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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

August 22, 2018

Department of Finance
James M. Flaherty Building
90 Elgin St.
Ottawa, ON
Via: FIN.Pensions-Pensions.FIN@canada.ca

To Whom It May Concern:

**Re: Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework**

We are providing ACPM's comments on the Consultation Paper that was released by the Ministry of Finance regarding an Unclaimed Pension Balances Framework.

The Association of Canadian Pension Management (ACPM) is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover more than 3 million plan members.

## GENERAL

We strongly support the expansion of the Bank of Canada's program for unclaimed balances to include the holding of unclaimed pension balances, provided the program is optional to plan administrators and that the plan administrator would clearly receive a full statutory discharge with respect to all amounts transferred. We think that interest should be paid in certain circumstances, and will provide comments on search methods, public disclosure and tax withholding.

Our Submission is focused on specific questions and the proposed approach raised in the Consultation Paper.

## Application to both Terminated and Ongoing Plans

The Consultation Paper proposes to amend the *Pension Benefits Standards Act, 1985* (the "**PBSA**") to make the Unclaimed Pension Balance Program available to terminated plans only and that consideration may be given to expanding the program to ongoing pension plans at a later date. ACPM agrees that this proposed approach would relieve the pressure of unclaimed pension balances for terminated plans where the need is greatest. We also appreciate that this approach would permit the Bank of Canada to establish procedures for unclaimed balances for terminated pension plans before expanding to ongoing pension plans.

That said, we submit that it would be useful for pension plan administrators of ongoing plans if they could also avail themselves of the Unclaimed Pension Balance Program should they wish to do so. We agree with the Consultation Paper's acknowledgment that ongoing plans may not be able to comply with requirements under the PBSA (such as sending annual statements) and the ITA (such as pensions commencing no later than the end of the calendar year in which the recipient reaches age 71) for unlocatable plan beneficiaries. Given changes in businesses such as mergers, sales of businesses, reorganizations, and name and location changes, plan beneficiaries may find it useful to have a permanent, government entity that is designated to hold unclaimed pension balances.

The Consultation Paper proposes that for <u>terminated</u> plans, after a termination report has been approved by the Superintendent of Financial Institutions (the "Superintendent"), a plan administrator could apply to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries after the plan administrator has undertaken what it considers to be sufficient time and effort searching for unlocatable beneficiaries. It is the view of ACPM that this approach should also apply to <u>ongoing</u> plans, i.e., administrators of ongoing plans should have the option of applying to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries after the plan administrator has undertaken what it considers to be sufficient time and effort searching for unlocatable beneficiaries.

**<u>Transfer to the Unclaimed Pension Balance Program Should be Optional</u>**

ACPM agrees with the proposed approach set out in the Consultation Paper that the transfer of unclaimed pension balances to the Unclaimed Pension Balance Program should be at the option of the plan administrator. Plan administrators may have particular insight or knowledge as to circumstances of unlocatable beneficiaries or their circumstances and would be in the best position to determine an appropriate time to apply to the Superintendent to transfer pension benefit credits of unlocatable beneficiaries.

**<u>Clear Statutory Discharge</u>**

The Consultation Paper indicates that "It is understood that terminated pension plans that transfer unclaimed pension balances to the designated entity would not retain any liability in respect of those balances under the PBSA." It is our view that plan administrators would be reluctant to utilize the Unclaimed Pension Balance Program for unclaimed pension balances without a clear statutory discharge. We strongly urge that the PBSA be amended accordingly.

A clear statutory discharge would also be consistent with the Consultation Paper's statement that a plan transferring an unclaimed pension balance would no longer retain any liabilities in respect of the transferred balances.

**Claiming Funds from the Designated Entity**

The Consultation Paper proposes that specified individuals be able to claim an unclaimed pension balance. ACPM agrees with the specified individuals set out in the Consultation Paper, but also proposes that spouses or former spouses of the unlocatable beneficiary be able to claim in respect of divorce, annulment, separation or breakdown of common-law partnership, subject to applicable provincial property law (as defined in the PBSA).

**Interest and Administration Fees**

We understand the trade-off that is proposed between not charging administration fees and paying interest. However, we are concerned that this is not equitable with respect to large balances. Instead, we would suggest similar to the two time periods for which amounts are held based on the size of the balance, there ought to be different treatment with respect to interest and fees based on the size of the balances.

**Search Methods**

With respect to the Consultation Paper's questions on page 11, we would like to provide the following answers:

1. We have found internet searches, telephone database searches and private investigator searches to be effective search methods. We have found letter forwarding and government agencies to be of limited utility. Finally, we have found newspaper advertisements generally to be of limited utility in reaching plan members and beneficiaries and extremely expensive.

2. We think that one year is an appropriate minimum time to search for a plan beneficiary prior to having the balance transferred to the designated entity.

**Disclosure of Information**

We would be concerned about the amount of information being disclosed, in particular the amount of the balances, unless there was a method to ensure that only someone who is authorized to receive that information, for example who has the social insurance number of the member, received that information.

**Tax Withholding**

We understand the simplicity of the tax withholding proposal but as the balances in issue represent retirement income, we believe, again for perhaps only balances of a specified size (*e.g.* above 20% of the YMPE in the year of transfer), that they should be eligible to be transferred to a tax deferred vehicle and therefore that no tax withholding should occur when the balances are transferred to the designated entity. It would be very detrimental for members with significant balances not to have their retirement income tax sheltered in accordance with the retirement savings rules. That being said, *Income Tax Act* rules place limitations on tax deferral beyond the end of the year an individual attains age 71.

For larger amounts, we recommend that the Bank of Canada establish two accounts for each individual, a tax-deferred account, and a non-tax-deferred account. Starting December 31st of the year in which the individual attains age 71 (or such later age required under the *Income Tax Act* for this purpose, Bank of Canada would transfer the minimum required withdrawal amount from the tax-deferred account to the non-tax-deferred account, and report to CRA the amount withdrawn from the tax-deferred account. This tax reporting should be another trigger for the individual to inquire about his / her pension accounts.

**Application to Provincially Regulated Pension Plans**

While not discussed in the Consultation Paper, ACPM strongly urges Finance Canada to work with provincial governments and pension regulators (e.g., through Finance Canada's participation in the Canadian Association of Pension Supervisory Authorities) to enable provincially registered pension plans across Canada the option of transferring unlocatable members' entitlements to the Bank of Canada. The issues identified in the Consultation Paper and the Submission would also apply generally to provincially regulated pension plans, particularly in provinces where there is currently no clear legal regime for the treatment of unlocatable pension beneficiaries. Therefore, the expansion of the Unclaimed Pension Balance Program would be of benefit broadly to Canadian pension plan beneficiaries and administrators.

Thank you for the opportunity and, if you would like to discuss this matter, please contact us at your earliest convenience.

Sincerely,

R Marrero

Ric Marrero
Chief Executive Officer
ACPM