



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

December 16, 2014

The Honorable Kevin Sorenson
Minister of State
Department of Finance
Canada
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Via E-mail: pensions@fin.gc.ca

Dear Minister Sorenson:

Re: Pension Benefits Standard Regulations - Proposed Amendments

This letter is to respond to the questions raised by your Department regarding our submission dated October 30, 2014 on the proposed PBSR regulation changes.

Investment Funds Definition

Our submission stated that we support the exemption from the 10% limit for an investment in an “investment fund”. However, the proposed definition of “investment fund” requires that the fund be established “by” a corporation, partnership or trust. We recommended that Finance broaden the proposed definition to include investment funds established by the fund.

The Department of Finance has requested examples of what we mean by “investment funds”. Some of our members, particularly larger funds, establish investment companies in other jurisdictions for tax reasons. For example, a large fund may want to structure their exposure in a particular country through one or several controlled subsidiaries domiciled in that country. For example, there may be a main Japan Equity fund that established a number of Japan industry funds, and some pension funds may invest directly into one of the industry funds. Depending on local jurisdiction, the legal form of the main local entity may not fall exactly into the list in the proposed amendments (corporations, partnerships, trusts). Given the multitude of potential foreign legal forms, it would be desirable to encompass all of them by establishing that an investment fund can be established by another investment fund irrespective of the local legal form.

Funds Managing Other Plans' Assets

In addition, we indicated that there are smaller plans that use larger plans such as OMERS to manage portions or all of their investment assets. As a result, we stated our belief that where the larger plan complies with all regulatory requirements, an exemption from the 10% concentration limit for these plans is both reasonable and appropriate.

The Department of Finance has requested additional examples of plans other than OMERS. Other examples include bcIMC, AIMCo, and the Caisse de dépôt, but we expect that more pension funds may enter into similar arrangements over time as provincial regulations enable this activity. It is important to note that such investment may be made through a dedicated partnership – i.e. such a partnership has just one investor and cannot be considered an investment fund under the proposed definition. Also, such a partnership would invest in a total return contract with a large pension fund – not an actual basket of securities. We would propose that the amended regulations allow the exemption from the 10% limit for such synthetic exposures, on the basis that the underlying pension fund already complies with the diversification requirements under the regulation.

To expand on our earlier letter, our general concern is that the narrow interpretation of the 10% limit as applied to the investment funds would lead to excessive diversification. For example, if an investment fund represents 20% of a pension plan's assets, and a particular investment represents more than 11% of the value of the investment fund, the pension plan could be considered in breach of regulation because the investment fund doesn't comply with the 10% limit applicable to the plan, even though the underlying investment equals $20\% * 11\% = 2.2\%$ of the pension plan's assets.

Our recommendation is that the proposed amendment is presented as follows:

"(3) The portion of subsection 9(3) of Schedule III to the Regulations before paragraph (b) is replaced by the following:

(3) Subsections (1) and (1.1) do not apply in respect of investments in

(a) an investment fund or a segregated fund that complies with

(i) in the case of investments applicable to a member choice account, section 11 of this Schedule, and

(ii) in the case of any other investments, the pro-rata requirements applicable to a plan that are set out in this Schedule;"

Once again, we thank you for the opportunity to share our thoughts with you, and for your interest in seeking further clarity on our submission.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Keenan". The signature is fluid and cursive, with a small flourish at the end.

Michael Keenan
Chair

cc. Lisa Pezzack, Director Financial Sector Division, Financial Sector Policy Branch,
Department of Finance Canada Lisa.Pezzack@fin.gc.ca