Pension Plan Investment in Canada: the 30 Per Cent Rule

Response of OMERS Administration Corporation to the Department of Finance Canada's Consultation Paper on the 30 Per Cent Rule

September 15, 2016

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Response of OMERS Administration Corporation

Introduction

OMERS Administration Corporation ("OMERS") is pleased to have the opportunity to respond to the Department of Finance's consultation paper ("Consultation Paper") on the ongoing usefulness of the 30 per cent rule.

OMERS believes that a stable and predictable regulatory structure plays an important role in ensuring that we fulfill the pension promise to our 461,000 members, while at the same time protecting participating employers and other stakeholders. To fulfill the pension promise to our members, OMERS makes decisions with a long-term perspective. Changes to the regulatory system could have significant impact on our plan. We appreciate the Department of Finance's commitment to open and constructive dialogue as it considers regulatory changes.

Pension investing has evolved considerably since the introduction of the 30 per cent rule, which was developed in a world where the investment alternatives facing plan administrators essentially consisted of public equities and bonds, and investment decision-making was typically outsourced to third parties on a fee-for-service basis.

The limitations of this model, particularly in a sustained low interest rate environment, led many of the large Canadian pension funds to expand their investments in alternative assets such as real estate, private equity and infrastructure ("Private Markets"), whether through fund investing or by building internal expertise specifically tailored to the plan's investment strategy. Indeed, the large Canadian pension funds are consistently cited as being global "pioneers" and success stories in alternative investment strategies.[1]

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[1] See, for example, The Economist "Maple Revolutionaries" (March 3, 2012)

The Consultation Paper asks questions about the role of pension plans in financial markets, including whether plans should be limited to "passive" investment rather than assuming a more direct or active position in the assets in which they are invested. OMERS believes strongly that limiting all plans to purely passive investing is not an approach that makes sense in today's investment environment and is not in the best interests of pension plan members nor Canada generally.

Large plans like OMERS that have the scale and internal capability to actively manage their investments should not be forced to outsource these services to third parties. Restricting these plans to purely passive strategies would severely hamper their ability to invest in Private Markets, to the detriment of their plan members. Active strategies provide the tools for the large Canadian plans to match their long-term liabilities with a more diverse and targeted asset mix, and to substantially reduce their costs through internal management. Active investing enables "patient" capital, which is key for long-term investors and beneficial to the economy.

Active investing by Canadian pension plans has direct benefits to the Canadian economy. According to a 2015 Boston Consulting Group (BCG) study,[2] Canada's top ten pension funds had more than $600 billion invested in Canada across various asset classes, including $18 billion in private equity, $113 billion in real estate and $18 billion in infrastructure. BCG also noted that one of the benefits of the current Canadian pension funds' investment model is that the top ten Canadian pension funds serve as financial services anchors for creating talent clusters in multiple Canadian cities.

In our responses below, we have followed the outline of the Consultation Paper and have addressed the specific questions posed. We would be pleased to speak with you further about our responses.

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[2] Boston Consulting Group "Measuring Impact of Canadian Pension Funds" (October, 2015). The top ten funds in the BCG report are: AIMCo; bcIMC; CDPQ; CPPIB; HOOPP; OMERS; OTPP; OPB; OPTrust; and PSP Investments

The 30 Per Cent Rule

Prudential Considerations

1) Does the philosophy that plan administrators should act as passive investors continue to be valid. If not, why?

In today's low interest rate environment, pension plans like OMERS face increasing challenges in achieving investment returns that enable them to meet their pension obligations. Volatile public equity markets add an additional set of challenges for plan administrators. In this context, relatively new asset classes such as infrastructure have developed and are a good fit for pension funds given the relative stability of such investments and the long-term horizon of pension obligations. In fact, the Canadian pension funds are recognized world leaders in this asset class and could only have achieved this level of success through an active investment strategy.[3]

The Consultation Paper posits that the principle behind the 30 per cent rule is that pension plans should be passive investors and should avoid exposure to the risk of a controlled business failing. Assuming that these are the underpinnings of the rule, it is important to examine whether such a philosophy has merit in Canada today.

To do so, first it is necessary to understand what active investing means for pension plans. It does not involve the "day-to-day operations of business" as suggested in the Consultation Paper. Indeed, this would not be in accordance with the objects of most pension plans, which generally limit their activities to investing plan assets and administering the plan. Some of these administrators, including OMERS, have been granted additional power under their legislation to manage money for certain permitted third parties; however, these activities do not result in the administrator engaging in "day-to-day operations of business" either.

An active approach to investing means taking a direct approach to investing (i.e., not through a fund, index, third-party manager or otherwise) and being engaged as a

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[3] See, for example Andrew Willis, "How Canada Became the Centre of the Infrastructure Universe" *Globe and Mail* (July 13, 2016*); The Economist*, *supra* note 1; Boston Consulting Group, *ibid*.

shareholder in the investment. This engagement is typically achieved in two ways: (i) through seats on the Board of Directors which has oversight of the management of the business; and (ii) through shareholder rights negotiated in a shareholders agreement or other similar instrument agreed by equity participants. Plans like OMERS do not operate the businesses of their Private Markets investments but rather oversee management in a governance capacity through Board seats and shareholder engagement. We believe that this ability to directly engage with our investments and influence alignment of interests with the long-term goals of our Plan is a critical element of the good governance of our plan assets.

At large plans like OMERS, this oversight function is carried out by internal personnel with relevant expertise in the asset class. Shareholders often also recruit external experts to sit on Boards of Directors of investee companies, where they have a particular industry or other expertise not possessed internally by the investors. Investee companies will have their own management teams that operate their businesses and report to their respective Boards of Directors. In some cases, pension funds may co-invest with an operating partner (i.e., not a financial investor), who may operate all or part of the business under a management contract.

We have already noted above and it is well documented that Private Markets provide attractive opportunities for pension plans, including suitable matches for a plan's long-term liabilities. Direct Private Market investments are often made together with other investors through a consortium. Governance rights for each investor, including Board seats and shareholder protection rights, are typically commensurate with the size of the shareholder's investment.

A passive investing philosophy is particularly ill-suited to this type of investing for the following reasons.

- Pension funds following a passive strategy would necessarily revert to third-party managers or fund investments to gain exposure to Private Markets. It is not clear why a pension plan of scale that can prudently create internal capacity should be forced to outsource this investment activity to a third party at significant incremental cost to its plan members. The large Canadian pension funds have demonstrated to their members and stakeholders that they are able to deploy this

type of investment expertise internally at a materially lower cost than using a third-party fund or other advisor.

- A passive role limits influence on the strategic direction of the investment. Pension plans would therefore not be able to impact or drive strategy in a direction that suits their plan. A typical example is investment horizon – pension plans typically invest for the long term in an attempt to match their long-dated liabilities. This focus can bring stability to the businesses in which they invest, as it removes the distraction and potentially damaging effects of short-term or "quarter-by-quarter" management. The objectives of third-party funds will not likely be completely aligned with the investment strategy of the pension fund.
- An artificial restriction on equity holdings would hamper the ability of a pension plan to properly manage its investment; for example, it could be hamstrung on capital calls or in responding to shareholder transfer events such as rights of first refusal or buy-sell clauses.

In order for direct, active investing to be prudent, a pension fund must have in-house expertise and must have an appropriate governance model. We would suggest that a pension fund needs a certain scale in order to do so.[4] OMERS and other large Canadian pension funds have developed, over time, high-quality investment management teams skilled in Private Markets investing. Active investment strategies enable the large pension funds to attract, develop and retain talent in strong Canadian enterprises that compete for investment opportunities on the global stage.

While smaller or single employer pension plans may not have the scale or internal infrastructure to deploy an active strategy, they may team up with other smaller plans or co-develop this expertise, or they may team up with the large Canadian plans that already have this ability and are recognized world leaders.

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[4] See for example, Keith Ambachtsheer, "Tomorrow's Pension Fund" (2010) *Director* (Institute of Corporate Directors) where the author submits that the key success drivers for "tomorrow's pension fund" are: (i) conflict-free; (ii) well-governed; (iii) sensible investment beliefs and approach to risk management; (iv) sufficiently-scaled; and (v) competitively-compensated.

2) What are the benefits and risks of pension plans taking on a dual role of providing benefits to members and taking an active role in the operations of a business?

The benefits of active investing for pension plans are noted above and include cost effectiveness, influence over direction and strategy of investments, greater ability to tailor an investment strategy to a plan's liability profile and the execution precision that comes with a developed, sophisticated internal team. We have also noted above that active investing does not mean "operating" a business.

As with any trustee, part of the role is to distribute assets in fulfillment of the objects while another is to manage the assets held from time to time in the trust. Accordingly, there is nothing surprising about the existence of a dual role. For large plans that have developed internal investment capacity to manage active strategies, there is no added risk of a "dual role" conflict. This is because the large plans have dedicated investment professionals, separate from the employees who administer pensions. This functional separation eliminates any dual role risk for plans governed in this fashion.

3) Are the prudent person and other PBSA standards sufficient to offset potential risks involved in pension plans acquiring a controlling stake in a corporation?

We believe that the prudent person approach is sufficient to offset any risks of active investing. It is noteworthy that under both the PBSA and the PBA, the prudent person approach is supplemented by an objective standard for administrators with the knowledge and skill that they possess or ought to possess by reason of their profession or business.

The prudent person standard arises from the administrator's statutory and common law fiduciary duty – the highest duty known to law. Administrators are held in their investment decisions to rigorous standards of prudence, loyalty and good faith vis-à-vis plan beneficiaries, and their duties are further informed and shaped by hundreds of years of case law requiring the prudent investment of trust assets and ensuring the protection of trust beneficiaries. To the extent that any administrator undertakes active investment, it must be prepared to show that such an approach is in the best interests of beneficiaries.

The Canadian Association of Pension Supervisory Authorities ("CAPSA") recently described this aspect of the fiduciary duty in its *Guideline No. 6 – Pension Plan Prudent Investment Guidelines* (the "Prudent Investment Guideline"), which articulates and provides guidance on how the prudent person approach applies in the pension investing context. For example, under the principle of "Prudent Delegation", the Prudent Investment Guideline notes that a plan administrator should assess the extent to which it has the right internal resources and expertise to perform its investing and administering duties. To the extent it does not, it would be prudent to delegate these tasks (e.g., to external third parties).

As noted above, acquiring controlling stakes in corporations does not mean that a pension fund manages day-to-day operations of the entity, but acquiring such stakes does require appropriate governance skills and expertise to provide prudent oversight as an investor and owner on behalf of the pension plan.

This is particularly so with private corporations, which are typically not subject to public company disclosure rules and other market disclosure and feedback mechanisms. However, there is no particular reason why a pension fund could not develop or acquire this expertise in-house, or why an external private equity fund or other type of asset manager should be the only option available to pension plans. The development of an internal platform may not be suitable for all pension plans and likely requires scale, as noted above. The Prudent Investment Guideline specifically addresses this by requiring a plan administrator to make a determination about internal capabilities. Where internal expertise does not exist, it would be prudent for the administrator to delegate the function.

The Prudent Investment Guideline also articulates prudential principles around "Investment Selection and Due Diligence" and "Monitoring". Plan administrators pursuing an active investment strategy would need to be satisfied that appropriate due diligence processes are in place in the investment selection process and that the investment is monitored appropriately. Large jointly sponsored plans like OMERS have

robust governance processes and control functions in place to manage risks that may come with making investments in Private Markets.[5]

The Prudent Investment Guideline also provides a self-assessment questionnaire where plan administrators can self-assess against the principles and practices articulated in the Guideline. This is an example of one of the tools regulators have to ensure that plan administrators are considering their fiduciary obligations of prudence in how they structure their investment practices.

4) If a pension plan's investment exceeds a certain threshold, should the plan be subject to additional requirements? If so, what should those requirements consist of and what would be the appropriate threshold?

Pension legislation provides explicit limits on concentration so that, for example, a pension plan could not invest more than 10 per cent of its assets in one investment. This limit is prudent from a diversification perspective; however, it is less clear what the policy reasons are behind quantitative restrictions such as the 30 per cent rule.

The Ontario Ministry of Finance recently published its own consultation paper on the 30 per cent rule, in which it asked for feedback on potential increased disclosure requirements (if any) for investments above 30 per cent. Below are our thoughts on increased disclosure requirements.

In Ontario, the *Pension Benefits Act* ("PBA") imposes ongoing reporting requirements on all pension plans which provide the Financial Services Commission of Ontario ("FSCO") with a substantial amount of information about Ontario pension plans, including their assets and investments. The PBA also grants FSCO broad powers to obtain further information.

OMERS believes that these requirements, combined with FSCO's broad powers to obtain further information, provide the regulator with multiple tools to enable it to effectively regulate pension plans in Ontario. However, it may be that reporting by a

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[5] See, for example, "Large Canadian Public Pension Funds: A Financial System Perspective" Bank of Canada – Financial Systems Review (June 2016) which examines these issues as they relate to the "Big Eight" pension funds.

plan of whether or not it engages in active, direct investing could assist the regulator in determining which plans are making these types of investments and whether the regulator should seek further information, for example, on its investment practices and its compliance with the Prudent Investment Guideline.

An increased disclosure obligation should not be placed on the investee company in which a pension plan has an interest – this would have the effect of bringing a non-pension investee company into the ambit of the pension regulator, making the pension plan less attractive as an investment partner to third parties.

Investment Performance

5) Does the 30 per cent rule impede pension administrators from obtaining appropriate investment returns? If so, why?

In Private Markets investing, the 30 per cent rule creates complexities in structuring transactions. As noted above, active private investments are often done through consortia where governance rights reflect ownership interest. Restricting a pension plan's ownership interest will necessarily restrict its governance rights, inhibiting the plan's ability to influence the strategy and direction of the investment, to the detriment of plan members. It also impacts the ability of a pension plan to form the most competitive consortium to compete internationally for opportunities and its attractiveness as a partner for operating company investors. These types of quantitative restrictions also place the pension plan at other disadvantages in a consortium, as its ability to exercise certain transfer protection rights and capital call requirements may be restricted. Without the ability to exercise typical transfer rights, such as through a buy-sell mechanism, the pension plan would be at a material disadvantage compared to its investment partners. As a result, other complex mechanisms and structures may need to be negotiated to address these issues, adding cost and complexity to the investment transaction.

6) What are the costs, if any, that the 30 per cent rule imposes for pension plans seeking active investments?

As noted above, there are various costs associated with compliance with the 30 per cent rule, including complexity of the investment structures employed to comply with the rule and of the partnering arrangements with equity partners who are not subject to a similar quantitative restriction.

7) Does the 30 per cent rule create inequities between large and small pension plans? Conversely, could its removal do so? If so, why?

The 30 per cent rule does not create inequities nor would its removal do so. The fundamental question is whether, from a prudential perspective, a pension plan should or should not pursue an active versus a passive investment strategy. It is true that there are benefits to scale and that only pension funds with scale are likely to pursue an active investment strategy in all of the Private Market asset classes; however, from a policy standpoint, it is not inequitable to permit Canadian plans with the internal expertise and capability in any Private Market asset class from pursuing an active strategy. Restricting active investment strategies by all plans on the grounds that smaller pension plans in Canada may not be in a position to do so presently would be more inequitable as large plans face a far greater deployment challenge. Any such restrictions would also only serve to harm beneficiaries of large plans without helping beneficiaries of smaller plans.

Instead, focus could be given to finding ways for smaller plans to access active investment strategies, should they desire to do so, at reasonable costs. These efforts could include, for example, consolidation or pooling of investments of smaller plans. In Ontario, the Investment Management Corporation of Ontario ("IMCO") was recently launched with this objective in mind, following a 2012 report commissioned by the Ontario Ministry of Finance which explored ways to facilitate pooled asset management of public sector institutions.[6]

Tax Policy Considerations

8) Are any of the tax policy concerns relating to the ability of tax-exempt pension plans to acquire controlling positions in taxable corporations (e.g., potential strategies to eliminate corporate-level taxation, which could provide an advantage to the plans or the businesses they control) material in nature?

The Consultation Paper states that relaxation or elimination of the 30 per cent rule would enhance pension plans' ability to acquire controlling stakes in businesses. The Paper

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[6] "Facilitating Pooled Asset Management for Ontario's Public Sector Institutions" *Report from the Pension Advisor to the Deputy Premier and Minister of Finance*, October 2012

also notes that large Canadian pension plans who have engaged in active investing have been able to structure these investments to comply with the 30 per cent rule. Active investments in real estate and resource corporations also benefit from a specific exemption from the 30 per cent rule.

The Consultation Paper notes that, in 2014, it is estimated that Canada's six largest pension funds held at least $22.2 billion of active investments in Canadian entities, outside of the real estate and resource sectors, representing approximately 1.5% of total investments made by Canadian defined benefit plans ("DB Plans").[7] This reveals that the vast majority of investments made by pension plans in Canada are not active investments.

The issue of materiality of the tax policy concerns depends both on the extent of investment in these kinds of assets and whether a change in the 30 per cent rule would materially affect behaviour in a manner detrimental to society. The statistics referenced above indicate that investments in Canadian private equity, venture capital and infrastructure represent only 1.5% of total investments made by DB Plans. Since these investments are largely or exclusively done by the large plans through structures compliant with the 30 per cent rule, it is not readily apparent that relaxation or elimination of the rule would materially change behaviour, in the absence of other reasons to invest (e.g., an increase in attractive opportunities).

The Consultation Paper does not state that the current level of active investments by pension plans is such that the tax policy concerns raised are material. Rather, the concern seems to be about a potential increase in the level of active investments made should the 30 per cent rule be relaxed or eliminated. Nevertheless, the Consultation Paper itself recognizes that the 30 per cent rule has not been preventing large pension plans from making significant investments. The quantity of active investments made by pension plans is primarily governed by prudential considerations, not the existence or absence of the 30 per cent rule. The repeal of the 30 per cent rule is unlikely to have

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[7] The Paper references statistics compiled by the Pension Investment Association of Canada (PIAC), which reveal that DB Plans invested approximately $1.5 trillion across all asset classes and geographies in 2014. Of this amount, $197.3 billion was invested in private equity, venture capital and infrastructure.

any material effect on the extent to which the tax planning structures referred to in the Consultation Paper are likely to be used by the large pension plans.

We have already suggested in this submission that pension plans likely require a certain scale in order to engage in active investing, from a prudential standard. It is therefore unlikely that relaxation of the 30 per cent rule would open the "floodgates" to smaller plans making these types of investments. Regulators have tools to monitor the appropriateness of this investing from a prudential perspective, in addition to quantitative restrictions such as the 10% diversification rule that would prohibit smaller plans from taking active positions in large businesses.

In determining materiality of the tax policy concerns, it is necessary to weigh the benefits of active investing by pension plans against the potential dampening effects of new tax measures directed at pension fund investments in Canada. In this regard, the Consultation Paper notes at page 5:

> Pension plans are unique and important contributors to Canadian financial market efficiency. Precluding plans from making active investments in Canada could negatively affect capital market efficiency by reducing liquidity, the availability of patient capital, and capital for large-scale projects in which only large institutional investors are active. Also, by constraining an important class of Canadian investors, it could lead to increased foreign takeovers of Canadian business.

Weighing the benefits of pension investing in the Canadian economy against the tax policy concerns expressed in the Consultation Paper (some of which have already been mitigated by Canadian tax authorities as discussed below), OMERS believes that applying targeted tax changes to pension funds may reduce the attractiveness of Canada as an investment destination.

The Consultation Paper, and this question in particular, focuses on the ability of tax-exempt pension plans to acquire controlling positions in taxable Canadian corporations. For example, the paper refers to tax mitigation strategies as being a factor that could enable a pension plan to pay a premium on an acquisition and thereby provide a benefit to a pension plan relative to taxable investors. It is submitted that this concern should not be regarded as of continued significance given significant recent amendments to the *Income Tax Act* (Canada) (the "Tax Act"). For example, the rules in section 100 of the Tax Act regarding the sale of partnership interests were recently significantly expanded

to ensure double the regular rates of tax apply to certain gains arising on direct and indirect sales of partnerships interests to tax-exempt persons. Similarly, the rules in the Tax Act relating to “bump” transactions were recently significantly amended to ensure that business assets in a corporation remain in corporate form and cannot be converted to another type of business vehicle such as a partnership.

9) How does the potential relaxation or elimination of the 30 per cent rule impact any concerns described in respect of the previous question?

This question is addressed in the response above to Question 8.

10) Should the Government consider implementing tax measures (e.g., thin capitalization restrictions, application of the SIFT tax to pension-controlled trusts and partnerships) to limit the ability of pension plans to undertake tax planning strategies to reduce or eliminate entity-level income tax on business earnings? Are there other potential tax measures that the Government should consider in this regard? What considerations should be taken into account in the assessment of such potential measures?

The Consultation Paper raises two potential new tax measures that could be directed at pension plans: (i) a thin capitalization rule; and (ii) a tax similar to the specified investment flow-through (“SIFT”) tax that applies in respect of certain publicly-traded trusts and partnerships. We provide some general comments regarding potential new tax measures and then make some specific comments on each of these suggestions below.

General

Pension plans should be allowed, as a general principle, to defer taxation on earnings until paid to plan participants. Since all plan benefits when paid are taxable as ordinary income, imposing a corporate-level or equivalent tax on earnings results in double taxation. Concerns regarding the deferral of tax on income earned by a pension fund do not warrant measures which lead to an overall higher level of tax on such income as compared to the tax that would be payable had the income been earned directly by the plan participants.

Any incremental tax burden on pension funds would run counter to the objective of ensuring that such plans are fully-funded to meet plan obligations (the quantum of which is limited by legislative rules). Concerns about the insufficient level of retirement savings by Canadians would seem to only be exacerbated by such measures and necessitate an

increase in the funding of such plans. Since governments, corporate sponsors and individuals would be responsible for such funding, any new tax revenue raised from the tax measures would be offset by additional government contributions and a reduction in tax revenue from corporations and individuals who can deduct contributions from their income.

The proposed measures could have an adverse impact on important commercial objectives of pension plans. One important objective is diversification. A pension plan that makes an investment in a business may want to bring in a partner to the business to reduce its committed capital and allow some of its capital to be deployed in other businesses. A convenient means for the pension fund to do so is to offer investors interests in a partnership carrying on the business. If the partnership were itself subject to tax, it could make the investment significantly less attractive to other investors. Moreover, the measures that are being proposed have the potential to make pension funds significantly less attractive as investment partners. Holders of business investments would be reluctant to allow a pension fund into the business if it would have the potential to cause the business vehicle to be taxable or increase the tax payable by the entity.

Ongoing work is being done in this area in the context of the OECD base erosion and profit shifting ("BEPS") initiative. It would be premature to single out pension plans for specific remedies in light of the broader work currently underway and the government's commitment to this work. Any legislative initiative undertaken by Canada alone also has the potential to make Canada a less attractive investment alternative relative to other jurisdictions and skew investment decisions in favour of those other jurisdictions.

Finally, we submit that it would be inappropriate to introduce tax changes that (i) put Canadian pension plans at a disadvantage relative to other investors (including foreign pension funds, sovereign wealth funds, taxable investors and domestic tax-exempts), and/or (ii) impose undue compliance costs on Canadian pension funds, their co-investors and/or their investment entities. Such changes could be a worse outcome for the large Canadian pension funds than managing the complexities of the 30 per cent rule.

Thin Capitalization Rule (Thin-Cap)

Applying a thin-cap rule specifically to pension plans raises questions of fairness in that it targets pension plans but no other tax-exempt investors. A thin-cap rule can also be a rather blunt instrument in that it typically does not distinguish between different types of investments whose fundamentals may support different levels of leverage. The thin-cap rules are an arbitrary method to determine the extent to which a shareholder's debt investment should be treated as if it was equity. It is generally accepted that a suitable debt-equity ratio depends on the nature of the business of the issuer. Pension plans will often invest in very capital intensive businesses for which the debt-equity ratio used in the current thin capital rules may not be appropriate.

The Consultation Paper acknowledges that although investment income earned by a pension plan may be tax-exempt, pension payments made to plan beneficiaries are not. Accordingly, the tax benefit is not a pure exemption, but rather a deferral. Thus, the tax policy rationale for the existence of thin-capitalization rules for non-resident investment in Canada cannot be extended to Canadian pension plan investing. Interest payments made to non-resident investors are subject to no further Canadian tax.

SIFT-like Tax (SIFT Extension)

A SIFT Extension on Canadian pension plans raises numerous issues of fairness vis-à-vis other tax-exempt investors and other flow-through vehicles not affected by such a new tax. If pension plan participation in an investment entity had the effect of (i) imposing a SIFT tax on that entity, (ii) limiting the activities that could be undertaken by the entity or its subsidiaries without engaging the new rules, or (iii) increasing the compliance costs in connection with an investment in the entity, clearly pension plans would become unfavoured partners in these investments, materially limiting their ability to deploy investment capital in Canada. Expanding the SIFT rules to private partnerships and trusts controlled by one or more pension plans will make it very difficult for such plans to enter into partnerships with taxable minority partners who seek the benefit otherwise allowed for flow-through entities. Furthermore, taxable and tax-exempt investors alike will often invest through trusts and partnerships for non-tax commercial reasons such as liability protection. Expanding the SIFT rules to private partnerships and trusts controlled by one or more pension plans would effectively penalize pension plans for structuring in this manner.

As noted above, OMERS believes that there are existing mitigants in place to address the tax policy considerations raised in the Consultation Paper and that the tax policy concerns are not material in nature when viewed in the broader context, including the policy rationale behind the tax status of pension plans and the benefit to the Canadian economy of active pension investing and patient capital. However, in the event that either of these tax measures (or alternative ones) is introduced, it is important that existing investments and commitments made by pension plans be grandfathered. These investments were made for the long term and any *ex post* change to the tax regime could materially impact the returns of such investments to the detriment of plan members and employers. Since many of these plans are currently underfunded given the sustained challenging investment environment, any new tax measures should be considered in this broader policy context.

Thank you for the opportunity to comment on the proposed amendments. We believe that ongoing dialogue between pension plans like OMERS and the government is critical to ensuring that the government's public policy objectives of eliminating a barrier to investment are met by the final regulatory framework. We hope to have another opportunity for discussion with you as you digest the feedback from this consultation process and consider the best path forward.

OMERS ADMINISTRATION CORPORATION

September 15, 2016