April 29, 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, ON M7A 1Y7

Email: pension.feedback@ontario.ca

To Whom It May Concern:

RE: Proposed Amendments to Reg. 909: Eliminating the 30 per cent rule for Pension Investment

ACPM is a national non-profit volunteer-based organization acting as the informed voice of plan sponsors, administrators and their service providers, advocating for improvement to the Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members, with assets under management in excess of $330 billion.

We welcome the Government's proposal to eliminate what is frequently referred to as the "30% rule" and offer the following comments.

The "federal investment regulations", being sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulation, 1985 made under the Pension Benefits Standards Act, 1985 (Canada), provide that the administrator of a pension plan "shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation".

There has been a movement to reconsider the 30% rule. Ontario pension plans have been at a disadvantage in investing within Canada and outside due to the rule. Any lifting of the 30% rule needs to done with care to avoid creating new problems for pension plans.

The Government's consultation paper, dated March 14, 2016, posed four main questions, which we address below.

Should there be disclosure requirements or undertakings and, if so, what should they be?

The 30% rule applies only to director voting securities. There is no prohibition on the administrator from investing in more than 30% of the economic value of a corporation.

This is an important distinction, as numerous pension funds have acquired more than 30% of the economic value of various corporations despite holding less than 30% of the director voting securities. The elimination of the 30% rule would mean that pension funds could use simpler investment structures than have been used in the past.

Concurrent with the elimination of the 30% rule, Ontario has proposed various disclosure requirements and undertakings that would apply to a corporation in which the administrator has invested in securities to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation. Given that such disclosures and undertakings are not required while the 30% rule is in place, we do not think there is a rationale for adding disclosures and undertakings when the 30% rule is eliminated. Rather, new disclosure requirements and undertakings may have unintended negative consequences.

Specifically, the proposed undertakings and disclosure requirements put administrators on an uneven playing field in relation to other potential buyers. If the administrator has a co-investor, as is often the case, the co-investor may be unwilling to act in that role if the purchased corporation is subject to undertakings and disclosure requirements that would not apply if the co-investor were to invest with a partner that is not an Ontario pension fund.

The result is that pension funds might have more difficulty making significant investments than they do today. Given the Government's intention of liberalizing the investment rules, it should not include requirements that make it more difficult for pension funds to take significant equity interests in corporations.

Any mandatory disclosure requirements should be solely applicable to the pension plan itself and should be minimal. For example, it could entail the administrator disclosing that it has invested or sold as the case may be securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation. That disclosure could, for example, be required in the plan's annual information return.

We recognize that there might be situations in which more disclosure is desirable. As Ontario moves to risk based regulation, if there is a need for disclosure above what is required by regulation, we note that FSCO has tools to pursue enhanced disclosure that is tailored to the circumstances of the plan and to FSCO's concerns. For example, under Section 98 of the Pension Benefits Act (Ontario) (PBA), the Superintendent already has broad powers at its disposal to require a pension plan to produce information "for the purpose of enabling the Superintendent to ascertain whether the Act and the regulations are being complied with," as well as to require appraisals of a pension plan's assets.

Should the same disclosures and undertakings be required from all types of corporations?

We do not see that it is appropriate to require the same disclosures and undertakings from resource corporations, real estate corporations and investment corporations on the one hand and corporations in which the administrator has invested in securities to which are attached more than 30% of the voting shares.

We would be pleased to consider separately the appropriateness of the existing disclosures and undertakings required from resource corporations, real estate corporations and investment corporations.

Should the disclosures and undertaking depend on features of the plan?

No.

Are there other considerations associated with eliminating the 30% rule, such as measures to reduce conflicts of interest?

The elimination of the 30% rule will not fundamentally alter the investment landscape for pension funds. Its elimination will allow pension funds to use more efficient investment structures than they have used to date when they have purchased more than 30% of the economic value of a corporation. Greater efficiency in investments is in the best interest of plan members because it ensures that more economic value is available to meet pension obligations.

The elimination of the 30% rule seems unlikely to open the floodgates to investments that would not otherwise occur. That is, the code of conduct imposed on the administrator by the PBA, which has at its heart the standard of care and duty to not knowingly permit a conflict of interest, will continue to be very much at the centre of investment decision making. As well, the various limitations on related party transactions by a pension plan should serve to ensure prudent investment behaviour.

We are available to discuss further, either by way of conference call or meeting.

Yours very truly,

Bryan Hocking
Chief Executive Officer