



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

April 27, 2016

Pension Policy Branch
Eliminating the 30 per cent Rule for Pension Investment
Ministry of Finance
5th Floor, Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario
M7A 1Y7
Via Email: pension.feedback@ontario.ca

Dear Sirs:

Re: Proposed Amendments to Regulation 909: Eliminating the 30 per cent rule for Pension Investment

PIAC is pleased to provide comments on the proposed amendments regarding the 30% investment rule.

PIAC has been the national voice for Canadian private and public pension funds since 1977 in matters related to pension investment and governance. Senior investment professionals employed by PAC's member funds are responsible for the oversight and management of over \$1.5 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

For over 15 years PIAC has expressed the view that pension investment regulation needed to move from quantitative limits in pension fund investment to the principle of the "prudent person". In 2001, a joint submission from PIAC, the Association of Canadian Pension Management (ACPM), the Canadian Life and Health Insurance Association (CLHIA), and the Investment Counsel Association of Canada (ICAC) to CAPSA's Investment Policy Committee laid this out (attached). More recently, the CD Howe Institute released a paper in February 2009 on the removal of the 30% limit entitled: "A Matter of Voice: The Case for Abolishing the 30 percent Rule". We are pleased to see that the Ontario Ministry of Finance has come to agree with this conclusion.

While we are pleased that the Ministry is prepared to finally eliminate the 30% quantitative limit, we are seriously concerned about the suggested regulatory compliance requirements being considered by the Ministry. Some of our key thoughts are:

- It is PIAC's contention that pension funds have fiduciary obligations to their plan beneficiaries, and any investments have to be considered in light of this fiduciary commitment. The standard of care would not be eliminated, limited or reduced if the 30% rule was removed.
- The fall 2015 Ontario budget stated that the elimination of the 30% rule was intended to open up new investment opportunities and tap the capacity of the pension sector to contribute more to economic growth. That may not be the case if the compliance hurdles being considered in the consultation document recently released by the Ministry are implemented. These requirements are onerous and will result in an unnecessary and costly administrative burden on pension plans and the operating businesses in which they invest.
- The 30% rule is a competitive disadvantage for Canadian pension funds and, as such, either keeping the rule or eliminating the rule but with significant compliance reporting will continue to create an unnecessary, and uncompetitive, cost to the pension plan and the operating businesses in which they invest. In addition, the undertakings and disclosure obligations may lessen the appeal of pension plans as investors in operating businesses, as other investors would not want their portfolio companies to be subject to such requirements, which could hinder returns to the detriment of beneficiaries.
- As a result of PIAC's views above, our response to the specific questions from the Ministry's consultation document are as follows:
 1. PIAC believes that there should be no required disclosure or specific undertakings, and that there should be no threshold. Rather, we believe the prudent person rule should govern whether or not an administrator decides to make any particular investment, no matter the ownership percentage. Guidance or principles to help smaller employers may be warranted to ensure their understanding of the implications of the decision to take a substantial position in an investment. The point at which an investment of any percentage is not prudent will be different for different organizations. The prudent person rule is the best way to address this, not undertakings and thresholds.
 2. With regard to different types of corporations: there are strict requirements in the Investment Regulations for an entity to qualify as an investment corporation (i.e., the entity must hold at least 98% of its assets in cash, investments and loans, it must not issue debt obligations, and it must obtain at least 98% of its income from investments and loans, etc.). As a result, an investment corporation can't conduct any business other than investing in the same manner as a pension plan, and so can't be involved in operating a business. An investment corporation is really just an extension of a pension plan and used only for undertaking the investments of a pension plan, and so it makes more sense for those entities to be regulated in the same manner as the pension plan.

3. With respect to the question of undertakings and disclosures depending on features of the plan, we believe such oversight is not necessary.
4. With respect to risks of conflicts, we believe the existing related party rules that apply solely to the pension plan are sufficient to protect against inappropriate investments being made by pension plan administrators, and against inappropriate risks being incurred.

PIAC also believes that if Ontario continues to take a lead in proceeding with the elimination of the 30% rule, it is important that the Ministry consults with other jurisdictions to ensure a harmonization of this change in pension regulation across the country.

Thank you for this opportunity to respond to the consultation document. We would be pleased to meet with you to discuss any elements of this letter.

Yours sincerely,



Lisa Jankov
Chair

encl.