

Long Awaited Changes To Federal Pension Fund Investment Regulations Close To Fruition



The Federal Department of Finance has released draft regulations that if adopted would, among other proposed changes, amend the pension investment restriction rules contained in Schedule III to the Pension Benefits Standards Regulations, 1985 (Canada) ("Schedule III").

The changes, long awaited from the Minister of Finance's October 2009 announcement that the pension investment rules would be modernized, apply not only to federally regulated pension plans but also to those plans whose governing provincial legislation incorporates Schedule III.

Currently, Schedule III prohibits the administrator of a pension plan from directly or indirectly investing or lending more than 10% of the book value of the plan's assets in or to any one person, two or more associated persons, or two or more affiliated corporations. The proposed changes would limit investments to 10% of the market value of the pension plan's assets. This is a welcome change as market value is much easier to determine.

One of the exceptions to the 10% book value limit is for investment in a fund that replicates the composition of a widely recognized index of a broad class of securities traded at a "public exchange". The term "public exchange" is outdated and excludes many important exchanges – for example the Nikkei – while including some exchanges that no longer exist.

Under the proposed changes "public exchange" would be replaced with "marketplace" to reflect that plan investments may be bought not only on public exchanges but also through quotation and trade-reporting systems and other platforms through which buyers and sellers of securities and derivatives are matched.

The proposed changes would also address related party transactions. Schedule III currently prohibits the plan administrator from directly or indirectly lending moneys of the pension fund to a "related party", investing moneys of the pension fund in the securities of a related party, or entering into a "transaction" with a related party on behalf of the pension fund. The proposed changes would remove certain exemptions, such as the nominal or immaterial transaction exemptions, and permit other exemptions, such as permitting the holding of an investment in the securities of a

related party where the investment is made in an investment fund.

While the changes will prohibit the administrator from investing plan assets directly or indirectly in securities of the employer, the amendments now clarify that the administrator may engage the services of a related party for the administration of the plan, such as the hiring of a related party broker-dealer.

The proposed amendments will be released for public comment with official publication in the Canada Gazette on September 27, 2014. Plan administrators and investment managers who manage pension assets for Canadian registered plans should be reviewing their investment mandates including agreements and compliance monitoring systems to ensure that they are ready to implement these changes.

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