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January 29, 2016

Via email: capsa-acor@fscs.gov.on.ca

Andrew Schrumm
Policy Manager, CAPSA Secretariat
5160 Yonge Street, Box 85
Toronto, ON M2N 6L9

Dear Mr. Schrumm:

Re: Canadian Association of Pension Supervisory Authorities – Strategic Plan 2016-2019

I am writing on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) in response to CAPSA's solicitation of input from stakeholders for the preparation of CAPSA's 2016-2019 Strategic Plan. We commend CAPSA for the solicitation process as we believe that practical challenges faced by stakeholders will provide useful information in developing and selecting appropriate priorities for the new strategic plan.

The Canadian Bar Association is a national association of approximately 36,000 lawyers, Québec notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers from across Canada who practise in pensions and benefits law, including as counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefits consultants, investment managers and advisors.

The CBA Section believes that all stakeholders (regulators, plan sponsors and administrators, plan beneficiaries and service providers) will benefit from an efficient and effective pension regulatory system in Canada, and harmonizing pension regulation across Canada is key to facilitating that system. We suggest that CAPSA continue to focus on developing an efficient and effective pension regulatory system through harmonization in its new strategic plan.

In addition, the CBA Section has identified several matters for CAPSA's consideration in developing the new strategic plan. We have taken into account the nature of CAPSA (a group of pension regulators responsible for administering the regulatory system in conformity with the law without any legislating authority), its mission and mandate, the framework set out in your November 30, 2015 letter and our beliefs described above. Our proposals are in no particular order of importance.

Agreement Respecting Multi-Jurisdictional Pension Plans (MJPP Agreement)

In the CBA Section's February 2009 submission, we supported CAPSA's introduction of the MJPP Agreement. Broad adoption of the MJPP Agreement would result in regulatory simplification and significantly improve the administration of pension plans in Canada. The Memorandum of Reciprocal Agreement originally signed in 1968 (1968 Memorandum) does not provide sufficient guidance to address multi-jurisdictional issues.

The MJPP Agreement was signed by the governments of Ontario and Quebec and came into effect in these jurisdictions on July 1, 2011. One of CAPSA's key strategic priorities in its 2012-2015 strategic plan was to support the adoption and continued implementation of the MJPP Agreement. CAPSA also expected the remaining jurisdictions to sign the MJPP Agreement in 2013 or as soon as possible after that. However, no other government (federal or provincial) has yet ratified the MJPP Agreement.

The CBA Section is of the view that the MJPP Agreement is a highly relevant, useful and efficient tool for simplifying the administration of multi-jurisdictional pension plans which form part of the Canadian pension landscape. However, to fully achieve its objectives, most, if not all, jurisdictions need to adopt and sign the MJPP Agreement.

The CBA Section urges CAPSA to reiterate the priority of supporting the adoption and implementation of the MJPP Agreement in its new strategic plan, and to take steps to better understand why the remaining jurisdictions have yet to sign on (e.g., are there issues with enabling legislation, administrative reasons specific to the government, or fundamental concerns with certain provisions of the MJPP Agreement). Once CAPSA understands the reasons, it can assess the circumstances and consider the appropriate action to encourage other jurisdictions to sign the MJPP Agreement. If there are fundamental concerns, CAPSA could analyze the issues and possibly propose solutions to facilitate the ratification of the MJPP Agreement by other jurisdictions.

Pension Asset Transfers

All pension standards legislation requires the approval of the pension regulator for a pension asset transfer (other than pursuant to the exercise of a portability right by a member or spouse, as applicable). A pension asset transfer typically occurs in a business acquisition or in the restructuring of pension plans. Most pension standards legislation does not detail the process for obtaining regulatory approval or the criteria of the regulator in deciding whether or not to grant its approval. Pension regulators have issued their own guidelines.

Stakeholders have experienced hurdles, uncertainty and significant delay in obtaining regulatory approval of pension asset transfers involving pension plans with members in more than one jurisdiction, or for asset transfers from a pension plan registered in one jurisdiction to a pension plan registered in another jurisdiction. These multi-jurisdictional issues are aggravated if the design of the receiving plan is different from the originating plan.

Typical issues encountered by stakeholders when seeking approval include determining which pension regulator to submit the application to, the applicable requirements for member communication, the required contents and supporting documents of the application, the criteria for the regulatory approval, and the actuarial standards for calculating the value of benefits and related assets to be transferred.

To the extent that applicable pension standards legislation specifies requirements, a stakeholder needs to comply (even if there are different requirements in different jurisdictions). There is an

opportunity to simplify the process and harmonize across jurisdictions if the legislation gives discretion to the regulators to set criteria and a process for approval.

The CBA Section suggests that guidelines be developed to address these issues. Neither the MJPP Agreement nor the 1968 Memorandum deal with multi-jurisdictional issues in pension asset transfers. Hurdles, delays and uncertainties result in costs to pension plans. All stakeholders will benefit from guidelines.

We invite CAPSA to identify key criteria and concerns of the regulators in granting approval and to consult with stakeholders to identify issues. Due diligence is the first step in developing practical guidelines.

Cyber Risk, Data Governance and Management

In 2002, CAPSA issued Guideline No. 2 Electronic Communication in the Pension Industry (2002 Guideline). The letter accompanying the 2002 Guideline stated: “CAPSA members believe that electronic communication between pension plan administrators and plan members has the potential to enhance information sharing while reducing costs. We hope the Guideline will permit more pension plan administrators and plan members to use newer technologies and realize these objectives.”

Since the 2002 Guideline was issued, there have been major advances in computer technology. Plan administrators and their service providers have embraced this technology and much of the communication between administrators and members is now through electronic means. As well, electronic means are used to store massive amounts of member data. This raises important data governance issues. Major businesses such as Target and Home Depot have been the recent target of security breaches resulting in public losses of sensitive personal information. While pension plan administrators do not have credit card information on file, they retain sensitive information like banking particulars, social insurance numbers and details about family members. Sensitive personal data is stored in different ways across the pension industry. Large public sector plans typically store it in-house. Private sector plans (whether registered pension plans or other types of capital accumulation plans) frequently store it with third party service providers, and these providers include international companies that may use offshore cloud storage.

The use of electronic means to store member data raises cyber risk, data governance and management issues. It would be helpful for CAPSA to update its 2002 Guideline to provide guidance in the form of best practices to plan administrators on these issues. We suggest that such guidance should not be prescriptive, since detailed rules could become obsolete with ever-changing technologies. Rather, articulating basic principles can assist plan administrators in setting up their data governance policy and highlight risks and issues they may not fully appreciate. There is an overlap between privacy and cyber risk, data governance and management issues, and the two areas raise related but separate issues. CAPSA can usefully comment on the relationship between these two areas and can suggest some governance best practices which would be helpful to the pension industry.

Treatment of Annuity Purchases

Federal and provincial pension standards laws permit or require the purchase of annuities from qualified insurance companies in satisfaction of benefit entitlements accrued under a registered pension plan. The purchase can be initiated by a pension plan administrator or the exercise of a portability right by a plan beneficiary. There is no shortage of instances – plan terminations, for example – where substantial pension plan assets are transferred to insurance companies in exchange for a contractual promise to deliver the accrued benefit at the appropriate time and under

the prescribed circumstances. More recently, annuities have become a significant part of pension plan de-risking strategy and play an important role in reducing pension risks for Canadian plan sponsors.

However, the pension standards legislation across Canada is inconsistent in the treatment of annuity purchases. In some instances, the plan administrator is discharged from all liability for the accrued benefit entitlement once the annuity contract is executed and the necessary premium delivered to the selected insurer. In other instances – in Ontario, for example – a discharge is unavailable. Some, but not all, pension regulators have issued guidelines on the use of buy-in/buy-out annuity policies in the pension plan context.

Given the increasing importance of annuities in pensions and retirement planning and in a pension plan sponsor's de-risking strategy, the CBA Section suggests that CAPSA undertake consultations:

1. A consultation with a view to harmonizing the treatment of annuity purchases across Canada to develop a consistent approach in all jurisdictions.
2. A consultation on the use of annuities purchases as a de-risking strategy by plan sponsors and the choice of an annuity payment option by a plan beneficiary (possibly with other members of the Joint Forum of Financial Market Regulators or other industry groups). This consultation could focus on:
 - the annuity market in Canada, with a view to creating greater protection for annuitants;
 - promoting greater competition among financial institutions for annuity purchase contracts, increasing the monthly benefit received by annuitants;
 - promoting greater transparency and consistency in the annuity purchase process – consistent documentation, ease of comparison, transparency of commissions, assumed interest rates, etc.; and
 - promoting greater education for pension plan beneficiaries on the selection and use of annuities as a retirement planning tool.

Some of our suggestions may require legislative changes, and we urge members of CAPSA to bring these issues to their respective legislatures.

Funding Defined Benefit (DB) Pension Plans

The proper and timely funding of DB pension plans is critical to the delivery of promised retirement benefits, yet it remains one of the most complex and perplexing areas of a pension plan.

Low interest rates and persistent volatility in world economies and their corresponding equity markets, coupled with a crippling number of DB funding rules, variables and assumptions across jurisdictions, have contributed to the continued decline in the number of DB pension plans in the Canadian private sector. While funding relief measures offered by some jurisdictions have been welcomed by plan sponsors, different funding relief measures, timing and availability across Canada has created a patchwork of rules and regulations which increase the complexity and cost of implementing those measures. The cost of consultants and professional assistance required to manage the complexity of DB funding is a consistent complaint among plan sponsors.

Reversing (or at least slowing) the decline in the number of DB pension plans in Canada requires, among other things, harmonization of DB pension funding rules. The CBA Section recommends that CAPSA undertake a consultation with a view to harmonizing DB funding rules across Canada, focusing on practical and regulatory issues within CAPSA's mandate. These include the process of

obtaining funding relief and the use of letters of credit, consistency in regulatory requirements for funding rules, and timing of actuarial valuations and other funding-related regulatory reporting.

Legislative changes are required to deal with other issues like the consistency of DB funding rules among jurisdictions, availability and consistency of funding relief measures in different jurisdictions, and approaches on the requirements to fully fund or reduce accrued benefits. We encourage members of CAPSA to bring these issues to the attention of their respective legislature.

Actuarial Standards Committee

CAPSA's Actuarial Standards Committee (ACT) plays an important role in monitoring, reviewing and advising on current and proposed actuarial standards in the pension industry. Accepted actuarial practice and standards play a significant role in the valuation and funding of DB pension plans, which impact the benefits members ultimately receive from those plans. We express our continued support for the ACT's mandate and encourage CAPSA to continue prioritizing its work. CAPSA members and related stakeholders must remain mindful of the issues relating to accepted actuarial practice and standards in Canada and the ACT is well positioned to fulfill that requirement.

Additional Items

The CBA Section has also identified two matters which we believe are desirable for CAPSA to consider, although it may be premature to include as priorities in the new strategic plan.

1. Pooled registered pension plans (PRPPs) – Uniformity in the regulation of administrators of PRPPs will encourage and support an environment where PRPPs can be delivered as a low cost pension option for Canadians. With the federal PRPP legislation now in force and a number of provinces enacting enabling legislation, CAPSA is uniquely positioned to persuade governments to harmonize. We encourage CAPSA to continue its focus on the harmonization of the regulation of PRPP administrators.
2. New Plan Designs – Different jurisdictions have introduced or are in the process of introducing new plan designs, such as shared risk plans and target benefit plans. CAPSA's 2012-2015 strategic plan included a priority to promote consistency in the regulatory response and frameworks to funding issues and issues arising from new types of pension plans and innovations. One key issue with new plan designs relates to governance structure and the applicability of CAPSA's Guideline No. 4 Pension Plans Governance Guidelines and Self-Assessment Questionnaire (under revision). We encourage CAPSA to keep these issues in mind in revisiting its guidelines or issuing new guidelines in the near future.

We look forward to our discussion on these matters in the stakeholder dialogue on April 4. In the meantime, please do not hesitate to let us know if you have questions or require other information.

Yours truly,

(original letter signed by Gillian Carter for Michael Wolpert)

Michael Wolpert
Chair, CBA Pension and Benefits Law Section