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CAPSA Draft Guidelines: Pension Plan Prudent Investment Practices and Questionnaire and Pension Plan Funding Policy

NATIONAL PENSIONS AND BENEFITS LAW SECTION
CANADIAN BAR ASSOCIATION

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500-865 Carling Avenue, Ottawa, ON, Canada K1S 5S8
tel/tél : 613.237.2925 | **toll free/sans frais** : 1.800.267.8860 | **fax/téléc :** 613.237.0185 | info@cba.org | **www.cba.org**

PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Pensions and Benefits Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Pensions and Benefits Law Section of the Canadian Bar Association.

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CAPSA Draft Guidelines: Pension Plan Prudent Investment Practices and Questionnaire and Pension Plan Funding Policy

I. INTRODUCTION

The Canadian Bar Association National Pensions and Benefits Law Section (the CBA Section) is pleased to participate in CAPSA's consultation on the Draft Guideline on Pension Plan Prudent Investment Practices and Self-Assessment Questionnaire (Investment Guideline and Questionnaire), and the Draft Guideline on Pension Plan Funding Policy (Funding Guideline). The CBA Section comprises lawyers from across Canada who practice in the pensions and benefits area of law, including counsel to pension and benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

These submissions supplement the CBA Section's April 2010 submissions on the consultation on the Prudence Standard and the Roles of the Plan Sponsor and Plan Administrator in Pension Plan Funding and Investment (2010 submission). We acknowledge that the materials address a number of issues raised in our 2010 submission.

II. INVESTMENT GUIDELINE AND QUESTIONNAIRE

The CBA Section generally agrees with the approach to the Investment Guideline and Questionnaire. Our general comments are thematically divided into three parts, each theme spanning both the Investment Guideline and Questionnaire:

1. Roles and Responsibilities
2. Investment Policies, Objectives and Risk Tolerances
3. Defined Contribution Plans

A. General Comments

1. Roles and Responsibilities

The CBA Section agrees that the roles of the plan sponsor and plan administrator should be clearly delineated in the plan documentation, and agrees with CAPSA's approach to this topic. Pension stakeholders will appreciate the greater degree of clarity.

2. Investment Policies, Objectives and Risk Tolerances

The CBA Section recommends that the contents of the investment policies, objectives and risk tolerances be developed in harmony with the guidelines of pension regulators and the dictates of the legislation in most provinces.

The 2010 submission notes (bottom of page 1, Section II) that the CBA Section would welcome guidelines on best practices for pension plan investments to clarify the fiduciary standard against which pension plan administrators are measured. We reiterate that statement. Although the Investment Guideline contains a section on prudent investment practices, plan administrators may not find that this sufficiently clarifies the standard.

3. Defined Contribution Plans

There are no references in the Investment Guideline and Questionnaire to the CAPSA Guideline No.3 for Capital Accumulation Plans (the CAP Guideline). The Investment Guideline and Questionnaire should be consistent with and complement the CAP Guideline. References to the CAP Guideline should be added in the Investment Guideline and Questionnaire where relevant (some examples are provided below).

The Investment Guideline and Questionnaire refer to defined contribution pension plans (DC plans) and to a combination of defined benefit and defined contribution plans. As the intention seems to be to apply these documents to registered DC plans only (and not to other capital accumulation plans), this should be clarified in the two documents.

The Investment Guideline states that DC plans under which plan beneficiaries may choose from a list of investment options will have different prudent investment practices criteria than a pension plan where this option is not available. In practice, many DC plans provide that members are responsible for selecting their investment choices. The Investment Guideline could refer to Section 8 of the Questionnaire on selecting investment options and default option, as well as to Section 2.2 (Investment Options) of the CAP Guideline.

B. Specific Comments On Investment Guideline

Role of the Plan Sponsor/Administrator/Dual Role of the Employer

The roles of the sponsor and administrator should be better defined to provide a clear distinction and appreciation of the duties that accompany each role. In particular, failure to clarify the dual role of the employer as plan administrator and sponsor may result in the employer's failure to fulfill the responsibilities that accompany each role. The CBA Section suggests that a more comprehensive discussion of the respective responsibilities and duties be provided in the "Dual Role" section.

Recent case law suggests a shift in the courts' view of the two roles and of the difficulties employers face deciding which role they are acting in.[1] The CBA Section proposes adding a recommendation that employers, sponsors and administrators stay current with legal developments, and seek legal advice if they are uncertain about their roles and respective responsibilities. Failure to do so could result in inappropriate funding and investment decisions.

Communication with Plan Beneficiaries

The information in this section on DC plans is quite general. For example, it mentions that plan beneficiaries should be given sufficient details about the pension plan investment options to make informed investment decisions.

To make the Investment Guideline a more useful tool, a reference to the CAP Guideline and the relevant subsections of Section 3 (Investment Information and Decision-Making Tools for CAP Members), Section 4 (Introducing the Capital Accumulation Plan to CAP Members), and Section 5 (Ongoing Communication to Members) should be added.

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1 *Re Indalex*, 2011 ONCA 265 (CanLII); *Slater Steel Inc. (Re)*, 2008 ONCA 196 (CanLII).

Risk Tolerances

The Investment Guideline provides a comprehensive list of possible risks comparable to the list in Section I.4 of the Office of the Superintendent of Financial Institutions (OSFI) Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans. The CBA Section recommends that the Investment Guideline describe the risks consistent with the OSFI Guidelines. For example:

Credit risk	risk that a counterparty will not pay an amount due as called for in the original agreement, and may eventually default on an obligation.
Funding/Mismatch risk	risk that a solvency deficiency will develop because an increase or decrease in the market value of the plan assets are not matched by a corresponding increase or decrease in the liabilities.
Foreign exchange/Currency risk	risk that the market value of a financial instrument will fluctuate due to changes in exchange rates.
Market/Price risk	risk that the market value of an investment or of a financial instrument based on investments will fluctuate.
Interest rate risk	risk that the market value of a security will fluctuate due to changes in market interest rates.

Investment Policy/Statement of Investment Polices & Procedures

The CBA Section agrees with the approach in the Investment Guideline discussion of the overall requirements for the investment policy and Statement of Investment Policies and Procedures (SIP&P) under the same heading. It is appropriate to allow plan administrators to determine whether to set out the investment policy in one or in several documents.

The Investment Guideline lists some key elements for investment principles. We propose that key elements for SIP&Ps be included consistent with the elements prescribed in the Federal Investment Rules (the FIR):

(a) Categories of investments and loans, including derivatives, options and futures;
(b) Diversification of the investment portfolio;

(c) Asset mix and rate of return expectations;
(d) Liquidity of investments;
(e) Lending of cash or securities;
(f) Retention or delegation of voting rights acquired through plan investments;
(g) Method of, and basis for, valuation of investments not regularly traded at a public exchange; and
(h) Permitted related party transactions and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan.

Like the FIR, the list should be inclusive and not limit the SIP&P to only the specified components.

C. Specific Comments on Investment Questionnaire

Section 1 – Plan Administration Roles and Responsibilities

Questions 1 and 2: The CBA Section suggests including a reference to governance policy (or terms of reference) in the list of documents. While this could be included in the "other" category the general responsibilities identified in both questions, especially 1, should be addressed or at least identified in relevant governance documentation.

Question 4: There has been a move by consulting firms to perform investment functions on behalf of plan administrators. These structures give rise to some unique considerations, especially from a liability standpoint. It may be appropriate to include consulting arrangements in a separate category.

Question 6: Greater clarity is needed on the information sought to be elicited by Question 6. The CBA Section suggests adding "both indirectly and directly" at the end of the fourth bullet. A number of investment related delegates are often involved and relevant information might make its way to the plan administrator in a variety of ways. Also, the CBA Section suggests adding "the requirement to monitor delegates on an ongoing basis" to the list of activities, as it is not fully captured in the rest of the question.

Section 2 – Responsibility for Establishing the Investment Policy

Question 2: Consultants and lawyers tend to be heavily involved in drafting SIP&Ps, more so than, say, insurance and trust companies or external investment managers. The CBA Section suggests that they should be included in the list in question 2, rather than relying on "other".

Section 3 – Investment Objectives

Question 2: Reference should be made to "plan sponsor(s)" to recognize jointly-sponsored plans.

Section 4 - Risk Tolerances

Question 1: "Investment risk" should be added to the bullet list.

Section 5 - Content of Investment Policy/SIP&P

Question 4: The last bullet should be amended to "the amount and the effect of management and administrative fees, transaction costs and custodial fees".

The CBA Section suggests including the following:

- Benchmarks
- Rate of return expectations (including time frame) and expected volatility
- Pension fund performance measures
- Investment review process
- Policy review process
- Criteria and process for permitted related party transactions
- Conflicts of interest policy
- Roles and responsibilities of delegates
- Criteria and process for monitoring delegates

An additional question should be added after Question 3 asking "Does the investment policy/SIP&P include the elements required under the applicable legislative investment rules?"

Section 6 – Delegation of Investing Activities for Pension Fund Assets

In the first paragraph under the heading "Fund Holder", the CBA Section suggests that the last sentence indicate that where a fund holder has been retained, there "must" be a written fund holder agreement, rather than "should". In the same sentence, an agreement should also include the item "determines legal terms and conditions, including an appropriate standard of care".

The third sentence in the next paragraph under "Fund Holder" should add a reference to "legal terms and conditions" and a "standard of care" to the requirements for a custodian agreement. The paragraph should also discuss the selection of sub-custodians and who is responsible for their oversight. The CBA Section reiterates the suggestions in our September 2010 submission to CAPSA on the Guideline on Fund Holder Arrangements.

Question 5: The CBA Section suggests that the list of what to include in the written procedures for selecting an investment manager should also include an assessment of the boilerplate investment management agreement.

Section 8 – Defined Contribution Pension Plans

This section should specify that it also applies to defined benefit plans that have a defined contribution component.

Question 1: Where investments are selected wholly by plan beneficiaries, the plan administrator may be able to make some selection as to the range of investment options offered by the financial institution. The CAP Guideline mentions on page 4: "In some cases the choice of a service provider will define or limit the type of investment options available to a plan". This should be reflected in Question 1 with an item such as: "a range of investment options offered by the financial institution and selected (totally or partially) by the plan administrator".

Question 3: While the items outlined in this question are useful, the CBA Section recommends that the introductory wording be rephrased similar to Question 2 but referring to situations where investment options are wholly or partly selected by plan beneficiaries. The question could also refer to steps taken, documentation supporting this decision and factors considered in this decision. Other items could be added in the proposed list such as those mentioned in Section 2.2 (Investment Options) of the CAP Guidelines. The wording in the Investment Guideline and Questionnaire should be consistent with the wording in the CAP Guideline. The CBA Section also suggests adding a bullet "other ____________" at the end of the listed items.

If the wording is not changed as suggested, the CBA Section notes that the question refers to the retirement needs of plan beneficiaries. This would be in line with the reference to DC plans (and not to other capital accumulation plans) in the Investment Guideline and Questionnaire. We also suggest replacing "taken to reflect" with something like "considered taking into account".

Question 6: The CBA Section suggests adding a second bullet such as: "monitor the number or percentage of plan beneficiaries whose investment options are not in line with their investor profile (e.g. prudent investment profile with aggressive investment choices)". Other bullets could be added, such as "monitor the frequency of transactions."

Question 7: The CBA Section suggests adding items to this question such as:

- Investment options and funds
- Change, replace or remove investment options or funds
- Investments selected by plan member
- Transfer options and related fees
- Investment activity (transaction details)
- Responsibilities of plan members with respect to investment decisions

Question 8: Suggested additional questions

The following questions could be added in this Section:

- Identify the steps taken to ensure that the decision-making tools provided are generally well suited to the plan beneficiaries and used by them.
- Identify the procedures in place to deal with plan beneficiaries questions or complaints.
- Determine if communication of information measures or policy is needed (e.g. what, when, who).

III. FUNDING GUIDELINE

A. General Comments

1. The CBA Section believes that the Funding Guideline will assist in developing a sound and practical funding policy to permit a plan sponsor to meet its statutory funding obligations. The CBA Section agrees that plan sponsors should be encouraged to consider adopting a funding policy. However, the Funding Guideline should be clear that the development and adoption of a funding policy may not always be desirable or appropriate for every plan or plan sponsor, rather than be prescriptive in nature.

2. As discussed in the 2010 submission, creating a funding policy is the responsibility of the plan sponsor/employer under a single employer pension plan (SEPP). The Funding Guideline appears to acknowledge this important concept. The Funding Guideline should clearly distinguish between SEPPs on the one hand, and multi-employer pension plans (MEPP) and jointly-sponsored pension plans (JSPP) on the other to avoid confusion, uncertainty and misunderstanding among pension plan stakeholders.

3. Funding considerations, processes and practices may differ greatly depending on the governance and benefit structure of the pension plan and the circumstances of the employer. To be effective for plan sponsors, the Funding Guideline must acknowledge that the funding policy will not be driven by a prescriptive or "one size fits all" approach and while the detailed written funding policy envisioned by the Funding Guideline may be appropriate in some cases, it will not always be appropriate. The Funding Guideline should acknowledge that employers must have some flexibility to address circumstances unique to each pension plan and sponsor. The CBA Section recommends that the Guideline acknowledge the need for flexibility and address broad principles without prescribing the contents of a funding policy.

4. Funding and investment policies are interrelated. However, it is responsibility of the administrator to set investment policy in a way that reflects the funding policy for the plan, not the converse. For example, it would be inappropriate for the plan administrator to be free to establish an aggressive investment policy based on an assumption that the plan sponsor will have to account for this in setting or adjusting funding policy. Clarity about the relationship between investment and funding policy is necessary to maintain a proper governance structure.

5. The Funding Guideline inherently applies only to pension plans with a defined benefit component and would not apply to defined contribution plans. To avoid confusion, the CBA Section recommends that the opening paragraph of the draft Funding Guideline clarify that it applies to a pension plan which has a defined benefit component (as distinct from a defined contribution plan). In addition, the title of the Funding Guideline should identify that it applies only to plans with defined benefit components rather than pension plans generally.

6. In its 2010 Submission, the CBA Section encouraged harmonization between provincial legislation and the Funding Guideline, to provide plan sponsors and administrators with clear direction as to the standards they are expected to follow. The CBA Section commends CAPSA for addressing this issue throughout the Guideline.

B. Specific Comments

As noted above, the opening paragraph of the Funding Guideline should clarify that it applies only to a funding policy for a defined benefit pension plan (as distinct from a defined contribution pension plan), and should clarify that:

(1) for a SEPP, the decision to establish a funding policy and development of the policy rest with the plan sponsor; and

(2) for a MEPP or JSPP, the decision to establish a funding policy and development of the policy rest with either or both of the sponsor and administrator of the plans as applicable in the circumstances.

Pension Plan Funding Principles and Objectives

The CBA Section generally agrees with the principles and objectives in the Funding Guideline.

The CBA Section also agrees that different funding considerations may apply to SEPPs on the one hand and MEPPs and JSPPs on the other. As noted above, the CBA Section recommends a separate section in the Funding Guideline devoted to MEPPs and JSPPs, rather than including references throughout the Guideline. This would reduce confusion with references to the involvement of administrators in the creation of funding policies for plans "other than SEPPs". For example, the last sentence of paragraph 1 that begins "different funding considerations…", the last sentence of paragraph 2, and the last sentence of paragraph 4 are important concepts and should be combined under the heading "Special Considerations for MEPPs and JSPPs". It would be beneficial to address this distinction up front, as it relates to the discussion of principles and objectives and the purpose of a funding policy, and is a distinction that affects the tone, content, and clarity of the entire Guideline.

Paragraph 2 of the Funding Guideline refers to "funding requirements". In light of the significant pension reform in the last two years, the CBA Section recommends that CAPSA ensure these statements are consistent with new funding requirements in many jurisdictions. For example, the federal *Pension Benefits Standards Act* now requires annual actuarial valuations using a three-year average solvency ratio to reduce fluctuations caused by market events. This was first raised in the 2010 submission. However, the Funding Guideline does not appear to recognize that changes have occurred and different funding requirements have been introduced to minimize fluctuations and enhance benefit security of members (e.g., limits on contribution holidays).

As set out in paragraph 3, the CBA Section agrees that funding decisions should not be ad hoc and a funding policy could provide some consistency to funding related decisions. At the same time, the Guideline should note that funding decisions have a significant impact on plan sponsors (currently the term used is "stakeholders") and should recognize that sponsors require flexibility to alter or shift their objective and focus with regard to funding decisions.

Purpose of a Funding Policy

The CBA Section agrees that a number of relevant factors should be considered in developing a funding policy. However, the Funding Guideline should clarify that funding policies are not intended to create expectations or requirements to fund in excess of that required by applicable legislation. The Funding Guideline should indicate that a funding policy provides a framework for how the plan sponsor will meet its funding requirements, rather than require the sponsor to exceed minimum required funding.

The CBA Section stresses the importance of ensuring that the plan sponsor has the flexibility to respond to unforeseen circumstances that may have implications for funding a pension plan.

Further, the Funding Guideline should indicate that provisions of a funding policy cannot substitute or alter entitlements in pension plan documents (e.g., plan text, funding agreements or collective agreements).

The CBA Section also recommends that the factors listed include the *Income Tax Act* maximum limits, overall plan assets and liabilities, and the nature of the pension promise (e.g., target benefit versus defined benefit).

The CBA Section recommends that the funding policy and investment policy should be separate documents.

Finally, it is not clear what is intended by the last factor identified ("related agreement between the plan sponsor and plan beneficiaries"). This should be clarified.

Role of the Plan Sponsor

As discussed in the 2010 submission, the CBA Section recommends that the Funding Guideline clearly state that funding decisions are the role of the plan sponsor. The CBA Section also recommends that the Funding Guideline expressly state that, while funding policies are a good practice and a matter of good governance, the Funding Guideline is not mandating that all plan sponsors create a policy.

Role of the Plan Administrator

The CBA Section agrees that the administrator is responsible for ensuring that the investment policy is consistent with the funding policy. It is also important, as stated in the Funding Guideline, that the plan sponsor and administrator understand each other's role for implementation of the funding policy. The Funding Guideline should also indicate that the roles and responsibilities of the plan sponsor and administrator be clearly set out in the documentation itself.

The Funding Guideline contains varying references to MEPPs that result in uncertainty about the distinction between the role of the plan sponsor and administrator. As discussed above, this should be addressed by removing these references from various sections of the Funding Guideline and dedicating a single section to a discussion of funding policy issues for MEPPs and other similar plans such as JSPPs.

Dual Role of the Employer as Plan Sponsor and Plan Administrator

As stated in the 2010 submission, it is important that the Funding Guideline clearly recognize the differences between the roles of sponsor and administrator. The CBA Section agrees with the section on the Dual Role of the Employer as Plan Sponsor and Plan Administrator, especially references to the standards and considerations applicable to each role.

Developing a Funding Policy

The CBA Section agrees with some of the potential benefits outlined in this section of the Funding Guideline, such as bettering the employers' understanding of the risks faced by the pension plan and furthering transparency. However, the Funding Guideline contains a number of references that should be reconsidered prior to its finalization.

While the Funding Guideline explains that funding policies are a sponsor function, it goes on to state that the funding policy should consider the specifics of the investment policy. The CBA Section does not agree with this approach, as it would require the sponsor to consider administrator policies when setting the funding policy. Instead, as stated in the 2010 submission about harmonization and clarity between funding and investment policies, the CBA

Section recommends that the Funding Guideline clearly state the funding policy is a separate policy that should be developed by the sponsor without reference to the investment policy. In the event of a conflict between the funding policy and investment policy, it should be the responsibility of the administrator to adjust the investment policy accordingly.

Once again, the CBA Section also recommends that the Funding Guideline be amended to clearly address plans other than SEPPs upfront, to minimize any confusion with respect to the role of the administrator in the development of a funding policy.

Elements of a Funding Policy

The CBA Section recommends amending this section to make it clear that these elements are optional, not mandatory and that employers have some flexibility to address their unique circumstances. Not every element will be relevant in every circumstance or for every pension plan. For example, funding considerations, processes and practices may differ greatly depending on the governance and benefit structure and demographics of the pension plan and the size and circumstances of the employer. Further, collective agreement considerations and other contractual obligations may affect funding policy considerations.

The Funding Guideline should expressly acknowledge that while a detailed written funding policy may be appropriate in some cases, it will not be in all cases.

The Funding Guideline states that there may be overlap for some elements between the funding policy and investment policy, and the funding policy should refer to the investment policy to minimize duplication. The CBA Section does not agree with this approach. As the funding policy is a sponsor responsibility and the investment policy is an administrator and fiduciary responsibility, these documents should be separate and self-contained. The funding policy should refer to all necessary factors that the sponsor wishes to consider, without reference to the investment policy.

Element 2: Funding Objectives

The CBA Section does not agree that the funding policy should indicate how the funding objectives integrate with the plan's investment policy. Instead, the investment policy should indicate how it integrates with a funding policy, if one exists, and the administrator should be responsible for adjusting the investment policy in the event of a conflict between the investment policy and funding policy.

The CBA Section recommends that the Funding Guideline be revised to indicate that, where a funding policy exists, the plan sponsor is not required to fund in excess of minimum standards.

Element 4: Funding Volatility Factors and Management of Risk

The CBA Section recommends that this element indicate that a plan sponsor is not required to disclose sensitive or confidential commercial information when summarizing a plan's tolerance for volatility in funding requirements.

Again, the Funding Guideline indicates that the funding policy should make reference to the investment policy. Funding and investment policy should, at least in theory, take into account the plan sponsor's and the plan administrator's goals and objectives, but each one proceeds from a different point. Investment policy objectives should not have to be referred to in the funding policy.

The CBA Section also believes that funding policies should not be required to refer to scenario testing. These considerations are often very detailed and involve additional input from third-party advisors and regulators.

Element 6: Cost Sharing Mechanisms

While a funding policy should discuss cost sharing mechanism if one is in place, for some plans this may be a matter of collective bargaining. Where a plan is collectively bargained, the funding policy must be consistent with the negotiated agreement regarding cost sharing. The Funding Guideline does not adequately acknowledge the possible implications of a pension plan where aspects are the result of bargaining and thus the necessity for greater flexibility in the content of the policy.

Element 7: Utilization of Funding Excess

As noted in our 2010 submission, the CBA Section generally supports that a funding policy can address the "utilization of funding excess". However, the Funding Guideline should clearly state that a funding policy cannot substitute for or alter plan or trust document terms. The Funding Guideline should also indicate that funding policies must be consistent on the use of funding excess where minimum standards legislation contains restrictions or limitations. Finally, the ability to use funding excess remains uncertain and entitlement may be a contentious issue. Plan sponsors should not be required to set out how such funding excess shall be used where uncertainty exists. This matter may require legal advice, which plan sponsors should not be required to disclose. Finally, the use of surplus on plan termination is not relevant to funding policy and need not be included.

Element 8: Multi-Employer Pension Plan (MEPPs)

As discussed above, MEPPs (and similar plans such as JSPPs) should be discussed separately in a section at the outset of the Funding Guideline, and should not be identified as a separate element for consideration.

Element 9: Actuarial Methods, Assumptions and Reporting

Many plan sponsors would not have the expertise to address the issues identified under this element. Further, it may not be appropriate for the funding policy to effectively "crystallize" the considerations that an actuary may undertake when appropriate methods and assumptions are selected for the preparation of an actuarial valuation.

Element 10: Frequency of Valuations

A funding policy that discusses the frequency of actuarial valuations may create unintended expectations for a plan sponsor and it may not be an appropriate factor for discussion. Further, the frequency of valuations may be dictated by legislative requirements (for example, federally regulated plans must file annual valuations) such that consideration of this element is not appropriate in a funding policy. Finally, it is unlikely that many sponsors will wish to file actuarial valuations more frequently than required by legislation. In those cases, discussion of this factor would not add value to a funding policy.

Element 11: Monitoring and Amending the Policy

The CBA Section agrees that any funding policy should address ongoing monitoring of the policy. The CBA Section recommends that the section on monitoring also encompass amendments and termination of the policy to clarify that the Plan sponsor may amend the policy from time to time as appropriate and may terminate the policy. The Funding Guideline should suggest that Plan sponsors identify within their funding policy specific circumstances or events that could trigger a review, amendment, or termination of the policy. Circumstances could include changes in the financial risks of the plan sponsor or plan demographics.

Element 12: Communication Policy

If a funding policy is created, the plan sponsor should determine whether it or related funding information will be accessible to plan members. The CBA Section does, however, acknowledge the importance of transparency and agrees it may be appropriate for the plan sponsor to provide a summary of the funding policy to plan members, subject to the protection of confidential or commercially sensitive information. Plan sponsors should not be required (subject to applicable law) to disclose any information counter to their commercial interests, including confidential or sensitive information.

Where the policy or a summary of the policy is to be made accessible to plan members, it should be the administrator's responsibility to communicate the information, consistent with existing communication policies on the pension plan.

IV. CONCLUSION

The CBA Section trusts our comments and recommendations will assist CAPSA in its work. We would be pleased to provide further information on any of these points or to address any questions you have in connection with the consultation.