

## **Proposed Amendments to Regulation 909: Eliminating the 30 per cent rule for Pension Investment**

### **A. Background**

In the *2015 Ontario Economic Outlook and Fiscal Review*, the Province announced its intention to eliminate the “30 per cent pension investment rule”. This posting describes and requests feedback on amendments being considered to Regulation 909 under the *Pension Benefits Act* (PBA) to implement this commitment.

The 30 per cent rule is one of the quantitative limits contained in the federal pension investment rules, which Ontario incorporates by reference. This rule, in s. 11(1) of Schedule III of the federal Pension Benefits Standards Regulations, states: “The administrator of a 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.”

The federal pension investment rules currently have exemptions from the 30 per cent rule for certain corporations – real estate, resource, and investment corporations - if the stipulated disclosure and undertakings are provided to the regulator.

It is proposed that a plan administrator would no longer be prevented from investing in more than 30 per cent of the voting shares of any corporation. A threshold percentage could be established above which certain disclosure requirements or undertakings would apply. Possible requirements that may apply to the plan administrator and the corporation if the plan invests in more than a threshold percentage of that corporation’s voting shares are described below.

Stakeholders are invited to make submissions by April 29, 2016. Submissions should be emailed to [pension.feedback@ontario.ca](mailto:pension.feedback@ontario.ca) or sent to:

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

Stakeholders are invited to comment on all aspects of this posting.

Comments on the following questions in particular are welcome:

1. Should there be disclosure requirements or undertakings requested from a corporation if a plan invests in more than a threshold percentage of the voting shares (e.g., 30 per cent) of that corporation? If so,
  - a) What should the required disclosure or undertakings consist of?
  - b) What is the appropriate threshold?
2. Should the same disclosure and undertakings be required from all types of corporations?
3. Should the disclosure requirements and undertakings depend on the features of the plan (e.g., size of plan, governance structure, investment capability)?
4. Are there any other considerations or concerns associated with eliminating the 30 per cent rule? For example, should measures be introduced to reduce the potential for conflicts of interest?

## **B. Amendments Being Considered**

A plan administrator would no longer be prevented from investing in more than 30 per cent of the voting shares of any corporation.

Consideration is being given to requiring pension plans investing in more than 30 per cent of the voting shares of any corporation and meeting a threshold percentage to comply with certain disclosure requirements and undertakings.

The disclosure requirements and undertakings being considered and outlined below are a subset of those set out in sections 12 to 14 of Schedule III of the federal Pension Benefits Standards Regulations. The disclosure obligations would be intended to ensure that the regulator has proper oversight of pension plans, in order to fulfill its regulatory obligations and protect plan beneficiaries:

### **Administrator to File Undertaking by the Corporation**

The administrator of a plan would not be permitted to invest, directly or indirectly, the moneys of the plan in the securities of a corporation to which are attached more than a threshold percentage (e.g., 30 per cent) of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the

Superintendent an undertaking by the corporation that, while those securities are held, the corporation will comply with all the requirements described below.

**a. Filing by the Corporation**

The corporation would be required to file with the Superintendent:

- copies of its annual financial statements;
- copies of its audited financial statements for each fiscal year;
- a list of its officers, directors and shareholders,
- a certificate stating that the corporation is complying with its undertaking ;and,
- a list clearly identifying the assets of the corporation and fair value of each asset.
  - The list of assets shall not include any asset that is not authorized under the PBA.
  - The list of assets shall value any securities that are included in the assets of the corporation at a value not exceeding the fair value.

**b. Regulator Permitted to Visit and Examine**

The corporation would be required to permit the Superintendent or an authorized member of the Superintendent’s staff to visit its head office and to examine its books and records.

**c. Appraisal**

In respect of privately held corporations, the corporation would be required to obtain an appraisal of the business by one or more accredited appraisers, at the request of the Superintendent and at its own expense.

**d. Related Parties**

The corporation would not be permitted to lend any of its assets to, or invest any of its moneys in, a related party of the plan.

**e. Investment Restriction**

The corporation would be required to restrict its investments and loans to those authorized under the PBA.

**f. Investments in Another Corporation**

The corporation would not be permitted to invest, or hold an investment, in securities of any other corporation to which are attached more than a threshold percentage (e.g., 30 per cent) of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other corporation not to invest, or hold an investment, in the securities of any other corporation.

**g. Financial Statements Filed by the Plan**

Any financial statement filed by the plan shall value the common shares of the corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying:

- (a) an amount equal to the total assets of the corporation less the sum of its total liabilities and its preferred capital stock, by
- (b) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.