



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

January 11, 2019

Mr. Mark Schaan
Director General
Marketplace Framework Policy Branch
Innovation, Science, and Economic Development Canada
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Dear Mr. Schaan,

Re: Consultation Document – Enhancing Retirement Security for Canadians

The purpose of this letter is to provide comments from the Pension Investment Association of Canada (PIAC) on the recently released consultation document regarding potential gaps in the Canadian pension regulatory framework. We largely limit our comments to the questions of preferred creditor status for pension deficits and the proposal related to pension regulation.

PIAC has been the national voice for Canadian private and public pension funds since 1977 in matters related to pension investment and governance. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$2 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. PIAC's positions on public policy reflect the fiduciary framework in which member funds operate and its commitment to work in the best interests of plan members.

Preferred Creditor Status

PIAC is not supportive of providing a super-priority for unfunded pension liabilities and employee post-retirement benefits in an insolvency situation. While we recognize that the intention of such a change would be to enhance retirement security for plan beneficiaries, we believe that overall impact on the retirement income system would be negative.

Most private sector plan sponsors rely on bank and/or capital markets financing to operate their businesses such that preferred creditor status for unfunded pension liabilities would impact the cost and availability of credit for companies that sponsor DB plans. Moreover, the impact would be highly pro-cyclical and most acute during periods when lenders are most concerned about pension deficits, which is typically recessionary periods when businesses are already facing more difficult operating conditions. For companies facing severe business challenges, preferred creditor status would likely reduce the availability of new capital to effect a turnaround. It is also worth noting that companies which sponsor DB plans would be disadvantaged in terms of cost of capital relative to competitors that do not sponsor DB plans, and this would no-doubt lead to a re-assessment of the overall strategic value of the DB plans to those businesses.

PIAC members provide substantial financing to the Canadian private sector through the corporate bond market. Some degree of negative re-pricing of corporate debt for issuers with material DB plans would be expected from a re-alignment of the bankruptcy rules and this would translate into capital losses for pension portfolios. Again, securities issued by companies with the largest DB plans and lower credit ratings would be most impacted by such changes.

Finally, we would observe that there appears to have been limited published work by policy makers or researchers to collect, aggregate and analyze the actual historical Canadian experience with regard to pension plan terminations from insolvencies and the ultimate impact on beneficiaries. The creation of a super-priority in bankruptcy would have broad systemic implications for companies offering DB plans and in the absence of data, it is difficult to assess the potential offsetting benefits in terms of additional security to the Canadian system. PIAC believes the debate around this complex issue would benefit from such analysis and encourage the federal government to sponsor or otherwise catalyze this work.

With regards to the proposals regarding pension regulation, we make the following comments:

Solvency Reserve Accounts

PIAC has advocated in favour of Solvency Reserve Accounts (SRA's) for many years as a means to overcome the inherent procyclicality of pension funding requirements and to mitigate the asymmetries regarding the potential for trapped surplus in plans. We see no policy downside in terms of benefit security from appropriately structured SRA's and encourage the federal government to follow the lead of British Columbia, Alberta and Quebec in terms of making these an eligible funding mechanism for federal plans. We would note that utilization by plan sponsors will be dependent on SRA contributions receiving the same tax treatment as contributions into the plan. Moreover, the SRA rules should be integrated with the rules permitting the use of letters of credit such that the latter continue to operate effectively.

With relatively good economic performance and Canadian pension plans in a broadly well-funded position today, this would be an ideal time to implement the SRA change as it could bring additional funding into the federally-regulated pension complex ahead of the next turn in the pension funding cycle.

Pension funding relief criteria

PIAC is supportive of the federal government imposing criteria or conditions on individual companies seeking pension funding relief as part of a package of changes in an effort to preserve the ongoing viability of the business. It is appropriate that the Minister have broad authority in such situations as agreements will no doubt vary from case to case.

Transfer to self-managed accounts

PIAC is supportive of seeking alternatives to a forced immediate annuitization of terminated plans in the context of an insolvency. Potential options could include transfers to self-managed accounts as proposed, but might also include ongoing participation in a non-guaranteed balanced fund or a re-profiling of the annuity payment for certain classes of retirees. All options would of course need to be structured to ensure they were value-neutral across different groups of retirees but we believe there are alternatives which could improve on a forced annuitization outcome for many retirees.

Clarify benefit entitlement

PIAC supports clarifying the rules around benefit entitlement in a termination situation. However, we do not support a general prohibition against a plan having different benefits in different circumstances as it may prevent companies and employees from agreeing on arrangements which support long-term plan sustainability. In PIAC's view, such differentiation is important not just for corporate sponsors in distress, but for long-term plan sustainability of newly created corporate and multi-employer plans. Several Canadian jurisdictions adopted the target-benefit plan model which permits such differentiation of benefits. We agree that regulatory clarity on that issue would be beneficial to the extent the plan text is unclear, and we believe such differentiation should be permitted.

Legal discharge on annuitization

While not discussed in your paper, we would also encourage the federal government to re-introduce the PBSA amendments that would allow for legal discharge of pension liabilities in the event of an approved annuitization by a federal plan. As we have indicated in the past, we believe such a change would be a net positive in terms of the security of the overall retirement system as it would encourage the transfer of retirement income into the more heavily regulated life insurance sector. We would emphasize again that now is an opportune time to make such a change given corporate plans are broadly well-funded. Annuitizations are an expensive option for companies and are far more likely to happen in cases where plans are well-funded.

Restrictions on corporate behavior

While we understand the motivation for restricting corporate behavior where a material pension deficit exists, we would caution against the potential consequences for plan sustainability of such a change, particularly among public companies. Over shorter time horizons, pension deficits are driven mainly by financial market changes which are out of the control of plan sponsors. As we have seen in Canada, this funding volatility makes it very challenging for companies to maintain open defined benefit plans and we can only see a negative impact in terms of the rate of closure of private sector plans to the extent the CBCA imposes additional constraints on shareholder distributions in the presence of a pension deficit.

Corporate reporting and disclosure requirements

PIAC members are pensions plans with a focus on delivering returns to pay benefits over the long term. As such, we support improvements in the reporting of material risk factors, including environmental, social and governance (“ESG”) factors to make informed investment decisions. PIAC supports the recent amendments to the CBCA including those related to the disclosure of diversity policies and diversity among boards of directors and senior management of companies, but rather than creating prescribed disclosure requirements in the areas mentioned, we would encourage the Government to review current practices in ESG disclosure to further inform their view. International initiatives such as the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), the International Accounting Standards Board (IASB) and the International Integrated Reporting Council (IIRC) are examples of organizations working to build and align standards on ESG disclosure.

PIAC believes the promotion of corporate social responsibility principles and practices would benefit Canadian businesses and investors. Section 122(a) requires every director and officer of a company incorporated under the CBCA to “act honestly and in good faith with a view to the best interests of the corporation.” It is PIAC’s view that this does not preclude directors from considering the interests of outside stakeholders including employees, creditors, suppliers, consumers, community members, governments and the environment.

We appreciate this opportunity to share our views on these important issues.

Yours sincerely,



Deanne Allen
Chair