



March 27, 2020

Ms. Leah Fichter
Chair
Canadian Association of Pension Supervisory Authorities
c/o CAPSA Secretariat
5160 Yonge Street
16th Floor
Toronto, ON M2N 6L9

Dear Ms Fichter:

CAPSA Strategic Priorities

Further to our letter of February 24, 2020, the Canadian Life and Health Insurance Association (“CLHIA”) would like to acknowledge the prudence of CAPSA’s decision to forego face-to-face consultations with stakeholders as part of your forthcoming discussions on March 30th. At the same time, we would like to provide additional background and context regarding the issues we raised in our February 24th letter, to focus you and your colleagues on our suggested priorities, and to summarize mid- and longer-term objectives. At the same time, we wish to reiterate concerns that have been raised subsequently with CLHIA members by pension plan sponsors, administrators and plan members as a result of the rapidly evolving n-Coronavirus pandemic. In order to allow you to address these immediate and longer-term priorities separately, we are providing separate, concurrent, letters reflecting these timelines.

As you know, the CLHIA is a not-for-profit, membership-based organization that represents 99% of Canada's life and health insurance companies. CLHIA's member companies help Canadians to protect their employees, themselves and their families against the financial risks surrounding illness, retirement and premature death. As service providers to a majority of pension plans in Canada, CLHIA members are keenly interested in and supportive of CAPSA’s role and efforts.

Insurer’s key 3-year priorities

Our February 24th letter identified eleven issues for review and consideration by CAPSA members. While all are material to the efficiency of Canada’s private pensions system, we would like to focus your attention on four of those issues:

- 1. Last year, CAPSA announced your intent to review and update, as appropriate, the Capital Accumulation Plans Guideline.**
 - CLHIA was an active participant in development of the 2004 CAP guideline, since our members are service providers to more than 85 per cent of CAPs.

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- We adopted that guideline as one of CLHIA’s own guidelines, and extended it to non-tax-assisted plans to ensure consistency of approach regardless of the intent of structure of the arrangement.
 - We think the CAP guideline works well, but fine-tuning may be appropriate.
 - If CAPSA sees gaps in the guideline, we would be interested in what you think those gaps are.
 - CLHIA is concerned that this review does not appear to be gaining traction; given our members’ role in the CAP environment, CLHIA and its members look forward to participating in the stakeholder working group on any updates to the guideline, and moving this review forward as efficiently as possible.
- 2. Where pension plans buy annuities, there is a theoretical risk that the liability to pay benefits could revert to the plan administrator should the annuity provider become insolvent.**
- CLHIA believes that the benefit paying ability of life insurance companies is strong – CLHIA member companies are regulated for both solvency and market conduct, our actuarial standards are arguably more robust than for pension plans since they must assume adequate funding at time of purchase, life insurers conduct “own risk self-assessments” and are generally accountable to the capital markets, plus Canada’s life insurance companies participate in an independent consumer guarantee fund, Assuris.
 - Arguably, the lack of a legal discharge on annuitization discourages plans from de-risking; this prevents Canadian businesses that sponsor pension plans from focusing on their core competencies while ensuring workers and retirees have guaranteed retirement incomes.
 - Quebec, Ontario, British Columbia and Nova Scotia have (or have announced) legislative provisions to grant a pension plan a full liability discharge upon annuitization; others need to do the same to encourage de-risking.
 - To the extent that CAPSA can encourage further adoption of consistent legislation to this end, we think that such harmonization and red-tape reduction are positive for all plan stakeholders, and are consistent with CAPSA’s mandate.
- 3. Last year, CLHIA was excited to note the introduction of **Variable Payment Life Annuities and Advanced Life Deferred Annuities** in the 2019 federal budget. While these new options allow tailoring of pension-sourced entitlements to better match consumers’ specific income needs, they **are not the only options that need to be considered**. CLHIA believes that the VPLA in particular needs to be available outside of pension plans, so that it can aggregate assets from RRSPs, DPSPs, and other plans – perhaps even TFSAs – to provide effective risk pooling and economies of scale.**
- Adoption of ALDAs and VPLAs will require changes to the federal *Income Tax Act* and to both federal and provincial pension law.
 - Draft legislation released by the Department of Finance Canada in 2019 proposed a narrow approach to VPLAs, contrary to recommendations made in 2018 by a coalition of various pension stakeholder organizations, including CLHIA.
 - CLHIA also encourages legislators and regulators to permit periodic purchases of payout annuities with deferral periods of more than one year, even if the ALDA does not progress rapidly; our analysis indicates that some jurisdictions view such income deferral periods as unacceptable for pension-sourced funds.
 - Guaranteed lifetime withdrawal benefit options within accumulation annuities have existed in Canada for over 15 years. CLHIA believes that such options can move money purchase income streams toward traditional DB benefit structures, providing guaranteed income while preserving investment growth opportunities.
 - CLHIA fully expects other flexible decumulation innovations to arise.

- Pension regulators can assist in helping legislators develop measures to promptly permit such options once any necessary tax legislation is adopted.
 - We think that CAPSA has a core role to play in collaboratively and proactively encouraging legislative change to expand and simplify pension regimes to ensure secure, cost effective, retirement income options for all Canadians; we encourage CAPSA to engage in an ongoing dialogue with our industry to explore and lead such innovation.
4. Over the last several years, CRA has been working toward an administrative approach that would treat some **alternative fixed-indexation mechanisms as acceptable proxies for variable cost-of-living indexation for annuities purchased under s. 147.4 of the federal *Income Tax Act***.
- Fixed indexation is easier and generally less expensive to price than variable indexing, and is a significant tool in allowing pension plans to de-risk via annuity purchases.
 - We understand that some pension regulators view the substitution of fixed-indexing as an adverse amendment to plan provisions, potentially eroding members’ future benefits, and thus requiring member consent and plan amendment.
 - We understand this concern, but we think it may miss an important point.
 - Sticking to COLA discourages plan continuation; attempts to “preserve the perfect” may further erode employers’ willingness to offer private-sector DB plans.
 - The pragmatic solution may be to better balance future benefits against employers’ funding risk by allowing the substitution of fixed indexing, thereby preserving some form of cost-effective benefit indexing while allowing employers to focus on their core business, rather than pension administration, and to reduce employers’ funding risk.
 - We encourage CAPSA to endorse CRA’s proposal, and allow any debate over the merits of preserving variable COLA indexation to move to specific jurisdictions where such concerns remain; those jurisdictions should not delay adoption of fixed indexing in those jurisdictions where such substitution is acceptable.

The Industry’s Second Tier Objectives

5. Guaranteed Lifetime Withdrawal Benefits, or GLWBs, are options within accumulation annuities, where regular payouts are made from the underlying segregated investment fund, but where ad-hoc income benefits are also possible. Importantly, if the investment fund is depleted, regular periodic income benefits continue, backstopped by an insured payout annuity. GLWBs represent a functional hybrid between a RRIF and a life annuity that, when provided through a registered plan, is regulated as a RRIF, or from a pension perspective, as a LIF.
- LIF minimum and maximum benefits for a calendar year are a function of the account value at the start of that calendar year.
 - Conversely, GLWB options base the annual income on the initial amount invested and various escalation formulae.
 - Where market values have fallen, the LIF minimum and maximum can fall, but the guaranteed income benefit from the GLWB may not, and may actually exceed the maximum permitted by the LIF rules.
 - **Given the guaranteed nature of the GLWB income, such contracts should be treated more like payout annuities, and not as LIFs, for purposes of pension law.**
 - This issue has been raised with at least one provincial legislative team, but has yet to move forward.
 - Given the current economic turbulence, the value of GLWB options is clearly demonstrable.

- We think CAPSA members readily understand the benefit of the GLWB structure, and could be a key ally in encouraging change to pension law on a consistent national basis to treat such plans as annuities.
 - We would ask for your assistance in advocating for a more consumer friendly regulatory treatment of such product options.
6. CLHIA members strongly support facilitation of **electronic commerce**. Our concern is that jurisdiction-specific pension e-commerce **regimes may not align** with insurance, trust, and securities e-commerce standards applicable to the assets held in or as a pension plan, or with the general e-commerce regimes in those jurisdictions. Where those regimes do align, they may be at odds with e-commerce law in other jurisdictions.
- For instance, pension law may permit electronic beneficiary designation, e-communication to plan members, etc., but this may be inconsistent with e-commerce rules for underlying instruments such as life insurance contracts (i.e., annuities) – as is routinely the case in the DC environment.
 - A holistic assessment and coordinated move to a consistent e-commerce regime would make sense, within and across jurisdictions.
 - CLHIA would encourage CAPSA to raise this initiative with the Joint Forum.
 - More broadly, we encourage all regulators to further adopt harmonized electronic filing and facilitate electronic administrative communication to and from plan administrators and their service providers.
7. In 2019, CAPSA released a communique on the use of leverage within pension plans.
- The focus was primarily on large, single employer, defined benefit plans.
 - Less clear were CAPSA’s views with respect to the use of leverage in investment funds made available to pension plans by third-party investment managers such as insurance companies.
 - Access to leverage may also be relevant as assets are transferred when defined benefit pension plans to steps to de-risk.
 - CLHIA believes that **a more complete consideration of leverage** by CAPSA is warranted. In the DC content, this might be incorporated in the review of the CAP guideline reference above.
8. CLHIA has actively promoted adoption of Pooled Registered Pension Plans, in large part because their automatic features and use of behavioural finance techniques can nudge less engaged consumers to enhance their retirement savings. **Those automatic features - such as automatic enrolment and contribution escalation – should be available for all pension plans**, and implementing PRPPs – with some important refinements - still makes sense where they are not yet available.
- In some jurisdictions, including automatic features in pension plans can be viewed as contrary to employment standards legislation.
 - Such automatic features are explicitly part of PRPP legislation and consequently do not offend employment standards.
 - CLHIA encourages CAPSA to endorse an exemption from such labour standards for such automatic features, subject to appropriate advance communication and an opt-out right, reflecting the public policy rationale of encouraging pension adequacy.
 - This exemption should not be limited to PRPPs.
 - Where PRPPs have not yet been adopted and implemented, we encourage CAPSA to advance those efforts, ideally with a requirement for some form of workplace-provided plan and required minimum contribution level unless an individual opts out of contributions entirely.

- Given the limited success of PRPPs to date, it may be appropriate for CAPSA to review design and implementation measures that may have impeded uptake, and recommend changes to enhance meaningful coverage.
 - In order to enhance consistent and compliant plan administration and reduce costs that are ultimately borne by plan members, CLHIA again urges all regulators to strive toward nationally harmonized regimes that incorporate automatic features.
9. CAPSA guidance sets out regulators' administration expectations regarding practices that are not mandated in legislation or regulation.
- In some cases, such as plan governance and prudent investment practices, CAPSA has developed self-assessment tools to assist plan sponsors, administrators and other stakeholders in monitoring and documenting steps taken to address regulators' administrative expectations.
 - Absent such tools, some stakeholders can struggle with how to demonstrate reasonable efforts to meet regulators' expectations.
 - There may be significant value in **broadening the scope of self-assessment tools** in order to promote robust plan management, and we encourage CAPSA to consider working with stakeholders to develop such tools.
10. Systemic reviews of pension oversight regimes have historically noted a lack of granularity in plan members' benefit characterization. (For instance, CLHIA's staff pension plan includes members with exclusively DB or DC entitlements, but all have historically been classified as DB plan members for regulatory purposes.)
- Misclassifying members' entitlements makes it difficult to determine what financial, legislative, regulatory and administrative risks exist, and what measures might be adopted or enhanced to better manage such risks.
 - We believe that **better data facilitates stronger, evidence-based, decision-making in pension policy and regulatory development.**
 - While CAPSA members have launched efforts to enhance data collection and analysis, it is unclear what progress has been made on this front.
 - CLHIA continues to strongly encourage more useful purpose-based data-gathering actions by pension regulators, with enhanced stakeholder communication and regulatory reporting in this area.
11. Too often, plan administrators face narrowly prescribed administrative processes, such as on-line plan registration and amendment, contribution variance reporting, LIF/LIRA contract requirements, and search processes for missing plan members, former members and beneficiaries that vary between jurisdictions.
- Often, those differing requirements flow from specific legislative wording; in some cases, the requirements are entirely within the regulators' purview.
 - Plans with members in multiple jurisdictions face enhanced compliance difficulties where law and administrative practice vary.
 - Similar challenges exist for service providers who manage disparate compliance regimes.
 - While the eventual adoption of the Multilateral Agreement may assist somewhat in terms of plan level administration, member level compliance will continue to reflect requirements in each individual member's residence location.
 - Harmonization of such measures enhances compliance, reduces administrative costs, and removes an impediment to pension plan creation and preservation.

- **We encourage CAPSA members to work collectively to streamline processes, eliminate “distinctions without differences”, and to seek harmonization at a legislative and regulatory level as a significant red-tape reduction effort.** CLHIA and its members would willingly participate in identifying and eliminating such differential practices.

Canada’s life and health insurance companies welcome the opportunity to discuss these issues with you and your colleagues. We will be following up with the Secretariat to move responses to both Covid-19 crisis and the industry’s priority issues ahead as efficiently as possible. As always, should you have questions or concerns regarding any of these issues, you can contact me by telephone at 416-359-2021 or by email at rsanderson@clhia.ca.

Yours truly,

Ron Sanderson
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