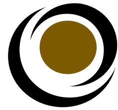

The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

Brief To The

Nova Scotia Pension Review Panel

Friday, July 11, 2008

Prepared by the
ACPM Advocacy & Government Relations Committee

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TABLE OF CONTENTS

Section 1 Introduction……..…………………………………………….………… 3

Section 2 Background……………………………………………………….…..… 6

Section 3 Pension Plan Legislation …..………………………………………… 7

Section 4 Policy Issues……………………………………………………….…… 9

Section 5 New Developments………………………………………………..…… 18

Section I – Introduction

Foreword

This brief is submitted on behalf of the Association of Canadian Pension Management (ACPM) by the ACPM's Advocacy and Government Relations Committee (AGRC). It was prepared in response to the May 28, 2008 discussion paper ("the Discussion Paper") issued by the Nova Scotia Pension Review Panel ("the Panel").

ACPM commends the creation of the Panel and its Discussion Paper. We are pleased with certain aspects of the Panel's Terms of Reference, namely:

- to review improvements to current legislative standards that will allow pensions to work for both employers and employees;
- to enhance the affordability and availability of defined contribution and defined benefit pension plans for employers and employees;
- to eliminate unnecessary rules and regulations.

Nova Scotia needs a vibrant system that encourages employers to offer pension plans to their employees, either defined benefit or defined contribution pension plans and other retirement savings vehicles as well. In particular, the current system needs urgent fixes in order to offer a positive environment for the implementation, maintenance and improvement of defined benefit pension plans. Nova Scotia and other Canadian jurisdictions have an opportunity to work together in developing an environment where retirement plan coverage can increase but without posing a complex regulatory and administrative burden on plan sponsors and administrators. We look forward to participating in this new regime.

Recently, the ACPM has released several documents expressing positions and comments on important pension issues:

- August 2005: Back from the Brink, Securing the Future of Defined Benefit Pension Plans ("our DB Paper")
- October 2007: Brief to the Ontario Expert Commission on Pensions ("our OECP Brief")
- February 2008: Brief to the Alberta-British Columbia Joint Expert Panel on Pension Standards ("our JEPPS Brief")
- May 2008: Delivering the Potential of DC Retirement Savings Plans ("our DC Paper")

Many issues that are raised in the Discussion Paper were addressed by the ACPM in the above documents. In order to avoid repeating the same comments and suggestions, in this brief we will refer to relevant sections of these documents where appropriate. A copy of these documents is appended to

this brief. However, in preparing this brief, we reflected issues and considerations that are particularly relevant to Nova Scotia's situation.

For the convenience of the Panel, we have responded to the Discussion Paper using the same structure and numbering as those used in the Discussion Paper.

Fundamental Principles

Our responses are built on the following five fundamental principles:

Single Regulatory Regime – We support the creation of a single regulatory system for pensions in Canada with one set of rules and principles. Under this structure, there could be a single regulator or separate regulators administering the rules for each jurisdiction. This would be a good first step towards a single national regulatory system.

Increased Pension Coverage – Between 1992 and 2005, the Canadian workforce grew by 26% while the percentage of workers with access to an employer-sponsored pension plan declined from 50% in 1992 to 32% in 2006. In Nova Scotia, the 2006 percentage was slightly higher at 34%.

Decreasing occupational pension plan coverage has broad social implications. As our citizens enjoy longer life, we want them to be financially independent in retirement, not reliant on the Canadian welfare system. Increased retirement savings plan coverage is thus a desirable policy objective.

In this paper we promote a legislative environment amenable to occupational pension plans. We do not support mandatory employer sponsored plans. We support expanded coverage which would include having employees who are not currently in an occupational plan to be covered by any type of employer sponsored retirement savings arrangement, including a Group RRSP.

Clarified Regulation/Legislation - In an environment where the creation of retirement plans is voluntary, it is critical that potential sponsors' administrative requirements be simple and affordable. We promote the idea of moving pension plans from the broad trust law environment to a regime where the pension deal is struck between employers and their employees. The role of standards, regulations and legislation should be to secure the pension deal. We recommend a "fresh start" approach to implementing this change (i.e., new plans are under the new rules, existing plans can transfer to the new regime subject to certain conditions).

We believe it is time to move from rules-based, prescriptive legislation towards some principles-based regulation where guidelines are developed within which the regulators administer occupational pension plans. Plans and plan sponsors that are "at risk" will receive more attention. Financially sound plan sponsors with a history of good governance, compliance, and adequate funding would receive little attention.

Harmonization is easier to achieve under principles-based regulation.

Flexibility – We promote a regulatory environment that allows flexibility in plan design, funding methods, investment strategies, and other aspects of operating an occupational pension plan. We traditionally think in terms of defined benefit or defined contribution plans; we encourage the regulators to make changes to accommodate new plan designs that transcend those definitions, so that sponsors can design and manage plans to meet their particular requirements without legislative restrictions.

Continued Leadership – We encourage Nova Scotia pension regulators to be open to discussions of change with plan sponsors and to take a leadership role in lessening bureaucracy and providing flexibility.

We further push Nova Scotia to lobby for removal of barriers to broad pension plan coverage that exist in other legislation, e.g., income tax legislation.

The Association of Canadian Pension Management (ACPM)

The ACPM is the informed voice of Canadian pension plan sponsors, administrators and their allied service providers. Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system through a non-profit organization supported by a growing membership and a team of volunteer experts. The ACPM currently has 570 Individual Members and 23 Institutional Members across Canada, representing more than 300 pension plans covering approximately 3 million plan members.

The ACPM promotes its vision for the development of a world-leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

The ACPM regularly advocates and participates in public dialogue on pension issues.

Section 2 – Background

Statistics are quite clear. Pension coverage in Canada is declining as a percentage of the workforce, especially in the private sector. The ACPM is concerned with both short-term and long-term impact of declining pension coverage. The ACPM has:

- identified factors explaining declining pension plan coverage (e.g. inappropriate legal and regulatory environment, risk/reward mismatch in the DB system, negative impact of accounting standards, cost and complexity of plan administration, legal risks);
- put forward principles to underline pension plan coverage (e.g. balanced environment, level playing field, well-adapted regulatory system); and
- made recommendations aimed at removing barriers for the implementation, continuation and improvement of occupational pension plans (e.g. harmonization of pension legislation, contract law overriding common trust law precedents).

For more details on these factors, principles and recommendations, please refer to pages 8 to 19 and pages 21 and 22 of our OECP Brief. Also, potential solutions to many issues affecting pension plans are covered in greater detail later in this brief.

Section 3 – Pension Plan Legislation

Should pension legislation and regulation have goals other than those listed in the Discussion Paper?

Yes. Maintenance of pension plans and expansion of pension coverage should be clear goals of legislation and regulation. It should also be a mandate of the pension superintendent.

For more comments on the desired goals and attributes of pension legislation, please refer to:
- the response to questions 2e, 3b and 3d contained in our JEPPS Brief; and
- pages 9 and 10 of our OECP Brief (Principles to Underline Pension Coverage).

3.1 Types of Plans

Are there plan designs not in use that would provide the benefits of DB plans while minimizing risk?

A pension plan model without risk does not exist. However, plan designs or mechanisms providing DB benefits with reduced risk do exist. For example:

- Insured group annuity contracts: This funding vehicle was very popular prior to the 70's. Under this vehicle, the benefits are guaranteed by the insurance company that issues the contract; therefore, the risk that the benefit promise will not be fulfilled is negligible. Once the premiums are paid to the insurer, there is no risk of cost fluctuations for the plan sponsor and members in respect of accrued benefits. However, several factors used by insurance companies in the pricing of these contracts, including compliance with mandatory reserve requirements, have made the benefit-cost ratio of the plans less attractive, compared with the pension-fund-secured-benefit approach. For this reason, insured group annuity contracts are rarely used nowadays.

- Immunization techniques for pension investment: The investments of a DB pension plan can be made in a matter that approximately matches the expected benefit disbursements over a long time horizon. When using such an investment strategy, cost fluctuations due to movements in interest rates are significantly reduced. However, immunization strategies typically eliminate the use of equity investments, thereby lowering potential future investment returns and producing a higher cost.

- Pooling of risk: For small and medium-size employers, risk can be reduced by pooling their DB promises with those of other employers. This is one of the fundamentals of multi-employer pension plans (MEPPs). The level of risk reduction depends on various factors, especially the MEPP's investment policy and quality of governance. An employer participating in a MEPP has limited or no control over key plan design, investment and governance decisions.

The above risk reduction options must continue to be available. Moreover, the formation of larger, more sophisticated multi-employer, jointly sponsored or cooperative plans should be considered and potentially encouraged. For more comments on such larger, broader plans, please refer to our response to question 3.4 on pages 23 to 25 of our OECP Brief.

Other single employer plan designs with less risk than the traditional DB plans should also be considered including cash balance plans, pension equity plans and other such lump sum plan designs that are allowable in other countries including the US and the UK. The ACPM encourages research in developing new and improved DB and DC schemes that meet the evolving nature of the retirement system in Canada. The ACPM strongly suggests that the Canadian jurisdictions strike an industry advisory group assigned with the responsibility of recommending alternative plan designs and a framework for permitting future creativity. This group could consult with the Canada Revenue Agency and the federal Department of Finance or, better still, have participation from members of those bodies.

In our view, one of the key terms of reference of the industry advisory group should be that there should be no bias in terms of risk, benefit and legislated administrative requirements between plan design options, whether they be primarily DB or DC in nature. The objective should be for the plan sponsor and other stakeholders to choose a design that best meets the needs of the sponsor-member "deal".

From a plan member (and public policy) standpoint, one of the most negative events would be a plan wind-up with insufficient plan assets at a time where, for a single-employer pension plan, the plan sponsor is insolvent. Fortunately, this type of situation has been infrequent in Canada. One may argue that an efficient, solid and well-designed insolvency insurance scheme could offer protection against this risk. However, the experience has revealed that existing insolvency insurance programs (e.g. the Ontario Pension Benefits Guarantee Fund, the US Pension Benefits Guarantee Corporation) are ill-designed and do not lead to sound behaviours. For more comments on guarantee funds, please refer to pages 37 and 38 of our OECP Brief, and pages 21 and 22 of our DB Paper. The ACPM favours higher benefit security through measures encouraging plan sponsors to adopt more prudent funding practices (please refer to our responses to the questions of the next section).

Section 4 – Policy Issues

4.1 DB Plans versus DC Plans

Should the current trend towards less DB plans be accepted, or should regulators permit DB plans that may be more attractive to employers by reducing funding risks?

We support expanded coverage which would include having employees who are not currently in an occupational plan to be covered by any type of DB or DC employer sponsored retirement savings arrangement, including a Group RRSP. Employers must be free to choose the type of pension plan design that best suits their financial and human resource needs, to negotiate plan design, or to sponsor no pension plan at all. Public policy in this area is best served by removing disincentives to sponsoring occupational pension plans.

However, the current environment for DB pension plans in Canada is not encouraging. DB pension plans have been, and are, a positive force both in the Canadian economy and in Canada's social fabric. DB pension plans are one of the best ways for a group of people to share and mitigate risk. As a result, members can look forward to the future with a greater level of confidence. At the same time, the Canadian economy benefits by having pools of capital productively invested by professionals in a more efficient manner than would be the case with equivalent amounts made up of individual accounts. Retirement plans (DB and DC) are one of Canada's economic engines. If DB pension plans continue to decline as they have elsewhere, many Canadians may pay a price in view of the burden of risk being transferred to them from their employers. The ACPM believes the DB pension plan system needs urgent attention.

The ACPM believes that the perceived risk/reward imbalance, whereby plan sponsors are generally responsible for funding shortfalls but are severely constrained from accessing surpluses, is the major impediment to not only the funding of private sector DB pension plans but to their continued existence. Consequently, it is imperative that governments introduce some meaningful, permanent solutions to deal with the perceived risk/reward imbalance. Two practical methods address this issue directly while striking a balance between the interests of sponsors and beneficiaries:

- Letters of credit (LoCs)
- Special purpose "solvency accounts", independent from the pension fund.

For more comments on these methods, please refer to our JEPPS Brief (top half of page 16 and response to questions 5f and 5g on pages 18 and 19).

In the case of DC plans, to what extent should an employee's right to make investment choices be limited, and by whom?

The ACPM believes that the best results will be obtained if plan sponsors have the flexibility to determine the optimum level of investment choice for their DC plans, given its intended purpose, situation and design. Moreover, the ACPM endorses the approach of using default funds that will potentially yield more substantive investment growth.

For more comments on DC investment choices, please refer to our DC Paper (pages 17 and 18, paragraphs (e) and (f)).

Should new forms of DB pension plans be permitted to enhance their availability?
Should new forms of Hybrid pension plans be permitted to enhance their availability?

Please refer to our response to section 3.1.

Should DC members have the ability to use different disbursement options, such as LIF type payments, rather than be required to convert funds on their retirement date?

The ACPM supports permitting DC plan sponsors to offer different disbursement options, including variable in-plan LIF type payments. The ACPM endorses the removal of any fetters that unnecessarily inhibit the creation of new retirement products for former DC plan members.

For more comments on DC disbursement options, please refer to our DC Paper (pages 19 to 21, paragraphs (a) and (b)).

4.2 Pension Plan Funding

Are current rules for measuring and remediation of going concern and solvency deficits appropriate? Should going concern funding still be a requirement?

The fundamental principles underlying the current funding rules are sound. However, governments should shift their regulatory approach to focus solely on solvency valuations, except for plans which may be exempted from solvency valuation requirements. Moreover, some adjustments to the current funding rules are required to address the risk/reward imbalance issue and to provide more flexibility to financially stronger companies.

For more comments on recommended changes to funding rules, please refer to our DB Paper, the main objective of which was to offer some suggestions to improve the current situation. A summary of the main recommendations are found on pages 26 to 30 of our DB Paper. In addition, you will find comments and suggestions on some specific funding issues (e.g. should funding rules reflect the plan sponsor's financial health and the plan's risk profile) in our response to questions 5a, 5b and 5c contained in our JEPPS Brief.

Should there be exceptions to the funding rules for universities, multi-employer pension plans and municipalities, or anybody else?

The ACPM acknowledges that there may be circumstances that support different rules for different groups or plans. These need to be carefully studied and debated before being introduced, and perhaps there will be a need for counterbalancing rules also to be introduced. In particular, we believe that MEPPs -- under which contributions are set at fixed levels through collective bargaining and target benefits established by a Board of Trustees -- should be treated differently.

For more comments on the appropriateness of different rules depending on the type of pension plan or the type of plan sponsor, please refer to our response to question 1.7 contained in our OECP Brief (pages 22 and 23). For comments on treating MEPPs differently, please refer to our response to question 5e contained in our JEPPS Brief.

Should promises as to future benefit accrual be restricted to the level that can be funded by contributions?

We understand that, under current funding rules, current service benefit accrual promises having a value exceeding total member and employer contributions for the ensuing year would be allowed only if the plan has surplus assets. The plan sponsor (subject to the plan provisions) should be allowed to use surplus assets to fund the cost of current service benefit accruals.

In the absence of surplus assets, the funding rules should continue to require the payment of contributions in an amount at least equal to the actuarial cost of current service benefits. The elimination of this requirement would be a threat to the security of plan members' benefits and, for fixed-cost MEPPs, create a significant potential for intergenerational inequity. Before exempting certain public-sector plans from the application of this requirement, the government should carefully review the financial implications for the current and future generations of taxpayers, and give strong consideration to the potential for granting unaffordable pension benefits over the long run.

Should there be a requirement for full funding at wind-up?

The Nova Scotia pension legislation was recently amended to remove plan sponsors' right to "walk away" from the underfunded pension debt obligation on plan wind up. The ACPM supports the removal of this right. Its continuation would be a threat to the security of plan members' benefits. However, an appropriate transition or adjustment period would have been welcome.

Notwithstanding the above comment, for MEPPs where contributions are set at fixed levels through collective bargaining and target benefits are established by a Board of Trustees, full funding at wind-up should not be required because, unlike single-employer plans, members of MEPPs own both the financing risk and reward. These MEPPs are more like DC pension plans than DB.

Is the idea of a province wide pension plan for some public or private employers a good idea? Should such a plan operate as a multi-employer pension plan?

The formation of larger, more sophisticated multi-employer, jointly sponsored or cooperative plans should be considered and potentially encouraged. They should operate as MEPPs with strict governance models and completely transparent communication and disclosure to stakeholders. For more comments on such larger, broader plans, please refer to our response to question 3.4 on pages 23 to 25 of our OECP Brief.

4.3 Surpluses

Should regulators speak to the question of the ownership of plan surpluses? If so, what should it say?

Legislation should establish that pension plans are employment contracts and that ownership of pension funds is governed by those contracts, thereby achieving clarity and avoiding any surplus disputes. Legislation should also contain principles-based provisions requiring that surplus and deficit "ownership" be clearly defined in plan documents. Surplus entitlement rights must be clarified and plan sponsors must be able to adopt a "fresh start" approach to the new rules.

It is the view of ACPM that pension legislation should be amended to oust the application of classic trust law principles in the pension context, particularly in relation to fund holder arrangements. In this regard, such amendments could:

- recognize the applicability of contract law in the creation, operation and regulation of pension plans, on a go-forward basis; or

- clarify specific areas within the legislation that would limit the need to resort to the application of trust law principles. Such areas could include: the ability to pay reasonable plan expenses from the pension fund; the right to surplus on both an ongoing basis and at the time the plan is terminated, in whole or in part; or, establish definable rules applicable to plan mergers and asset transfers.

For more comments on limiting the application of trust law and on dealing with legacy issues, please refer to our response to questions 6e and 6f contained in our JEPPS Brief.

Is the concept of "deferred wages" valid? And if so, is there any current validity to it with respect to the determination of the responsibility for funding and for entitlement of surplus?

There are no black or white answers to these questions. They largely depend on the nature of the "pension deal" or the total compensation deal.

However, we observe that, for single-employer pension plans, benefits accrued by plan members cannot be reduced. Sponsors of these plans must honour the pension promises. If the actual cost of the pension promises is higher than initial estimates, we suspect that most plan sponsors do not adjust future benefit accruals or other elements of compensation to reflect the unexpected higher pension cost level. For most of these sponsors, the pension deal is to pay a pension at retirement; the employer must ensure that there are funds available to pay the promised pension, and the pension fund is only a vehicle to assist the employer in meeting the obligation to pay the promised pensions.

A clearly defined and communicated "pension deal" would be a significant step towards the elimination of disagreements on the utilization and ownership of pension surpluses. This is why the ACPM suggests the clarification of surplus ownership in plan provisions, and their disclosure to plan members.

The ACPM believes that pension legislation should require all DB plans to have a written funding policy, as a responsibility of the plan sponsor. The funding policy would cover how surplus assets may be used and how the sponsor will address funding deficiencies. The key elements of the funding policy should be communicated to plan members. The development, maintenance and disclosure of the funding policy would be another important measure for eliminating confusion on surplus utilization. For more comments on a funding policy requirement, please refer to page 16 of our DB Paper.

4.4 Multi-Employer Pension Plans

How should funding concerns for MEPPs be addressed? Which of the funding tests should apply to MEPPs?

Please refer to our response to the questions in section 4.2.

Would permitting the implementation of a different type of Hybrid pension plan be useful for MEPPs? Should regulators facilitate the further development of hybrid plans? Would the Québec model be an attractive option for Nova Scotia employers?

With appropriate adjustments, the current MEPP model can work well. Instead of solvency rules for MEPPs, we first encourage government to introduce legislation specifically addressing areas of potential abuse, such as inappropriate benefit improvements. Secondly, the government should require MEPPs to provide increased member disclosure, including confirmation that benefit levels are targets and are not guaranteed. Finally, there should be legislation concerning the treatment of the withdrawal of individual employers from MEPPs.

In the Discussion Paper, the Québec's Member-Funded Plan model is cited as a hybrid plan. It is a different type of plan which has the following characteristics:

- Member-Funded Plans can cover employees of one or several employers.
- The employer(s) participating in the plan must not have the power to unilaterally amend or terminate the plan. For most Member-Funded Plans, plan amendment decisions will be made by a board of trustees and at least half of them will be designated by the plan members or the union.
- A Member-Funded Plan must specify the required level of employer contributions, if any, and they are limited to those specified in the contractual agreement. Any employer contributions must be expressed as a percentage of pay, an hourly rate or a fixed monthly amount.
- A Member-Funded Plan must provide for employee contributions, because unexpected cost fluctuations are expected to be absorbed by variations in member contributions.
- Final or best-average-earnings pension formulae are prohibited. Consequently, member-funded plans must use a career-pay or flat-dollar formula to determine accrued pension benefits. Automatic indexation of pensions is also prohibited.
- Going-concern actuarial valuations must be performed assuming pre and post-retirement indexation of pensions at 100% of the Consumer Price Index (maximum 4% per year), even though such indexation is not actually guaranteed. However, a Member-Funded Plan may choose not to use the post-retirement indexation assumption if the plan terms provide that the pensions of all retirees are guaranteed by an insurer.
- Improvements to pension benefits are not allowed if a Member-Funded Plan is not fully funded or if the improvements would put the plan in a less than fully funded position. Moreover, benefit improvements or reductions in employee contributions are not allowed before a funding excess is first used to increase accrued pensions (and retirees' pensions if the plan is required to fund for post-retirement indexation) based on the increase in the Consumer Price Index (maximum 4% per year) for the preceding three years.
- Member-Funded Plans are subject to onerous requirements regarding information that must be provided to plan members on proposed plan amendments.

We note that, as confirmed by the adoption of Québec's Bill 68 on June 18, 2008, Québec pension legislation requires that the financial risks associated with the benefits accrued by Québec members of a MEPP are ultimately borne by the participating employers. For example, an employer withdrawing from a MEPP must pay any funding deficiency for its Québec members, even though the MEPP may provide for fixed employer contributions. We understand that one of the objectives of the introduction of the Member-Funded Plan model in Québec was to offer a DB plan design alternative providing for fixed employer contribution commitments. The MEPP model in other provinces already offers these characteristics.

The ACPM welcomes the additional pension plan design option introduced by Québec with the Member-Funded Plan model. A wider range of plan design options may potentially accommodate a larger number of pension coverage needs. We support the general objectives of the restrictive funding and plan amendment rules applicable to Québec Member-Funded Plans. However, these rules produce low benefit/contribution ratios, when compared to traditional non-indexed DB plans, due to the prescribed restrictive funding margins applicable to Québec Member-Funded Plans. If and when considering the adoption of this model, Nova Scotia may wish to impose less severe funding margins.

4.5 Governance

Should government attempt to define, audit, and regulate "good governance"? Why or why not? If so, what types of governance issues should be regulated?

Excellence in governance and administration is one of the Guiding Principles of the ACPM. As noted above, we support a move to more principles-based regulation. Principles-based regulation requires greater emphasis on good governance. In general, we support the continued collaborative efforts of regulators and industry to develop best practice guidelines in this area (e.g. CAP Guidelines and CAPSA Governance guidelines) as opposed to moving to legislated governance standards.

Given that there are associated costs with governance, what is an appropriate cost for "good governance"?

There are costs associated with governance, but they are usually recovered over the long run as good governance results in more efficient administration and better risk management. Each plan's governance structure and processes need to be adapted to its particular circumstances and characteristics. In developing its governance plan, plan sponsors and administrators need to strike an appropriate balance between the governance costs and the expected results.

We are not able to quantify the cost of "good governance", but have the following observations:

- We believe that most plans would be prepared to incur governance costs in exchange for a regulatory scheme that can be tailored to individual situations, as principles can be.

- Good governance will initially cost more than poor governance, but should result in significantly better outcomes and lower cost in the long run.

- The cost of good governance should offset to a large extent the cost of compliance in plans where governance is not adequate.

In the context of investment funds, experts have estimated that poor governance can result in implementation slippage costs anywhere between 50 and 150 basis points per annum.

4.6 Harmonization

Since many years, the ACPM has strongly advocated harmonization of pension standards in Canada. For more details on our position on harmonization of rules, please refer to page 21 of our OECP Brief.

Developing appropriate pension standards and monitoring their application requires significant expertise. Moreover, it is time consuming and expensive, especially in the context of a province of the size of Nova Scotia. Alberta and British Columbia are considering full harmonization of their pension legislation. We

encourage the Atlantic Provinces to do the same for these reasons and because the current regime makes the administration of pension plans with members in several Atlantic Provinces unduly difficult and expensive, an element contributing to low pension coverage. Moreover, we invite the ministers responsible for pension legislation to follow the example of the Atlantic Provinces' finance ministers who will meet soon to discuss harmonization of their tax systems.

4.7 Role of Regulators

The following paragraph is found on page 20 of the Discussion Paper:

Regulators should be neutral as to the format of retirement plans. While Defined Benefit plans are advantageous to many people, Defined Contribution plans are more beneficial for some. The choice between these two types of plans should be made by employers rather than having a certain type of plan encouraged by government.

We agree with these statements. However, the current environment for DB pension plans in Canada, in particular the current laws and regulations, is not encouraging. The ACPM believes the DB pension plan system needs urgent attention. Moreover, the Canadian DC plan system can be improved; on page 22 of our DC Paper, we provide a list of 10 recommendations requiring regulatory changes.

Does the current regulatory system work effectively? Should the appeal process be changed? If so, how?

The Pension Benefits Act provides that once the Superintendent makes a "proposed order", a party that is affected by the order has the right to request that the Superintendent reconsider her proposal. This places the Superintendent in the very challenging position of hearing an appeal from her own initial decision. Following the Superintendent's reconsideration, a party may appeal the Superintendent's reconsideration to the Nova Scotia Supreme Court.

The ACPM suggests that an independent appeal process should be introduced providing for an appeal to an administrative tribunal, prior to any appeal being made to the courts. In five Canadian pension jurisdictions, decisions of the pension regulator may be appealed directly to an administrative tribunal. There is not likely to be sufficient volume of administrative appeals to justify a specialized pension tribunal for Nova Scotia alone. The ACPM suggests appeals should be directed to an independent second level decision maker that already exists in Nova Scotia. The ACPM believes that it is important that the decisions of the administrative tribunal are protected from judicial review and appeal to the extent permitted by law. This will give the parties comfort that the decision of the tribunal is final.

The ACPM suggests the Nova Scotia Utilities and Review Board ("UARB") as the appropriate administrative tribunal to hear appeals. The UARB is an independent, quasi-judicial body which has both regulatory and adjudicative jurisdiction. It reports to the provincial legislature through the Minister of Finance. The UARB has a history of adjudicating financial issues, including tax issues. This history and expertise makes the UARB the most suitable of the present administrative bodies to handle appeals of decisions issued by the Superintendent of Pensions.

Are there currently unnecessary rules and regulations in place? If so, what are they?

The ACPM suggests changing current rules or implementing new rules that would:

- Allow forcing former DC members out of the plan
- Simplify marriage breakdown and allow immediate settlement method

- Enable electronic communication
- Clearly allow automatic enrolment of DC plan members

For more details on these suggestions, please refer to our response to question 5i in our JEPPS Brief, page 22 of our DC Paper, and pages 48 to 50 of our OECP Brief.

Should a plan have a minimum number of members before the government will regulate it? If so, what minimum number of members would be appropriate?

The ACPM supports fully exempting plans that cover only persons connected with the employer within the meaning of the Income Tax Regulations. Plans providing benefits in excess of Income Tax Act limits for members who have accrued the maximum pension permitted by those limits should be clearly exempted from the application of pension legislation.

For certain administration and funding requirements, Nova Scotia should consider exemptions based on number of members and/or size of pension fund (e.g. annual audit of pension fund).

4.8 Group RRSPs

While recognizing that Group RRSPs are different from DC RPPs, the ACPM feels it is important to continue to provide retirement savings vehicle choice to plan sponsors. We believe that this flexibility encourages participation by sponsors in the goal of providing employees with retirement savings opportunities.

However we would suggest that the potential reasons plan sponsors gravitate towards Group RRSPs has more to do with the complexity of DC RPPs versus the strategic decision of wanting this particular type of retirement savings plan. We urge the removal of these complexities in the administration of DC RPPs and refer the Panel to our DC Paper for a more in-depth discussion around some of the ACPM's specific recommendations.

As to the observation that Group RRSPs are not subject to the Pension Benefits Act and that this may lead to "poor money management by individuals, or poor choices by employers" eventually leading to "insufficient pension savings", the ACPM reminds the Panel that both DC RPPs and Group RRSPs are subject to the CAP Guidelines. The Guidelines were designed to encourage an environment where plan sponsors provide appropriate investment choice and plan members are provided with the information they need to make suitable investment choice. In addition, in our DC Paper, the ACPM makes a number of recommendations that would help mitigate the potential of individuals suffering from insufficient savings including automatic enrolment, automatic escalation of contributions, higher contribution limits, more appropriate default options and targeting of retirement income.

4.9 Unlocking Funds

To what extent should regulators attempt to regulate an employee's right to access funds?

There is now significant inconsistency in Canadian pension legislation regarding the locking-in of pension benefits, and this has become a controversial topic amongst those who work in the pension business. Some practitioners believe that all pension benefits should be locked-in. Others believe that all pension benefits should be unlocked upon a member's separation from the plan sponsor, and others have views somewhere between these extremes. We are definitely concerned about the increasing lack of uniformity of locking-in rules across the country.

To establish a uniform and balanced position on this issue, the ACPM has recently surveyed its membership. We are currently analyzing and summarizing the results. A separate document outlining the ACPM's position will be provided in due course.

4.10 Grow-in Benefits

Should the legislation require grow-in benefits to be provided on plan wind-up? Should legislators maintain the requirement to fund grow-in benefits upon wind-up?

The ACPM supports the elimination of prescribed grow-in entitlements. We are also concerned with the continuation of the partial wind-up concept and the requirement to distribute surplus upon partial wind-up; we recommend eliminating the concept of partial wind-up.

For more details on these recommendations, please refer to pages 44 to 47 of our OECP Brief.

Section 5 – New Developments

5.1 Safe Harbour Rules

Should "safe harbour" rules be established that would give DC plan sponsors and administrators protection from litigation?

The ACPM recommends adopting the concept of a safe harbour for certain design features of DC plans that meet criteria prescribed by legislation/regulation.

For more details on this recommendation, please refer to page 14 of our DC Paper.

5.2 Phased Retirement

What other issues are raised by phased retirement and what should be the regulatory position of Nova Scotia?

The federal, British Columbia and Québec governments have adopted changes to their pension laws that will allow payment of pensions while a person continues in employment; so-called phased retirement. These legislative amendments take full advantage of the additional flexibility permitted by the recent modifications to the tax rules. We encourage Nova Scotia to immediately amend its pension legislation to remove any barriers to the implementation of phased retirement arrangements allowed under the amended tax rules.

For more information on our position on phased retirement, please refer to our response to question 51 in our JEPPS Brief.

5.3 Tax Free Savings Accounts

What should be the regulatory position of Nova Scotia be with respect to TFSAs for pension purposes?

Some Canadians will use TFSAs for retirement saving objectives. However, TFSAs will be used for various purposes (e.g. saving for a house, car, medical expenses, etc.) other than retirement. For this reason, TFSAs should not be regulated under pension standards. If not already done, we encourage Nova Scotia to make any necessary amendments to its tax legislation in order to harmonize it with the federal tax rules respecting TFSAs.