Asset Management

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Pension Review Panel
c/o Nova Scotia Labour and Workforce Development
Policy Division
P.O. Box 697
Halifax, Nova Scotia B3J 2T8
E-mail address: lwdpolicy@gov.ns.ca

Dear Sirs/Mesdames:

Re: Review of *Pension Benefits Act* and Related Regulations

Comments of TD Asset Management Inc. on Position Paper dated October 17, 2008 (the "Position Paper")

Proposed Removal of Quantitative Limits on Investments and Loans

TD Asset Management Inc. is pleased to submit this comment letter to the Pension Review Panel (the "Panel" or "you") in connection with your review of the *Pension Benefits Act* (the "Act") and the general regulation enacted under the Act (the "Regulation").

We are submitting this letter in our capacity as a leading investment manager of pension plan assets. We are a wholly-owned subsidiary of The Toronto-Dominion Bank and are one of Canada's largest asset managers. We are a fully integrated investment manager and offer a wide range of investment products and solutions, including pooled funds, mutual funds and segregated accounts, to pension plans, endowments, foundations, trusts, corporations and individuals. Together with our affiliates, we managed over $166 billion of assets as of October 31, 2008, including over $38 billion for pension plan clients.

COMMENTS

On page 24 of your Position Paper, you recommended removing the existing quantitative limits on investments and loans, and relying instead on the plan administrator's duty to act prudently.

We support your recommendation. We made the same recommendation to the Ontario Expert Commission on Pensions, and to the Alberta-British Columbia Joint Expert Panel

on Pension Standards. It is the right approach, for the reasons mentioned in your Position Paper and for other reasons too.

The prevailing wisdom in 1975 was that the Regulation should prescribe the types of securities in which a pension plan may invest, and up to what limit. In our view, those qualitative restrictions and quantitative limits had no credible justification at the time. They trampled on the plan administrator's duties to act prudently and in the best interest of the plan. In the decades that followed, the list of permitted investments was repealed but the quantitative limits were left in place.

In the United States, since at least the enactment of the *Employee Retirement Income Security Act of 1974* ("ERISA"), administrators of federally regulated DB plans have not been restricted by similar quantitative limits. Instead, alongside their ERISA duties to act prudently and in the best interest of plan members, they have only been required to diversify the investments of their plans so as to minimize the risk of large losses, except where it is clearly prudent not to diversify.

In 2000, Quebec moved towards the U.S. approach. As a result, subject to a few lingering limits, the administrator of a DB plan regulated under Quebec's *Supplemental Pension Plans Act* (the "SPPA") now must endeavour to maintain a diversified portfolio so as to minimize the risk of major losses. The administrator is permitted not to do so where appropriate in the circumstances.

Nova Scotia currently is stuck in the past. For example, except in a few limited situations, the Regulation prohibits the administrator of a Nova Scotia DB plan from investing more than 10% of the plan's assets in any one person. An administrator who wants to replicate the holdings of a foreign government bond index will be prevented from doing so if the bonds of one government represent more than 10% of the index, even if such action is in the best interest of the plan.

The quantitative limits adopted in the Regulation continue to have no credible justification. They should therefore be removed. Doing so will:

- remove a barrier that hinders the administrators of Nova Scotia DB plans from fully acting in the best interest of the plan;

- reduce the risk that Nova Scotia DB plans will be unable to pay the amounts that have been promised;

- level the playing field for Nova Scotia DB plans compared to those regulated under the SPPA and ERISA;

- eliminate the substantial compliance costs imposed under the current rules, costs which far outweigh any perceived benefit of the quantitative limits; and

- make DB plans more viable in Nova Scotia.

Some people say that in the interest of harmonization across Canada, Nova Scotia should not change its investment rules unilaterally. We disagree. The country should not be united around outdated rules, and should instead have modern ones. In any event, Quebec has already moved in the direction that we wish Nova Scotia would have moved in 1975. Leaving the current quantitative limits in place will continue to hurt Nova Scotia DB plans relative to Quebec DB plans.

The federal government's decision in 2005 to repeal the quantitative limit on foreign content is a final reason why the remaining quantitative limits should be removed. The federal government spent decades slowly increasing the amount of foreign content that a registered pension plan could have in its investment portfolio. Eventually, the federal government realized that any quantitative limit on foreign content inherently hinders the administrator of a registered pension plan from acting in the best interest of the plan. The federal government therefore removed the foreign content limit altogether.

CONCLUSION

Thank you for this opportunity to comment on your Position Paper. We would be pleased to make ourselves available if you have any questions about our comments, or if you wish to discuss these issues further.

Yours truly,

Barbara Palk
President