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Ontario

SECTION:	Investment Guidance Notes
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TITLE:	Statements of Investment Policies and Procedures (SIPPs) for Member-Directed Defined Contribution Plans
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Note: Where this guidance note conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

Note: The electronic version of this guidance note, including direct access to all linked references, is available on FSCO's website at www.fsco.gov.on.ca. *All pension policies and guidance notes can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

1.0 Purpose

As a result of recent amendments to the federal *Pension Benefits Standards Regulations, 1985* (PBSR) and to Regulation 909 (the Regulation) under the *Pension Benefits Act* (PBA), the requirements have changed for the statement of investment policies and procedures (SIPP) for plans where the members direct the investment of the assets in their accounts (i.e., member-directed defined contribution (DC) plans and combination benefit or hybrid plans with member-directed accounts).

This guidance note sets out FSCO's expectations regarding the content of SIPPs for these types of plans in light of these changes; it does not apply to defined benefit (DB) plans, or to DC plans where the administrator directs the investment of the assets.

2.0 Background

2.1 SIPPs and the PBA

Under section 78(1) of the Regulation, the administrator of a pension plan (administrator) is required to establish a SIPP for the plan. A SIPP is a document that contains investment policies and procedures in respect of a plan's portfolio of investments and loans. The content requirements of the SIPP reflect the federal investment regulations as modified in sections 47.8 and 79 of the Regulation.

Under section 22 of the PBA, an administrator is responsible for administering and investing the pension fund in accordance with the administrator's standard of care, in a prudent manner, and in the best interests of the pension plan's beneficiaries. It is the responsibility of the administrator to determine what prudence requires in the context of the plan and fund that it administers. The administrator must determine the investment policies and procedures to be set out in the SIPP, implement a review and approval process, and monitor compliance with the SIPP, all in accordance with the administrator's fiduciary duties.

The administrator should document the rationale for key investment policies and procedures, although this does not necessarily have to be documented in the SIPP itself.

2.2 Federal Investment Regulations

The federal investment regulations (FIR) are defined in section 66 of the Regulation as sections 6, 7, 7.1 and 7.2 and Schedule III to the Federal PBSR made under the *Pension Benefits Standards Act, 1985 (Canada)* as they may be amended from time to time. The FIR are incorporated by reference in sections 78 and 79 of the Regulation. The Regulation also modifies the application of the FIR with respect to Ontario plans.

Under the amendments to section 7.1 of the PBSR, which came into force on April 1, 2015, the SIPP established for a federally registered pension plan does not need to address the assets of a "member choice account", as defined in the PBSR. A member choice account is essentially an account under a DC plan or DC provision of a combination benefit or hybrid plan for which the member or other beneficiary is permitted to make the investment choices.

The Federal Government has instead introduced a series of disclosure requirements concerning investment options offered under the member choice accounts. These new disclosure requirements, however, will not apply to Ontario pension plans as they are not incorporated by reference into the PBA.

3.0 PBA Content Requirements for SIPPs of Member-Directed DC Plans

The Ontario requirement for the establishment of a SIPP is not contained in the FIR, but directly in section 78 of the Regulation; therefore, member-directed DC plans are still required to establish a SIPP and the SIPP for other plans with member-directed accounts must still address the investment of such accounts. However, the content requirements set out in section 7.1 of the PBSR no longer apply with respect to the investment of member-directed accounts.

The SIPP for these plans must be consistent with the applicable portions of the FIR as modified in sections 47.8 and 79 of the Regulation. Where there is a conflict between the SIPP and the FIR as modified in sections 47.8 and 79 of the Regulation, the FIR as modified takes precedence.[1] The administrator should amend the SIPP to eliminate the conflict.

[1] Section 78 of the Regulation requires the SIPP to meet the requirements of the FIR as modified in sections 47.8 and 79 of the Regulation. Section 79 of the Regulation requires the assets of every pension plan to be invested in accordance with the FIR despite the provisions of the plan or an instrument governing the plan. Effective January 1, 2016, section 79 of the Regulation requires the assets of the plan to be invested in accordance with the FIR, as modified, and with the SIPP.

The SIPP must also include information as to whether environmental, social, and governance (ESG) factors are incorporated into the plan's investment policies and procedures, and if so, how those factors are incorporated. Reference should be made to FSCO *Investment Guidance Note 004: Environmental, Social and Governance (ESG) Factors* for more information.

4.0 Other Content for SIPPs for Member-Directed DC Plans

As the SIPP contains the investment policies and procedures in respect of the plan's portfolio of investments and loans, and the SIPP must be developed in accordance with the administrator's standard of care under section 22 of the PBA, FSCO expects that the administrator will give due consideration to including the following information in the SIPP:

1. *General investment principles.* This includes investment principles and assumptions that helped shape the DC plan/provision's investment program. While these may vary from plan to plan, examples include the administrator's views on active and passive management, the use of life cycle or target date funds, and the approximate number of investment options to be made available to plan members.
2. *Permitted asset classes from which investment funds can be selected.* The SIPP should identify from which asset classes investment funds may be selected. If the plan is exclusively employing life cycle or target date funds, then it may indicate so instead of specifying permitted asset classes.
3. *The default investment option for member accounts where no selection is made.* The default option should be appropriate given relevant factors, such as demographics of the plan membership and the interest rate environment. If the plan does not have a default option, the SIPP should outline what happens if a member does not make an investment choice.
4. *Selecting, monitoring, and terminating investment managers and funds.* This should include the processes and criteria to be followed in the selection, monitoring, and termination of investment managers and funds, as deemed prudent by the administrator given the nature of the plan. In determining appropriate criteria to be considered in selecting investment managers and funds, administrators may wish to refer to *CAPSA Guideline No. 3: Guidelines for Capital Accumulation Plans* (May 2004). The SIPP should also identify the party responsible (i.e., the administrator or its agent) for measuring investment performance, and assessing compliance by investment funds with applicable SIPP policies and procedures, and the frequency of reporting on both to the administrator.
5. *Plan expenses and investment fees related to the DC plan/provision.* This should include indicating which categories of expenses and fees will be paid by the employer and which will be borne by plan members; expectations, ranges, or limits on total plan expenses and fees; and guidelines for monitoring expenses and fees.
6. *Related party transactions.* The SIPP should document the policies and procedures pertaining to related party transactions permitted under section 17 of Schedule III to the PBSR and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan under the related party rules. As fiduciaries of the plan, administrators are also required to avoid or

manage other conflicts of interest that may arise.[2] Administrators may wish to address the broader topic of conflicts of interest in the SIPP or other policy document.

7. *Information guidelines for plan members on investment options.* The policy should identify at a high level the categories of information to be provided to plan members concerning their investment choices under the plan (e.g., educational information or tools to be provided to members, descriptions of available investment options, any timing requirements that apply to the making of an investment choice, etc.). Administrators may wish to refer to CAPSA Guidelines *No. 3: Guidelines for Capital Accumulation Plans* and *No. 8*: *Defined Contribution Plans Guideline*, and the new regulations on member choice accounts prescribed in section 7.3 of the PBSR.[3]

If any of the items described above are set out in a separate policy or procedure document, such document may be incorporated by reference into the SIPP. If the administrator chooses to incorporate by reference any other policy or procedure document, the document will form part of the SIPP and, therefore, must be filed pursuant to section 78 of Regulation 909. (Alternatively, the administrator can simply include relevant excerpts from the policy or procedure in the SIPP.)

5.0 Other Important PBA SIPP Requirements

The SIPP for a member-directed DC plan (or which pertains to member-directed accounts) is also subject to other regulatory requirements under the PBA, including those described below. This is meant as a summary only, and administrators should refer to the relevant sections of the PBA, the Regulation, and relevant FSCO policies directly for further information.

- Starting in 2016, administrators will need to file the SIPP with FSCO. The filing is to be done through the Pension Services Portal (see section 78 of the Regulation).
- Starting on January 1, 2016, the assets of the plan must be invested in accordance with the SIPP (see section 79(1) of the Regulation). Plan assets must also continue to be invested in accordance with the FIR, as modified by the Regulation.
- Administrators must make their SIPPs available to plan members and other prescribed stakeholders upon request (see section 29 of the PBA and section 45 of the Regulation).
- Effective July 1, 2016, administrators must include prescribed statements about the SIPP in annual statements to members, and in biennial statements to former and retired members, if applicable (see sections 40, 40.1 and 40.2 of the Regulation).

[2] Related party transactions are just one subset of the potential conflicts that plan administrators may face. Related party transactions have been singled out in this guidance note in deference to the requirements for SIPPs for other types of plans under section 7.1(1) of the PBSR.

[3] Section 7.3 of the PBSR (which is not yet in force) is not incorporated by reference into the Regulation, and, therefore, Ontario pension plans are not required to comply with this subsection. The requirements set out in section 7.3 may nevertheless serve as a useful guideline for administrators.

6.0 Assistance and Reference Materials

The SIPP is a plan document that addresses a wide range of technical topics and which must meet regulatory requirements. As such, the preparation, review and revision of the SIPP will require a fairly high level of technical knowledge and expertise. If the administrator does not feel it possesses adequate knowledge and expertise, it has a fiduciary duty to seek external expert assistance in this regard.

In establishing or reviewing a SIPP, administrators and their advisors may wish to review the following materials for additional guidance and information:

- FSCO *Investment Guidance Note 002: Prudent Investment Practices for Derivatives.*
- FSCO *Investment Guidance Note 004: Environmental, Social and Governance (ESG) Factors.*
- CAPSA's *Guideline No. 3: Guidelines for Capital Accumulation Plans,* May 2004.
- CAPSA's *Guideline No. 6: Pension Plan Prudent Investment Practices Guideline* and *Self-Assessment Questionnaire on Prudent Investment Practices*, November 2011.
- CAPSA's *Guideline No. 8: Defined Contribution Plans Guideline*, March 2014.

7.0 Review of SIPP

SIPPs for member-directed DC plans are not subject to the annual review requirements of section 7.2 of the PBSR. Nevertheless, in keeping with the standard of care under section 22 of the PBA, the administrator should review the SIPP when certain triggering events occur, such as major plan events (e.g., wind up, downsizing or asset transfer), material changes in the plan's investment principles, changes in key service providers (e.g., DC plan provider, key managers), or changes to relevant legislation.

Even where there are no specific triggering events, the administrator should ensure that the SIPP is periodically reviewed in order to ensure it remains relevant given changes in prudent investment practices or the external environment (e.g., economic trends).

Any time the SIPP is amended, the SIPP amendment (or the amended SIPP in its entirety) must be filed with FSCO within 60 days of the amendment, as per section 78 of the Regulation.