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

June 11, 2020

Honourable Scott Fielding
Minister of Finance
Minister's Office
450 Broadway
Winnipeg, MB R3C 0V8

Via Email: minfin@leg.gov.mb.ca

Re: REVISED from Pension Plan Challenges Posed by the COVID-19 Situation and Potential Measures that Could Greatly Assist Pension Plan Administrators and Employers

Dear Honourable Minister Fielding:

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. Our membership represents over 400 companies and retirement income plans that cover millions of plan members.

ACPM has considered the immediate challenges that pension plan sponsors are facing due to the COVID-19 outbreak. Below we summarize the key challenges as well as some suggestions on how to address these challenges.

Immediate Challenges

The immediate challenges facing our members cannot be overstated. While some have particularly acute challenges due to their revenues virtually drying up overnight, all indicated that they are facing liquidity challenges as this crisis deepens and persists. The challenges can be summarized under four main headings:

1. **Cash flow shock:** Revenues for many businesses have dwindled nearly overnight. Some members expressed concerns that unless cash is conserved within the business to address immediate concerns out of the COVID-19 situation, the business may not survive the dramatic decrease in cashflow experienced in the past few weeks. While circumstances are expected to normalize when we come out of this crisis and businesses start recovering, the ability to conserve cash for the business is paramount. Recovery times are anticipated to vary by industry.

2. **Market liquidity challenges**: In addition to the extreme volatility in the equity markets, we are aware that fixed income instruments, even short-term instruments have become very illiquid, with bid-ask spreads rising dramatically. Many plans, especially those that are cash flow negative are seeing challenges in raising the cash needed to pay monthly pensions. Measures to increase liquidity within pension funds was identified as a key concern.

3. **Dire need for certainty:** In the face of the cash flow shock outlined above, our membership expressed a dire and immediate need for medium-term certainty regarding cash-outflows, including pension payments. For those plans that continue to be subject to solvency funding regulations, the volatility of, and possible increase in solvency funding requirements, given the current economic turmoil was identified as a key item on which certainty is desperately needed.

4. **Concern over large portability transfer amounts:** the recent market volatility has caused a significant increase in the portability values attributed to termination benefits. This, coupled with a significant increase in layoffs and terminations, is likely to cause a significant level of lump sum payments flowing out of pension plans. This has been identified as a concern by some plans since there may be a need to liquidate assets at depressed market values in order to meet these cashflow requirements.

<u>Measures that Could Dramatically Assist Pension Plan Sponsors</u>

We have the following suggestions for your consideration:

1. **Suspend special payment obligations**: The option for a plan sponsor to delay making normal cost contributions and to suspend special payments would be extremely helpful to organizations that have a significant reduction in revenue at this time. Our members felt that an extension in the deadline to make special payments had the potential to result in a very large payment becoming due just as we are coming out of this crisis, thus preventing employers from getting back on their feet. In addition, the complex rules and case law regarding the regulation of pension plans which create a "deemed trust" for missed payments may result in employers being offside on the strict covenants in lending facilities, with the possibility of employers being in a technical default under such facilities. This "deemed trust" would need to be overridden in any regulations that provide for a suspension of special payments.

   Given the foregoing, ACPM urges a regulatory *suspension* on special payments (as opposed to a delay) for at least the balance of 2020. Given the current uncertainty, we recommend that special payments only recommence six months after an announcement from the government that the moratorium will cease. The impact of the suspension of special payments would then be evaluated at the next filed actuarial valuation in order to avert a large one-time payment being required.

   With respect to normal cost, a deferral could also be considered, with the drafting cognizant of deemed trust issues.

2. **Increase Liquidity for Pension Plans:** Given the lower liquidity on fixed income instruments, it would be helpful to **eliminate or extend the normal 90-day limit on borrowing under the Income Tax Act for defined benefit pension plans** to allow plans to continue to pay pensions without incurring significant losses on the forced sale of less liquid investments. Moreover, the normal functioning of fixed income markets (including the REPO market) is critical to not only pension plans, but also businesses themselves. **Anything the government, including through its interactions with the federal government or the Bank of Canada can do to improve liquidity in fixed income instruments and ensure a well-functioning market, will be of great benefit to the economy during this crisis.**

3. **Consideration of Freeze on Portability Transfers:** In light of the concerns expressed by certain plans over portability transfers, it may be appropriate to enable plan administrators to suspend or freeze portability transfers, at least until the situation stabilizes. We are aware of the policy bulletin which supports the adjustment or reset of the transfer deficiency if an administrator satisfies the superintendent that such a transfer would impair or further impair the solvency of the plan based on an interim cost certificate.

   Given the extreme situation and concerns expressed by employers and administrators, some regulators have temporarily suspended portability transfers unless the administrator is of the opinion that portability transfers will not materially affect the solvency financial position of the plan. (For example, portability transfers may not materially affect the solvency financial position of well-funded or de-risked plans).

4. **Minimize Solvency Funding Over Medium-term:** It is extremely difficult for businesses to know how much time it will take businesses to recover from this crisis, and some businesses will struggle longer than others due to the very nature of their business. Following the immediate crisis, stability of future funding requirements for those plans that are subject to solvency funding will be critical. **A communication regarding forthcoming regulations to support the previously announced pensions funding reforms[1] would be of great comfort to plan sponsors.**

5. **Access to pension funds under a Defined Contribution provision:** From a defined contribution pension plan member perspective, the following two measures would eliminate unnecessary hurdles that currently impair members' access to pension funds and expose them to financial risk and uncertainty.

   a) Requirement to transfer unlocked pension funds to a prescribed RRIF – Section 21.4 of the Act and 10.52 of the Regulations prescribe that unlocked pension funds must be transferred to a PRRIF. This generally requires that the unlocked funds be transferred to a financial institution that offers the PRRIF product. For members who intend to leave their unlocked funds in the DC plan for their retirement income (e.g., utilize a variable benefit product), this means the member must transfer the funds to a PRRIF at a financial institution and then transfer the funds back to the DC plan into the variable benefit product. This process can take several weeks to complete, creates unnecessary administrative burden for the financial institution, the DC plan, and the member, unnecessarily exposes the member to financial risk, and unnecessarily delays the member from accessing their pension funds. In normal market conditions, the unnecessary financial risk to plan members can be harmful. In abnormal market conditions, such as those we are encountering today, the financial risk encountered by members can expose them to <u>enormous</u> financial loss at a time when they are especially vulnerable (i.e., at retirement).

[1] On November 27, 2019 the Province of Manitoba issued a News Release regarding changes to *The Pension Benefits Act*. In particular, it was noted that solvency funding requirements would be modified from a 100% solvency ratio to 85%, and that employers would be subject to stronger going concern funding requirements. ACPM supports this model where funding is based on a going-concern measure while eliminating solvency funding requirements except for a minimal solvency ratio floor such as the proposed 85%. We understand that legislation to amend The Pension Benefits Act (Bill 8) received first reading on November 27, 2019, but draft regulations that would implement the funding modifications have not yet been released. We encourage the Province to move forward with these proposed changes to solvency funding which will greatly ease the solvency funding challenges faced over the medium term.

We note that Bill 8 (The Pension Benefits Amendment Act) includes provisions to eliminate the need for superintendent approval to unlock pension funds which is very welcome as this will eliminate one source of delay for members to access unlocked funds and financial uncertainty while awaiting approval. However, without also addressing the current requirement to transfer the funds to a PRRIF, significant hurdles to members efficiently accessing their unlocked funds and avoiding financial risk that is incurred because of legislative prescription remain. This issue will become even larger as Bill 8 has provisions to further expand unlocking of pension funds. A simple fix to this issue would be to include an unlocked pension plan variable benefit account as an acceptable product for the transfer of unlocked pension funds, in addition to the PRRIF. This would eliminate this administrative burden and the source of financial risk and uncertainty for DC pension plan members.

b) Inability to designate pension plan beneficiaries through electronic means – the COVID-19 pandemic has brought an acute awareness to the vulnerability of our individual health and well-being. It has heightened awareness among pension plan members to the importance of having up to date beneficiary designations in place to ensure their final wishes with respect to disposition of financial assets are carried out. Working for an employer whose offices are currently closed (i.e., working from home) and/or being a member of a pension plan whose offices are currently closed significantly reduces the member's ability to ensure an up to date beneficiary designation is held by the pension plan as those designations are prevented by legislation from being executed and submitted electronically. This highlights a significant shortcoming in the current legislation with respect to beneficiary designations for funds held in pension plans.

   Although beneficiary designations are testamentary – they do not come into effect until the death of the person executing the designation – the execution of these documents do not require the same level of formality as other testamentary documents. As has been done elsewhere in Canada, we propose that pension plan beneficiary designations be explicitly identified in the applicable legislation as having different requirements for execution than other testamentary documents (e.g., Wills). We propose that pension plans should be allowed to accept electronically executed and submitted beneficiary designations. This would be consistent with the current pension legislation that allows most communication and business transacted between the plan and a member to occur electronically (if both parties agree to it) and it would eliminate a source of financial risk and uncertainty for members who cannot physically attend employer and/or pension plan offices due to the member's failing health or because those offices are closed and inaccessible.

Notwithstanding the foregoing, if the Government is only able to provide temporary funding relief at this time, **we urge the Government to make the relief broadly available, as an option to organizations to use without restriction or qualification.** The 2009 crisis was the biggest we had seen in a generation. By all accounts, this crisis out-shadows the events of 2009 by multitudes and, in our view, warrants more significant, broad-based pension funding relief.

Thank you once again for giving us the opportunity to discuss the challenges facing pension plan administrators and employers and some measures which could be extremely helpful in the immediate term and the mid-term as we exit the crisis. Please feel free to contact us if we can be of further assistance.

Sincerely,

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Brad Prokop

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