide approach for the compliance portion of a plan's Annual Information Return (AIR). The AIR requires the administrator to identify any instances of non-compliance with the PBA during the year to which it relates, which in theory creates risks for the plan's *Income Tax Act* registration. Any delayed member statements, no matter the reason, appear to be caught. Thus, in addition to protection from AMPs, administrators are eager for assurance that missing statement deadlines due to the COVID-19 pandemic will be excusable from the perspective of a plan's tax registration.

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The global pandemic has made ongoing pension plan administration challenging. The ONRC welcomes the opportunity to share its perspective on potential relief. We would be pleased to discuss any aspects of our submissions.

Yours truly,

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cc: Nicole Stewart – Assistant Deputy Minister, Income Security and Pension Policy Division
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