MORNEAU SHEPELL

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Department of Finance Canada
FIN.Pensions-Pensions.FIN@canada.ca

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

Dear Sir or Madam,

Morneau Shepell is pleased to have the opportunity to comment on the Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework posted by the Department of Finance on June 22, 2018.

Morneau Shepell is a leading consultant and third-party administrator with many clients who sponsor and administer both defined benefit (DB) and defined contribution (DC) pension plans across Canada, including those under federal jurisdiction.

In addition, Morneau Shepell has an established insolvency and regulatory practice, dedicated to acting as appointed administrator of DB pension plans,. While a significant number of our appointments have been in Ontario, we have also acted as appointed administrator for federally regulated pension plans and pension plans registered in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Quebec. Over the past 20 years, we have successfully wound-up and distributed pension benefits for members in over 150 pension plans.

Based on our experience assisting clients with the administration of pension plans with unclaimed balances, as well as our experience as appointed administrator on pension plan terminations and wind-ups, we comment on the following specific aspects of the proposed framework.

**Support for the Proposed Framework**

In general, we are highly supportive of the proposed framework. Many pension plan administrators face significant difficulties dealing with unclaimed pension balances after taking all reasonable steps to locate the missing beneficiaries. These benefits can remain within a pension plan for many years while it becomes more and more unlikely that the benefits will ever be paid. Furthermore, the benefits may only be payable to beneficiaries or estates, making administration more complex and expensive.

These benefits become a particular problem in pension plan wind-ups and terminations, where they can prevent the pension plan from being fully wound down and all funds from being finally disbursed. The plan administrator may be forced to maintain contingencies for members that come forward at a late stage. It may also be forced to purchase costly annuities for individuals who are not locatable and who may not even be alive.

Taxation issues can also arise respecting unclaimed pension amounts. It can be difficult to transfer funds to a third party and maintain their status as pension benefits. Furthermore, in the face of missing information and missing members, it can be difficult to provide accurate tax reporting. We believe the proposed taxation regime for unclaimed balances would simplify these issues and make it much easier to administer unclaimed amounts.

**Concerns with the Proposed Framework**

Our main concerns with the proposed framework are as follows:

- Information on missing persons can be incomplete and/or inaccurate, including with respect to Social Insurance Numbers (SINs). The process should be flexible enough to accommodate these situations and allow for transfers of such amounts when information is incomplete or inaccurate. There should be the possibility for the administrator to provide any search-related information, pension plan files or other information in respect of the missing individuals to the Bank of Canada to assist in verifying pension entitlements, particularly when individual details are incomplete.
- We do not believe that there should be a mandatory time period required to search for a beneficiary. It is not clear when such a time period would begin to run; for example, on the date the individual terminated membership, on the date a pension plan is declared terminated, or the date searches commence? Furthermore, it is in the best interests of the pension plan and the individuals involved to pay the amounts out faster, preferably while the individual, a spouse or other beneficiary is still alive;
- The proposed transfer to the Bank of Canada would be of very limited scope in the Canadian pension context due to the limited number of federally regulated pension plans. The proposed taxation regime should be extended to provincially regulated pension plans when funds are paid to a provincial body under provincial unclaimed balances legislation. Furthermore, it should be extended to provincially regulated pension plans when funds are paid into court due to the lack of a provincially mandated regime.
- A pension plan administrator would be reluctant to transfer funds to the Bank of Canada without a clear statutory discharge, particularly given that pension plan texts for the most part will not address this issue. Pension plan administrators should receive a statutory discharge under the *Pension Benefits Standards Act, 1985*, for all funds paid to

the Bank of Canada under the unclaimed balance regime. This would be similar to the discharge available for pension buy-out annuities under provincial pension statutes in British Columbia, Ontario and Quebec;

- We also note that the taxation regime means that only a lump sum would be available if the individual with the entitlement is located. This goes against the nature of pension funds, which are meant to be payable for life. It also results in the involuntary loss of an individual's tax-deferral for retirement savings. We would propose the following additional options for lump sum payments, if payable to a pension plan member, spouse or former spouse:

    - Purchase of a life annuity meeting the requirements under the *Pension Benefits Standards Act, 1985* with more advantageous tax treatment than annuities purchased with non-tax deferred funds;

    - Transfer to a Tax Free Savings Account (TFSA) without using accumulated contribution room.

- Funds in an unclaimed balances account may raise difficulty with respect to marriage breakdowns and pension division. The legislation should provide that funds within the regime are still assignable in circumstances similar to those permitted under the *Pension Benefits Standards Act, 1985*;

- The legislation should specifically provide that any spousal rights or rights as named beneficiary under the pension plan are maintained after transfer to the Bank of Canada;

- Pension plan unclaimed balances may be relatively large, raising privacy concerns. We would recommend providing ranges of values rather than exact amounts payable to an individual.

**Conclusion**

We trust that the above comments will be useful in finalizing the proposed framework. Please feel free to contact myself at 416-407-9904 or azur@morneaushepell.com if you have any questions about our comments.

Sincerely,

Andrew Zur

Andrew Zur
Principal