



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

December 8, 2014

The Honourable Joe Oliver
Minister of Finance
Department of Finance, Canada
90 Elgin Street
Ottawa ON K1A 0G5

Via E-mail: commentonlegislation@ccmr-ocrma.ca

Dear Minister:

Re: Capital Markets Stability Act

The Pension Investment Association of Canada (“**PIAC**”) has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC’s member funds are responsible for the oversight and management of over \$1.3 trillion in assets on behalf of millions of Canadians. PIAC’s mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

We are pleased to have this opportunity to respond to your request for comments in respect of the consultation draft of the Capital Markets Stability Act (the “**CMSA**”).

PIAC supports efforts to enhance Canada’s financial services sector, providing for efficient capital markets and strengthening the management of systemic risk. We recognize the importance of oversight and management of systemic risk in an effort to protect Canada’s economy. A properly protected and stable economy allows for the members of PIAC to participate in the capital markets, with a focus on long term growth.

Harmonization

PIAC appreciates the efforts of the Government of Canada, as well as the efforts of the Provinces of British Columbia, New Brunswick, Ontario, Prince Edward Island and Saskatchewan (collectively, with the Government of Canada the “**Cooperative Regulators**”), to harmonize their systemic risk rules. Consistent with many of our submissions on proposed regulations, legislation and industry guidelines, Canadian rule makers must harmonize their rules both internally, and with international regulators. A lack of harmonization in capital markets rules has the potential of increasing the cost of

adherence, but also could impact liquidity within certain jurisdictions that are not harmonized.

Although PIAC supports the Cooperative Regulators efforts to harmonize their rulemaking and proposing the CMSA, we have some concerns with the present form of the CMSA and offer our comments below.

Capital Markets Intermediary

The definition of Capital Markets Intermediary in section 2 of the CMSA includes in subsection (c) “a pension fund”, and in subsection (d) “a person that directs or manages the business, operations or affairs ... of a pension plan”. PIAC would urge the Cooperative Regulators to reconsider the inclusion of pension plans within the definition of Capital Markets Intermediary, as pension plans are fundamentally different from the other entities included within this definition. The intent behind the creation of the CMSA is to deal with systemic risk in Canada. We would note pension plans present little to no risk to their counterparties or to the broader financial system. Specific factors that support this statement can be found within Exhibit B of the Global Pension Coalition comment paper, to which PIAC was a signatory, submitted to the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions in relation to Requirements for non-centrally cleared derivatives dated March 15, 2013, a copy of such Exhibit B is attached as Annex A.¹

In addition, we would note comments made by Mr. Lawrence Shembri, Deputy Governor of the Bank of Canada, at a recent PIAC event which illustrate the long-term nature of investments made by pension plans, which has the potential of reducing systemic risk, particularly in times of crisis.²

Designation of “Systemically Important”

In the event the Cooperative Regulators retain pension plans within the definition of Capital Markets Intermediary, PIAC would note the characteristics outlined in section 27 of the CMSA, designating a Capital Markets Intermediary as systemically important, are overly broad. For example, subsection 27(k) of the CMSA states “any other risk-related factors that the Authority considers appropriate”. PIAC would urge the Cooperative Regulators to create a very specific set of criteria when determining whether a Capital Market Intermediary is systemically important.

Orders that could be levied against a Capital Markets Intermediary

The orders available to the Authority, under section 29 of the CMSA, are extremely broad, and may inadvertently increase systemic risk, the opposite outcome of the intentions behind the CMSA. For example, when pension plans make investment decisions, they typically do so in a holistic manner, giving consideration to all of their assets. If the Authority orders certain “other assets” to be disposed of, pursuant to subsection 29(a) of

¹ Bank of International Settlements website: <http://www.bis.org/publ/bcbs242/globalpensionco.pdf>.

² Bank of Canada website: www.bankofcanada.ca/2014/05/double-coincidence-needs-pension-funds/.

the CMSA, without giving full consideration to the pension plans entire portfolio, such order may inadvertently increase systemic risk.

PIAC would urge the Cooperative Regulators to carefully consider subsection 29 of the CMSA and specifically focus on which orders will eliminate systemic risk.

We thank you for the opportunity to share our thoughts with you, and would welcome an opportunity to meet with the Minister of Finance and the Cooperative Regulators on our comments and suggestions.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Keenan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Keenan
Chair

Annex A

EXHIBIT B – GLOBAL PENSION COALITION COMMENT PAPER

Below is a summary of some of the key reasons Canadian plans present virtually no counterparty risk. Note that Canadian pension funds may be regulated by provincial or federal laws and regulations, so certain of the factors below may not apply to all pension plans.

- Pension plans are subject to a prudent portfolio investment standard. For example, the administrators of pension plans subject to the laws of Ontario are required to “exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.”⁴² In doing so, the administrator must use all relevant knowledge and skill that it possesses, or ought to possess, in the administration and investment of the pension fund.⁴³
- Pension plans are subject to investment restrictions, concentration limits and other restrictions mandated by law.
- Pension plans must establish and file with the appropriate regulators a detailed statement of investment policies and procedures, including with respect to the use of derivatives, options and futures.⁴⁴ Such document outlines the plans expectations with respect to diversification, asset mix, expected returns and other factors.
- Administrators of pension funds are subject to strict prohibitions concerning conflicts of interest. Similar prohibitions are also imposed on employees and agents of the administrator.⁴⁵
- Pension plans are generally prohibited from borrowing.⁴⁶
- The assets of pension plans are held in trust by licensed trust companies or other financial institutions and are separate from the assets of their sponsors.
- Funding shortfalls may be funded by the pension plan’s corporate or government sponsor, by increasing contributions of pensioners or by lowering benefit payments, depending on the nature of the plan.
- Pension plans must regularly file an actuarial valuation with the appropriate regulators.

⁴² E.g., Pension Benefits Act, RSO 1990, c P.8 (“PBA”), s 22(1).

⁴³ E.g., PBA s 22(2).

⁴⁴ Pension Benefits Standards Regulations, 1985, SOR/87-19, s 7.1.

⁴⁵ E.g., PBA ss 22(4) and 22(8).

⁴⁶ Income Tax Regulations, CRC c 945, s 8502(i).

- Pension plans are transparent to members and regulators. Provincial legislation requires that pension plans file a detailed annual financial statement accompanied by an auditor's report.⁴⁷
- Pension plans are not operating entities subject to business-line risks and competitive challenges.
- The governance of Canadian pension plans is subject to statutory requirements and guided by best practices.
- There is no provision under any Canadian law for pension plans to file for bankruptcy or reorganization to avoid their financial obligations to counterparties or other creditors. Additionally, the voluntary termination of a plan does not relieve the plan of its financial obligations.

⁴⁷ E.g., Pension Benefits Act, RRO 1990, Reg 909, s 76. In addition, an auditor's report is required for pension plans with \$3 million or more in assets.