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The Honourable Dwight Duncan
Minister of Finance
Attention: Comments on Report of the Expert Commission on Pensions
c/o Pension and Income Security Policy Branch
5th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, Ontario M7A 1Y7
E-mail address: Pension.Feedback@ontario.ca

Dear Minister Duncan:

**Re: Comments of TD Asset Management Inc. on the Report (the
“Report”) of the Expert Commission on Pensions (the “Commission”)**

TD Asset Management Inc. is pleased to submit this comment letter to the Government of Ontario (the “Government”) in connection with the Government’s legislative response to the Report’s recommendations amid the current recession.

We are submitting this letter in our capacity as a leading investment manager of pension plan assets. We are a wholly-owned subsidiary of The Toronto-Dominion Bank and are one of Canada’s largest asset managers. We are a fully integrated investment manager and offer a wide range of investment products and solutions, including pooled funds, mutual funds and segregated accounts, to pension plans, endowments, foundations, trusts, corporations and individuals. Together with our affiliates, we managed over \$173 billion of assets as of January 31, 2009, including over \$37 billion for pension plan clients.

COMMENTS

Our comments on the Report are set out below in chronological order, based on the sections of the Report to which they relate.

1. The Government should work to create national pension legislation and a national pension regulator. (Section 1.2 of the Report)

The current approach to the division of powers between the federal and provincial governments causes problems for workers who move from one jurisdiction to another, for plan sponsors who have members in more than one jurisdiction, and for service providers. The Report mentions a national pension regulator as the first option to solve the problem, but then dismisses that option as unlikely to occur any time soon.



The problems facing defined-benefit plans across Canada call for a national solution. The experience of the United States persuades us that Canada needs national pension regulation and a national regulator. The existing regulators could be used in some way to create the national regulator. No plan sponsor or plan member deserves to be at a disadvantage because of how regulatory authority was divided back in 1867. A national approach to pension regulation also would do a better job of ensuring that pension law works harmoniously with federal retirement income programs and with federal laws on taxation, bankruptcy and insolvency.

2. Regardless of the size of any existing solvency deficit, Ontario law should be changed to let plan sponsors extend their funding amortization period from five years to ten years, conditioned only on notice to the plan members. (Section 4.10.3 of the Report)

The Commission recommended that the sponsors of plans with a solvency funding ratio below 95% should remain subject to the current five-year amortization period, and that the sponsors of plans with a ratio at or above 95% should be allowed to amortize their payments over eight years. The Commission did not propose that the relief be conditional on the sponsor obtaining the consent of the plan members.

On December 16, 2008, the Government announced that it would introduce legislation this spring permitting plan sponsors to amortize the payments over ten years, provided that the plan sponsor has obtained the consent of the plan members.

The extended amortization period should be ten years as proposed by the Government, instead of eight years as proposed by the Commission. The time period should be harmonized across Canada as much as possible. The relief should be available regardless of the size of any existing solvency deficit. The goal of the relief should be to keep plan sponsors solvent during a recession. A solvency deficit arose from assuming that the plan was wound up on the valuation date, something that did not happen and will not happen for most defined-benefit plans. Pension promises are best protected through going-concern funding and by ensuring that plan sponsors stay solvent. For most defined-benefit plans, a solvency deficit on the valuation date is a paper deficit that may disappear in future years.

The consent of plan members should not be a precondition for accessing the relief. The only requirements should be that the plan administrator believes that electing to use the solvency relief is in the best long-term interest of the plan, and notice of the election is given to the current members and retirees. As the Supreme Court of Canada has emphasized, plan members come and go. Consent is an unworkable requirement that will defeat the Government's attempt to provide relief that is in the best long-term interest of the plan.

3. The Government should encourage the federal government to remove, rather than simply raise, the 110% ceiling on actuarial surplus under the *Income Tax Act*. (Section 4.14.2 of the Report)

The Commission recommended that the Government encourage the federal government to raise the contribution ceiling beyond the current level of 110% of plan liabilities. The Commission did not recommend a specific level.

In our experience, where pension law discourages plan sponsors from building a significant surplus, they are strongly tempted to move away from the asset mix that would otherwise be best for the plan. There should be no limit or taxation on the amount of surplus that a sponsor can build. Had plan sponsors been more able to save for a rainy day, many plans would have been in a stronger financial position at the start of the current recession.

4. The Government should rely on a plan administrator's existing duties of care and loyalty, and should remove all the current quantitative investment limits at the end of 2009 if the federal government has not done so by then. (Sections 4.14.3 and 8.3.2 of the Report)

In the mid-1960s, when Ontario's legislation was enacted, the prevailing view was that the legislation should prescribe the types of securities in which a pension plan may invest, and up to what limit. In the decades that followed, the list of permitted investments was repealed but the quantitative limits were left in place.

The federal limits have been adopted in Ontario. The Commission recommended that the Government should try to persuade the federal government to remove or amend the particular limits that no longer make sense, and that if the federal government does not do so within a reasonable timeframe, the Government should cease to rely on the federal limits and establish its own rules. As part of this, the Commission implied that the current limit on a plan owning more than 30% of the voting shares of a company should remain in effect, except in certain circumstances.

On January 9, 2009, the federal government issued a discussion paper with a view to making permanent changes some time in 2009. The federal government noted that the quantitative limits have not been reviewed for 15 years and sought comment on ways to improve the regulatory framework government pension investment. We will be encouraging the federal government to eliminate the federal limits. A plan administrator's duties of loyalty and care provide ample protection on their own.

In connection with the 30% limit, potential concerns about Ontario pension funds having a negative effect on Ontario's capital markets through corporate control are unfounded. The overwhelming majority of Ontario plans, especially single-employer pension plans, do not acquire shares with the intention of controlling a company.

The current limits impose compliance costs on plan sponsors and investment managers, and indirectly on the plans themselves. The costs exceed any perceived benefit because every investment decision, including an investment in voting shares above or below the 30% threshold, must be made carefully with a view to the best interest of the plan, based on the plan's payment obligations and in the context of the overall portfolio. Transactions have been designed to sidestep the 30% voting limit. There is no way around the duties of care and loyalty.

Some people say that pension investment rules should only be amended in concert with investment rules in other financial sectors, such as the insurance sector and public mutual funds. We disagree. The restrictions in each sector are driven by different considerations. Pension fund investment decisions should be driven by the plan's obligations – how much needs to be paid out of the fund, and when – rather than by artificial investment limits. Pension law reform is urgently needed and cannot afford to wait on reforms to other financial sectors.

5. The Government should eliminate the Pension Benefits Guarantee Fund. (Section 6.4 of the Report)

The Commission noted that since 2003, plan failures have become more frequent, especially in Ontario's declining steel and automotive sectors. The Commission recommended keeping the PBGF in place unless and until a better alternative for existing plan members and retirees can be found. The Commission also recommended raising the benefit amount from \$1,000 per month to \$2,500 per month, to adjust the benefit for inflation since 1980. The Commission recommended paying for the increase by raising the amount paid by plan sponsors, with no indication of what the cost to plan sponsors would be.

The PBGF makes the sponsors of other pension plans, and ultimately taxpayers, bear the costs of pension promises that in some cases were unaffordable, especially those made in declining industries. A guarantee that is funded by other plan sponsors, or by taxpayers, is unfair to the sponsors and members of well-run plans, and unfair to taxpayers who are not members of a defined-benefit plan. The costs of unsustainable pension promises should be borne by the plan members and the company's shareholders, and not by anyone else.

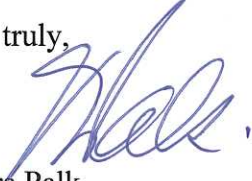
6. Ontario law should require a comprehensive review of the legislation every five years. (Section 10.2.4 of the Report)

The Commission recommended that a position of 'pension champion' be created, and that Ontario's pension legislation be comprehensively reviewed every eight years. We support the creation of a pension champion, but even with one, the reviews should take place every five years. That is the approach taken under Ontario's *Securities Act*, and it has worked well.

CONCLUSION

Thank you for this opportunity to comment on the Report. We would be pleased to make ourselves available if you have any questions about our comments, or if you wish to discuss these issues further.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Palk', is written over the closing 'Yours truly,'.

Barbara Palk
President