Unifor Response to the Consultation on Strengthening Federally Regulated Pension Plans

Submitted to the Department of Finance

January 2021

UNIFOR
theUnion | lesyndicat

Tel/Tél : 416-497-4110
Toll-free/Sans frais: 1-800-268-5763
Fax/Téléc : 416-495-6552

Introductory Comments

Unifor is pleased to offer the following comments to the Department of Finance in response to the consultations on potential solvency funding relief options for 2021 and further measures to strengthen the framework for federally regulated pension plans as set out in the consultation paper, **Consultation on Strengthening Federally Regulated Pension Plans.**

Unifor formed as the result of the merger in 2013 between the Communications, Energy and Paperworkers union and the Canadian Auto Workers union. Unifor is presently the largest union in the private sector with 315,000 members across Canada. Unifor currently represents some 66,000 workers in federally regulated sectors including energy, transportation, media, telecommunications, and financial services. Our members and retirees participate in many of the 1,200 federally regulated defined benefit (DB) pension plans, which together hold over $215.5 billion in assets and are the topic of this consultation.

Unifor joins with the current federal Government in a shared commitment to helping working Canadians achieve a secure and dignified retirement by improving Canada's retirement income system. One part of that commitment is expressed in the enhancement of the Canada Pension Plan and Guaranteed Income Supplement, as well as the proposed increase to the Old Age Security program. Another part of that commitment is promoting benefit security for plan members and retirees in federally regulated pension plans.

We appreciate that the Office of the Superintendent of Financial Institutions (OSFI) is the responsible authority for pension regulation for the federal jurisdiction; and regulates some ten percent (10%) of workplace registered pension plans (RPP) in Canada.

Unifor negotiates on behalf of members employed by numerous corporations large and small that sponsor single-employer pension plans (SEPP) plans in the federal jurisdiction. Unifor negotiates such pension plans as sponsored by Air Canada, Bell Canada, Brinks Canada Limited, Canadian Air Transport Security Authority, Canadian National Railway, Canadian Pacific Railway, Enbridge Energy, Fedex, Greater Toronto Airport Authority, NAV Canada, Purolator Inc., St. Lawrence Seaway, SaskTel, Sunwing Airlines, Telus and Via Rail Canada, among the major plans.

More typically in the inter-provincial transportation sector, Unifor members including members employed by DHL Express (Canada) Ltd. and Loomis Express participate in multi-employer pension plans (MEPPs). Unifor specifically represents a significant number - more than 16,000 members - in the air transportation sector, including pilots, customer service representatives, aircraft groomers, catering staff and air traffic controllers, to name only a few occupations and classifications that we will specifically speak on behalf of later in our response.

Our Union welcomes the efforts of the Federal government in continuing to promote innovative solutions to the various challenges of enhancing retirement income security – the most critical challenge for our workplace-based retirement income system. We are especially encouraged by the efforts to strengthen the protection of pension benefits in the event of employer and/or pension plan insolvency. Unifor members in various workplaces such as Massey Ferguson, Nortel, Northstar Aerospace and Sears have experienced the inadequacy of corporate governance laws, insolvency laws, and pension regulations at protecting pension benefits. More directly, many of our members and retired workers have lost wages and post-retirement benefits in employer insolvencies.

Unifor's call for a coordinated pubic response to the COVID-19 pandemic set out in the Map for a Fair, Inclusive and Resilient Economic Recovery[1] speaks to retirement security as one of the seven recommendations to improve the Canadian income security system more generally in responding to the current pandemic. Our Union notably has called for a critical and judicious approach to public support to corporations - workers and retirees must not be cut off from the benefits of the investments the government may make in individual firms or entire industries. Workers and retirees must be accepted as genuine partners as government acts to return numerous industries back to financial health. Workers and retirees deserve equal recognition and reward for our efforts and sacrifice during the pandemic and beyond.

Our position on public policy needs, including worker support measures relevant to the federal jurisdiction, as last updated on June 11, 2020 with particular consideration of those policy demands not yet implemented or addressed by government is set out elsewhere[2]. The following are our specific responses to many of the various questions posed in the consultation document in consideration of potential solvency funding relief options for 2021 and further measures to strengthen the framework for federally regulated pension plans:

A - Impacts of COVID-19 on Federally Regulated Pension Plans

1. What are your views on the potential challenges that could be facing federally regulated DB plans in 2021?

It is our understanding based on the most recent Mercer Pension Health Index that Canadian defined benefit (DB) pension plans ended the year 2020 as well funded as they began the start of the year - in large measure due to the strong equity rally in the last quarters of the year. Likewise, according to the Aon Pension Risk Tracker, the aggregate funded ratio for Canadian pension plans in the S&P/TSX Composite index during 2020 also increased slightly, from 90.8% to 91.2%.

That is not to suggest that there are not lingering concerns as major risks remain given the continuing and disparate economic damage caused by the COVID-19 pandemic. We know that employment in federally regulated sectors remains critically vulnerable to the pace at which vaccination campaigns roll out and the pandemic subsides as well as the lingering consequential and significant increase in debt levels in the face of persistently low interest rates.

We also know that workers and their families have been especially hard hit - experiencing a profound disruption in their lives resulting from the COVID-19 pandemic, with many facing continuing job loss and ever-greater financial uncertainty and insecurity. And often the most vulnerable and at-risk workers prior to the pandemic – whose work became otherwise even more essential during the pandemic – face only continuing, if not escalating uncertainty and insecurity in the months ahead.

In addressing the specific and disparate impacts of the pandemic, Unifor is advocating for a **National Aviation Recovery Strategy.** The strategy focuses on an aviation industry-specific corporate support package that ensures benefits flow through to workers, as well as specific government support programs for furloughed employees until the industry recovers. The

[1] https://buildbackbetter.unifor.org/

[2] https://www.unifor.org/en/federal-policy-demands-revised.

strategy also calls for continued training for pilots and NAV Canada employees to ensure their skills are maintained and current when travel resumes.

> *Financial support for the industry must also be contingent on the industry's social responsibility toward its workers, striving for employment protection and healthy employment conditions. These commitments must be concrete, binding, and enforceable, with support withdrawal and sanctions, as necessary. Government support for aviation employees will also be critical as current programs such as the Canada Emergency Wage Subsidy (CEWS) and the Canada Emergency Response Benefit (CERB) are due to be wound down well before the recovery period for aviation will be underway.*
>
> *…*
>
> *Immediate actions that can be taken by the Government of Canada to support employees in the aviation industry should include, but must not be limited to implementing an improved CEWS for furloughed workers with strong income protection; ensuring the continuation of CEWS and the 75% replacement rate and the CRB well into the sector's economic recovery and taking over the financial cost of workplace benefits to remove the burden from employers and employees who currently must cover it.*

The pandemic's duration and the consequential necessary public health measures across federally regulated sectors could result in increased risk of 'pension scarring' – of sustained injury to the accrual of credited and/or contributory service in registered pension plans.

Workers could ultimately experience the economic devastation of the pandemic many decades later in the form of delayed retirement dates or reduced retirement income. We strongly encourage continuing direct consultation with workers and their representatives in federally regulated sectors by the Department and OSFI on policy approaches to ensure that periods of service lost and/or contributions missed during the layoffs and furloughs resulting from the pandemic are capable of recapture.

2. Should further temporary relief options be considered? What principles or criteria should guide the consideration of the relief measures?

It is our understanding that the two major interim relief measures - a temporary freeze on portability transfers and annuity purchases relating to defined benefit provisions of pension plans, and the moratorium applying to certain solvency special payments have now ended.

In our view, access to solvency relief should always be transient - based on demonstrated need; permissive and subject to the consent of members and retirees. We note the significance of the negotiations that occur between unions and employers over solvency relief. In the current business environment where global firms demand much of bargaining units in exchange for investing in workplaces, negotiations over solvency funding can play a role in supporting jobs and protecting communities from employers terminating facilities. In situations, however where the minimum required employer contributions declines without negotiation, there remain no guarantees that corporations will re-invest the resulting savings in their Canadian facilities.

The recent insolvency of Sears provides an important context for the discussion of pension funding reform. Unifor members and retirees as participants in the Sears pension plan were adversely impacted by the wind-up of the pension plan and the CCAA proceedings. In our experience as bargaining agent, we have observed that regardless of their financial situation,

employers are reluctant to make more than the minimum required contributions to any workplace pension plans they sponsor.

In the case of Sears, the employer paid hundreds of millions of dollars in dividends and share buybacks while taking advantage of available temporary solvency relief measures. In our view, there should be express provisions in statute to prevent this type of mistreatment of the beneficiaries of workplace pension plans. Unifor would recommend that the Superintendent should have the authority and power to prohibit share buybacks and dividends should the pension plan obtain any temporary funding relief.

As well, pension regulation should expand to focus on the real risks facing pension plans: the risks facing the industry and the specific solvency risk of the employer. For an employer at risk of insolvency, funding only their current service cost; going concern deficit, and any applicable PfAD over ten years, while only funding 85% of the solvency deficit as required in some jurisdictions is simply not acceptable to plan members and beneficiaries. If in the opinion of the regulator, the pension plan faces significant risk due to employer insolvency or is being mistreated by the plan sponsor, the regulator should be empowered to obligate the employer fund the full solvency/wind-up deficit within five years.

3. If further relief measures are viewed as necessary, which potential temporary measures are best suited to address the challenges facing federally regulated DB plans?

We support continuing to provide temporary needs-based solvency funding relief while continuing to provide sufficient safeguards for pension plan members and beneficiaries. The lessons from the financial crisis in 2009 are instructive, especially the enactment of the Solvency Funding Relief Regulations which expired in November 2019. The Regulations allowed employers to extend the amortization of solvency deficiencies from five years to ten, but also required the consent of plan members.

As necessary, the Superintendent has also granted one-time funding relief measures to insolvent employers such as Canadian Press (2009) and Air Canada during its CCAA restructuring (2003-2004) in the context of the Distressed Pension Plan Workout Scheme. The Scheme also serves as a unique statutory mechanism to allow an employer who sponsors a federally regulated 'active' pension plan with breathing room in which to negotiate and restructure potentially crippling pension solvency obligations.

If there is clear evidence that solvency funding obligations are indeed onerous and potential fatal to a company and therefore threatening the viability and solvency of the pension plan, on a case-by-case basis, there may be merit in reviewing the extension of the previous Solvency Funding Relief Regulations. The review would assess the rationale of providing for a limited extension of existing or new amortization schedules as at January 1, 2020 and thereafter of any statutory solvency special payments that the employer is obligated to make to in order to fund deficits that have developed in the pension plan. The review would also consider whether there is sufficiently broad need for such temporary relief in light of the rebound in asset markets since March 2020 and the continuing access to the Distressed Workout Scheme.

4. Is there one particular relief measure that is preferable, or should consideration be given to providing a suite of measures that plan sponsors could choose from?

There have been several permanent solvency relief approaches adopted by various Canadian jurisdictions to address those obligations including stabilization reserve accounts or provisions for adverse deviation (PfAD) on a going concern actuarial basis. We recognize that there is a delicate regulatory and stakeholder balance between benefit security and solvency reform measures.

Recent reforms in various jurisdictions propose to or have already eliminated current solvency funding rules in favour of enhanced going concern funding. In Quebec, Bill 57 provided for a stabilization fund to enhance the going concern obligation while replacing the existing solvency funding regime. In Alberta and British Columbia solvency reserve accounts were created while Ontario or Nova Scotia now generally require solvency funding only if plans are below 85% but also require a funding cushion in the form of a PfAD from which MEPP and JSPP plans are exempt.

We are mindful of the approach suggested a decade ago by the Ontario Expert Commission, in regards to a permanent solvency exemption sought by MEPP plans in Ontario at that time, in recognizing a tangible quid pro quo:

> *However, to make a general point: if MEPPs are to be given a standing exemption from solvency funding, as they request and I propose below, they must be willing to do two things. First, they must acknowledge that they are accepting greater risks by abandoning solvency funding and ensure that their members are well aware of this fact. Second, they must initiate reforms in their governance arrangements that will ensure greater transparency in risk management, greater accountability by plan administrators, and greater influence by beneficiaries over decisions being made on their behalf in this new, riskier atmosphere*

It would be challenging to demonstrate that the statutory framework is complete for MEPPs in Ontario in view of this suggested quid pro quo. Arguably little has been achieved obligating MEPP plans to subsequently hold up their end of this bargain in respect of transparency and accountability, let alone a more fulsome engagement with plan members and beneficiaries. Even at that time it was recognized by the Commission that the question of whether to exempt MEPP plans from solvency funding rules was not a binary choice between yes or no, but rather 'who' should enjoy such exemption:

> *While the details are negotiable, the basic concept is surely right: the obligation to provide solvency funding should be relaxed only for MEPPs whose design and other institutional features justify such relaxation.*

This basic concept of 'merit' commends a regulatory assessment of the sponsorship and governance approach of any pension plan, as well as the contributory regime, benefit formula design and the scale and scope of participating employers. The assessment must also assess the awareness of assumed risk – and especially in terms of the prospect of under-funding and of plan sponsor failure.

We would underscore the OECD Guidelines on Funding and Benefit Security in Occupational Pension Plans embrace of a three-fold approach emphasizing prudent pre-funding; enhanced creditor rights and an insolvency or pension guarantee scheme as central to benefit security in occupational or workplace pension plans:

> *Occupational defined benefit pension plans should in general be funded through the establishment of a pension fund or through an insurance arrangement (or a combination of these mechanisms). Additional protection may be provided through the recognition of creditor rights to the pension fund or the plan members and beneficiaries and, in some cases, through insolvency guaranty schemes that protect pension benefits in the case of insolvency of the plan sponsor or the pension fund.*

Our union has called for any greater risk being assumed by plan members in relaxed solvency funding rules to be 'insured' - in relation to the increased risk of plan failures or insolvency and particularly when solvency funding relief was offered and a potentially greater solvency deficiency created. Providing such insurance in the first instance (and increasing the PBGF maximum limit in Ontario) offers the most practical relief from the risk of insolvency when plan are in deficits and serves to socialize the risks to realizing the pension benefit promised.

We insist on ensuring disclosure obligations for participating members, retirees and trade unions; and consent mechanisms to allow for those directly affected to assess and determine their willingness and consent to assume such greater risks. We insist on demonstrated need - conditional or case-by-case approval - rather than sweeping uniform or permanent solvency funding relief that would allow the most negligent employers access to opportunities to further under-fund the pension plan.

Unifor has and will continue to support employer requests for solvency relief in situations where it can play a role in supporting jobs and protecting communities. However, any absence of consent requirements will eliminate the ability of unions as bargaining agents to play an equal role in determining if the funding relief is appropriate in the specific circumstances at hand. If solvency funding rules are permanently relaxed and consent provisions are removed, there is simply no guarantee that corporations will re-invest in facilities; an important point our union has made in earlier submissions to other jurisdictions considering reforms to solvency funding.

The assumption that a quid pro quo will automatically result from changes to existing rules without maintaining existing checks and balances is also imprudent, and it exposes plan members and retirees to undue risk. It is particularly important to disclose the stark consequences of relaxing solvency funding rules, unlike in Ontario, where there is no insurance program that protects pension plan members and retirees in the event of employer insolvency.

To propose that the federal jurisdiction follow Ontario and reduce solvency funding targets without such an insurance program is to expose workers in federaly regulated sectors to significant risk without providing the similar level of protection offered by the Ontario government through the Pension Benefits Guarantee Fund (PBGF). In this context, permanent relaxation of solvency funding rules will unlikely increase coverage in workplace pension plans but will have the tragic consequence of reducing benefit security for retirees and plan members.

Unifor would support a funding regime where access to the existing temporary solvency relief options becomes permanent but remains needs-based, consensual and contingent, much in the same nature as the existing Distressed Pension Plan Workout Scheme contemplates.

5. For the one-time extension of the solvency amortization period (i.e. for 2021 plan year only), should consent from plan beneficiaries be required? Are there other conditions or requirements that should be considered?

As we have discussed in relation to other questions posed, any measures to provide solvency funding relief must provide at a minimum:

- A restriction on dividends or share repurchases;
- Limits to increases in executive compensation, including bonuses and stock options;
- A limit on pension plan benefit improvements (that are not otherwise fully funded); and/or
- A commitment by the employer or employers to negotiate with plan parties changes to the pension plan (e.g., contribution rates, ancillary benefits, and benefit calculations on a go-forward basis).

In addition disclosure and consent of plan beneficiaries must also be required as well as a demonstrated need for relief from solvency funding obligations as critical to the viability and continuing existence of the plan sponsor.

6. Should the qualified issuer determine the letter of credit limit, or should the limit be set by the special regulations? If the letter of credit limit is set by the special regulations, what are your views on an appropriate limit?

We accept that the letter of credit limit of up to 15 per cent of plan liabilities and other stipulations and conditions around reliance on a letter(s) of credit ought to continue to be a statutory and regulatory matter. We are not aware of any evidence that supports a compelling basis for change to the letter of credit limit as set out in the Regulations and presume that the current level is an appropriate balancing of interests.

7. What are some alternative valuation methodologies that could be considered to mitigate the volatility in solvency funding contribution requirements? Which ones could be most effective at providing relief while maintaining adequate funding to protect benefits?

We would note that one of the potential challenges (as much as it is an obvious opportunity as well) that could face federally regulated DB plans in the private sector is plan merger and asset transfers. We are aware of recent circumstances in which plan members of federally regulated private sector single employer DB plans have overwhelmingly approved merger with and/or a transfer of asset to DB plans registered in other jurisdictions.

Specifically, we note that Unifor members at both Greater Airport Authority of Toronto[3] as well as Brinks Canada[4] have voted overwhelmingly to move from their single-employer sponsored registered pension plan to CAAT DBplus. Any effective response to the emerging challenges of solvency funding includes innovation in plan design and both facilitating and realizing

[3] https://www.unifor.org/en/whats-new/news/unifor-members-gtaa-convert-dc-pension-plan-db

[4] https://www.newswire.ca/news-releases/brink-s-canada-looks-to-dbplus-for-a-sustainable-pension-solution-805846318.html

opportunities for consolidation in plan types as bringing more enduring enhancement in benefit security.

B - Plan Governance and Administration

1) What are your views on requiring plan member and retiree representation for all federally regulated pension plan Board of Trustees, for both single- and multi-employer pension plans?

We start from the proposition that the plan administrator is the person or body legally responsible for administering the pension plan and its fund, as specified by section 7 of the PBSA. The administrator of a plan registered under the PBSA therefore should be defined in the plan text, and where the administrator is expressly the employer as plan sponsor, rather than a Board of Trustees, a Pension Committee, or another governing body, there would be no requirement compelling representation for plan members and retirees.

We would recommend though that wherever plan administration responsibilities are delegated by a single employer (as plan sponsor) to another governing body such as a board of trustees or pension committee, that the delegation be express, conveyed in writing and clearly set out the requisite roles and responsibilities retained by the plan or delegated to the plan administration. This is especially critical if any statutory or regulatory authority or obligation is also transmitted by way of the governance arrangement from the plan sponsor to the plan administration, as in the case of the obligation to file an actuarial valuation report being transmitted from the sponsoring employer to the board of trustees, in their capacity as a pension committee.

In the case of any multi-employer plan, we would presume the creation of such plans would necessitate consideration of the representation of employers, and should require comparable representation for plan members and retirees consistent with or collateral to any funding risks they assumed. To the extent that there is no delegation of statutory or regulatory authority or obligation, we accept that the representation is limited to an advisory capacity and merely serves as a communication process with the aim of greater engagement, transparency and accountability to plan members, retirees and other stakeholders.

If a Board of Trustees is established (rather than merely a pension advisory committee), without regard for whether the plan is a single- or multi-employer pension plan, we support a requirement that plan members and retirees be ensured representation on the board.

2) What other approaches could be considered to increase plan member and retiree representation in plan governance?

Other jurisdictions such as Ontario offer examples of other approaches such as pension advisory committees[5] that seek to instill or enhance plan member representation in plan governance. The Quebec pension committee model[6] is also worth examining, as the regulations specifically

---

[5] https://www.fsco.gov.on.ca/en/pensions/pension-plan-guide/pages/HRPPW-Roles-of-the-Pension-Plan-Administrator-and-Pension-Plan-Advisory-Committee.html

[6] https://www.rrq.gouv.qc.ca/en/administrateur/gouvernance_regime/composition_comite/Pages/defaut.aspx

require seats for plan member and retiree representatives on the pension committee with the representatives determined by a vote held at an annual meeting.

There is of course a significant difference between the pension committees in either province. In Quebec the committee is actually the pension plan administrator:

> "*The members of a pension committee work together to ensure the management of the pension fund and the day-to-day administration of the pension plan. Like all groups that make collective decisions, operating and governance rules are necessary for the affairs of a pension committee to run smoothly*."[7]

Both types of committees require representation from retirees and active members, but the Quebec committee is designated by the Act and plan text to run the plan as the administrator. In Ontario a pension advisory committee is only advisory only and does not act as the administrator.

> *"An advisory committee is a formal structure for representatives of pension plan members, former members and retired members to meet and discuss pension plan administration and matters of interest to plan beneficiaries. It may make recommendations about the pension plan and pension fund administration to the pension plan administrator. It also promotes awareness and understanding of the pension plan to members and plan beneficiaries."*[8]

The role of these pension advisory committees includes monitoring the pension plan, making recommendations on plan administration, and promoting awareness and understanding of the plan. Though the plan administrator is not required to accept such recommendations, a commitment to good governance practices would at least require a fair review and consideration of those proposals.

There is also to our knowledge also an established practice among large single employer pension plans in the federally regulated private sector of providing for such pension advisory committees, including across the rail sector and further consultation with plan members and their representatives would be desirable in advancing measures to ensure greater representation.

3) Would it be appropriate to require all federally regulated pension plans to establish a governance policy with the minimum prescribed content? If yes, should the prescribed content align with the CAPSA Governance Guideline?

We support the requirement that all federally regulated pension plans establish a governance policy (either initially at plan registration or within a prescribed time if the plan is presently in operation). That policy should be disclosed to plan members and beneficiaries and provided to the Superintendent of Financial Institutions on request for approval. Requiring approval would permit the Superintendent to exercise the necessary discretion and latitude in respect of the prescribed content.

It is our view that the existing CAPSA Governance Guideline is little more than a checklist or framework and provides very little substantive content towards operationalizing the

[7] https://www.retraitequebec.gouv.qc.ca/en/publications/nos-programmes/rcr/numeriques/bien-administrer-regime-retraite/Pages/index.aspx
[8] https://www.fsco.gov.on.ca/en/pensions/Pages/advisory-committees.aspx

governance principles it sets out. We certainly appreciate the need for a broad and flexible approach to prescribing minimum content for a governance policy given the certainly considerable diversity in the types and size of pension plans across the federally regulated private sector.

We commend a substantive prescriptive approach that addresses the various parties, roles and responsibilities, based on the plan type and governance structure. As a minimum requirement, every plan administrator ought to ensure the preparation and review of the code of conduct, conflicts of interest policy and governance framework at regular intervals.

If third-party service providers are engaged to provide plan administration services or investment management, auditing and/or actuarial services, there must be a formal service agreement in place clearly defining responsibilities and regular review of compliance with the terms of the service agreement. All plan administrators need to ensure performance monitoring over such service providers in any delegated functions related to the administration of the plan, including wherever necessary in objectively monitoring performance, to engage independent third parties to provide such assessment.

4) To encourage a strategic and transparent approach to funding, should single-employer and non-NC multi-employer DB plans be required to establish and maintain a funding policy?

We accept that there ought to be a requirement to formulate a funding policy for the vast majority of federally regulated pension plans; including single-employer DB and (non-Negotiated Contribution) multi-employer DB plans. The general presumption would be that plans would need at a minimum to adopt a funding policy, with an exemption for those obvious circumstances such as a single-member plan (Individual Pension Plan or IPP) where a funding policy is of little relevance.

The more relevant policy choices are where to set the minimum threshold metric – and whether to measure in plan assets or membership. Ought a small single-employer DB pension plan in the federally regulated private sector be relieved of the funding policy obligation if plan assets are less than $10 million or 25 active plan members or 100 members and beneficiaries?

Given the dearth of 'small' single-employer or multi-employer DB plans more generally in the federally regulated private sector, the issue is simply whether there is a reasonable basis for a 'cut-off' or threshold. Below what level of plan assets or membership is there no longer any policy value in ensuring that plan administrators as a regulatory requirement have taken into account '*a broad set of considerations and external factors, such as funding objectives, plan sponsor sustainability and capital market movements, in order to better understand and manage risks that would affect benefit security*' as stated in the consultation document.

We agree that developing a funding policy is itself a useful exercise that can help pension plans shift from measuring success based on investment returns and the plan's current funded ratio, to ensuring plan sustainability over a long time horizon. A funding policy ought in any event to be a minimum mandatory pre-condition for reliance on a solvency funding reserve account, and a key minimum prescribed content including plan member and beneficiary engagement of any required governance policy.

5) In light of the growing international focus on ESG factors in investing, what would be an appropriate approach to encourage pension plans to consider ESG factors?

We support all efforts by the OSFI and the Department of Finance to encourage pension plans to factor ESG issues into pension investment analysis. This is simply consistent with and aligned with plan administrators' fiduciary duties to plan members and beneficiaries. We recognize and applaud the Canadian Expert Panel on Sustainable Finance in 2019 recommendation set out in its final report – Mobilizing Finance for Sustainable Growth – that the federal government require federally regulated pension plans to disclose in their Statement of Investment Policies & Procedures (SIPP) whether and how climate issues are considered.

In 2016, the Province of Ontario became the first jurisdiction in Canada to adopt an ESG disclosure rule, and under Regulation 909 at section 40(v)(ii) requires disclosure in annual statements to members and deferred vested members and in biennial statements to retirees. In addition to disclosure obligations to the plan beneficiaries, we commend setting out in policy guidance that ESG integration is an appropriate method of taking into account any and all financially material risks and opportunities, as has been adopted by the Ontario Financial Services Commission in its' Investment Guidance Note IGN-004[9]: Environmental, Social and Governance (ESG) Factors (October 2015),

6) What are your views on allowing federally regulated pension plans to provide required information electronically to plan members and retirees on a deemed consent basis?

Deemed consent is recognized in several jurisdictions such as Ontario, where a 'negative option billing' approach is adopted providing that plan administrators must first provide a written notice to members and retirees that specifies the date on which documents will begin to be sent electronically and confirming the addressees' contact information. Under a 'deemed consent' regime, we understand that plan members and retirees once served with such notice would only have the right to revoke their 'deemed' consent to receiving electronic communications at anytime, but absent their intervention revoking the deemed consent, the plan administrator is authorized to rely on electronic mail. We reject a deemed consent approach as relieving a plan administrator of the obligations to communicate and provide notice to plan members and beneficiaries.

The pandemic has certainly accelerated the reliance on electronic communication and made email, social media and mobile web-enabled phones ubiquitous. However, from our own recent experiences in organizing member ratification processes in this period, ubiquitous is not synonym with 'universal'. We accept that there is a residual obligation on plan administrators to communicate with plan members and beneficiaries (particularly for older demographic groups often less reliant on contemporary modes of communication, including email). Every reasonable effort should continue to be expended to fulfill the fiduciary obligations assumed by plan administrators regarding member communication.

We support a legislative obligation that recipients of plan communications, notices and other materials must provide express consent to receiving such communication in any electronic form

[9] http://www.fsco.gov.on.ca/en/pensions/policies/active/documents/ign-004.pdf

from the plan administrator, and that those recipients retain the right to subsequent revoke such consent in writing.

7) What are your views on the current legislative requirement to make federally regulated pension plans provide required communications to spouses and common law partners? Is it feasible for plan administrators to provide electronic communications to spouses and common-law partners on a deemed consent basis? If not, what other options could be considered?

In our view, there is no relevant basis to distinguish between plan members, retirees and surviving spouses or common-law partners for the purposes of this obligation to communicate with plan members and beneficiaries. We continue to support the legislative requirement to provide required communication to spouses or common-law partners. Where a plan administrator fails to receive express consent from any of the plan members, retirees and surviving spouses or common-law partners for the purposes of the obligation to communicate with plan, communications must continue to issue in a written form.

We do not support a 'negative option billing' approach to plan communication which would relieve the plan administrator of their obligation to communicate in writing with plan members and retirees in any more efficient or effective manner, unless the member or retiree has expressly consented and has assumed the responsibility to receive e-communications from a federally regulated pension plan.

8) What are your views on the relationship between ESG factors and a pension plan administrator's fiduciary duty?

Policymakers, regulators and governments now recognise that issues such as climate change and sustainable development represent systemic risks as well as opportunities that require explicit and targeted interventions. Many countries have started to implement the Paris Climate Agreement and the Sustainable Development Goals in national policy and regulations while numerous corporations and investors have adopted ESG processes to measure the sustainability and societal impact of an investment in a company or business.

The duty of care required of a fiduciary compels managing a prudent investment process that duly and thoughtfully considers the environmental, social and governance risks related to the sustainability and societal impact of investments. In our view, the debate about whether fiduciary duty is a legitimate barrier to ESG incorporation is over. The fiduciary duties of plan administrators – including plan sponsors or pension trustees require that they:

- Incorporate environmental, social and governance (ESG) issues into their investment analysis and decision-making processes, consistent with their investment time horizons.
- Encourage the highest standards of ESG performance in the companies or other entities in which they invest.
- Understand and incorporate beneficiaries and savers' sustainability-related preferences.
- Report on how they have implemented these commitments.

This is consistent with and premised on the three main reasons why fiduciary duties of loyalty and prudence require the incorporation of ESG issues:

- ESG incorporation is an investment norm,

- ESG issues are financially material,
- Policy and regulatory frameworks are changing to require ESG incorporation.

Pension plan trustees and administrators acting in their capacity as long-term investors that however fail to incorporate ESG issues are failing their fiduciary duties and are increasingly likely to be subject to legal challenge.

C - Proposed Elements of a Federal Solvency Reserve Account Framework

Prior to commenting on the proposed solvency reserve account framework, we pause briefly to acknowledge that families in Canada have experienced profound disruption in their lives resulting from the COVID-19 pandemic. This occurs after a decade of gaping wealth inequality and rising household debt, with many facing continuing job loss and financial uncertainty beyond the initial work interruptions since mid-March.

Even prior to the pandemic, the 2019 Survey of Financial Security revealed that for most Canadian families their largest family asset after their principal residence were in fact employer-sponsored pension plans. Just over half of Canadian families reported having an employer-sponsored or workplace pension plans in 2019 with a median value of $164,900. At the same time, only just under one-third (30.2%) of Canadian families were debt-free in 2019 indicating that debt remains a widespread burden for a large majority of Canadian families.

Candidly, liquidity is a concern not simply for pension plan sponsors but also for pension plan members. The same 2019 Survey of Financial Security reveals the median value of liquid financial assets held by families was only $27,700 and quite startlingly, lone-parent families held only $5,500. According to the this survey, liquid financial assets are all financial assets held in chequing and saving accounts, term deposits, treasury bills, tax-free savings accounts (TFSAs), stocks and bonds (including mutual funds), and registered retirement savings plans (RRSPs).

We would note that TFSA and RRSP plans are increasingly popular in federally- regulated private sector as workplace savings plans.[10] Conversely, illiquid assets are real estate assets such as the principal family residence and employer-sponsored and/or workplace pension plans; with participation in an employer-provided pension plan remaining the more common approach for retirement savings in the federally- regulated private sector than in Canada overall.

Liquid financial assets provide some critical relief for families faced with a disruption to their primary source of income, so they can continue to meet their essential needs and financial obligations. Therefore, families with lower liquid financial assets are more vulnerable to a disruption in income than families with higher liquid financial assets. However, workers that experienced unemployed and income loss due to the pandemic that participate in registered pension plans are unable to access those plans readily for critical temporary liquidity, by drawing on retirement savings.

It is time to reflect on whether we have achieved the right balance in our statutory “locking-in” rules in pension legislation, which strictly applies to only registered pension plans, and not TFSA or RRSP accounts in preventing early withdrawals of pension entitlements. We support greater consistency between pension and RRSP and TFSA arrangements that are exempt from pension

[10] https://www.canada.ca/en/employment-social-development/services/labour-standards/reports/expert-panel-final.html

minimum standards legislation, and not subject to “locking-in” rules. The point however cannot simply be to permit “unlocking”, but to enable greater flexibility consistent with comparable solvency funding relief approaches suggested for plan sponsors.

Such flexibility could be provided by enabling emergency spending ‘side-car’ accounts as a specific pension plan innovation to address workers’ current constraints in coping with financial shocks and volatility. This as well diminishes collateral reliance on withdrawals from other retirement accounts (TFSA or RRSP) to address financial hardships - without the hurtles required under the unlocking provisions of the Pension Benefit Standards Regulations.

A ‘side-car’ account structure as a reform of traditional pension and retirement savings programs that has been advocated by the Aspen Institute and studied by the National Employment Savings Trust in the United Kingdom[11]. The reform contemplates a worker remitting their pension contributions into a short-term subsidiary savings account intended for emergencies, and once a sufficient savings buffer has built up, any further contributions are automatically directed to the principal “locked-in” pension account.

We would expect that the ‘side-car’ account would be capped at a specific percentage of annual income and/or in relationship to the plan members’ annual income The approach would only on a provisional basis provide access to retirement capital to offset a documented transient income shock. The policy preference remains to avoid any serious depletion of long-term retirement readiness and could operate in the fashion of a ‘loan’ or margin account and require re-payment within a reasonable period. We believe further consideration and consultation is warranted of this ‘side-car’ account approach with the policy goal being to improve the financial well-being and security of workers in the federally regulated private sector in both the immediate and longer term — an outcome that is good not only for workers and their families, but for the economy overall.

1) To encourage more prudential employer funding, should consideration be given to permitting employer normal cost contributions to be made to a SRA where an employer is in a position to reduce normal cost contributions under subsection 9(5) of the PBSR?

We would reject permitting any plan sponsor to direct any normal cost or current service cost contributions into a solvency reserve account, unless the normal cost contribution is above the minimum required amount of normal cost payments set out in the most recent actuarial valuation report and therefore not otherwise an obligation to be remitted to the plan. In other words, as a matter of encouraging prudent funding, any additional contributions beyond the normal cost contributions required and set out in the most recent valuation would be permitted to the extent that required minimum funding obligations in that period are met.

2) What would be an appropriate legal structure for SRAs – for example, establishing a SRA as a separate account of the pension fund within the same trust agreement, or under a separate trust agreement? Would different arrangements pose administrative or operational difficulties? Should employers be permitted to choose their preferred approach?

[11] https://www.nestinsight.org.uk/liquidity/

We would advocate that were solvency reserve accounts to be introduced as a temporary or more enduring funding relief measure, that they be established as an amendment to and within the same trust agreement as the originating pension fund. This would ensure administrative and operational simplicity as well as jurisdictional consistency and compatibility.

We would stress that solvency reserve accounts need to acknowledge the distinction between contributory and non-contributory defined benefit plans as there is an equitable claim from plan members that any surplus, “trapped” or otherwise arises in proportion to their contributions as well as those of the plan sponsor. If the goal is a true funding symmetry with rules to permit clearer access to any plan surplus, we agree with the consultation document that important restrictions would need to apply to the statutory and regulatory framework in order to protect benefit security and balance considerations regarding surplus ownership and shared risk in respect of normal cost contributions.

Were a solvency reserve account framework to be introduced, we would support continuation of current limitations on a plan, with any contribution holiday or refund of surplus to the employer continuing to be limited to the amount of surplus in excess of the greater of: (a) two times the employer’s current service cost, and (b) 25 per cent of the plan’s solvency liabilities. Equally important, any refund of surplus must be applicable to all plan contributions.

Additionally a plan sponsor ought to continue to be required to establish such entitlement to the surplus under the plan trust documents. Further, the plan sponsor ought to only seek the consent of the Superintendent of Financial Institutions for a refund of surplus where the Superintendent has been satisfied that it’s claim to the surplus has the express consent of two-thirds of the plan members and two-thirds of the group consisting of former members (i.e., retirees and vested deferred members).

3) The proposed SRA framework would apply to single-employer DB plans. Should the SRA framework also apply to multi-employer DB plans, other than negotiated contribution plans? How might this work in practice?

We would accept that such a framework ought to apply equally to both single-employer DB plans as well as multi-employer DB plans – depending on the capacity of such plans to attribute any surplus amongst the contributing employers and plan members. In practice this may well take the form of a stipulated period of contribution relief in the form of a temporary reduction or ‘holiday’ from contributions in recognition of the extent to which external conditions, such as better-than-expected investment returns or higher interest rates have contributed to an un-anticipated surplus in excess of the parameters of any existing funding policy.

4) Would it be appropriate to set a minimum required solvency ratio threshold of 105 per cent before and after any SRA withdrawal is permitted for on-going pension plans? Should a similar threshold apply to the plan’s going concern funded level?

Given the stated purposes of introducing solvency reserve accounts, the minimum required solvency ratio threshold should be more comparable to the CRA limits regarding going concern surplus rules – since there remains a need to ensure ‘down-cycle’ protection while encouraging incentive to improve the funded status of plans. The preferred state would be a stronger

solvency funded status than the going concern funded status – given the longer timeframe and less contingent nature of the later.

5) Would limiting annual withdrawals from a SRA to one-fifth of the eligible surplus be appropriate? This would align with the approach in Alberta and British Columbia, and would mirror the 5-year amortization period allowed for solvency deficits.

We favour greater regulatory consistency and agree with the merits of aligning solvency reserve account balances with the same 5-year amortization period for solvency deficits.

6) Should additional restrictions or safeguards apply to SRA withdrawals?

We understand that the solvency reserve account framework has contemplated the following restrictions or limits:

- based on the most recent actuarial valuation report (AVR) filed with OSFI
- required to disclose details of any employer withdrawals from the SRA in the previous year, such as the amount of any withdrawal and its impact on the plan's funded ratio
- limit on withdrawal to once the plan reaches a specified solvency funding ratio threshold above 100 per cent and is fully funded on a going concern basis
- limit on withdrawal if reducing the plan solvency ratio below a specified threshold or creating a going concern funding deficit
- limit on withdrawal to a maximum annual amount (as a percentage of eligible surplus in the SRA) such that the full amount of eligible surplus could not be withdrawn all at once.
- requiring AVRs contain information on a plan's SRA, such as a reconciliation of funds (which would include new payments and any withdrawals), the impact of any withdrawals on the plan's funded ratio and the maximum annual amount that could be withdrawn from the SRA until the next AVR is filed
- special yet to be stipulated considerations would apply in the context of plan termination or merger

We appreciate that the policy intent is to prohibit solvency reserve account withdrawals that may unduly impair the plan's funded position. While we have not had the benefit of a review of the framework beyond that set out in the consultation document, and given that OSFI would not immediately provide oversight via an approval mechanism to withdraw funds from a SRA, we would recommend that the enabling statute and regulation provide for a capacity to implement an evolving suite of additional restrictions or safeguards as are necessary to ensure stakeholder confidence in the outcome measured by the protection of benefit security and reduction in risk of withdrawals creating adverse impacts for plans.

7) Should any specific disclosure requirements to plan members and beneficiaries or OSFI apply in respect of withdrawals from or payments to a SRA? Should the notice provided to plan beneficiaries be separate from their annual statement?

We understand that the framework contemplates requiring annual notices be sent to plan members, retirees and other beneficiaries entitled to benefits to disclose details of any employer withdrawals from the solvency reserve account in the previous year, such as the

amount of any withdrawal and its impact on the plan's funded ratio. Given the suggestion to allow federally regulated pension plans to send e-communications on a deemed consent basis, there ought to be quarterly disclosure of the transactions involving the solvency reserve account, as well as the opening and closing balance and the related plan transfer ratio.

Equally any withdrawal transaction from the solvency reserve account that amounts to 10 per cent of the accessible solvency excess in that fiscal year should be disclosed to plan beneficiaries within 30 days of the transaction on a deemed consent basis.

8) Should other limits or restrictions apply to SRA withdrawals to help ensure that withdrawals are based on up-to-date information (e.g., withdrawals only allowed within six months following the AVR being filed, or prohibiting SRA withdrawals if the employer had reason to believe that the plan's funded position had changed significantly to the downside)?

Please refer to our earlier comments.

E - Proposed Ministerial Guidelines on Special Pension Funding Relief

1) What are your views on the PBSA's principles-based approach to administrator's fiduciary duty? Are additional clarifications necessary to ensure that the fiduciary duty principles apply to both the accumulation and decumulation periods?

We do not accept the claim offered by critics of increasing regulation of governance that a principles- based approach is itself sufficient or their collateral claim that plan administrators, as fiduciaries, are of necessity bound to act prudently and in the best interests of plan beneficiaries, which would inherently ensuring good governance practices. We accept from experience that some plan sponsors are far less than even-handed as plan administrators and therefore this circumstance requires more rules that are prescriptive in order to truly protect plan beneficiaries.

There is a sound rationale to clarify that the plan administrator is bound by fiduciary duties as a strict legal liability that applies equally to both accumulation and decumulation periods. There is also a need to recognize the various governance structures and the reality that federally regulated pension plans are subject to varying requirements depending on what party is considered the administrator under the Act and on the type of plan. Single-employer plans administered either by the sponsoring employer or a Board of Trustees (unionized pension plans) or the sponsoring employer (non-unionized pension plans). Multi-employer plans are administered by either a Board of Trustees (unionized pension plans) or a pension committee (non-unionized pension plans).

2) What are your views on the proposed Ministerial guidelines? Are there any additional components or considerations that should be included in the draft Ministerial guidelines?

We commend the initiative to establish criteria for employers seeking funding relief under the PBSA and welcome continuing efforts to provide a more transparent, predictable and accessible path to funding relief – an effort to encourage more disciplined corporate behaviour while DB plans are underfunded. As a priority, the guidelines should codify the relative sequence of alternative funding relief options for DB pension plan sponsors seeking short-term funding

relief, given the recent introduction of Letters of Credit or Distressed Pension Plan Workout Scheme options.

We would support the Ministerial guidelines requiring evidence of consideration of all available options available to lessen immediate funding pressures and/or providing plan sponsors with greater flexibility to negotiate longer-term changes with plan parties to improve plan sustainability. Only in the event these other relief options have been considered and are deemed unfeasible, would we accept that merit exists for a plan sponsor to engage with the Department of Finance Canada to seek temporary funding relief under the guidelines.

We would commend providing that whenever under the statute the Minister of Finance makes recommendations to the Governor in Council where special funding regulations are made; that such regulations provide temporary pension funding relief expressly to protect accrued benefits as well as to provide temporary relief and improve the plan's long-term sustainability.

We would again reiterate that any temporary relief measures should only occur in the context of the following complimentary measures:

- A restriction on dividends or share repurchases;
- Limits to increases in executive compensation, including bonuses and stock options;
- A temporary limit on recent pension plan benefit improvements (unless otherwise fully funded within a five year period); and/or
- A commitment by the employer or employers to negotiation subject to member ratification of any changes to the pension plan (e.g., contribution rates, ancillary benefits, and benefit designs on a go-forward basis).

We would also suggest that funding relief be considered in the context of broader corporate or sector support packages. Our proposals around the Unifor Build Back Better program affirm the position that Government must ensure any corporate support package delivered through debt or equity instruments include limits on executive pay, dividends and share buybacks. This must spur environmentally sustainability, restrict wage reductions for non-executive workers and establish job protection guarantees to prevent layoffs due to restructuring and offshoring.

The Unifor Build Back Better program also recommended that such support packages must include a union neutrality clause and prevent recipients from accessing employee pensions for short-term liquidity. As we mentioned at the outset, workers must not be cut off from the benefits of the investments the government will make in individual firms or entire industries. Workers must be seen as partners with plan sponsors to return numerous industries back to financial health. We deserve equal reward for our efforts.

Thank you for your attention to this submission.

As submitted on behalf of Unifor

CV:nmcope343