



**August 30, 2001**

Ms. Carla Adams,  
Policy Manager (Acting)  
CAPSA Secretariat  
c/o Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
North York, Ontario M2N 6L9

Dear Ms. Adams: re: CAPSA Pension Governance Guideline and Implementation Tool

First, we would like to express our appreciation for the extension of time to prepare and send our comments because vacation schedules have made it difficult to address this matter on a timely basis.

The Pension Investment Association of Canada (PIAC) is the representative Association for pension funds in Canada in matters relating to pension investment. PIAC's 139 Member pension funds manage an aggregate of over \$½ trillion on behalf of over 6 million beneficiaries. Membership in PIAC is limited to pension funds with assets in excess of \$200 million and we do not actively solicit membership from funds with assets less than \$500 million. PIAC's mission is "*to promote the financial security of pension fund beneficiaries through sound investment policy and practices.*"

As many CAPSA representatives are aware, PIAC has prepared its own governance model titled "*Effective Pension Plan Governance*" and has participated with ACPM and OSFI in the development of a governance self-assessment questionnaire. For some time, PIAC has held a strong interest in the quality of governance processes among its Members. Recently, PIAC surveyed Members about their use of the self-assessment questionnaire and the majority of members responded that they had in place a governance process that met or exceeded the recommendations of the PIAC/ACPM/OSFI Task Force.

Generally speaking, our view of governance is that it must be a process whereby knowledgeable fiduciaries monitor the management of a pension fund in the interests of beneficiaries and that the governing body regularly assesses its own effectiveness. Our opinion of the process is that it must be simple to understand and that fiduciaries have the information that *they* deem appropriate to complete their function effectively.

We understand that the CAPSA Pension Governance Guideline (the "Guideline") is intended to build on the work of the PIAC/ACPM/OSFI Task Force and we note the additional number of principles discussed. PIAC does not have any difficulty with the added principles. Our comments on the Guideline are set out in our answers below to the specific questions asked by the CAPSA Pension Plan Governance Committee (the "Committee").

- Does the Guideline effectively capture the most important aspects of pension governance?

We believe that the Principles addressed are entirely appropriate and are important issues in pension governance. We comment further below, but it is our general view that the structure of the Guideline blunts its effectiveness because of the complexity and detail in the accompanying

explanatory notes, especially those in the Principles 7, 8 and 9.

- Does the Implementation Tool usefully complement the Guideline? Can it be effectively utilized by plans in different situations?

PIAC believes that the Committee has done an excellent job of correlating the Implementation Tool with the Guideline. We might however suggest that the Committee reconsider the name of the document to make absolutely certain that plans perceive immediately that it is intended to be used as an assessment of their governance processes.

- How might the documents be modified to make them even more responsive to the needs of plans of different types and sizes?

First, we wish to address the complexity of the Guideline that we commented on briefly above. In situations where the governing body is composed of people knowledgeable in pension issues and asset management, it is clear that the governing body is able to establish standards of disclosure in respect of the information they require to effectively fulfil their responsibilities. But we also understand the concerns of the Committee about the smaller pension funds with less sophisticated people responsible for governance. We perceive that these concerns underlie the addition of the extensive explanatory notes to each Principle.

While we appreciate and do not disagree with the reason for their inclusion, we strongly recommend that such explanatory notes be removed from the Guideline to a separate accompanying document titled *Governance Best Practices Guide* and have each set of notes correlated to the Principle to which they refer. In this way, pension plans that require the assistance of the notes can refer to them: those that do not can deal with them solely as reference material. We believe that, by making this modification, the Guideline will be greatly simplified, readers will become immediately aware of all the Principles, fiduciaries can identify their responsibilities easily and those requiring assistance to build the governance process can refer to the *Governance Best Practices Guide*.

We further recommend that, when assembling the *Governance Best Practices Guide*, the Committee rethink a number of the suggestions made in the notes to each Principle. Some examples are:

- There are many cases where the amount of information suggested be provided the governing body will force that body into the position of micro-managing when its duty is clearly to monitor and oversee.
- PIAC understands that, given the current state of judicial review of fiduciary relationships, the scope of fiduciary duty is, at best, unsettled.
- We find it difficult to understand how a governing body can possibly ensure that its education program for plan members will make plan members *understand* investment issues. At best, the governing body could ensure that plan members were aware of such issues.
- It should be remembered that not all performance appraisals of people are objective.

Finally, we would recommend that the *Governance Best Practices Guide* (or the notes) be reviewed by legal counsel only to ensure that the suggested best practices do not exceed the legal responsibilities of the members of the governing body and of management personnel.

- Once the Guideline and Implementation Tool are adopted, how might they be usefully implemented across the country?

PIAC believes that self-assessment and monitoring by regulators is the appropriate approach.

PIAC has confidence that sponsors of larger pension funds, such as those over \$50 million in size, will ensure that their pension plan is governed responsibly. We perceive that CAPSA will want to have a much higher level of comfort with the governance of smaller plans than is possible without the Guideline. This important issue is to make certain that such plans are actually following the Guideline and implementing procedures to comply with its Principles. For this we suggest a monitoring process where, by spot checking, a sense of compliance can be developed and problem areas identified.

Finally, we are concerned that there are two models for governance and assessment currently in use in Canada. We understand that OSFI has no immediate intention of withdrawing the PIAC/ACPM/OSFI Self-Assessment Questionnaire. PIAC believes that good governance is to be encouraged at all levels in the pension industry and we encourage some regulatory agreement to eliminate the confusion created by the two documents sponsored by pension regulators.

## CONCLUSION

PIAC commends the Committee for its attention to detail which is obvious from the draft Guideline and, subject to our comments above, would support CAPSA's initiative to encourage good pension governance practices by all pension plans across Canada. We strongly suggest that regulators come to agreement on the best way to remove the confusion created by the existence of two separate regulatory recommendations for governance that are not the same. To effectively encourage plans' adoption of the Principles, the process must be seen to be a simple one to embrace.

Respectfully submitted,

Keith A. Douglas  
General Manager