THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

October 3, 2023

Via email: capsa-acor@fsrao.ca

Angela Mazerolle
Chair, Canadian Association of Pension Supervisory Authorities
Vice President, Regulatory Operations
Superintendent of Pensions
Financial and Consumer Services Commission
New Brunswick

Dear Ms. Mazerolle:

Re: CAPSA Guideline for Pension Plan Risk Management

I write on behalf of the Canadian Bar Association's Pension and Benefits Law Section (CBA Section) in response to the Canadian Association of Pension Supervisory Authorities' (CAPSA) consultation on revised draft Guideline for Pension Plan Risk Management (Guideline).

The CBA is a national association of over 37,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pension and benefits legislation, and promotes harmonization. Our members are involved in all aspects of pensions and benefits law and include counsel who advise pension and benefit plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

Comments on CAPSA's revised draft Guideline

We commend CAPSA for its overall approach in the Guideline, most notably its express recognition of the complexity and importance of proportionality when developing guidelines applicable to plans that vary greatly in size and sophistication. The Guideline strikes a reasonable balance between giving detailed and comprehensive guidance for more complex plans, while conceding that many of the proposed risk management approaches may have limited application for smaller plans.

Our only concern is with the proposal for review of environmental, social and governance (ESG) considerations in assessing risks, and specifically, the suggestion that "[a] review should be conducted at least annually, or whenever there is a material change in the risks facing the plan or governance processes." (see page 25 of the Guideline).

In our view, it may be more appropriate to state that reviews of a plan's approach to ESG risk considerations should occur at the same intervals that risks are normally reviewed by the plan administrator, or whenever there is a material change in the risks facing the plan or governance processes – recognizing that ESG risks are a subset of general risks facing the plan.

We trust that our comments are useful. Please do not hesitate to contact us if you have questions or require further information.

Yours truly,

(original letter signed by Marc-André O'Rourke for Susan Lynn Philpott)

Susan Lynn Philpott
Chair, Pensions & Benefits Law Section