



16 September 2016

Sent by e-mail to: FIN.Pensions-Pensions.FIN@canada.ca

Subject: Federal Consultation on the 30% Rule

The Canadian Federation of Pensioners (CFP) is pleased to submit its comments on the consultation "Pension Plan Investment in Canada: The 30 Per Cent Rule". CFP advocates for the defined benefit pension interests of its member organizations, which collectively represent 250,000 active and retired DB pension plan members across Canada. The consultation document notes that many Canadian jurisdictions adopt the federal investment rules for pension plans by reference, so all member organizations of CFP take a keen interest in this consultation.

The consultation is canvassing views on whether the current rule¹ should be retained, relaxed, or eliminated. CFP acknowledges that eliminating the 30% rule may provide sponsors and administrators with greater flexibility in the investment strategy for a DB pension plan. CFP is not interested in unduly fettering a plan administrator in its duty.

However, CFP's priority is the effective stewardship of a pension plan in a way that does not open its members to unnecessary risks. In this vein, CFP is very supportive of other pension investment rules that do fetter an administrator's discretion. In particular, PBSR, 1985 Schedule III, section 9(1) limits investments in (a) any one person, (b) two or more associated persons, or (c) two or more affiliated corporations to 10% of the total booked value of the plan's assets. This rule limits the exposure of a pension plan's investment to any one holding, and promotes the diversification of the plan's investment portfolio.

PBSR, 1985 Schedule III section 17(3) permits "transactions with a related party on behalf of the plan if the value of the transaction is nominal or the transaction is immaterial to the plan." This rule appropriately limits the discretion of the administrator as well. This rule ensures that pensioners will not be doubly harmed should the employer fail; first by the employer's inability to contribute to the plan, and second by a sudden reduction in the plan's assets as the employer's value disappears. The first may be unavoidable for any particular plan, the second is avoided by the prohibition on material related-party investments.

¹ PBSR, Schedule III section 11(1) precludes the administrator of a plan from investing "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".

Active management of an investment, made possible by elimination of the 30% rule, entails a different set of skills in comparison to passive investing. Developing or acquiring these skills is not a trivial matter for the plan administrator; and the plan would be taking on a higher level of risk along with the prospects for better returns. An administrator that opts for only active management properties may be taking on an unacceptable level of risk. However, the 9(1) restriction together with the prudent person standard and the requirement to document and inform active and retired plan members of the plan's investment strategy will mitigate this potential risk to some extent.

CFP does not object to the elimination of the 30% rule. But this position is premised on two conditions. The first condition relates to the potential that an administrator may be more likely to be placed in a conflict of interest. Consider the case where the pension plan is the majority owner of a customer of or a supplier to the employer. The onus is on the administrator of the plan to ensure that its decisions regarding the operation of that investment vehicle is unambiguously in the interests of the pension plan members, not the employer. The administrator will have to ensure that mechanisms are in place to recognize, acknowledge, document, and remedy potential conflicts of interest in this regard. With the elimination of the 30% rule, there should be a requirement that the administrator document the measures that have been adopted. This document should be filed annually with the Superintendent and be made available to plan members on request.

The second condition relates to the discussion in the consultation document on tax deferral. The document states that enhanced tax deferral opportunities will be made available, or be made available more easily, with the elimination of the 30% rule. CFP does not take a position on what level of tax deferral should be considered "acceptable" or "unacceptable". However, CFP is looking for assurance that current pension plan investment strategies will not be curtailed should subsequent tax amendments be inspired by the fear of, or reality of, increased tax deferral strategies occasioned by the elimination of the 30% rule. It would be harmful to the success of pension plans if current investment strategies become less effective, and sadly ironic should that happen as a result of a change intended to relieve or eliminate investment restrictions.

Yours truly,

A handwritten signature in black ink, appearing to read 'Bob Farmer', with a stylized, cursive script.

Bob Farmer

President – Canadian Federation of Pensioners