

June 10, 2016

Neil Mohindra
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CAPSA Secretariat
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Via E-mail: capsa-acor@fscsco.gov.on.ca

Dear Mr. Mohindra;

We are writing to provide comments on the Canadian Association of Pension Supervisory Authorities (CAPSA) drafts of the revised *CAPSA Guideline No. 4: Pension Plan Governance*, and the related *Self-Assessment Questionnaire* and *FAQ Document*.

The Shareholder Association for Research and Education (SHARE) is a Canadian leader in responsible investment services, research and education for institutional investors. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and engagement, trustee education, policy advocacy, and practical research on issues related to responsible investment. Our clients include many Canadian pension funds.

Recently, SHARE was deeply involved in discussions with the Government of Ontario regarding its eventual adoption of enhanced reporting obligations for Ontario-registered pension plans on whether, and if so how, those plans take environmental, social and governance (ESG) factors into account in their investment decision-making. We advocated for adoption of this regulation because we believe that ESG factors can have a material impact on investment outcomes. SHARE also commissioned a recent report by Koskie Minsky entitled *Climate Change and the Fiduciary Duty of Pension Trustees in Canada*,¹ which highlighted the need for pension trustees to consider material impacts of climate change in their decision-making process.

Managing ESG risks such as climate change is critical for pension fund management and the successful exercise of fiduciary duty by pension administrators. Although CAPSA's current *Guidelines* and related documents are intended to be general in scope, the inclusion of additional guidance related to a plan's assessment of such investment risks is critically important, especially for those risks with a long-term horizon.

¹ Available at: http://share.ca/documents/educational_resources/2015/Fiduciary_duty_and_climate_change.pdf

Additional guidance will signal to pension administrators the relevance of ESG factors to investment outcomes. It will also illustrate to pension administrators that they may take these factors into account in developing investment policies and making investment decisions, thereby assisting administrators in understanding their fiduciary duties.

This would be consistent with current understanding of fiduciary duty² as well as recent developments in Canadian pension regulation.³

To provide additional guidance for administrators on these matters, we suggest the following changes to CAPSA's *Frequently Asked Questions* document.

First, we propose that CAPSA add a further question to its *Frequently Asked Questions* document specifically addressing the relevance of ESG factors to pension investments. While the specific wording of this question and response is best addressed by CAPSA, we recommend that the question examine the appropriate disclosure of whether and, if so how plan administrators take ESG factors into account in investment decision-making. This approach is consistent with recent changes to Ontario's *Pension Benefits Act* regulations which ask administrators to report annually on this question.⁴ The question could be placed within the section on fiduciary duty.

The response to the question could include:

- a brief overview of why ESG factors may be relevant to investment outcomes;
- clarification of the long-term investment horizon necessary for pension investments;
- a positive statement clarifying that consideration of ESG factors can be consistent with fiduciary duty;
- an example of an ESG factor that is relevant to pension investments, such as climate change-related risks; and
- mention of the range of options for pension administrators to incorporate consideration of ESG factors in their investment process, such as investment screening, integration, shareholder engagement, and proxy voting.

In addition to including a new question related specifically to consideration of ESG factors in investment decision-making, we recommend adding the following material to the responses under questions 1.1, 4.1, 6.1, and 7.1 to further clarify the duties of plan administrators.

Question 1.1

The description of an administrator's fiduciary duty should clarify that to act in the interests of all beneficiaries and to be impartial towards all beneficiaries also, by necessity, involves

² See, for example: UNPRI. *Fiduciary Duty in the 21st Century*, available at: https://www.unpri.org/download_report/6131

³ See, for example: Financial Services Commission of Ontario *Guidance Note IG-004 - Environmental, Social and Governance (ESG) Factors*, available at: <https://www.fSCO.gov.on.ca/en/pensions/policies/active/Documents/IG-004.pdf>

⁴ <http://www.ontariocanada.com/registry/view.do?postingId=16584>

intergenerational equity. The plan must make decisions, including investment decisions, that have regard for the long-term in order to meet the duty of care. Investment decisions that solely favour the short-term without regard for the long-term health of the portfolio are inconsistent with this duty. In this context, assessment and mitigation of the risks related to climate change that affect investment outcomes, for example, should be part of the duty of plan administrators.

Question 4.1

The Performance Measures recommended for Investment Managers should include:

- “Are investment risks, including environmental, social and governance risks, assessed and if applicable mitigated?”

Question 6.1

In addition to seeking investment performance reports, where proxy voting is executed by the plan’s asset managers or a service provider, plan administrators should explicitly receive *proxy voting reports*. Proxy voting reports identify the exercise of specific rights attached to ownership of public equities by the plan. The results of votes undertaken at annual meetings (such as electing the board of directors) can have a material impact on investment outcomes. The administrator should be aware of how their managers or agents are exercising those rights on their behalf.

Question 7.1

While the list of possible risks is intended to be illustrative rather than exhaustive, we believe it would benefit plan administrators to have additional risks included under the Investment Risks category. Specifically, we recommend including “*Environmental, Social or Governance risks*” in this list.

Thank you for offering the opportunity to comment on the draft *Guidelines* and related documents. We are available to discuss any of the matters raised here and, should you wish, can provide additional input or documentation to support CAPSA in addressing these concerns. I can be reached at pchapman@share.ca or by phone at 604-695-2020.

Sincerely,



Peter Chapman
Executive Director
SHARE