

March 16, 2009

Diane Lafleur  
Financial Sector Policy Branch  
Department of Finance  
L'Esplanade Laurier  
20<sup>th</sup> Floor, East Tower  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Dear Ms. Lafleur:

OMERS is pleased to provide our views and comments on item 5E, "Investment Rules", contained in the Department of Finance's consultation paper entitled, *Strengthening the Legislative and Regulatory Framework for Defined Benefit Plans Registered under the Pension Benefits Standards Act, 1985*. Item 5E deals with your request for ways to improve the regulatory framework governing pension investments.

Our views on investment rule reform are contained in OMERS response to the recent report of the Ontario Expert Commission on Pensions. We've attached a copy of our response, recently sent to the Honourable Dwight Duncan whose Ministry of Finance created the Expert Commission on Pensions in 2006 to address overall pension reform in the province of Ontario. Please refer to section 2.1 in our report entitled, *Turning Recommendations into Actions*.

We congratulate the Ontario government for recognizing the need for pension reform and we are ready to assist with this important initiative. Our key proposal to modernize pension investment regulation is to eliminate the quantitative investment rules contained in the federal *Pension Benefits Standards Act, 1985*.

In 2001, the Province of Ontario, along with seven other provinces, opted to harmonize its investment rules under their respective pension benefits acts with the investment rules under the federal *Pension Benefits Standards Act, 1985*. While harmonization had some efficiencies, the federal investment rules impose significant investment restrictions on pension plans, unlike other capital pools. These rules were largely created in a time when pension plans were passive investors focused on government bonds and stock index funds. Large Canadian pension plans today are not passive investors and they are active investors in a wide range of asset classes. The current investment rules put us at a competitive disadvantage to other large pension plans.

Here is a brief overview of the rules and why we are of the opinion they pose a challenge to the optimization of investment returns for pension plans.

- **The 30% rule**

Pension plans are restricted to holding no more than 30% of the shares eligible to elect the board of directors of a corporation. This rule has forced pension plans to come up with complicated and expensive structures to hold or own more than 30% of the economic value of a business.

The 30% rule presumes that pension funds are passive investors. In fact, the opposite is true. OMERS currently takes an active approach to 65% of its investments, and our plan over the next few years is to increase this to 90%. In the case of voting rights, pension plans, like other investors, should be able to vote as many shares as they choose to own to ensure companies are managed in the best interests of all shareholders.

This rule, in our view, represents a significant impediment to structuring investments in a commercially reasonable manner. It impinges on the rights that pension plans have, as prudent investors on behalf of their members, to make solid investment opportunities that will earn future returns.

- **The 5%, 15%, and 25% rules**

These rules restrict pension plans to holding not more than 5% of the book value of the fund's total assets in any single parcel of real estate or Canadian resource property, 15% of the book value of the fund's total assets in Canadian resource properties and 25% of the book value of the fund's total assets in the aggregate of worldwide real estate and Canadian resource properties.

These rules make the assumption that real estate and Canadian resources are assets that pose a greater risk than other types of assets. This is untrue. A well conceived real estate portfolio will post high and stable rates of return over the longer term. These rules do not allow us to increase our real estate holdings once we have reached the ceiling set by the 25% rule even where our board determines it would be prudent to do so. Who's losing out? Our plan members – who won't have the benefit of the investment returns on real estate assets even where holding those assets would be prudent.

As for the ownership limits on Canadian resource properties (specifically oil and gas), it is ironic that the Canadian government continues to inadvertently discourage Canadian investment in Canada's fastest growing economic sector.

Canada, with its wealth of oil and gas properties and aptitude for innovation, has many opportunities for investing in new and emerging companies but the 5%, 15% and 25% rules limit us from supporting Canadian economic growth in key sectors.

- **The 10% rule**

Pension plans are restricted to investing no more than 10% of the book value of the pension fund in any one entity.

The rationale for this rule is understandable – it attempts to mitigate risk through diversification – ensuring pension plan returns are not dependent on the results of only a few investments. In practice,

pension funds are generally not investing more than 10% simply as a matter of prudence. In other words, they do not need an arbitrary rule based on book value to manage risk.

- **Principle Based Rules**

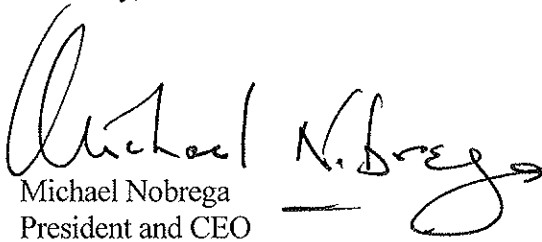
Like other institutional investors, pension plans are bound by the laws of good governance, due diligence and fiduciary responsibility. These principles based obligations and standards of conduct are embodied in the existing federal and provincial legislation. These principles negate the requirement for prescriptive, rules based regulations like the quantitative rules discussed above. The result is that Canadian pension plans are over-regulated relative to their competitors in other industrialized countries which have opted only for principle based regulation.

Our regulators do not need to impose quantitative rules to keep large pension plans in line with public policy objectives such as fiduciary based decision making. We manage billions of dollars in assets, are investing on a global scale, have significant risk and diversification strategies in place, have been innovators in creating stable investment growth and already abide by prudent person principles.

We thank you for seeking our views on referenced legislative impediments and are most reassured with your follow up commitment in your recent budget for action in 2009. We also look forward to attending your national consultation meeting being held in Toronto on March 20, 2009, being chaired by Ted Menzies, Parliamentary Secretary to the Minister of Finance.

If you have any questions or concerns about our comments please do not hesitate to contact me at 416-369-2446. Equally, OMERS staff would also be pleased to assist you in your deliberations if desired.

Sincerely,

  
Michael Nobrega  
President and CEO

Enclosure

Cc: Honourable James Flaherty, Minister of Finance  
Ted Menzies, Parliamentary Secretary to the Minister of Finance  
Honourable Dwight Duncan, Ontario Minister of Finance