August 4, 2023

Angela Mazerolle
Chair, Canadian Association of Pension Supervisory Authorities
CAP Guidelines Committee Chair
Vice President, Regulatory Operations
Financial and Consumer Services Commission, New Brunswick
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Ms. Mazerolle,

Re: Draft CAP Guideline 3

We, the undersigned organizations and individuals, thank CAPSA for the initial consultation with stakeholders in revising the 2004 CAPSA CAP Guideline No. 3 (the Guideline). This document was in need of updating and modernization.

Unfortunately, the revised draft of the Guideline, in its current form significantly alters the expectations and industry standards for capital accumulation plans (CAPs) articulated in the 2004 version, especially those that are not DC pension plans. As such, the latest draft of the Guideline is not broadly supported by the industry stakeholders participating in the review process, and to better address stakeholder concerns, we strongly encourage CAPSA to re-engage the industry working group (IWG) in CAPSA's review process. We believe that in its current form, the Guideline can create adverse outcomes for Canadians. In particular, increased burden may lead to less plan sponsors offering CAPs today, ultimately harming the ability of Canadians to save for retirement.

While the revised version of the draft Guideline, released on June 6, 2023, provides some much-needed clarity and updates on best practices, we continue to have serious concerns over issues that have not been addressed from the last set of stakeholder comments, many of which were similar across our organizations.

Overall, we support a principles-based approach to regulation and industry guidance respecting CAPs, and particularly to the CAPSA guidelines. The proposed changes are more prescriptive than principle-based. The prescriptive approach adopted in the newest draft Guideline will discourage the adoption of new CAPs and the continued maintenance of existing CAPs. If this outcome came to fruition, it would leave Canadians worse off.

It is our understanding that many of the changes to the Draft Guideline made after the IWG submitted its proposed revisions were to align the Guideline with recommendations made in the Technical Advisory Committee Report released by OSFI and FSRA (TAC Report). The TAC Report, however, dealt exclusively with DC pension plans, which are subject to complex statutory and regulatory regimes and are, by their nature, more complex to administer than other CAPs.

The Guideline, on the other hand, applies to a variety of plan types that are not subject to this statutory regime or a clearly delineated statutory standard of care. Accordingly, the changes recommended in the TAC Report are better suited to Guideline No. 8, which addresses best practices specifically for DC pension plans.

Applying Regulator expectations for pension plan administrators (who are deemed fiduciaries under pension legislation) to sponsors of other types of CAPs amounts to regulatory overreach. It will increase compliance costs and administrative burden, which will deter current and future plan sponsors from offering CAPs to their employees and/or increase administration expenses. Fewer plans and higher costs for those plans ultimately harms CAP members, and all Canadians, in the long run.

More broadly, we strongly request that CAPSA consider further revisions to the draft Guideline that are consistent with the original intention and balance of the Guideline. Such an approach would especially help smaller plans to implement these changes and comply with new guidance in a cost-effective manner.

We further strongly request that the IWG be recalled to review the current draft Guideline in detail to address industry concerns about its reach, balance, and potential for unintended and undesirable consequences. This will enable key stakeholders to complete the internal due diligence and review processes that are critical to providing concise and material feedback. While this will necessarily extend the draft Guideline consultation period, likely by several months, it will result in a more transparent process and allow for significant improvements to the resulting guidance. CAP members will, for decades to come, be the beneficiaries of this more complete and fulsome review.

Since CAPSA was established, it has collaborated successfully with industry working groups to reach consensus on practical solutions and guidance on best practices for the pension sector. However, we do not believe a satisfactory consensus of industry stakeholders has yet been achieved in this particular case. We look forward to continuing to work with CAPSA on this important initiative to ensure such consensus is reached to the benefit of the retirement system at large.

Yours sincerely,

Stephen Frank, President and CEO
Canadian Life and Health Insurance Association (CLHIA)

Ric Marrero, Chief Executive Officer
Association of Canadian Pension Management (ACPM)

Peter Waite, Executive Director
Pension Investment Association of Canada (PIAC)

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cc:

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