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VIA EMAIL: capsa-acor@fsrao.ca

August 31, 2022

CAPSA Secretariat
25 Sheppard Avenue West, Box 21 - Suite 100
Toronto ON M2N 6S6

Dear Sirs and Mesdames:

Re: Canadian Association of Pension Supervisory Authorities Consultation on Guideline No.3 – Capital Accumulation Plans

Background

The [Portfolio Management Association of Canada](#) (**PMAC**) is pleased to have the opportunity to provide feedback on the Canadian Association of Pension Supervisory Authorities' (**CAPSA**) consultation with respect to Guideline No. 3 – Capital Accumulation Plans (**Guideline**). Capitalized terms used in this letter but not defined shall have the meanings given to them in the Guideline.

PMAC represents over [310 asset management firms](#) with more than \$2.9 trillion in assets under management. Members are all fiduciaries managing investments in the best interests of their clients, which include private individuals, foundations, universities and pension plans. As one of the largest and fastest-growing investment industry associations in Canada, PMAC operates coast-to-coast in English and French-language markets. PMAC employs a collaborative information-sharing business model and advocates on behalf of its members on securities regulation and government policy matters. PMAC's mission is to advocate for the highest standards of unbiased portfolio management in the interests of investors served by members.

Key Recommendations

- 1. Provide additional information on the policy reasons for the updates to the Guideline, clarification of certain changes, and harmonize terminology with securities legislation.**
- 2. Create a separate Guideline for the decumulation aspects with additional guidance.**
- 3. Continue or expand existing exemptions for pooled fund managers.**

General Comments

PMAC agrees that the 2004 version of the Guideline merits an update, and we support many of the proposed changes. For example, we support the inclusion of newer arrangements such as Tax-Free Savings Accounts (**TFSAs**) and Exchange-Traded Funds (**ETFs**), enhancements to policies and procedures, changes to enhance the governance framework for plans, the supervision of service providers, requiring consideration of conflicts of interest, focusing on member education and the use of plain language in member communications.

We have the following specific recommendations:

- 1. Provide additional information on the policy reasons for the updates to the Guideline, clarification of certain changes, and harmonize terminology with securities legislation**

Since the Guideline has not been updated in nearly 20 years, and given the extensive nature of the changes, it would have been preferable for CAPSA to provide stakeholders with a blacklined version showing the changes as well as information summarizing the changes, explaining the policy reasons for the updates, and the rationale for specific amendments. Without additional background or policy rationale for the changes, they are difficult to understand and interpret, which hinders and prolongs the consultation and comment process. In order to solicit higher quality and more informed feedback on the Guideline, CAPSA should re-publish the Guideline with an accompanying blackline and explanations for the proposed changes.

In the absence of additional context, PMAC found many of the amendments to be confusing, contradictory and the amendments would be improved by further refinement of the wording, including harmonization of terms with securities legislation and regulations. For example, with respect to the definition of "Investment Funds" in section 1.2.6, the term "potential returns" in section 2.2.1 and the term "fundholder" in section 6.2, all of which are discussed below in Appendix A. We believe that CAPSA should work with securities regulators in this regard. It would be advisable to strike an industry working group including representatives from CAP sponsors, the various regulators and other stakeholders to provide additional feedback before the amendments are finalized.

Some of our members have requested additional detail and context regarding the Guideline, and provided specific comments with respect to the items listed in **Appendix A**.

2. Create a separate Guideline for the decumulation aspects with additional guidance

The Guideline makes various references to “retirement income”¹, the decumulation phase and decumulation options.² Given the important differences between the accumulation and decumulation phases, we believe that it would be helpful for CAPSA to develop guidelines specific to decumulation and retirement for CAP plans with a primary purpose of providing income in retirement. This separate guideline should provide additional detail with respect to the investment selection process, options for members, default positions, implementation process and other best practices applicable to such plans. We believe that a stakeholder consultation on a decumulation guideline is warranted.

3. Continue or expand existing exemptions for pooled fund managers

Canadian Securities Administrator (**CSA**) jurisdictions other than Ontario, Quebec, Newfoundland and Labrador, the Yukon Territory or Nunavut adopted a blanket exemption from the dealer registration and prospectus requirements for certain trades in mutual fund securities that are in compliance with the Guideline. Many pooled fund managers rely on this exemption and/or have obtained exemptive relief in the above jurisdictions to obtain similar relief from these requirements. Collectively these are referred to herein as the “**CAP Exemptions**”.

We believe that the changes to the Guideline present an opportunity for regulators to consider whether the CAP Exemptions are still required and if so, whether broader blanket relief is possible to reduce the regulatory burden for asset managers to apply for the relief in various jurisdictions. Assuming the CAP Exemptions continue to be required, firms must be given the opportunity to review and seek to revise their existing relief or obtain new exemptive relief as necessary before the Guideline comes into effect. Consultation and coordination with the CSA on this issue is warranted.

¹ In sections 1; 1.2.2; 1.2.6; 2.1.1, 3; 3.1.1; 3.4; 4.1; 4.2; 4.3; 5.1; 5.3; 6.2; 7.1.1

² In sections 1; 3.1.1; 4.3; 7.1; 7.1.1;

Conclusion

PMAC would like to thank CAPSA once again for engaging in on-going consultation and assessment of the Guidelines and other CAPSA guidelines.

If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or by e-mail at kwalmsley@pmac.org.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

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Chair of PMAC's Industry, Regulation &
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APPENDIX A

PMAC members have the following comments on specific sections of the Guideline:

1. Introduction

It is not clear why the word “workplace” was inserted in the definition of a CAP and throughout the document. If this is meant to convey that the Guideline is applicable only to CAPs offered or established by certain entities, this should be defined. In the absence of a definition for “workplace CAP” it is not clear what other types of CAPS are referred to. Does the insertion of the word “workplace” impact the considerations for the decumulation phase of the plan? Is this the intent of the change or is there another reason?

The reference in the Introduction to registered defined contribution pension plans “DCPPs” and other workplace tax assisted investment or savings plans or programs that do not permit members to make investment decisions is confusing. Members note that this type of DCPP is not considered a CAP and therefore it is not clear why the Guideline refers to them.

2. Section 1.2.2 CAP Sponsors

The Guideline states in this section “The CAP sponsor is the entity that establishes the CAP and *is responsible for the choice of the investment options* offered to CAP members or has assumed such responsibility for an existing CAP.” This section is inaccurate with respect to DCPP plans, because the plan administrator may be responsible for the management of the fund and choice of investment options (as noted on p. 5 under the asterisk). Members suggest that the sentence “The following is a summary of CAP sponsors by common plan types” and the list of plans (including the asterisk regarding DCPP) be moved to the beginning of section 1.2.2 in order to clarify that a plan administrator is included in the phrase “plan sponsor” throughout the Guideline.

Members also question the inclusion of RESPs in the list because these are not retirement income focused, and may not be subject to the same obligations and communication requirements applicable to other types of plans, when their purpose is not to generate retirement income. Different duties of care may apply to plans established for the purpose of generating retirement income and plans designed for other purposes; including them in the Guideline is confusing.

3. Section 1.2.5 CAP Members

The Guideline refers to “individuals *who have assets in* an individual account” (emphasis added). There are situations in which an individual may have an account that does not hold assets, which may be a temporary situation, and the individual would remain a “CAP Member”. Therefore the reference to having assets in the account is confusing. Members suggest removing the reference to “assets” and simply refer to an individual with an account.

4. Section 1.2.6 Investment Funds

There is a concern with an Exchange Traded Fund being used as an example of a "mutual fund" in the definition of Investment Funds in section 1.2.6. An Exchange Traded Fund (ETF) is not usually considered to be a mutual fund. ETFs could be included as a type of investment fund. The section would read:

An "investment fund" means a mutual fund (for example, a redeemable fund), an exchange-traded fund (ETF), non-redeemable investment fund, segregated fund or similar pooled investment product made available to members under the CAP for the investment of their CAP assets or payment of retirement income.

5. Section 1.3.1 The CAP Sponsor

On page 7, in the paragraph setting out the CAP sponsor's responsibilities, subsection (iv) "selecting investment options and investment funds", the words "investment funds" are redundant given that investment funds may form part of the investment options. The section should simply refer to selecting investment options.

6. Sections 1.3.1, 3, 4.1 and 6.4 - The requirement to take the level of financial literacy of plan members into account

This is a new requirement compared to the 2004 Guideline. Other than in very general terms, CAP sponsors do not have the tools or ability to understand individual members' levels of financial literacy. They do not have an individual relationship with the member that would allow them to make a "suitability" determination. CAPs are member-driven and CAP Sponsors do not provide a recommendation. Additional guidance with respect to this expectation would be beneficial. As currently written, it is unclear how CAP sponsors could comply with this requirement. It would be preferable to maintain the focus on educating members about the CAP rather than on the financial literacy of members.

7. Section 2.1.1 Defining the Purpose of a CAP

Members find the sentence "It is crucial for CAP sponsors to have a clear sense of the plan's purpose for decision-making, to assist in prioritizing decisions with the greatest impact on outcomes" to be confusing. It is not clear what the relationship is between the purpose of the CAP and prioritizing decisions that have the greatest impact on outcomes. The CAP sponsor is subject to a fiduciary duty that guides decision-making within the plan. While decision making is performed with a view to the purpose of the plan, it will not necessarily prioritize the "greatest impact on outcomes". This is a subjective concept. Members suggest that this sentence be revised to clarify what is intended, or that the sentence be deleted.

8. Section 2.1.2 Setting up a Governance Framework

Members agree with the proposed inclusion of a governance framework in the Guideline and believe this is an important element for CAPs. However, members believe that the Guideline should clarify that the elements of the framework may vary depending on the type of plan. For example, the elements required for a DCP may

be more extensive than those for an RESP. There would be an added cost and administrative burden for establishing a governance framework for different vehicles.

9. Section 2.1.5 Selection of Service Providers

Members believe that “registration or licencing” should be added as a factor to consider, given that most investment professionals are required to be licenced in their jurisdiction. Members believe it is fundamental for investors (including institutional investors) to know and understand the registration status of the asset managers they are dealing with. Members therefore suggest adding a factor to include “regulatory registration and/or licence or exemption(s) therefrom”, to the list.

Members suggest that subsection (viii), “quality, level and continuity of services offered” be expanded to specifically include business continuity and cyber security.

10. Sections 2.1.5, 2.2.1, 2.2.4, 6.2, and 6.4 - the requirement to consider whether fees achieve “tangible” benefits

Without additional information, members do not understand the rationale for the change and question the use of the word “tangible” of the Guideline, which is a vague reference to quantifiable and measurable benefits. Members suggest that for each use of the term, the section simply indicate what is being referenced or provide an example (such as the impact of the fees in relation to the services provided, the net return, etc.).

11. Section 2.2.1 Selecting Investment Options

Members question the term “potential returns” in subsection (iii). Members suggest that “risk return profile associated with the investment options” would better capture the concept.

With respect to monitoring, the reference to “ongoing performance” in the following paragraph suggests that only performance should be monitored. Members suggest that the sentence be changed to “The CAP sponsor is responsible for monitoring each investment option in the plan and reviewing the appropriateness of the investment option line-up, including the default investment.”

The previous version of the Guideline included the sentence “The CAP sponsor should ensure a range of investment options is made available taking into consideration the purpose of the CAP”. Members believe that this sentence should not be deleted, although the word “appropriate” could be added (“an appropriate range of investment options”). Adding this sentence back into the Guideline ahead of the sentence “In determining the investment option line-up design, the CAP sponsor should consider that a large number of investment options will impose a greater governance burden on the CAP sponsor in their oversight of these options and may make member decision making more complex” will provide a more balanced perspective and will not discourage CAP sponsors from using the appropriate number of investment options for the particular plan, in keeping with their fiduciary responsibilities.

A section including factors to consider in determining the number of investment options to include could be added to assist CAP sponsors with this decision.

12. Section 2.2.2 Selecting Investment Funds

It is not clear why the historical performance has been included in this section under subsection (i) but not in section 2.2.1. Members note that historical performance may be relevant to investment options other than investment funds. Historical performance could be included in subsection 2.2.1 (iii) together with the risk and potential returns.

13. Section 2.2.3 Transfers Among Investment Options

The previous version of the Guideline included a sentence regarding the factors to consider when determining how often CAP members can make transfers among investment options (the purpose of the CAP, the liquidity of investment options, the number of options that are available, and the risks associated with the investment options). It is not clear why this sentence was deleted. This sentence provided useful information, and members believe it would be helpful to keep it in the Guideline.

14. Section 2.2.4 Policy Regarding Failure to Make Investment Choice

One of the factors to be considered in this section is “the level of risk associated with the default option”. Members suggest that this section should be consistent with Section 2.2.1, which refers to “risk and potential returns associated with the investment options”. (or, as suggested above regarding section 2.2.1, the “risk return profile”) Therefore a reference to potential returns or risk return profile should be added to section 2.2.4.

With respect to the last sentence, “A CAP sponsor should consider a default option that could be suitable as the core of a member’s investments, not just in the context of an absence of member choice,” it would be helpful if examples could be provided, because this sentence has the potential to conflict with the previous sentence regarding the purpose of the CAP. For example, depending on the purpose of a CAP, in certain cases an option providing capital preservation may be an appropriate default investment option compared to an investment that fluctuates daily.

15. Section 2.3 Maintenance and Retention of Records

Members agree that CAP sponsors should consider the controls necessary to protect the members’ personal data. Members recommend adding that these controls should be implemented and reviewed on a periodic basis to ensure that they are responsive to cyber security developments.

16. Section 3.2 Investment Options

It would be helpful if a timing expectation were included with respect to the information to be provided to members – i.e. when this information should be provided and how frequently it should be updated.

17. Section 3.2.1 Investment Funds

In subsection (i), it is not clear whether “names of all investment fund managers responsible for the day-to-day management of the fund assets” refers to the names of the managers available on the platform, or the names of underlying managers in a fund-of-fund structures, or both.

18. Section 3.4 Description of Fees and Expenses

In terms of the types of fees to be disclosed, the list in this section does not include fees for professional advice – this should be added to the list of fees to be disclosed to members if total cost reporting is the goal.

Members agree that information regarding fees and expenses should be provided in plan language. The fee information should be coupled with information on performance in order to contextualize the information. Fees associated with investing (such as investment fund Management Expense Ratios (**MERs**)) should not be confused with the costs of plan administration, although both should be provided in a manner that is easy for members to understand.

19. Section 4.2 Investment Information

With respect to subsection (iv) the impact of expected returns and fees on projected retirement income, it is not feasible to project retirement income for each investment option. The information could be provided more generally.

20. Section 4.3 Decision-making Tools

Members agree that the suggested decision-making tools can be helpful to members. However, these may be costly to develop, and may not be useful to the member, if they do not have the background to understand them. There is a risk that overloading members with information will cause “decision fatigue”.

Members are also concerned that including subsection (v) regarding decumulation will be difficult to implement without additional advisory support to the member, which results in higher burden and costs.

21. Section 4.4 Investment and Financial Planning Advice

As noted above under section 2.1.5, members believe being “appropriately qualified” includes being registered with the provincial securities commissions or regulatory authorities, or meeting other registration and licencing requirements including reliance on certain exemptions from registration. The concept of appropriate registration or licencing should be included in this section.

22. Section 4.4.1 Selecting Service Providers to Provide Investment or Financial Planning Advice

Members believe that a materiality threshold should be added to subsection (ii) regarding conflicts of interest. This would be consistent with the conflicts disclosure

requirements under NI 31-103 (Client Focused Reforms). It would also be helpful if examples of material conflicts of interest were provided.

23. Section 5 Ongoing Communication to CAP Members

With respect to the last sentence, the provision of information should be subject to a reasonableness standard. There is information that members may request that is difficult, costly, or impossible for the CAP sponsor to obtain (for example, the CAP sponsor or administrator may not have access to information regarding the underlying fund holdings in certain funds).

24. Section 5.1 Member statements

Members are concerned that the amount of information to be provided in the statement would be overwhelming to the member and could result in "information fatigue". It is clear from behavioural research that investors struggle to understand the information that is provided to them in lengthy and complicated statements. In general, information should be presented in a simple format, in plain language and should be limited to what is relevant to the specific member.

For example, with respect to subsections (i) and (v), it would be overly burdensome and not useful to members to provide information on all investment options available to the member. It would be more sensible to provide information regarding the specific holdings in the individual's account.

With respect to subsection (viii), it is not clear how the fees and expenses should be reported. Costs such as the pension administration and custody costs are often reported within the total fee. It is also not clear how the embedded costs of investment funds are to be reported and what the statement should include if this information is not available.

25. Section 5.2.2 Report on Material Changes

It would be helpful for the Guideline to provide a suggested timeline for the provision of the notice, or to include a "reasonableness" threshold for the timely delivery of information. This will help in providing a level playing field and consistent disclosure across plans and providers.

26. Section 6.2 Reviewing Fees and Expenses

Members agree that the CAP sponsor should attempt to obtain and periodically review detailed fee and expense information. However, there is a lack of consistency between providers as to how fees are reported. For example, insurance providers typically bundle the fees, and there is a lack of transparency. The CAP sponsor does not have any control over these fee disclosure practices.

It is not clear what is meant by the term "fundholder" in subsection (ii). This term is not defined in the Guideline. Is this referring to the asset manager (investment fund manager)? This should be clarified. The same comment applies to Section 7.1.1 (vi).

27. Section 6.6 Reviewing Maintenance of Records

It would be helpful for the Guideline to recommend a timeframe for the retention of records. This would assist CAP sponsors who are relying on service providers to indicate the necessary record retention period. Guidance on handling abandoned accounts and/or unclaimed property would also be welcome.

28. Section 7.2.1 Communicating the Termination of a Plan to CAP Members

Members believe that the sentence "It is important to note that the CAP sponsor's responsibility for administering and overseeing the CAP plan continues for as long as any individual member account assets are held within the CAP" should be moved from this section to the beginning of section 7.2 Terminating a CAP.