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SENT BY EMAIL

Mark Schaan
Director General
Marketplace Framework Policy Branch
Innovation, Science, and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
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Dear Mr. Schaan:

Re: Consultation Document – Enhancing Retirement Security for Canadians

I am writing on behalf of NAV CANADA ("NAV") to provide our submission in response to the Consultation Document recently published by ISED, Finance Canada, the Minister of Seniors, and Employment and Social Development Canada, "Enhancing Retirement Security for Canadians".

NAV is the private sector, non-share capital company that operates Canada's civil air navigation system – the ANS. NAV's services are provided to aircraft owners and operators within Canadian-controlled airspace and include air traffic control, flight information, weather briefings, airport advisories, aeronautical information and navigation aids. As the ANS is an essential service for air transportation, NAV has operations throughout Canada. NAV acquired the ANS from the Government of Canada in 1996 for a purchase price of $1.5 billion.

NAV's core business is to manage and operate the ANS and related services in a safe, efficient and cost-effective manner. The company's mandate covers both Canadian airspace and airspace delegated to Canada under international agreements. The cost of the services, including pension funding, are primarily supported through service charges that are charged to commercial and private customers.

As the sponsor of defined benefit ("DB") pension plans which are subject to federal jurisdiction, one of which – the NAV CANADA Pension Plan – is a top 100 Canadian pension fund which poses significant funding risks for NAV, we are very much interested in the issues raised in the Consultation Document. In addition, we share the Government's concern regarding the diminishing numbers of Canadians with membership in DB pension plans, and encourage the Government to implement reforms to slow – and perhaps even reverse – the erosion of DB pension coverage in Canada.

To that end, we support proposals that would provide flexibility to pension plan sponsors and allow them to work with the members of the pension plan to implement creative solutions in order to both protect members' interests and also support the long-term sustainability of DB pension plans. As a strong "third pillar" in the Canadian retirement income system, we firmly believe that employer-sponsored DB pension plans provide Canadian workers with a secure, predictable income stream in retirement. Reforms that encourage employers to create or continue DB plans, while still protecting members' interests, should in our view be a Government priority.

Canada is widely seen as a leader in retirement income security solutions, and is home to some of the best-run and best-performing DB pension plans in the world. We at NAV firmly believe that we can build on those strengths in order to preserve DB plans for future generations of Canadians.

One specific issue from the Consultation Document which we wish to address was set out as follows:

> **Clarify benefit entitlement:** Federal pension legislation provides that members are entitled to their accrued pension benefits, with the intent that the full pension benefits are to be provided regardless of whether the plan remains ongoing or is terminated. Nevertheless, it has been suggested that the legislation may be unclear in this respect, leading some plan sponsors to propose amendments that would provide for different benefits on plan termination compared to while it remains ongoing (e.g., indexation only payable on plan termination if sufficient assets remain in the plan). This could result in members experiencing reductions for those benefits if a plan is terminated underfunded, particularly in an insolvency situation. In order to ensure that all pension benefits are afforded equal protection regardless of whether the plan is ongoing or terminated, the legislation could be clarified to provide explicitly that entitlement to pension benefits cannot be made conditional on the continued operation of the plan. Alternatively, amendments would be required to provide flexibility for DB pension plans to offer different benefits in different circumstances in pursuit of plan-specific objectives, such as addressing affordability and sustainability issues that may be critical to the employer.

This is a perfect example where we think that the legislation (*i.e.* the *Pension Benefits Standards Act, 1985* (Canada) ("PBSA")) should be amended in order to provide flexibility for pension plan sponsors to work together with plan members with the goal of enhancing pension plan sustainability. In our view, pension plan stakeholders should be afforded the opportunity to manage pension plan risks in a way that meets the unique needs of their workplace, and the opportunity to develop solutions that are in their mutual best interest. In particular, the legislation should be amended to permit a pension plan to provide certain benefits while the pension plan is ongoing that would not be provided on plan termination if sufficient funding is not in place at that time, provided that certain safeguards are met.

For example, consider a scenario in which a DB plan sponsor is concerned about the plan's sustainability, based on cost, volatility, or other considerations. If the DB plan in question provides guaranteed indexation, one solution might be for the sponsor to amend the plan to eliminate indexation for all future accruals. Such an amendment would clearly be permitted under the PBSA, provided the plan terms also permitted it. (As a more extreme option, the sponsor could decide to terminate the pension plan entirely. Both alternatives would, of course, be subject to any collective bargaining considerations.)

The plan members may very well value the guaranteed indexation, however, and wish to preserve it to the extent possible. While the rate of inflation has recently been very low in Canada, we know it has been very high in the past, and high inflation quickly erodes the value of a non-indexed pension.

In order to address the sustainability issue, however, the pension plan sponsor and the plan members might come together in order to develop a creative solution, and might agree to preserve indexation under the plan while it remains ongoing but, if the plan is terminated in the future, to provide indexation only to the extent that assets remain to fund it after provision for all other accrued benefits.

By eliminating the guarantee of indexation on plan termination (such indexation being, as noted above, conditional on there being sufficient surplus at the time of termination), the sponsor would not be obligated to fund the indexation on a solvency basis, thus making the plan more sustainable from a cost and volatility perspective. From the members' perspective, they may very well prefer such a compromise over the possible alternatives (complete elimination of indexation on a prospective basis, or plan termination).

In NAV's opinion, we see no reason why the legislation should not give pension plan members the option of entering into such an arrangement with the plan sponsor, provided that certain protections are included in the legislation. For example, where the change being proposed would apply retroactively, the legislation may require the consent of any affected members, whether they be active members or deferred vested members and retirees. Where consent is required, there would also have to be a requirement for full and frank disclosure to the affected members – disclosure that is clear, transparent, and direct – so that the affected members are fully informed and understand the issue before them.

The Consultation Document indicates that reform proposals will be assessed based on three broad considerations:

- Their effectiveness in protecting pensioner and employee interests;
- Whether the proposal supports sustainable pension plan options; and
- Whether the proposal is compatible with the core principles and objectives of Canada's current retirement income system and marketplace framework laws.

It is NAV's view that the proposal described above (permitting pension plans to provide benefits while the plan is ongoing that may differ on termination, provided that member consent is obtained where necessary) satisfies all three considerations.

First, pensioner and employee interests would clearly be protected, since a pension plan would only be permitted to provide such a scheme if sufficient member consent is obtained, where the legislation requires such consent. While members would, admittedly, be exposed to the risk that the pension plan may be terminated in the future at a time when the plan is not in surplus, and thus that their benefits would not be the same as they were under the ongoing plan, they may very well be willing to accept that risk in order to provide more meaningful benefits while the plan continues and to promote the overall sustainability of the plan. In our view, it is preferable to inject some flexibility into the pension regulatory scheme in order to promote pension sustainability, and let members decide for themselves what is in their best interests in the context of their particular employment relationship, rather than having a "one size fits all" regulatory scheme.

Safeguards could be added to the legislation in order to address concerns that employers might negotiate such an amendment with the affected plan members only to terminate the plan once the amendment is approved. For example, where such an amendment is in effect and the sponsor is not funding the relevant benefits on a solvency basis, the legislation could require member consent to any plan termination, or it could require Superintendent consent to termination (similar to the current requirement for a partial wind-up), or it could require the pension plan to provide the same benefits on plan termination as apply while the plan is ongoing if the plan is terminated within a certain period of time (5 years, say) following the implementation of the plan amendment.

Second, the proposal supports sustainable pension plan options, by giving those DB plan sponsors who wish to offer certain benefits while the plan is ongoing the option to do so, but with some flexibility built in if funding is not sufficient on plan termination. As is borne out by the statistics on private sector DB pension coverage in Canada, DB plan sponsors are abandoning their plans in increasing numbers, due to affordability and volatility issues and risks including investment and longevity risk. For those sponsors who wish to continue to provide a DB pension to their workers, the legislation should support creative solutions to promote sustainability, so long as members' interests are protected as discussed above. Other jurisdictions are also taking steps to address pension plan sustainability. One example of a creative solution in this regard is the introduction in New Brunswick of the shared risk model. Such plans provide a DB benefit, but that benefit can be reduced if funding deteriorates below a certain level. Numerous safeguards are built into the shared risk model, however, including a requirement for a detailed funding policy, so that members' interests are well protected.

Finally, we would note that the effects of the proposal described above – to permit different benefits while the plan is ongoing as compared to the obligation on plan termination – would not be unprecedented as the PBSA already allows for certain benefits to be subject to consent, resulting in their exclusion from the solvency liabilities. Furthermore, unlike some of the other proposals described in the Consultation Document, this proposal would not have an impact on insolvency/bankruptcy laws or on general corporate laws. It would, however, be completely compatible with the core principles and objectives of Canada's retirement income system, in that it would strengthen the "third pillar" and provide an avenue for certain plan sponsors to continue to provide DB pensions (which Canadian workers overwhelmingly prefer) while at the same time giving those sponsors more financial flexibility.

Sincerely,

Raymond G. Bohn
Executive Vice President
Human Resources, Communications and Public Affairs
NAV CANADA