

March 2, 2009

Pension Standards Review
Alberta Finance and Enterprise
Room 402, 9515 - 107 Street
Edmonton, Alberta, T5K 2C3

-and-

Pension Standards Review
British Columbia Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria, B.C., V8W 9V1

Dear Sirs,

Re: Feedback on the Report of the Joint Expert Panel on Pension Standards

SHARE is encouraged by the invitation to submit responses to the Report of the Joint Expert Panel on Pension Standards. We acknowledge the significant breadth of the Panel's Report, and are pleased to take this opportunity to provide our response to three of the Panel's recommendations.

Investment Rules – ESG Factors Recommendation: 7.2.1-A

In Section 7.2.1 of its Report, Environmental, social and governance (ESG) factors, the Panel prefaces its recommendation with the observation that: “we do believe that some clarification is required in this area to explicitly allow, and in fact require, that all types of plans consider all relevant factors when making investment decisions”.

The recommendation itself incorporates the ‘best financial interests’ criterion currently set out in the British Columbia legislation, and provides that fiduciaries ‘consider relevant factors only as they affect the potential risk and return of investments’.

The Manitoba precedent that SHARE recommended takes a very different approach, elaborating upon the standard of care and obligation to adhere to all applicable regulations by explicitly permitting (not requiring) fiduciaries to take ‘non-financial’ factors into consideration in the investment decision-making process.

The Panel clearly rejected the Manitoba approach. In doing so, its primary argument is: “if considering ESG factors makes for a good investment, why then would there be a need to legislate an exception to the general rule to allow for it?”.

SHARE’s experience supports the Panel’s observation that there are plans operating under the British Columbia statute’s ‘best financial interests’ requirement that ‘already engage in substantial ESG investments.’ What they understand is the import of this comment by Keith Ambachtsheer: “Long horizon investing is an important pension fund activity. Doing so requires investment processes capable of examining ALL relevant value-creating and risk factors”.

We are also aware of others who lack full awareness of the ESG factors and therefore fail to consider them because they are routinely advised that ‘best financial interests’ must be interpreted in the very narrowest of ways. They are advised, for example, that if they believe the consideration of an entity’s strategy for dealing with environmental challenges and opportunities is crucial to the performance of an investment in it, considering these circumstances could leave them liable to charges of a breach of their duties simply because it was not a line item in the most recent financial statements of the investment vehicle.

The Panel acknowledged that there are pension fiduciaries in this situation. Referring to the Manitoba provisions in its discussion, the Panel notes: “this kind of legislation may ease [pension administrators’] fears about whether taking ESG into consideration is compatible with current fiduciary duties”.

Investment decision-makers require clarity in the legislation. We do not think that the implementation of the Panel’s recommendation will move us meaningfully toward the clarity the pension community requires. Without such clarity, too many pension funds will continue to believe that they cannot consider the full range of risk factors when making investment decisions.

SHARE Recommendation:

Clarify that the standard of care governing pension plan trustees under the British Columbia Pension Benefits Standards Act and the Alberta Employment Pension Plans Act (the Acts) does not preclude trustees from considering environmental, social and governance criteria as part of the investment decision-making process provided that such considerations are made in the overall context of fiduciary responsibility and the tests of prudence otherwise applicable to trustees.

It is recommended that this be achieved by:

Incorporating the language set out in Section 28.1(2.2) of the Manitoba Pension Benefits Amendment Act (2005) into the Acts.

ESG Disclosure: *no recommendation made by the Panel*

The Panel considered, but did not recommend, that pension funds disclose their ESG policies. We believe this is a missed opportunity. The Panel acknowledges that some funds apply ESG criteria now. Disclosure by all funds would enable pension plan fiduciaries to explain what approaches are actually being taken under the statute(s). Given concerns about improving clarity in the investment provisions that apply to pension plan fiduciaries, it would seem that more information about each governed plan's investment approach could only be helpful.

For ease of reference, SHARE's specific recommendation is that the U.K. model, now adopted by seven other OECD countries in their pension requirements, be used. Specifically, pension funds must disclose the extent to which, if any, environmental, social and governance considerations are taken into account in the selection, retention and management of investments. This is also, as noted by the Panel, the import of Principle Six of the UNPRI Principles for Responsible Investment.

One of the Panel's reservations about the usefulness of ESG disclosure is that pension plans may have different investment approaches with respect to ESG, which might confuse plan members.

In jurisdictions where ESG disclosure is required, the onus is on pension funds to produce clear and concise disclosure. If a plan member finds the information provided is confusing, clarification can and should be sought from the administrator about the investment approach taken by the pension plan.

The Panel is also concerned that without a mandated format for disclosure will not allow plan members and the regulator to "hold funds to a consistent measuring stick". We note that in jurisdictions where ESG disclosure has been implemented, the reporting requirement is non-prescriptive in order to encourage plan-specific implementation and avoid unnecessary rules.

ESG disclosure requirements are relatively new in most jurisdictions where they have been adopted. They have been put in place to provide information to plan members and other interested parties about investment approaches involving ESG factors. This is information that SHARE believes the pension community (including the regulators) in British Columbia and Alberta could use to evaluate how plan fiduciaries interpret the investment standards that are ultimately adopted.

SHARE Recommendation:

That the Alberta Employment Pension Plans Regulations, 35/2000, Section 50(3) and the British Columbia Pension Benefits Standards Regulation, 433/93, Section 38(2) be amended to require provincially registered

pension funds to disclose the extent (if at all) to which environmental, social and governance considerations are taken into account in the selection, retention and management of investments.

Trustee/fiduciary education: 7.1.1-A, B, C

SHARE supports this set of recommendations based on our experience in the delivery of such programs throughout Canada over the past seven years. We recognize the importance of trustee education to the success of pension funds. SHARE's trustee education program is currently in the process of expanding in partnership with Athabasca University and we are involved in similar discussions with other organizations about similar cooperation, including the Continuing Education Program at Simon Fraser University.

We place very high importance on ensuring that SHARE's courses meet the learning needs of trustees. We look forward to playing an active role in discussions with the pension regulators of Alberta and British Columbia to expand the availability of practical, comprehensive education for pension plan trustees.

We hope that the Panel's recommendations on education will be implemented. Specifically, SHARE recommends that pension regulators consider a range of learning delivery options to ensure that trustees have the ability to select among programs that meet rigorous and consistent knowledge outcomes through delivery methods that are appropriate to the individuals who seek them.

Sincerely,



Laura O'Neill, CFA
Director of Law and Policy