



February 1, 2021

Andrew Donelle
Director, Co-ordination and Deferred Income Plans
Tax Policy Branch
Department of Finance
90 Elgin Street
Ottawa, ON K1A 0G5
Via email: andrew.donelle@canada.ca

Dear Mr. Donelle,

Re: Comments on Relaxation of Borrowing Restrictions

NOTE: Proposed Changes

The Association of Canadian Pension Management (“ACPM”) is the leading advocate for 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 and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

Thank you for the opportunity to provide our views regarding the borrowing rules contained in section 8502 (i) of the *Income Tax Regulations* (the “ITR”). Our comments below are being made in the context of the temporary exception to the borrowing rules contained in proposed section 8502(i.1) of the ITR (the “**temporary exception**”), and the continuing uncertainty and challenges faced by pension plans and sponsors due to the COVID-19 pandemic.

Extension of temporary exception to February 2021

As you know, there is only a limited time window during which the temporary exception would apply, as the only loans (or series of loans and repayments) to which it applies are those that both are (i) entered into after April 2020 and before February 2021, and (ii) repaid no later than April 30, 2021. Unfortunately, given the growth in the severity of the COVID-19 pandemic in recent months, and associated uncertainty for plan sponsors and financial markets and actors, it is ACPM’s view that the duration of the temporary exception to the borrowing rules should be extended for an additional period, as detailed in the appended language, with further consultations and extensions as necessary.

Technical changes to temporary exception

As discussed previously, we also note that certain technical changes to the language contained in the temporary exception are necessary to better align its wording with that of the existing borrowing rules. Specifically, the rules in Section 8502(i) speak to restrictions on “borrowing” and “borrowed money”.¹ In contrast, the temporary exception refers to “loans”. We have appended to this letter language for your consideration but would welcome the opportunity to work with you to refine the temporary exception to the borrowing rules as you determine appropriate.

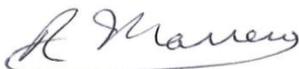
Future of borrowing rules – broad consultation needed

You have also asked for our views on the borrowing rules more generally and to provide submissions on potential permanent changes to such rules. In this regard, we note that the Canadian Association of Pension Supervisory Authorities (“CAPSA”) has established a working group to examine the prudent use of leverage by pension plans. We also note that the Canada Revenue Agency is a member of CAPSA. As a part of this work, we understand that CAPSA is engaging with multiple industry stakeholders to obtain information on market practices and views on the prudent use of leverage within pension funds, including views on borrowing. We understand that CAPSA is expected to report on its findings in summer 2021. Given the foregoing, we would ask that the Department of Finance defer its review of the borrowing rules more generally until the CAPSA working group reports on its work related to leverage.

Moreover, we suggest that any review of the borrowing rules be accompanied by broad consultations with industry stakeholders at that time. Notwithstanding the foregoing, should the Department of Finance determine to review the borrowing rules prior to CAPSA reporting on its work, we nevertheless suggest that broad consultations be held across all stakeholder groups as the conceptual and technical aspects of any potential amendments to the borrowing rules are certain to affect how many, if not most, of Canada’s pension plans operate and invest and could have deep, long-term and reverberating effects within Canada’s pension and financial industry.

Thank you for the opportunity to make submissions to the Department of Finance on matters of importance to Canadian pension plan administrators. We look forward to our continued dialogue on this and other issues of mutual concern.

Yours truly,



Ric Marrero
Chief Executive Officer
ACPM

¹ Terms like “borrow”, “borrowing” and “borrowed money” appear numerous times in Section 8502(i). The term “loans” (and its variants) appears only once, namely, in the concept of a borrowing that forms part of a “series of *loans* or other transactions and repayments”.

Appendix

SECTION 8502(i) [emphasis added]

Borrowing

8502(i) a trustee or other person who holds property in connection with the plan does not borrow money for the purposes of the plan, except where

- (i) the borrowing is for a term not exceeding 90 days,
- (ii) the borrowing is not part of a series of loans or other transactions and repayments, and
- (iii) none of the property that is held in connection with the plan is used as security for the borrowed money (except where the borrowing is necessary to provide funds for the current payment of benefits or the purchase of annuities under the plan without resort to a distressed sale of the property that is held in connection with the plan),

or where

- (iv) the money is borrowed for the purpose of acquiring real property that may reasonably be considered to be acquired for the purpose of producing income from property,
- (v) the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property does not exceed the cost to the person of the property, and
- (vi) none of the property that is held in connection with the plan, other than the real property, is used as security for the borrowed money;

***Borrowing — temporary exception – SUGGESTED WORDING**

(i.1) In its application to ~~a borrowing loan that are~~ entered into after April 2020 and before February 202~~21~~, subparagraphs (i)(i) and (ii) are to be read as follows:

- (i) the ~~borrowing loan~~, or, if the ~~borrowing loan~~ is part of a series of loans or ~~other transactions~~ repayments, the series of loans ~~or other transactions~~ and repayments, is repaid no later than April 30, 202~~21~~.