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Dear Ms. Anderson:

**Re: IIAC Comments on Proposed Pooled Registered Pension Plan (PRPP) Regulations**

The Investment Industry Association of Canada (IIAC) appreciates the opportunity to provide comments on the first tranche of proposed PRPP regulations (the Regulations) under the *Pooled Registered Pension Plans Act* (the PRPP Act). Over the past six years, the IIAC has participated fully in retirement savings reform discussions with federal and provincial policymakers. We appreciate your officials' efforts to consult on the proposed PRPPs and hope our recommendations will be taken into consideration as you finalize the Regulations.

**General Comments**

We remain hopeful that PRPPs can fill a gap in retirement savings options for small businesses, for which administration of defined benefit (DB) or defined contribution (DC) pension plans is too costly, as well as for the self-employed. However, we believe that in order to achieve this goal, two concerns about the PRPP from a public policy perspective must be addressed, through legislative changes to the *Income Tax Act (Canada)* (ITA) and through the proposed Regulations. Specifically, we believe that PRPPs, as currently designed, could have the following related negative effects on Canadians' savings that to our knowledge have not been fully assessed or considered publicly.

### ***Overtaxation of lower-income Canadians***

Contributions to PRPPs will be free of employer- and employee-paid Canada Pension Plan (CPP) and Employment Insurance (EI) premiums while Canadians and businesses making contributions to group registered retirement savings plans (RRSPs) and direct employer contributions to individual RRSPs are subject to these taxes. This has been justified in the past because money can be withdrawn from RRSPs for non-retirement purposes: our research suggests withdrawals for “unacceptable” purposes are proportionally rare. The existing tax cost unfairness between pension plans and RRSPs compounds the effect of our second concern, that the low-cost aspect of PRPPs will lead to employer and employee decisions based on their perception of cost alone rather than net value.

Although we realize that this is not directly related to the proposed Regulations, we have urgently requested that the Federal Government address the unequal tax implications for Canadians saving for retirement, by amending the ITA to remove CPP and EI taxation of employer and employee contributions to Group RRSPs and employer contributions to individual RRSPs for effect January 1, 2013. The gross cost to the government is limited because yearly maximum pensionable earnings cap the CPP and EI collected. The net cost is considerably less (especially as the small minority of people who withdraw from RRSPs could be required to repay CPP and EI not withheld), and will ultimately outweigh the benefits. Leaving more money in the hands of Canadians and Canadian businesses – a government commitment – generates spending (and income taxes) or investment (jobs and taxes).

### ***Cost of loss of financial advice***

The lack of a disclosed fee-inclusive advice option in the design of the PRPP program is at odds with the stringent rules, such as know-your-client and suitability requirements, which our member firms and their registered advisors must abide by from an investor protection perspective. The Government’s own Task Force on Financial Literacy found financial literacy to be “critical to the prosperity and well-being of Canadians”, citing the search for financial advice as a “teachable moment” critical for providing investor education and noting that “the advisory role of financial institutions and financial practitioners should be promoted”. Canadians will be exposed to the risks of having no financial advice not knowing that they need advice at the times they would benefit most from it (e.g., job loss or change, divorce, extended health issue, death of a parent, estate planning, tax time); and losing a financial advisor’s encouragement to put more savings aside for home-buying, education and retirement. We believe it is reasonable to conclude that, for more than a few, the lack of personal advice will outweigh the benefits of PRPPs.

To address the access-to-advice problem, the government should restore the best channel to financial education for adults and limit the potential effect on the availability and/or costs of other financial services Canadians need, through the final PRPP Regulations by:

- Specifically confirming that members may unlock all or some of the their PRPP twice yearly for transfer into a locked-in RRSP to provide members with additional or more specialized or customized services needed at different times in their lives.
- Providing a fully-disclosed advice-inclusive option to enhance investors' engagement in their retirement planning and overall financial health.

### **Comments and Recommendations Regarding Proposed Regulations (First Tranche)**

The recommendations below are made by section number of the proposed Regulations, and not in order of importance.

#### ***Licensing (s. 7)***

We believe that the licensing criteria listed in proposed section 7, while perhaps appropriate for non-financial institution PRPP Administrators, are inappropriate and duplicative for regulated financial institutions in Canada. In order to create a program that is both attractive to financial institutions (especially from an administrative point of view) to offer and effectively regulated for the protection of investors, the federal and provincial governments must be clear on the purposes behind imposing additional requirements upon Administrators. Consideration must be also given to the legal relationships and requirements already existing between financial institutions and their respective industry regulators.

IIAC members are already regulated, and in many respects, are more effectively regulated than our counterparts in other areas of the financial industry that currently offer registered pension plans with respect to protections against conflicts and fraud, operational capacity and risk management. As such, we believe that established regulated financial institutions should be exempt from licensing requirements over and above the PRPP business plan required in section 7(a) – for example, to provide duplicative documentation or information of risk control and operational capacity that goes beyond evidence of good standing with the relevant regulator (i.e. IIROC for investment dealers).

We also note that in the Regulations, any corporation that meets the licensing criteria will be able to administer a PRPP. With this in mind, we believe that Administrators providing PRPPs and indeed any retirement savings product or service should be on a level playing field and, in this regard, should public sector entities (or other corporations) be able to offer PRPPs, they should be subject to equivalent capital, regulatory and other cost requirements such as insurance expenses. To the extent that government-sponsored organizations offer PRPPs using the same infrastructure as used for other purposes, we assume that the retirement plans will not cross-subsidize each other.

**We recommend that:**

- **Canadian regulated financial institutions should be exempt from PRPP licensing requirements over and above the PRPP business plan required in section 7(a).**
- **Non-regulated financial institutions and government-sponsored organizations that may be permitted to offer PRPPs must be subject to equivalent requirements for the protection of PRPP members.**

**Permitted Investments (ss. 8-14)**

As mentioned previously, in order to create a program that can be efficiently administered by financial institutions, and adequately regulated for investor protection, the federal and provincial governments must take into consideration the legal relationships and requirements already existing between the financial institutions that will (or would, should the conditions for PRPPs be amended to allow more competition) create PRPPs and their respective industry regulators. We believe that the regulatory standards that currently exist effectively address the duties of the Administrator for the PRPP program – including the investment of funds.

The proposed Regulations import the rules from the *Pension Benefits Standards Act* which we believe are inappropriate for PRPPs because PRPPs were created precisely to remove the administrative disincentives to offer such plans. It appears that the federal government expects financial institutions to create new “one size fits all PRPPs” – to be administered in a similar fashion as a defined benefit (DB) pension plan, instead of creating a vehicle for investors and financial institutions to leverage existing pooled investment funds, greatly minimizing start-up and administrative costs. **Placing inappropriate and unnecessary duties and requirements upon administrators will increase costs and reduce the number of financial institutions that will offer PRPPs.** Financial institutions should be able to offer proprietary funds already in existence, at all investment choice levels, including a “low-cost” and a low-cost-with-advice option.

If financial institutions are allowed to leverage existing funds, they will also be able to use their current distribution systems to promote the PRPP. But in order to do this, Administrators should be given maximum flexibility to use existing platforms, delivery systems, marketing materials, operational procedures, agreements, standardized industry forms (with minor PRPP-related modifications) and industry-wide infrastructure.

With respect to the 10% investment limit proposed in subsection 9(1) and the 30% investment limit proposed in subsection 10(1), we have concerns about the administrative requirements to continually monitor and control these limits. We would prefer to see revised language in these sections requiring PRPP Administrators to use “reasonable” efforts not to invest the assets of the PRPP beyond these limits.

***We recommend that:***

- ***The investment rules should be based on a prudent person approach only.***
- ***The language in subsections 9(1) and 10(1) should be revised to allow PRPP Administrators some flexibility to use reasonable efforts not to invest the assets of the PRPP beyond the percentage limits listed.***

***Investment Choices (ss. 15-18)***

We believe that there is not a single optimal number of investment choices, and agree in principle with the concept of having a limited, administratively manageable number of investment options from which plan members can choose, including a limited range of cost and service options.

However, we remain concerned that while the Administrator must not provide any more than six investment options (paragraph 17(a)), the Administrator is not required to offer more than one option (the default option). The combination of allowing Administrators to provide only one investment option and the mandate of providing a “low-cost” option may result in forcing PRPP members into a “low-cost” option when another choice might be more appropriate for their investing needs. One of the goals of PRPPs is to expand the range of retirement savings options for Canadians; however, we believe that a single fund that must be “low cost” and, therefore, “low service”, may not be the appropriate solution for all individuals.

***We recommend that:***

- ***Finance should not license an Administrator with a single PRPP offering: financial planning theory says that this cannot meet the needs of all Canadians at all stages of their lives, particularly those who may only start saving in a PRPP very late in their careers.***

***Permitted Inducements (s. 19)***

We appreciate that Finance has recognized the importance of permitting certain “inducements” – an exemption from the general rule that inducements should not be offered, demanded or accepted. In our previous submissions, we asked for clarity on what constitutes an “inducement” to an employer. We note that two general exemptions have been provided that would allow for the bundling of services (“tied selling”), where the inducement is for the equal benefit of the employees and where assets are being transferred into a PRPP – covering the employer’s costs associated with the transfer of assets.

However, we anticipate that a number of other important exemptions will need to be made in order to allow Administrators to operationalize the rollout of the PRPP program. For example,

we recommend that where an Administrator is prepared to pay a small amount to a third party (e.g., another financial institution or broker) to distribute the PRPP options, in order to reach Canadians who may not otherwise become part of a PRPP, this should be exempt from consideration as a prohibited “inducement”. Similarly, a free retirement planning seminar for PRPP members offered by an Administrator and/or an Employer should not be considered an inducement and exempted if necessary. We believe that a number of these types of examples will arise during the course of the PRPP implementation, and as such, the regulations should explicitly give the supervisory authority the power to provide further exemptions and relief.

***We recommend that:***

- ***Finance provide explicit exemptions in the regulations or guidance allowing Administrators to distribute PRPP options through third-party providers.***
- ***The regulations delegate authority to the supervisory authority to provide further relief and exemptions as required from the definition of prohibited inducements to allow for the smooth implementation of the PRPP program.***

***Low-Cost Plan (s. 20)***

As previously mentioned, the combination of allowing Administrators to provide only one investment option and the mandate of providing a “low-cost” option may force PRPP members into a “low-cost” option when another choice might be more appropriate for their investing needs. One of the goals of PRPPs is to expand the range of retirement savings options for Canadians; however, we believe that a single fund that must be “low-cost” and, therefore, “low service”, may not be the appropriate solution for all individuals.

We recommend that the government re-evaluate the portions of the Regulations that create incentives for Administrators to provide only low-cost alternatives, essentially precluding a range of retirement products and services from being offered through PRPPs. The Federal Task Force on Financial Literacy has identified the importance of advice to making good financial decisions, and mandating a “low-cost/low-service” option might well undermine efforts to promote financial literacy generally, keeping in mind that financial advice is a service that requires investment on the part of the financial institution to provide.

Without a basic advice component, PRPP members will not be able to adequately assess whether they should move out of a default plan into one that is more suitable to their investing needs. Perhaps even more importantly, investors should receive advice to determine if they should more appropriately be considering other savings vehicles, such as TFSAs, especially where their employers may not be matching the contributions. Sponsors of DB and DC plans, as well as employer-provided group RRSPs and TFSAs, have no or limited “know-your-client” requirements. Similarly, PRPP providers have no requirement to analyze and take into account a

retirement planholder's overall financial situation and provide the personalized attention that clients receive as part of individual RRSPs, TFSAs and non-registered accounts.

Most investors require advisory services especially as millions of Canadians already have savings in Registered Pension Plans (RPPs) and/or RRSPs and/or TFSAs and/or non-registered assets and these should be understood when making decisions about PRPPs. A more comprehensive advice component should be available to these individual investors to determine how to structure a balanced retirement portfolio across all holdings. ***Not having a clearly disclosed advice-inclusive PRPP option will put more pressure on existing providers of advice, possibly leading to less such service being available to individuals at the moments it is needed.*** Advice will also be required by small businesses that may be interested in providing a PRPP to their employees, or in determining how PRPPs fit into an overall financial and business plan for self-employed individuals.

Investors who want or need a more comprehensive financial review and more customized financial advice should be able to access supportive, clearly disclosed, personalized services beyond what is included in a "low-cost" PRPP option by "adding on" to their services for an additional competitive market price or as an all-inclusive embedded price if that is what retirement planholders prefer. Many investors prefer to pay an all-inclusive fee for financial advice. This is another reason why PRPPs should be administered by a broad range of qualified financial institutions; Canadians should be able to access all retirement products by contacting their existing financial institution of choice, including contacting their current investment advisor.

We believe that the criteria used in section 20 of the proposed Regulations ("at or below those incurred by members of defined contribution plans that provide options to groups of 500 or more members") may serve as a disincentive to firms considering becoming Administrators given there may be little prospect of a market return on their PRPP investment infrastructure. Flexibility should be permitted to allow for amortization of costs (start up and ongoing administration and recordkeeping) as well as tiered pricing to reflect increasing volumes over time. Without the ability to tier pricing to volumes, Administrators will lose the ability to pass on savings from increased volumes in future. As an alternative approach, we also draw your attention to the National Employment Savings Trust (NEST) established in the UK<sup>1</sup>, which charges annual management fees to all members, set at 0.3% of a member's total fund each year. Members are also levied charges on new contributions, which are intended to be removed once the costs of setting up the NEST program are met.

Under both National Instrument 31-103 and IIROC rules, registered dealers must provide clients with a description of the costs they will pay in making, holding and selling investments, including the management expense ratios (MER), the sales charge options available to the client, the trailing commission, any short-term trading fees and any switch or change fees. We believe

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<sup>1</sup> See <http://www.nestpensions.org.uk/>.

that such disclosure is appropriate for PRPPs, and assume that the rules will apply to PRPP investments.

***We recommend that:***

- ***The final Regulations should include the right to offer a clearly-disclosed advice-inclusive PRPP option, recognizing that some advice-equivalent products such as target date and lifecycle funds will incur higher costs and that some basic level of advice is necessary to ensure investors do not contribute to a PRPP in inappropriate circumstances.***
- ***The Federal Government should consider whether the strict requirements to charge the same fees to early participants as to late participants, and for individual members as for group members are practicable.***

***0% Contribution Rate (s. 21)***

Administrative costs will be increased substantially by allowing members to set the contribution rate to zero without any constraints on the number of times this is done (subsection 21(2)), and this ability is arguably contrary to the retirement saving rationale that the PRPP solution is intended to promote. The requirement for written notification, with written confirmation by the Administrator, will also increase costs – at a time when many transactions proceed on the basis of a username or number and password.

We also have concerns with the provisions in the proposed Regulations requiring the Administrator to “ensure that the member’s contribution rate is set at 0%” (subparagraph 21(4)(a)(ii)). This is something that is beyond the control of the Administrator, and entirely within the control of the employer. Similarly, the Administrator cannot ensure that the contributions to the PRPP resume automatically after the expiration of the zero contribution period unless it is contemplated that employers are to make payment into a member’s bank account and the Administrator to debit that account effectively at the same time, in which case we believe that this should be made clear.

***We recommend that:***

- ***Barring clarification of the expected contribution process, reducing the contribution rate to zero and returning contributions to the previous rate must be a matter between the PRPP member and the employer as it is the employer that is responsible for managing the contribution deposit directly or through the payroll service provider it uses.***
- ***The decision by a member to reset the contribution rate to 0% should be identified as a discretionary event (“triggered by the action of the member”), the cost of which will be borne by the member, with the cost disclosed to the member but not set by regulation or***

***subject to guidance by the Supervisory Authority without a requirement for consultation on such fees.***

### ***Rights to Information (ss. 22-24)***

#### *General Comments*

It would also be helpful to PRPP Administrators for Finance or the Supervisory Authority to provide further clarity on the term “year-end”, and whether this is set to the calendar year-end, or the year-end of the PRPP Administrator. Similarly, it is not clear from the proposed Regulations by what time the statements and information returns are to be required to be provided and filed.<sup>2</sup> We would recommend in each case that PRPP Administrators be given 90 days to complete the requirements in sections 57(1)(b) and 58(1) of the PRPP Act.

#### ***We recommend that:***

- ***More clarity be provided on the term “year-end”.***
- ***PRPP Administrators be given 90 days to complete the information requirements of sections 57(1)(b) and 58(1) of the PRPP Act.***

#### *Annual Member Statement*

We appreciate that Finance has recognized the importance of leveraging existing systems of disclosure for PRPPs, however, for many years DC planholders almost certainly have received substantially less disclosure than holders of RRSPs.

Securities law (NI 31-103) requires all registrants (which would include all IIROC member firms) to provide client statements at least quarterly. Similarly, IIROC member rules require monthly reporting in months where transactions have occurred, and in every other case, on a quarterly basis. We believe that PRPP members should receive quarterly statements as a minimum.

Under both NI 31-103 and IIROC rules, registered firms must also provide clients with a description of the costs they will pay in making, holding and selling investments, including the MER, the sales charge options available to the client, the trailing commission, any short-term trading fees and any switch or change fees.

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<sup>2</sup> Paragraph 57(1)(b) of the PRPP Act requires Administrators to give each member of the plan a written statement showing prescribed information “within 45 days after the end of each year or *any longer period specified by the Superintendent*”.

**We recommend that:**

- ***Standards for PRPP disclosure for investment dealers should be based on the requirements set by the CSA and IIROC; these requirements have been subject to significant consultation and review over many years.***

*Information Return to Supervisory Authority (section 24)*

We note that the proposed Regulations provide for separate disclosure of fees for advice (as they would be considered a “fee, levy or charge triggered by the actions of a member”). As noted above, retirement savings holders should have the right to select an advice-inclusive option.

**Timing and Follow-Up**

As mentioned in previous submissions, we would appreciate more clarification on the proposed introduction date of the PRPP program. Our members agree that an implementation timeframe of 12-18 months from the *final* release of detailed regulatory guidance is appropriate and reasonable, and as such, introducing PRPPs in 2013 is not a reasonable timeframe. If the government is planning on introducing this program in 2013, financial institutions may not be in a position to immediately offer PRPPs to the public. However, we would like to re-emphasize that the implementation period can be reduced if the PRPP program is designed in a simple, straightforward and uniform fashion that can leverage existing industry platforms and systems.

We will contact you directly to arrange a call to discuss any questions that you might have about our comments.

Sincerely,

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Cc: Lynn Hemmings, Department of Finance  
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