New Pension Plan Guidelines Issued by The Federal Pension Regulator

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Pension plan administrators need to be aware of the new guidelines on the disclosure of plan information and "related party" rules for pension fund investment issued by the Office of the Superintendent of Financial Institutions ("OSFI"), the federal pension regulator, in late 2016. The disclosure guidelines are relevant only to pension plans that are subject to the federal pension standards legislation while the guideline on the "related party" rules is also relevant to plans subject to provincial pension standards legislation which has adopted the federal pension fund investment rules.

Disclosure of Plan Information — Defined Benefit and Defined Contribution

OSFI issued a plan information disclosure guideline in 1998 without making any distinction between defined benefit ("DB") and defined contribution ("DC") plans. This 1998 guideline has been replaced by two guidelines in October 2016: one for DC plans and one for DB plans. It is strongly recommended that plan administrators review their plan booklets, formats of statements and disclosure manual to ensure that they continue to be in legal compliance and meet OSFI's expectations.

The new guidelines outline OSFI's expectations which are similar for both DB and DC plans in most respects but there are also some key differences. Disclosure of plan information is subject to the administrator's overriding duty of care and fiduciary duties. Both guidelines emphasize the importance of effective communication for promoting transparency and enabling members and their spouses to understand how the plan works and to make informed decisions.

There are variations on the types of information to be disclosed, depending on whether it is a DB or DC plan. An illustration of such variations relates to pension fund investment. For a DB plan, the information to be included in plan explanation includes the purpose of the statement of investment policies and procedures ("SIPP") and how a

member can obtain a copy of the SIPP. For a DC plan where members direct the investment of their DC accounts, a SIPP is no longer required and the investment information to be included in the plan explanation is completely different.

The Canadian Association of Pension Supervisory Authorities ("CAPSA") has also issued various guidelines that contain guidance on plan information disclosure for a DC plan. Although such guidelines are not legal requirements, they reflect the expectations of pension regulators and will likely be considered by the court in determining whether a plan administrator has met its standard of care and fiduciary duties if there is a dispute.

"Related Party" Rules

The federal pension fund investment rules prohibit a pension fund from investing in a "related party". However, there are statutory exemptions to this general prohibition. Effective July 1, 2016, the statutory exemptions have changed. The previous general exemption of acquisition of securities at a public exchange is no longer available. The current exemptions include:

- a transaction with a related party for the administration of the plan on terms no less favourable than market terms (not involving loans to or investments in the related party);
- investments in an investment fund or a segregated fund that complies with certain requirements under the federal pension fund investment rules; and
- nominal or immaterial transactions.

These rules and exemptions apply to both DB and DC plans, with some differences.

OSFI issued a guideline outlining its interpretation and expectation regarding the exemptions, including the 5-year grace period to put the pension fund into compliance with the changes in the rules. The 5-year period for divesting non-compliant investments runs from July 1, 2016 unless the contravening investment results from a transaction entered into by a person other than the administrator (e.g. a corporate acquisition), in which case the 5-year period runs from the date of the contravention.

OSFI expects that administrators not wait to the last minute for the divestiture to bring the investment into compliance but should start planning sooner. This is due to a number of obvious reasons. Market conditions 5 years down the road are unknown. The investment could affect the funding of a DB plan. The SIPP and the investment or funding policies may need to be changed. Members need time to make decisions as to how to change their investments for a DC plan where the members direct investments.

By

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