



Comparative Study of U.K. and Canadian Pension Fund Transparency Practices

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Executive Summary

This report was commissioned by Canada's National Round Table on the Environment and the Economy to explore how pension fund transparency practices with respect to social, environmental and ethical (SEE) issues in the United Kingdom differ from those in Canada.

In particular, we address the antecedents and impact of U.K. policies mandating the inclusion of a fund's approach to SEE issues in its statement of investment principles (SIP). And we explore the possible relationship between reforms to the 1995 *Pensions Act* and the subsequent growth of socially responsible investment (SRI or RI) in the U.K.

We examine what such reforms might require in Canada and recommend how such reforms might be pursued. Finally, we suggest further areas for research in order to determine the case (or the absence of a case) for such reforms.

The main body of the report includes the following substantive sections:

- Relevant U.K. Law Regarding the SEE Issue Disclosure Requirement in the SIP
- Social and Political Drivers Leading to the SEE Issue Disclosure Requirement in Amendments to the U.K. *Pensions Act*
- Impact on the U.K. Pension Fund Industry of the SIP Disclosure Regulation
- Implications of Introducing a SEE Issue Disclosure Requirement in Canada
- Recommendations and Future Research

Our six principal recommendations (including recommendations for further research) are listed below.

For the Attention of Federal and Provincial Governments

- i) The need for Canada to adopt legislation similar to the U.K. requirement for pension funds to disclose *the extent (if at all) to which social, environmental and/or ethical (SEE) considerations are taken into account in the selection, retention and realization of investments; and the policy (if any) directing the exercise of the rights (including voting rights) attaching to investments*¹ in both the statement of investment policies and procedures (SIPP) and the annual reports to members. This legislation should be accompanied by active clarification of the fact that exploration of SEE issues in investment decision making for the purposes of risk minimization and/or long-term value maximization is not in conflict with the established fiduciary duties of pension fund managers and trustees.

¹ This language (italics) comes from the disclosure requirement contained in the UK's amended 1995 *Pensions Act*.

- ii) The need for a broader public policy and civil society debate on the effective management and supervision of Canadian pension funds (to include such issues as general transparency [including SEE criteria], representation of pensioners and deferred pensioners on boards of trustees, protection of pensioners and deferred pensioners from underfunding, impacts of bankruptcy, etc.).

For the Attention of the Pension Regulators and Pension Fund Associations²

- iii) The need for Canadian financial institutions to become more broadly familiar with both mandatory and voluntary pension fund transparency practices—particularly in relation to SEE criteria—in Europe and elsewhere in order to ensure that best-practice standards are observed in Canada.
- iv) The need for the promulgation of model pension fund laws consistent with international best practice on transparency that may require the inclusion of policy statements on SEE criteria in Canadian statements of investment policies and procedures for pension funds, recognizing that there is no evidence of negative impacts arising from such transparency.

For the Attention of the Research Community

- v) The need for further research to determine the case (or absence of a case) for legislative reform (e.g., the streamlining of federal and provincial pension fund laws and regulations within the context of SEE criteria and more effective financial regulation generally).
- vi) The need for further research to determine the case (or absence of a case) for consideration of SEE criteria as a way to protect the interests of pensioners and deferred pensioners with respect to portfolio risk minimization and/or long-term value maximization.

² Such associations include the Canadian Association of Pension Supervisory Authorities, the Pension Investment Association of Canada and the Association of Canadian Pension Management.

1) List of Acronyms

ABI	Association of British Insurers
APPG	All-Party Parliamentary Group
DB	Defined Benefit
DC	Defined Contribution
CAP	Capital Accumulation Plan
CAPSA	Canadian Association of Pension Supervisory Authorities
CPBI	Canadian Pension and Benefits Institute
CPP	Canada Pension Plan
CPPIB	Canada Pension Plan Investment Board
CPPIBA	<i>Canada Pension Plan Investment Board Act</i>
CR	Corporate Responsibility
CSR	Corporate Social Responsibility
DTI	Department of Trade and Industry (U.K.)
DWP	Department for Work and Pensions (U.K.)
EIRIS	Ethical Investment Research Service
HMT	Her Majesty's Treasury (U.K.)
IMA	Investment Management Association
LAPF	Local Authority Pension Funds
LAPFF	Local Authority Pension Fund Forum
MP	Member of Parliament
NAPF	National Association of Pension Funds
OTPP	Ontario Teachers Pension Plan
PBSA	<i>Pension Benefits Standards Act</i>
PBSR	Pension Benefits Standards Regulation
PSPIB	Public Sector Investment Board
PSPIBA	<i>Public Sector Investment Board Act</i>
PIRC	Pensions Investment Research Consultants
RI	Responsible Investment
SEE	Social, Environmental and Ethical
SIO	Social Investment Organization
SIP	Statement of Investment Principles
SIPP	Statement of Investment Policies and Procedures
SRI	Socially Responsible Investment
TUC	Trades Union Congress
UKSIF	U.K. Social Investment Forum
USS	Universities Superannuation Scheme Limited

2) Introduction³

The National Round Table on the Environment and the Economy (NRTEE) conducted scoping meetings for its Capital Markets and Sustainability Program in Ottawa and Toronto in September and November 2003 and in Calgary, Vancouver and Montreal in January 2004.

One issue that emerged out of the scoping process was that the Program might learn from experience in the United Kingdom regarding how pension funds can influence the capital markets with respect to sustainability issues. The direction received in the scoping process was that Canada's adoption of an approach similar to the U.K. statement of investment principles (SIP) with respect to social, environmental and ethical (SEE) issues could potentially lead to greater take-up of notions of responsible investment⁴ (RI) and sustainability in Canada. This in turn would bring benefits from the integration of the environment and the economy.

This report provides preliminary information addressing the interests of the NRTEE in exploring the U.K. experience. It also seeks to address (briefly) a number of key areas relating to the U.K. experience and relate them to the Canadian situation:

- relevant U.K. law regarding the SEE issue disclosure requirement in the SIP;
- social and political drivers leading to the SEE issue disclosure requirement in amendments to the U.K. *Pensions Act*;
- impact on the U.K. pension fund industry of the SIP disclosure regulation; and
- implications of introducing a SEE issue disclosure requirement in Canada.

The report concludes with recommendations and directions for future research.

³ The research team would like to express their gratitude to David Myers and Canada's National Round Table on the Environment and the Economy for commissioning this research and their assistance throughout the project. We would also like to thank all of the interviewees in the United Kingdom and Canada for their invaluable participation, as well as Peter Chapman of SHARE and Jane Ambachtsheer of Mercer Investment Consultants for providing comments on the draft report. Gil Yaron of SHARE deserves special recognition for his advice on legal aspects of SRI in Canada.

⁴ This term is used interchangeably with socially responsible investment (SRI).

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3) Background

It is generally believed that the corporate sector in the European Union has embraced corporate responsibility (CR) to a greater extent than its counterparts in other parts of the world. This is demonstrated by various phenomena such as public attitudes to social and environmental issues (Wheeler, 2003) and the comprehensive reporting many European companies undertake with respect to their social and environmental performance (Wheeler and Elkington, 2001).

Moreover, socially responsible investment (SRI) is one of the fastest-growing sectors of the European investment market. According to the U.K. Social Investment Forum, the total value of SRI assets in the U.K. increased from £23 billion in 1997 to £225 billion in 2001 (see Table 1).

Table 1: Total value of SRI assets in the U.K. (£billion)			
	1997	1999	2001
SRI unit trusts	2.2	3.1	3.5
Churches	12.5	14.0	13.0
Charities	8.0	10.0	25.0
Pension funds	0.0	25.0	80.0
Insurance companies	0.0	0.0	103.0
Total	22.7	52.2	224.5

Source: Russell Sparkes, *SRI: A Global Revolution*, John Wiley & Sons, 2002.

It is possible that growth in SRI assets in the U.K. has been spurred or at least accelerated by amendments to U.K. pension fund legislation, passed in 2000. The disclosure requirement under the amended 1995 *Pensions Act* means that trustees must declare in their statement of investment principles *the extent (if at all) to which social, environmental and/or ethical considerations are taken into account in the selection, retention and realization of investments; and the policy (if any) directing the exercise of the rights (including voting rights) attaching to investments.*⁵

In this report, we explore the proposition that there may have been a link between inclusion of SEE issues in statements of investment principles in the U.K. and the growth of total SRI investments. We do this by reviewing the social and political drivers of reform in the U.K. and the impact of the reform on the U.K. pension fund industry. And we apply our observations to the Canadian situation. However, we start our examination of the U.K. precedent by considering the legal context for reforms to the U.K. *Pensions Act*.

⁵ 1995 UK Pensions Act

4) Relevant U.K. Law Regarding the SEE Issue Disclosure Requirement in the SIP

Introduction

The majority of U.K. pension schemes are trust-based and governed by a board of trustees. This board has a responsibility to administer the scheme in accordance not only with the rules of the scheme but also with a plethora of other rules and regulations derived from a number of different areas of law. These areas include *inter alia* trust, contract, tax, social security and employment law and the *Financial Services Act*. The employer sets the scheme rules, with the responsibility for pension schemes falling within the jurisdiction of several government departments.

Under common law, pension scheme trustees have a duty of care to “...take such care as an ‘ordinary prudent man’ would take if he were minded to make an investment for the benefit of other people....”⁶ However, the lack of a comprehensive statutory framework prior to the introduction of the 1995 *Pensions Act* was a serious cause of concern. This concern crystallized in the 1990s when the loss of pension funds through misappropriation came to light during the collapse of Robert Maxwell’s publishing empire.

Prior to the 1995 *Pensions Act*, schemes were required to supply certain information to members, including benefit statements and scheme details. Other information was to be available on request, including the scheme documents and the annual report. In 1998, John Denham, the then U.K. Parliamentary Under-Secretary of State for Social Security, announced government proposals for further disclosure of the investment policies of pension funds. He also stated that regulations might be introduced to require pension funds to include a specific reference to their policies on socially responsible investment when they set out their SIPs (Denham, 1998). Two years later, an amendment to the 1995 *Pensions Act* came into effect. From July 3, 2000, occupational pension fund trustees have been required to state in their SIPs⁷ the extent to which SEE considerations are taken into account in their investment strategies. The following discussion focuses in particular on those sections of the relevant legislation that pertain to the responsibilities of trustees to provide information to their members.

⁶ *Re Whiteley* (1886) 33 Ch D 347, 355, per Lindley L.J.

⁷ Here the authors wish to avoid any confusion in relation to the terms SIP and SIPP – the former, the statement of investment principles, is required of UK pensions funds; the latter, the statement of investment policies and procedures, is the Canadian equivalent.

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Pensions Act 1995

The 1995 Act came into force in 1997, following a pensions law review (Goode, 1993) and effectively codifying trust law and good practice. The Goode committee observed that trustees of pensions funds were “entitled to have a policy on ethical investment and to pursue that policy, as long as they treat the interests of the beneficiaries as paramount and the investment policy is consistent with the standards of care and prudence required by the law.” However, at the time, including discussion of any such policy within the SIP did not become a requirement.

The 1995 *Pensions Act* required that:

- (1) *The trustees of a trust scheme must secure that there is prepared, maintained and from time to time revised a written statement of the principles governing decisions about investments for the purposes of the scheme.*
- (2) *The statement must cover, among other things –*
 - (a) *the trustees' policy for securing compliance with sections 36 and 56, and*
 - (b) *their policy about the following matters.*
- (3) *Those matters are –*
 - (a) *the kinds of investments to be held,*
 - (b) *the balance between different kinds of investments,*
 - (c) *risk,*
 - (d) *the expected return on investments,*
 - (e) *the realisation of investments, and*
 - (f) *such other matters as may be prescribed.” (Pensions Act, 1995 s.35)*

Post-1995 Developments

Another period of consultation on pension reform commenced in the late 1990s, as part of the government’s Welfare Reform Programme, when John Denham was Parliamentary Under-Secretary of State for Social Security. The consultation document issued by the Minister—*Strengthening the Pensions Framework: A Consultation Document* (HMSO, 1998a)—introduced the idea of adding disclosure of SEE considerations to the SIP. Views were invited on the following draft proposal:

For the purposes of section 35(3)(f) of the 1995 Act (other matters to be contained in the statement of investment principles), the statement must cover whether the trustees take into account any considerations other than financial considerations, and if so, what these are and how investment decisions are affected. (p. 39)

The green paper *A New Contract for Welfare: Partnership in Pensions* (Cm 4179) also issued in 1998 (HMSO, 1998b) echoed similar sentiments and set out that

[p]ension funds must consider how their funds are invested. The Government believes that, subject to the over-riding requirements of trust law in respect of the interests of the beneficiaries, trustees should feel able to consider moral, social and environmental issues in relation to investments. (Ch. 8, para. 68)

We believe that it is right that all trustees should consider how far such issues should affect the way they invest the assets of the pension fund. We believe that the best way to achieve this is the introduction of a regulation under the Pensions Act 1995. Such regulation would require pension fund trustees to set out their policy if any in their statement of investment principles. (Ch. 8, para. 69)

In the final draft of the *Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulations 1999*, an additional clause in respect of voting rights was inserted and “considerations other than financial considerations” became much more specific. The relevant amendment required that

[t]he matters prescribed for the purposes of section 35(3)(f) of the 1995 Act (other matters on which trustees must state their policy in their statement of investment principles) are –

- (a) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments;*
- (b) their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to investments. (1999, SI 1849)*

Amendments to Related Regulations

New regulations also imposed similar requirements upon public sector pension funds, which mandated a

regulation which requires each administering authority to prepare, maintain and publish a written statement of principles governing their policy on investments of pension fund moneys. This statement must cover the same matters as those the trustees of a trust scheme must include in the statement that they are required to prepare under section 35 of the Pensions Act 1995. The statement must also include the authority’s policy on the extent to which social, environmental or ethical considerations are taken into account. (1999, SI 3259)

SIP for schemes not established under trust detailing:

(f) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments. (2000, SI 1403)

5) Social and Political Drivers Leading to the SEE Issue Disclosure Requirement in Amendments to the U.K. *Pensions Act*⁸

Introduction

This section explores the social, political and other drivers leading to the introduction of the requirement to disclose social, environmental and ethical considerations in all occupational pension fund statements of investment principles. The requirement is from hereon referred to as “the requirement” and is based on the legal explanation of the disclosure requirement in the previous section.

The requirement was championed by the new Labour government, which opportunistically used a review of the *Pension Fund Act* conducted for other reasons. As we shall describe, the disclosure of social, environmental and ethical issues was supported by key NGOs and generally faced little opposition as it was seen as part of a general move toward greater transparency of U.K. pension funds. The following section outlines the key drivers and various stakeholder group positions leading up to the requirement. A table of chronological events is attached in Appendix B.

Key Stakeholders

U.K. Government

Tony Blair was elected Prime Minister of the U.K. in 1997, bringing the Labour Party into government after 18 consecutive years of Conservative rule. The new Labour government positioned itself in support of modernizing government and other U.K. institutions, including company law, and elevating the role of corporate responsibility. Momentum quickly built for institutional investors—notably pension funds—to serve as vehicles for promoting CR in the U.K.

The U.K. government has been relatively active in promoting the concept of private sector self-regulation for corporate responsibility.⁹ A number of policy

⁸ Observations described in this section were compiled from primary and secondary sources: 15 in-depth interviews with key informants in the U.K. and desk-based research. Interview participants included representatives from the U.K. government, the U.K. public sector, the U.K. Social Investment Forum, Pensions Investment Research Consultants, Ethical Investment Research Services, investment managers and other related agencies. A complete list of U.K. interview participants is included in Appendix A. All interviews were conducted face to face unless otherwise noted, and ranged from 30 minutes to 90 minutes in length. The desk-based research included publicly available documents found independently, supplemented by sources identified and/or provided by interview participants.

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initiatives leading up to the requirement—and under review at the time—created the necessary momentum to pass the requirement (see Appendix B for a more detailed chronology); the requirement was widely advocated within the U.K. government (with cross-party support) but predominantly championed by a few key Labour MPs including John Denham,¹⁰ Tony Colman¹¹ and Stephen Timms.

In July 1998, John Denham (then Minister of State at the Department of Social Security) gave the U.K. Social Investment Forum (UKSIF) Annual Lecture to representatives of the investment industry, NGOs and UKSIF members. During the speech, he announced the government's intention to amend the 1995 *Pensions Act* to include a statement in the SIP on consideration of SEE issues (Denham, 1998). He stated: "I am minded to take action which will ensure that trustees set out the extent to which their investment strategy takes account of ethical and social considerations..." (Denham, 1998).

Also in 1998, an All-Party Parliamentary Group (APPG) on SRI was formed to "promote informed government debate on SRI issues" and "to ensure that those issues are considered, wherever relevant, during framing of legislation" (Insight Investment, 2003). Tony Colman (MP, Putney) was appointed to chair this group¹² and has since been central in driving parliamentary action on socially responsible investment.

Initially, the requirement was widely misinterpreted and considered to be a move by the government to force pension funds to embrace SRI (Powdrill, see App. A). Therefore, a key activity leading up to introduction of the requirement was the 12-month multi-stakeholder consultation period to raise awareness of what the requirement would include—and, perhaps more importantly, what it would not include (i.e., *mandatory* inclusion of SEE issues in pension fund investments). The consultation consisted of a number of meetings with the U.K. investment community, NGOs, trustees, trade unions, lawyers, academics, other government departments and other interested parties. Emphasis was given to increasing the transparency of pension funds, the voluntary nature of the requirement (to consider SEE issues), and creating space for trustees to include SEE issues in their investment process (Napier, see App. A; Colman, see App. A).

In 1999, Denham was succeeded as Minister of State at the Department of Social Security by Stephen Timms,¹³ who supported the requirement and introduced the initiative to Parliament that year. Colman and the APPG on SRI

⁹ The United Kingdom was the first country to appoint a minister for corporate social responsibility. CR has found support from various departments including the Department of Trade and Industry (DTI), Department for International Development (DFID) and, notably here, the Department for Work and Pensions (DWP) and Her Majesty's Treasury (HMT) (DTI website).

¹⁰ Denham was formerly with War on Want, a U.K. anti-poverty and development NGO.

¹¹ Colman is a former director with the Burton Group of companies and chair of an association of local government pension funds.

¹² Colman is the current chair and has chaired since inception in 1998.

¹³ Timms is now the Minister for Corporate Social Responsibility.

tabled Early Day Motion No 710 on Pensions Disclosure Regulation in support of the government's proposal, garnering cross-party support and the backing of 163 MPs (APPG, 2000).

The requirement did not see any opposition in Parliament, as it was supported by the Liberal Democrats and was not opposed by the Conservatives (Colman, see App. A). The lack of political point scoring was quite remarkable (Waygood, see App. A). Moreover, ministerial debate about the requirement helped to demonstrate that it was not an anti-company agenda but rather a move to encourage transparency of pension funds.

RI generally fits well with Labour policy. Moreover, in the U.K., many MPs come through the political system via local councils and have experience with the Local Authority Pension Funds (LAPFs).¹⁴ They are therefore likely to have greater knowledge and experience related to the challenges surrounding RI or SEE issues and pension funds (Shepherd, see App. A; Webster, see App. A).

It seems that the U.K. government genuinely believes that CR benefits all stakeholder groups. The SIP/SEE requirement is often cited (especially by politicians) as an example of public policy successfully promoting CR and creating value on many levels (Waygood, see App. A; Webster see App. A).

Much of the commentary we obtained in our research made clear that the U.K. government had played a significant leadership role in promoting the requirement:

It was an idea that appealed to a couple of people in government as a possible area for exploration...and a way to do it that was politically easy was found. (Mansley, see App. A)

He [Denham] was in a position to say that "I understand the business case as well as the economic case for doing this kind of a reform." And that was the key thing—having someone with a significant understanding of SRI in a senior pensions role in government. He had the authority to make an SRI progression happen, and the understanding of how it could ultimately benefit both corporate responsibility specifically and the economy more generally...." (Waygood, see App. A)

As for the question of what the U.K. government was trying to achieve with the requirement:

From the government's perspective the "why" relates much more to the health of the UK Plc or the UK economy, knowing that companies which deal with their social, ethical and environmental performance tend to be best managed and better performers. (Waygood, see App. A)

The idea of information and choice fits with their [the Labour Party's] "third way" economics: regulating rather than controlling markets and adopting a

¹⁴ The LAPFs constitute about 10 percent of the occupational pension funds in the U.K. and 3 percent of the shares on the U.K. stock market. See also section on LAPFF.

variety of new approaches to social and environmental issues. There are also a number of MPs who have invested in ethical investments themselves and have been part of these debates in their younger days who seem pleased with what is going on right now. (Webster, see App. A)

Civil Society and Allied Organizations

Many NGOs believe capital markets can be used to influence CR in support of their various objectives on SEE issues (Waygood, 2004), and they saw the proposed requirement as an opportunity to further advance their goals. Some NGOs argued that the requirement did not go far enough to support CR and RI and would have preferred to see mandatory consideration of SEE issues in pension fund investments (MacDougall, see App. A; Webster, see App. A). However, recognizing the potential for the requirement to raise awareness on SEE issues, most NGOs in the U.K. very actively supported it. Two of the most prominent NGOs and their role in the requirement are discussed below.

U.K. Social Investment Forum

The U.K. Social Investment Forum¹⁵ (UKSIF) is widely regarded as the key NGO supporting the requirement (Waygood, see App. A; Webster, see App. A; Shepherd, see App. A). UKSIF led the NGO lobby for the requirement and informally collaborated with others including Friends of Earth, War on Want, Traidcraft Exchange and WWF-U.K. We understand that, recognizing the opportunity presented by the broader SIP review and knowing Denham was open to SRI generally, UKSIF suggested the idea of including the requirement directly to Denham (Waygood, see App. A; Wildsmith, see App. A). They also called upon the expertise of their membership to develop a strong case for the requirement (Waygood, 2004). UKSIF became the secretariat for the APPG on SRI upon its creation in 1998, and together they created an enabling environment for the government to push the requirement through (Shepherd, see App. A).¹⁶

Pensions Investment Research Consultants

Pensions Investment Research Consultants¹⁷ (PIRC) saw the requirement as a key driver in promoting sustainability strategies for corporations and giving

¹⁵ UKSIF is a membership-based organization with a mission “to promote and encourage the development and positive impact of SRI amongst UK-based investors. UKSIF believes that all material social, environmental and ethical issues should be integrated into standard investment practice and that individual investors should be able to reflect their values in their investments.” Their affiliates include banks, building societies, investment management institutions, charities, independent financial advisers, professional advisory firms, research providers and other interested organizations (UKSIF website).

¹⁶ A more recent development of UKSIF is their adoption of Just Pensions, which was formed by Traidcraft and War on Want in 2000 in response to the requirement; Just Pensions aims to raise awareness among, educate and influence the U.K. pension industry and other institutional investors about the importance of international development issues in their SRI practices; Just Pensions also aims to raise the profile of SRI on the U.K. and European public policy agenda (Just Pensions website).

¹⁷ PIRC was established in 1986 and is the U.K.’s largest pension fund adviser on corporate governance and SRI strategies (PIRC website).

pension funds the legal legitimacy to consider SEE issues. They publicly supported the proposed requirement stating:

The government's initiative [the requirement] means that the socially responsible investment movement has come of age. The regulation recognises that socially responsible investment is an appropriate part of a pension fund's investment policy and is consistent with the fiduciary responsibility of trustees, a view PIRC has championed for thirteen years. It should finally lay to rest the stale debate over the legality of these strategies. (PIRC, 1999)

Pension Funds

A few pension fund organizations are singled out here for having adopted a position on RI and/or the requirement.

National Association of Pension Funds

The only major opposition to the proposed requirement came from the National Association of Pension Funds (NAPF).¹⁸ Initially, NAPF considered it to be bad for pension funds. However, they changed their position: after dialogue with the government (through the consultation process), they came to understand that consideration of SEE issues for investments was to be voluntary and the requirement would further increase pension fund transparency. This understanding improved their comfort level. The NAPF ultimately supported the requirement and, before it was finally implemented, conducted a seminar to educate members on the new public policy (Pryce, see App. A).

Local Authority Pension Fund Forum

The Local Authority Pension Fund Forum¹⁹ (LAPFF) has historically been active in SRI (Shepherd, see App. A) and clearly states in its mission statement that the forum “exists to promote the investment interests of local authority pension funds, and in particular to maximise their influence as shareholders to promote corporate social responsibility and high standards of corporate governance amongst the companies in which they invest, commensurate with statutory regulations” (LAPFF website). The LAPFF was indeed supportive of the requirement and considered it an opportunity to promote its own strategy of shareholder action (LAPFF, 1999).

Universities Superannuation Scheme

The Universities Superannuation Scheme²⁰ (USS) was already active on SEE issues when the requirement was proposed and to a certain extent was a model for the requirement (*The Ethical Investor*, 2000; Thamotheeram, see App. A). Along with BT, it was one of the first pension funds to start a dialogue on SIP that included consideration of SEE issues, corporate governance and engagement policy in its investment process (*The Ethical Investor*, 2000); this

¹⁸ NAPF predominantly represents the interests of employer-sponsored pension schemes.

¹⁹ The LAPFF was formed in 1990; it provides a platform for Britain's Local Authority Pension Funds (LAPFs) on shareholder activism and campaigns on CR issues; it includes 30 (of 99) LAPFs and has collective assets of over £40 billion (LAPFF website).

²⁰ USS is the third largest U.K. pension fund with assets worth £15.4 billion (USS, 2003).

was due to its active membership of university academics and NGO activism (Ethics for USS), who put pressure on the scheme to divulge how their pensions were being invested and demanded a socially responsible approach to investing. USS SRI policies cover its entire assets and are not restricted to certain allocated funds. It is also one of the very few pension funds to have an in-house team for SRI. USS' SIP is included in Appendix D as an example of best practice in U.K. pension funds.

Fund Managers

Generally, the investment management community did not take a position on the requirement. They left the issue with their clients, letting them decide how they wanted to invest their money and, in turn, ask for appropriate services from their managers (Gamble, see App. A; Lankester, see App. A). That said, fund managers that had already incorporated SEE considerations into their investments saw the requirement as an opportunity for increased business. Other investment houses began to take action in order to respond to the anticipated demand for RI-oriented investment strategies (Lankester, see App. A; Robins, see App. A). In addition, a number of new SRI funds were launched in the U.K. in the period leading up to the requirement (Shepherd, see App. A).

Trade Unions²¹

The involvement of trade unions was limited in the process leading up to the requirement. Overall, trade unions did not have particularly strong views on RI. Indeed, most trade union-appointed trustees were nervous about incorporating SEE issues and confused about how they might conflict with their fiduciary responsibilities. Many believed that SRI was “on the cusp of legality” (Powdrill, see App. A). Government consultation on the requirement catalyzed trade unions into rethinking their policies with respect to pension fund investment strategies and how they might better align with union policy objectives (Powdrill, see App. A). And more recently, the Trades Union Congress (TUC) and some of their affiliated unions, such as the GMB, have initiated activities to educate pension trustees on SRI and shareholder activism.²²

Summary

From the foregoing, we can observe that the passing of the SIP/SEE requirement was an act of political leadership that capitalized on an existing review of the *Pensions Act* and which seemed to be threat-free to most if not all stakeholders. The voluntary approach carefully avoided opposition from potentially opposed stakeholders and ultimately won the active or tacit support of all relevant groups (insofar as our research could determine). The policy has often been cited in public and private sectors as an example of successful

²¹ The Trades Union Congress (TUC) represents indirectly nearly seven million people who are members of 71 unions. This is the vast majority of trade unionists in the U.K. The information here represents the views of the TUC.

²² See also the responses of trade unionists in the following section.

public policy for mutually beneficial outcomes; however, the degree of impact on CR is still under review. The following section examines the *ex ante* reactions and outcomes stemming from the disclosure requirement.

6) Impact on U.K. Pension Fund Industry of the SIP Disclosure Regulation²³

Introduction

According to our interviewees, the SIP/SEE requirement has raised awareness of SRI in the U.K. pension fund industry by catalyzing an open, vocal debate on SEE considerations in the investment process. All parties (trustees, fund managers, consultants, lawyers and others) involved in pension fund investments have participated in the debate. This section examines the general sentiment in the pension fund industry following the introduction of the requirement, the impact of the requirement on the U.K. SRI market, and U.K. government policy developments since 2000.

General Sentiment in the U.K. Pension Fund Industry

According to two well-placed commentators, the general reaction of the U.K. pension fund industry to the SIP/SEE requirement was not a problem. Indeed, the change may have improved the climate somewhat for discussions of SRI.

It [the requirement] did, in a way, remove a chill from looking at social, environmental and ethical criteria in investment selection and made it a more mainstream set of investment criteria than we find in countries that haven't adopted this type of legislation. And in that way it's very positive because it is seeking to basically provide more information to the market—[to] which I would say (with the financial markets) generally, the more information the better. (Hebb, see App. E)

It has certainly changed the debate...nobody says it's illegal anymore and it's certainly got pension funds and fund managers interested in it. (Webster, see App. A)

The introduction of the requirement seems not to have been resisted by pension funds; this is evidenced by the high number of pension funds that include SEE issues in their SIPs. The interviews suggested that due to the engagement-based and voluntary nature of actions arising from the requirement, most pension funds prefer saying that they do consider SEE

²³ Observations described in this section were compiled from primary and secondary sources: 15 in-depth interviews with key informants in the U.K. and desk-based research. Interview participants included representatives from the U.K. government, the U.K. public sector, the U.K. Social Investment Forum, Pensions Investment Research Consultants, Ethical Investment Research Service, investment managers and other related agencies. A complete list of U.K. interview participants is included in Appendix A. All interviews were conducted face to face unless otherwise noted, and ranged from 30 minutes to 90 minutes in length. The desk research included publicly available documents found independently, supplemented by sources identified and/or provided by interview participants.

issues rather than that they do not. Environmental Resources Management (ERM) conducted a study in June 2000 (just prior to legislation of the requirement) that found that 21 of the largest 25 pension funds (representing 35 to 40 percent of total pension assets) intended to include SRI principles in their SIP (ERM, 2000).

Upon implementation of the requirement, major pension funds such as BT and USS²⁴ responded by publishing their policy on social issues and recruiting staff to engage companies in their portfolio on social responsibility issues (UKSIF Newsletter Spring 2000). UKSIF conducted a survey of pension fund SIPs in October 2000 (following legislation of the requirement) that reinforced ERM's projections for a high uptake of SEE considerations in U.K. SIPs; UKSIF found that only 14 percent of the funds participating in the survey clearly stated that they *will not* take SEE issues into account (Mathieu, 2000).

Following up two years later, EIRIS (2003a) carried out a study of the largest 250 U.K. pension funds²⁵ and found that:

- 90 percent of pension funds state in their SIPs that they consider SEE issues in their investment strategy;
- 59 percent of funds consider SRI experience and performance when appointing or reappointing investment managers;
- 74 percent of public sector funds disclose voting practices compared with 47 percent in the private sector; and
- 73 percent of pension funds engage with companies and, of these, 46 percent have written guidelines, 80 percent ask for regular reports on engagement activities and 87 percent exercise voting rights on SEE grounds.

The U.K. Institutional Shareholders Committee (ISC)—which includes the National Association of Pension Funds (NAPF), the Association of British Insurers (ABI) and the Investment Management Association (IMA)—has set out best-practice principles for institutional investors and their agents, which include: “monitoring the performance of and establishing a regular dialogue with investee companies; intervening where necessary; evaluating the impact of their activism; and reporting back to clients/beneficial owner” (ISC, 2002). It goes on to include concerns about corporate social responsibility (among other relevant items) as cause for intervention. This development is notable given NAPF's earlier opposition to the requirement, and it demonstrates that they have indeed changed their public position. However, it is unclear whether this principle is actively pursued or advocated within NAPF's membership (Pryce, see App. A).

In our research, we detected no discussions about increased costs associated with the requirement. This is taken to indicate that it is not an issue.

²⁴ Refer to Appendix D for current examples of U.K. SIPs.

²⁵ In terms of market capitalization with 70 of 250 respondents. It should also be noted that pension funds that are active on these issues would be more likely to respond to the survey.

General Sentiment among Investment Managers and Research Firms

A number of mainstream investment management firms such as ISIS (formerly Friends Ivory & Sime), Insight Investment, Henderson and Aviva/Morley, as well as SRI research specialists such as Innovest and EIRIS, saw the requirement as a business opportunity. The requirement has indeed generated interest in SRI among fund managers, and many have come out with new products and services. The interest of fund managers is also reflected in their recruitment of project teams in SRI.

There is a significant number of fund managers who have built significant expertise in this area and part of that is done in anticipation of demand from the pension funds. (Mansley, see App. A)

However, fund managers and SRI commentators concur that the demand has not been as great as expected following the requirement (Robins, see App. A; Gamble, see App. A; Lankester, see App. A). Some attribute lack of demand to trustees' lack of knowledge and confidence about SRI and heavy reliance on conventional consultants for advice. Others cited the three-year bear market along with an increased emphasis on trustee responsibilities following the Myners Report—factors that focused trustee attention on short-term recovery of fund positions and prompted a preference for low-risk responsible investment strategies (such as engagement) (Robins, see App. A).

The impact of the requirement was also described to us as somewhat paradoxical for SRI, as it has increased engagement-based approaches and created myths around screening.

In particular, the assumption has grown up that active SRI inherently involves extensive negative exclusions (e.g., of tobacco, military stocks), whereas the reality of segregated SRI mandates for pensions is that they can have no exclusions and take a pure best-in-class approach. (Robins, see App. A)

Trade Unions

Trade unions emerged as generally supportive of the requirement and in recent years have adopted a more proactive response, recognizing that SRI can be harnessed in support of broader union policy goals. The General Secretary of the TUC, Brendan Barber, has been most active:

...trade unions will try and play our part in developing a responsible investment culture. We will endeavour to use our financial assets actively to ensure that companies are well-run and responsive to questions of social

responsibility. (Barber, 2003)

The TUC's Pension Investment Officer, Tom Powdrill, reinforces this view:

We'd obviously like to see pension funds invest in a more responsible way and make sure that they put CSR issues further up the agenda. (Powdrill, see App. A)

Indeed, the U.K. trade unions have become quite active on CR issues via capital markets, and this can largely be attributed to the requirement. The TUC has initiated a number of activities—including creating a position of Pension Investment Officer—to focus on leveraging union pension funds to achieve social objectives. They encourage union trustees to engage in shareholder activism and SRI and provide training on investment issues (Powdrill, see App. A; Insight Investment, 2003).

Growth of SRI Since the Requirement

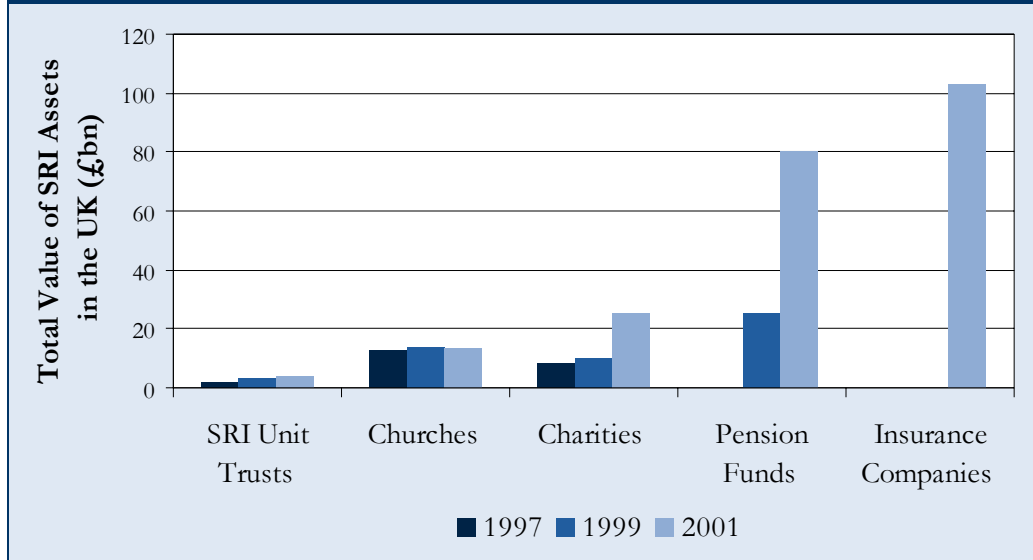
It has undoubtedly had an impact and it has undoubtedly galvanised change quite substantially for the investment industry. (Mansley, see App. A)

Following the changes to the pension fund legislation, demand for this type of service has increased significantly. (Lankester, see App. A)

The U.K. SRI market has expanded rapidly since the requirement came into effect in 2000. This is reflected in Figure 1, where the total value of U.K. pension fund investments using SRI criteria increased from virtually zero in 1997 to £80 billion in 2001 (Sparkes, 2002). However, it is not possible to observe or claim a causal relationship.

Figure 1: Total value of U.K. pension fund investments using SRI criteria

Source: Sparkes, 2002.



Today, more than £80 billion of U.K. equities out of £250 billion held by U.K. occupational pension funds are subject to pension funds' SIP/SEE policies (Eurosif, 2003). As noted above, pension funds still largely favour corporate engagement over active screening or a combination of the two, as the perception is that engagement does not challenge their fiduciary duties (and it is still felt in many quarters that screening may). Thus it is widely believed that the trend toward increased shareholder activism and corporate engagement is likely to continue (Eurosif, 2003).

Table 2: U.K. occupational pension funds – Demand for SRI

SRI Activity: U.K. equities holdings subject to SRI approaches	£ billion
Negative screening only	0.2
Positive and negative screening	1.4
Positive screening only	0.2
Engagement	84.2

Source: Eurosif, 2003.

Another important impact is companies increasing transparency in response to demand from the investors:

The SIPs have led to an increase in engagement activities and companies in the UK are becoming accustomed to dialogue on these issues with

shareholders. (Wildsmith, see App. A)

Consideration of SEE Issues as Stated in SIPs

In 2003, Patricia Hewitt, Secretary of State at the Department of Trade and Industry, made a speech in which she hinted that the voluntary approach is not working and not enough pension funds and asset managers are taking activism seriously (Insight Investment, 2003). There is evidence to suggest that the consideration of SEE issues in U.K. pension fund investments does not match the degree of inclusion in SIPs (Coles and Green, 2002; Gribben and Faruk, 2004).

The number of pension funds that have actually done something really substantive in this is disappointingly small...it is perhaps going slowly and the real change in pension funds is small. (Mansley, see App. A)

There are various reasons for this lack of implementation. Most pension funds seem reluctant or not equipped to monitor the activities of their fund managers on these issues. Therefore, it is common to see a lack of reporting from fund managers on how they integrate SEE issues into the investments—even when it is clearly stated in the SIPs.

Unless people like us are required to report to trustees and the trustees are required to report their own members...there is just not enough transparency for moving this agenda forward. (Lankester, see App. A)

Similar sentiment was voiced in other interviews, and many think that unless pension funds address this issue of implementation urgently, the case for regulatory action by government will become stronger.

Other Developments

Gribben and Faruk (2004) conducted a study of pension trustees that identified the main barriers to consideration of SEE issues in the investment process:

1. Lack of tools to evaluate the financial impact of SEE issues on portfolio companies.
2. Lack of tools to evaluate the competence of fund managers in considering SEE issues in the investment process.
3. Concerns raised by legal or investment advice.
4. Uncertainty surrounding financial benefits and additional costs generated.

The same study reported that many trustees felt additional regulation was needed, including requirements for:

- pension funds to report on the implementation of their SIP in their report

and accounts;

- defined contribution schemes in the U.K. to offer an “ethical” option; and
- all pension fund trustees to receive investment training incorporating SEE issues.
- a longer-term perspective in equity investment.²⁶
- a formal code of best practice for pension funds in dealing with SEE issues.

²⁶ The USS and Hewitt Bacon & Woodrow staged a competition called “Investing Pension Funds as if the Long Term Really Did Matter” that generated ideas to overcome the challenge of “short-termism” (Hewitt Bacon & Woodrow, 2004).

Our interviews also suggested action to mitigate the barriers outlined above:

A couple of easy things would be mandatory reporting on CSR issues in company reports. That is where the OFR bit within the Company Law review was all about, is what companies would have to report and it got tied into this issue of materiality; what really is material for shareholders and we argue that human capital is an important issue, environmental stuff is important. We'd like to see mandatory reporting on this....Making it mandatory for fund managers to publish their voting and engagement records. (Powdrill, see App. A)

The new regulations emerged in the context of regulation of pension funds. And, of course, capital market investments are much broader than just pension funds, although obviously they constitute a large slug of that money. I would have preferred to see a more fundamental review of fiduciary responsibility—to redefine it to include sustainability and governance, too. Such a review would apply to all those acting in a fiduciary capacity, whether it be mutual funds, investment trusts (we have here), bank investments, financial products for the retail market, or collective investment schemes like insurance companies or pension fund products and services. I would have preferred to see a broadening of the application of enablement. This would have avoided some pension funds saying “why single us out.” It's not so much saying that you are not acting in the best interests of your beneficiaries if you don't take it into account, but what you do need to do is be aware of it. And in that way it would have to be part of a culture of fiduciary responsibility. (MacDougall, see App. A)

In response, the U.K. government is taking action or giving consideration to:

- Further regulation to encourage pension funds to put policies into practice. There is strong demand for pension funds (and therefore fund managers) to produce reports detailing the actions they have taken on SEE issues as outlined in their SIP (Colman, see App. A; Waygood, see App. A; Webster, see App. A).
- Regulation to extend the disclosure requirement that applies to occupational pension funds to all retail investment products (Insight Investment, 2003).
- Similar regulation for U.K. registered charities with an annual income of over £1 million (Green, 2003). Moreover, following the *Myners Review of Institutional Investment*, the government is also showing an interest in legislating on shareholder activism (Eurosif, 2003).
- A new statutory Operating and Financial Review currently has draft regulations out for consultation. These include increased transparency for company reporting including on SEE issues²⁷ (DTI, 2004).

²⁷ “The key aspects of our proposals on the OFR require the directors of quoted companies to give a balanced and comprehensive analysis of their business as part of their annual reports and accounts to shareholders. This will include a company's objectives, strategies and key drivers of the business, focusing on more qualitative and forward-looking information than has
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Kingston Business School

Summary

According to Alan MacDougall, the Managing Director of PIRC:

We have developed a positive culture in the U.K. in which sustainability is no longer a dirty word either in the investment world or the corporate world, and many companies have begun to manage expectations and negotiate with stakeholder interests, whether they are NGOs, employees, investors or regulators and government. The regulations have been a very healthy development, and we've seen little "witch hunting" of companies or investors. What we've seen is a dialogue, sometimes hostile, but broadly speaking positive.... Few company directors publicly say that... these activities have no effect on their ability to create wealth...on the other hand, very few investors would deny that these issues do not have legitimacy in the investment process. (MacDougall, see App. A)

It seems the requirement has indeed raised awareness and created space for trustees to consider SEE issues in pension fund investments. The requirement has certainly been a driver in the growth of SRI in the U.K., albeit mostly through increased shareholder activism and corporate engagement. However, it has not been a panacea for CR, and the degree of real impact is still unclear. There was no feedback to suggest that the requirement has had any negative impact on the U.K. pension fund industry or the companies in which they invest. The criticisms expressed by civil society and allied organizations typically stemmed from lack of "real" implementation and a possible lack of impact of the voluntary approach.

However, the SIP/SEE requirement is likely to stay and is unlikely to be discarded by future governments. It has been widely touted as successful, and it has generated a great deal of interest internationally with a number of other countries implementing the same or very similar policies (Australia, Belgium, France, Germany and Sweden). Many others are looking to it as best practice (Napier, see App. A).

traditionally been included in annual reports in the past. In providing this analysis, directors will need to consider whether it is necessary to provide information on a wide range of factors which may be relevant to an understanding of the business, such as information about employees, environmental matters and community and social issues." (DTI, 2004)

7) Implications of Introducing a SEE Disclosure Requirement in Canada²⁸

Introduction

The past decade has seen an increasing level of interest in RI within Canada. The Social Investment Organization (SIO) estimates that the sum of all assets in Canada managed according to SRI guidelines as of June 30, 2002 totalled \$51.4 billion. This represents about 3.3 percent of the Canadian retail mutual fund and institutional investment market (SIO, 2003). Concurrently, we can observe increased levels of CR initiatives, evidenced by corporate sustainability reporting growing from 57 companies in 2000–01 to 100 in 2001–02 (Stratos, 2003). Building on the information gathered in the previous sections of this report, we believe Canada can observe lessons learned from the U.K. experience and relate them to a Canadian context. This section explores possibilities for designing a requirement to disclose consideration of SEE issues in Canadian pension fund investments, as well as implications for implementation. Consideration is given to Canadian pension regulatory and legal frameworks, as well as other issues of local relevance including current developments.

Canadian Pension Fund Overview

There are more than 13,800²⁹ registered pension plans in Canada (Statistics Canada, 2002). And the amount of money in institutional investments³⁰ has seen remarkable growth over the past 20 years. The OECD has tracked this growth worldwide, Figure 2 shows Canadian pension funds as a subset of institutional investments increasing more than 800 percent between 1980 and 2000 (OECD, 2004a).³¹ More recent estimates assess total assets held by employer-sponsored pensions at about C\$94 billion (Statistics Canada, 2004), plus approximately \$17.5 billion (CPPIB, 2003) and \$16 billion (MacDonald, 2003) held by the Canada Pension Plan Investment Board (CPPIB) and the Quebec Pension Plan (QPP) respectively. This represents the second largest

²⁸ Eleven interviews for this section were conducted with Canadian pension experts, policymakers, lawyers, trustees, investment managers and NGOs (a complete list is included in Appendix E). Interviews ranged from 15 to 90 minutes in length. Approximately half of the interviews were face to face and half were done by telephone. The interviews were exploratory in nature, shaped according to the participant's area of expertise and did not follow a standard questionnaire. Interviews were complemented by desk-based research on pension regulation and other contextual issues in Canada.

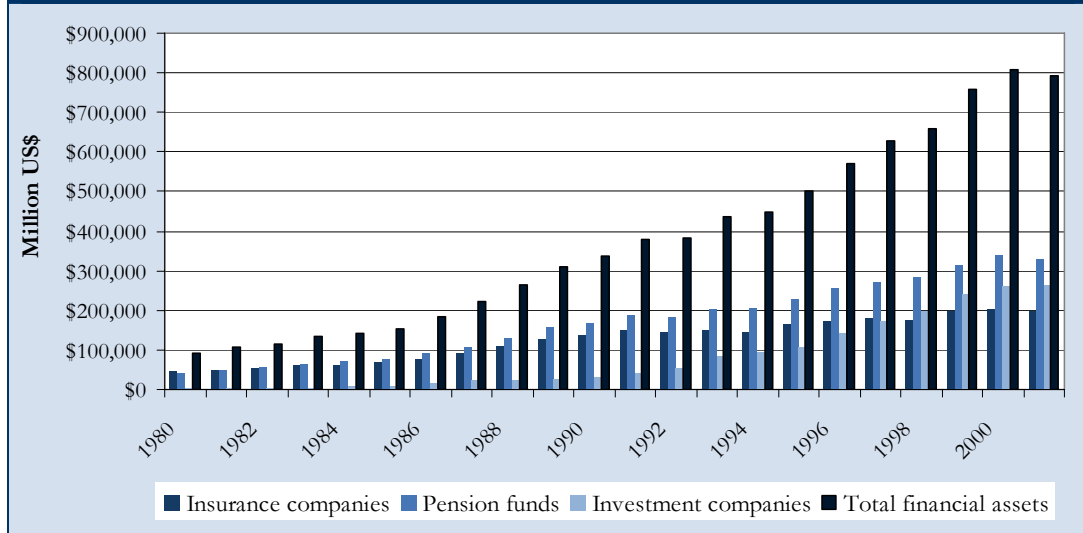
²⁹ In 2002, there were almost 6,300 defined-benefit (DB) plans and over 7,100 defined-contribution (DC) plans. Although there are fewer DB plans, they represent 83 percent of all plan members (Statistics Canada, 2002).

³⁰ Institutional investors include any investing organization that manages assets that are not individual, including pension funds, insurance companies, endowments, banks, churches and foundations.

³¹ Growing from US\$42.5 billion in 1980 to US\$343 billion in 2000 (OECD, 2004a).

pool of investment capital in Canada³² (Statistics Canada, 2002), owning about 20 percent of the stock of big-name publicly traded companies in Canada.

Figure 2: Financial assets of Canadian institutional investors (US\$million)
Source: OECD (2004a).



Key Stakeholder Organizations

Pension Investment Association of Canada³³

The Pension Investment Association of Canada (PIAC) includes membership of more than 135 pension funds that represent aggregate assets of more than \$500 billion (PIAC website).

Association of Canadian Pension Management³⁴

The Association of Canadian Pension Management (ACPM) is the national voice of Canada's pension industry. The ACPM's current membership totals 700 in the individual category (open to plan sponsors, administrators, plan trustees, consultants, investment managers, custodians, providers of professional services, government representatives, academics and citizens), plus over 20 institutional members (APCM website).

³² Second only to the assets held by the chartered banks (Statistics Canada, 2002).

³³ www.piacweb.org/

³⁴ www.acpm-acarr.com/

Canadian Pension and Benefits Institute³⁵

The Canadian Pension and Benefits Institute (CPBI) is a forum for education, discussion and networking for Canadian plan sponsors, service providers, consultants and regulators involved in pensions, benefits and investments.

Canadian Association of Pension Supervisory Authorities³⁶

The Canadian Association of Pension Supervisory Authorities (CAPSA) is a national inter-jurisdictional association of pension supervisory authorities whose mission is to facilitate an efficient and effective pension regulatory system in Canada. It discusses pension regulatory issues of common interest and develops policies to further the simplification and harmonization of pension law across Canada (CAPSA website).

Best Practice

At present, some pension funds disclose whether they consider SEE issues in a policy statement or similar document (e.g., CPPIB, 2004), as well as disclosing their proxy voting guidelines and/or proxy voting records (e.g., BCIMC website; OMERS website; OTPP website; CPPIB website). In response to client requests, some investment managers report on proxy voting to clients, and this is becoming common practice (Anonymous, see App. E).

Canadian Pension Regulation

Canadian pensions are regulated both provincially and federally.³⁷ There are approximately 12,500 provincially regulated pension funds with total assets of about \$503 billion and 1,205 federally regulated pension funds with total assets of about \$91 billion (Statistics Canada, 2002; OSFI, 2003). The Reciprocal Agreement (1968)³⁸ between the provinces allows for the regulation of plans by the jurisdiction in which the plurality of members live and/or work; however, the members' benefit entitlements remain subject to the legislation of their "home" province (Hall, see App. E). (The Agreement does not apply to federal plans—where the application of the law is based on the industry involved—or to plan members who live in the Territories.) Multi-jurisdictional regulation presents challenges for stakeholders complying with different rules in different jurisdictions, and the need for uniformity in standards has been raised (CAPSA, 2004; Yaron, 2001; Bardswick, see App. E). A complete list of Canadian regulatory bodies is included in Appendix F.

³⁵ www.cpbi-icra.ca/

³⁶ www.capsa-acor.org/

³⁷ The Territories follow the federal legislation.

³⁸ This is currently under review (Hall, see App. E).

Potential Regulatory Reform³⁹

Canada's split regulatory jurisdiction is perhaps the greatest challenge in potential regulatory reform (Ellmen, see App. E; Jantzi, see App. E; Kainer, see App. E). On the positive side, it creates numerous ways for adopting SEE disclosure in Canada. However, against this it is difficult to envisage consistent reform occurring nationally.

Because of the federal nature of the country and different pension regimes and exemptions from the legislation for some statutory plans, including major ones like OMERS in Ontario, there will be a need for a variety of types of legislative change. One fix isn't going to do it all. I think it only makes sense to assume it will be necessary to pass the required legislation, or make the regulation in the context of each specific pension statute.
(Kainer, see App. E)

Prospects for Federal Reform

Federal regulations are cited in this report as exemplars of current pension regulation. A complete review of Canadian pension disclosure requirements is beyond the scope of this report; however, we have undertaken preliminary research in this area, and we understand that the investment rules for pension funds (including disclosure requirements) are based on the federal statute in most jurisdictions (Hall, see App. E).⁴⁰ Therefore, consideration of federal regulations provides a starting point for the potential reform required to incorporate SEE issues more broadly into pension fund investment considerations. In the past, federal pension law has been adopted by provincial jurisdictions seeking to harmonize. Hence the amendment of federal regulations relating to pension fund transparency could provide the impetus for increased disclosure by other jurisdictions (Jantzi, see App. E; Yaron, see App. E; Ellmen, see App. E; Anonymous, see App. E).

Defined Benefit Plans

Defined benefit (DB) federal pension assets are regulated by three different legal frameworks:

1. The *Public Sector Pension Investment Board Act* (PSPIBA) addresses investment policy issues with respect to federal public sector pension plans (including those of the Royal Canadian Mounted Police and the Canadian Forces), whose combined assets exceed \$2.5 billion (PSPIBA, 1999). The disclosure requirements for these plans require the board to annually "establish written investment policies, standards and procedures for each fund that the Board manages" (PSPIBA, 1999, Section 7(2)(a)),

³⁹ This is not intended as an exhaustive review of future options for Canadian pensions regulation but rather an introduction to possibilities.

⁴⁰ Except Quebec and New Brunswick.

and those should be adhered to as a prudent person would (PSPIBA, 1999, Section 32).

2. The *Canada Pension Plan Investment Board Act* (CPPIBA) sets out the investment policies for the Canada Pension Plan, which as stated earlier has net assets of about \$17.5 billion (CPPIB, 2003). Changes to this act would require the approval not only of Parliament but also of two-thirds of the nine participating provinces representing two-thirds of the population (Curry, 2004 quoting CPPIB spokesman John Cappelletti). Much like the PSPIBA, the CPPIBA requires a SIPP in the annual report (CPPIBA, 1997, Section 51(3)(f)) and that the investments be managed prudently (CPPIBA, 1997, Section 35).
3. The *Pension Benefits Standards Act* (1985) governs investment policy for all federally regulated pension plans except those identified below. As stated previously, 1,205 private pension plans valued at \$91 billion are federally regulated under the PBSA (OSFI, 2003).

The *Pension Benefits Standards Act* covers the largest sum of assets and provides the legal framework upon which the Pension Benefits Standards Regulation expands. An amendment to the Act is possible; however, amending the Regulation would be less onerous, requiring only an order in council by the Cabinet. Section 7 (Investments) of the Pension Benefits Standards Regulation (PBSR) (included in Appendix G) outlines the information to be included in the SIPP and could be amended to require additional disclosure on SEE issues.

On November 10, 2001, the federal government adopted amendments to the *Pension Benefits Standards Act* (1985) (see Appendix H), requiring disclosure of a plan's SIPP to plan members upon request. However, most plan members do not request or read their pension's SIPP. Therefore, in addition to Section 7 of the PBSR, complementary legislation could integrate a disclosure statement on SEE considerations in the annual reports to members attached to Sections 22–23 (Information to be Provided) in the Pension Benefits Standards Regulation (see Appendix G).

Capital Accumulation Plans

A capital accumulation plan (CAP) is “a tax assisted investment or savings plan that permits the members of the CAP to make investment decisions among two or more options offered within the plan. A CAP may be established by an employer, trade union, association or any combination of these entities for the benefit of its employees or members” (Joint Forum of Financial Market Regulators, 2004). These are regulated separately from DB plans and include defined contribution (DC) registered pension plans, group registered retirement savings plans or registered education savings plans, and deferred profit-sharing plans. More than three million Canadians belong to over 60,000 CAPs totalling over \$60 billion in assets (Merrick, 2003), and about 70 percent of these plans allow members to make investment choices (Joint Forum of Financial Market

Regulators, 2003).

CAPs must comply with the investment rules

- under applicable pension benefits standards legislation if the investment funds are offered in a registered pension plan;
- under National Instrument 81-102 Mutual Funds (OSC 1999) if the investment fund is a mutual fund under securities law; or
- applicable to individual variable insurance contracts, or conventional public mutual funds, or applicable pension benefits standards legislation if the investment fund is an insurance product (Joint Forum of Financial Market Regulators, 2004).⁴¹

The regulations surrounding CAPs are scattered. To provide some coherence, the Joint Forum of Financial Regulators (JFFR) was created and consulted on Proposed Guidelines for Capital Accumulation Plans (Joint Forum for Financial Regulators, 2003). These guidelines are being released in their final version at the time of writing of this report (Joint Forum of Financial Regulators, 2004).

Three options for incorporating consideration of SEE issues into CAPs would be to

1. require mutual funds to disclose the extent to which they consider SEE issues in National Instrument 81-106⁴² on Investment Fund Continuous Disclosure (OSC, 2002);
2. require CAP sponsors to offer members an RI option for their plan. This could be added to the JFFR Guidelines for CAPs, or possibly added to the PBSR under DC plans;⁴³ and/or
3. require investment advisers providing personal financial advice to plan members to ask whether environmental, social or ethical considerations are important to their clients (Australian Securities and Investments Commission, 2003).

CAPSA Model Pension Law

As noted earlier, the overlap and split of regulatory jurisdictions in Canada creates challenges, not only for legislative reform but also for those operating within the system (Bardswick, see App. E; Hall, see App. E; CAPSA, 2004).

⁴¹ To be clear, other than DC registered pension plans that are subject to pension benefits standards legislation, CAPs (Group RRSPs, etc.) are not regulated, except at a product level (Hall, see App. E).

⁴² This is pending enactment.

⁴³ SEI Investments (2004) found that the majority of DC plan members did not understand their own pension plan (71%), lack confidence in investing (85%) and lack investment knowledge (84%). Rather than more education, plan members want sound, trustworthy advice on their retirement plan (79%). These findings should be considered when determining where and what form of disclosure would have the greatest impact.

CAPSA is currently consulting on a Model Pension Law (CAPSA, 2004) with the aim of harmonizing pension legislation. The Model Pension Law does not currently include any disclosure requirements for consideration of SEE issues in investments; however, it is in the early stages of consultation and could include this addition to Canadian SPPs (and other mediums of disclosure such as the annual reports to members). If the Model Pension Law were to include such a provision, it would facilitate the adoption of SEE disclosure in the jurisdictions where pension law is under review (Yaron, see App. E; Jantzi, see App. E; Ellmen, see App. E; Hebb, see App. E; Bardswick, see App. E).

Pension Law Currently Under Reform

Meanwhile, any jurisdiction could establish new best practice. Manitoba is currently reviewing its provincial pension law with a view to amending it, likely by fall 2004. The proposed framework did not include a requirement for disclosure of consideration of SEE issues; however, it is not out of the question for regulations to include this, and submissions have been made in this regard (Yaron, 2004b). At this time it is unclear whether Manitoba is considering its inclusion based on documentation available.

Alberta is also reviewing its pension law and recently completed consultations on its discussion paper *Strengthening Risk Management, Disclosure and Accountability* (Alberta Finance, 2003). Based on its consultation process, Alberta found (among other things) general support for increased disclosure and transparency of pension funds (Alberta Finance, 2004). Recommendations on SEE disclosures (among other things) have been made (Yaron, 2004a).

International Guidelines

The OECD has guidelines that have been adopted by some pension funds as best practice.⁴⁴ OECD guidelines for disclosure and transparency in pension funds could include a statement on consideration of SEE issues in investments (Hebb, see App. E). The OECD's recently revised Principles of Corporate Governance also promote consideration of broader stakeholder interests, and this may be taken to be consistent with investors' interests in SEE issues (OECD 2004b).

Fiduciary Responsibility

Pension fund trustees have a legal responsibility to act according to the "principle of prudence" and the "principle of loyalty," which include achieving a reasonable rate of return and maintaining an adequate diversity of investments.

An extensive review of fiduciary law and SRI in Canada found no legal authority on this point in Canada. The review also found no consensus among U.K. and U.S. authorities regarding the ability of institutional investors to apply non-financial screens to the investment selection process (Yaron, 2001). Yaron

⁴⁴ See, for example, the OECD Guidelines for Multinational Enterprises and the OECD Principles for Corporate Governance.

(2001) concluded that “from the extensive analysis of Canadian legislation, common law and academic authorities on the subject...Canadian law does not prohibit trustees from investing plan assets in a socially responsible manner. Rather, there is significant legal and empirical support for viewing SRI practices as a requisite element of prudent and loyal trusteeship.”

Recently, institutional investors have publicly expressed concerns about “non-financial” issues such as climate change (e.g., the Institutional Investors Group on Climate Change, Carbon Disclosure Project), corporate governance (e.g., the Canadian Coalition for Good Governance), and HIV/AIDS (Baue, 2004b) due to their associated risks. Yaron (2001) argues that Canadian law has not yet caught up with today’s operating environment. Similar sentiment has been expressed by legal experts in the U.S. (Baue, 2004a). However, it is still an area with little clarity, and investors’ ability to consider this information is limited by corporate disclosure and reporting on social and environmental issues.

...often the consultants that advise trustees thinking about using SEE criteria tell them using such criteria is in violation of their fiduciary duty (this still happens in Canada on a pretty regular basis). (Hebb, see App. E)

Further clarification around the rights of trustees in pursuing these questions would be a good idea. That would mean an interpretation by the government of the restrictions set out in legislation as it pertains to social investment.... In the United States, the federal regulator has clarified rules around social investment which creates the space for trustees to explore that agenda. (Berger, see App. E).

There is still a fair bit of misunderstanding here about trustee entitlement to take these [SEE] considerations into account. I don’t want to tar all money managers with the same brush, but there are a number who, I think, don’t really relish the idea of having any restrictions placed on them.... Part of the concern of the trustees is that it may be in breach of their fiduciary duties...so if it [the disclosure requirement] were accompanied with some statement that this was acceptable, and does not constitute a breach, that would certainly help. (Kainer, see App. E)

I would take the inclusion of this [SEE disclosure requirement] in the legislation or the regulation (myself as a lawyer), as a tacit or implicit assumption by the people who passed the legislation that these are legitimate considerations. (Kainer, see App. E)

Discussion

Many Canadian interviewees noted the general move toward increased transparency in the context of ongoing corporate governance scandals (Enron, Worldcom, Tyco, etc.), citing Sarbanes-Oxley, U.S. Securities and Exchange Commission requirements of Canadian CEOs and CFOs (Bardswick, see App. E; Yaron, see App. E), new proxy voting disclosure requirements for U.S. mutual funds (Ellmen, see App. E; Hebb, see App. E; Yaron, see App. E), the Canadian Institute of Chartered Accountants guidelines for “management

discussion and analysis” (Yaron, see App. E), the Myners Report in the U.K. (Hebb, see App. E), and general investor expectations (Baue, 2003; Bardswick, see App. E; Ambachtsheer, see App. E).

Institutional investors in Canada are on a path to being required to have more transparency generally anyway because you can't become such an important driver of the financial system and be such a black box. (Hebb, see App. E)

I wonder whether this is an inevitability given the increasing expectation and requirement of organizations, particularly larger organizations, to provide full disclosure and broad comprehensive disclosure on a number of fronts...we are heading down that road anyway. (Bardswick, see App. E)

A broad range of interviewees associated with the SRI industry favoured Canada's adoption of SIPP/SEE disclosure that is similar to the U.K. requirement:

Who's against transparency? (Anonymous, see App. E)

I think the idea that pension funds would be able to articulate their investment beliefs is a very sound idea—why not? (Ambachtsheer, see App. E)

Legislation is important because it sends a signal from a regulatory sense that these issues are important as a component of fiduciary responsibility. The legislation is not prescriptive—it's not saying you have to do it [SRI]. But when you have legislation and disclosure on whether you are doing something on this front or not, then I think that it does send a message; I think that has value in and of itself. (Jantzi, see App. E)

I don't know what the arguments are against it. (Walker, see App. E)

However, these commentators expressed some concern about a regulatory focus directed solely on pension funds and a desire to see disclosure and transparency on SEE issues implemented more broadly (Bardswick, see App. E; Hebb, see App. E; Ambachtsheer, see App. E; Walker, see App. E):

...so much more effective to have social and environmental [issues], because of the risk that they pose to the portfolio, integrated into broad transparency requirements of institutional investment than just a single transparency demand. (Hebb, see App. E)

I think that what is good for pension funds, what's appropriate and ethical for pension fund disclosure, should be more broadly applied. (Bardswick, see App. E)

These commentators tended to see the U.K. requirement as a first step toward a more desirable state:

If you pose the question “to what degree do you consider social, environmental, etc.”—wrong question. The question is, how do you generate investment beliefs inside your organization, and what kind of factors do you think make the elements of those investment beliefs—for them to be functional and effective. See now you’ve left the question open-ended; you haven’t given them the answer. Then fill in the blanks, because if it is done well those kinds of things will come up. (Ambachtsheer, see App. E)

Right now, the Statement of Investment Policies and Goals (SIP&G) are, 99 percent of them are, basically just boilerplate. They all look the same, and they really don’t have any measurable feet. Again, if you want to improve the effectiveness of an organization, including an investment organization, you have to go way beyond some broad, general statement. You need to say “and for us, what that means is the following.” (Ambachtsheer, see App. E)

I think the other thing that is lacking is that there has been no follow-up monitoring and verification, so even those funds that say “we are doing something...we are doing this...we are doing that”—well, what does it really mean? Are they really doing what they are saying they are doing? And there is obviously a big discrepancy in what funds are doing. This isn’t necessarily a bad thing. I mean, the range isn’t a bad thing, but it’s the funds that are not doing what they are saying they are doing—that is the problem. (Jantzi, see App. E)

I would like to see a disclosure rule include a discussion about how they [pension funds] view social and environmental issues as part of the broader value proposition and details on how they actually implemented the policy. On the flip side, I would like to see why they don’t look at these issues. (Jantzi, see App. E)

...[look] to Australia where they’ve extended the disclosure rule to mutual funds. (Walker, see App. E)

In our interviews, we detected little indication of political activity or even interest in the area of pension fund transparency, CR or RI generally. However, this issue has been raised before. Stéphan Tremblay (MP, Bloc Québécois) tabled Private Member’s Bill C-394 in the House of Commons on September 20, 2001 to amend the PBSA, 1985. The amendment included a requirement to prepare an annual report on SEE factors considered during the previous fiscal year relative to investment decisions and/or voting rights, which would be available to any member upon request (Tremblay, 2001). This bill was not passed. During Question Period in December 2001, Tremblay pressed the issue of pension funds and SRI with the then Finance Minister, Paul Martin (Liberal); Martin replied somewhat supportively (Government of Canada, 2001).**

On other pension matters, Pat Martin (MP, NDP) continues to raise the question of bankruptcy and insolvency. On February 9, 2004 he introduced Bill C-474 to amend the *Bankruptcy and Insolvency Act* (unpaid wages to rank first

in priority in distribution), which was seconded by Sheila Copps, then MP for Hamilton East (Liberal) (Martin, 2004). Pat Martin has also questioned the CPPIB's investments, calling them paradoxical to government policy (especially regarding the war in Iraq). He called for prohibition "from investing in companies and enterprises that manufacture and trade in military arms and weapons, have records of poor environmental and labour practices or whose conduct and practices are contrary to Canadian values" (Curry, 2004).

8) Recommendations and Future Research

The U.K. experience with pension fund transparency reform tells us several things.

First, that just as in Canada, the U.K. legal and regulatory framework for pension funds was (and is) complex, embracing trust law, contract law, tax law, social security law, employment law and the *Financial Services Act*.

Second, that despite the complexity, effective political leadership combined with active consultation with stakeholders was sufficient to establish broad political and societal consensus for increasing the transparency of pension fund administration in the U.K. with respect to including policies on social, environmental and ethical issues in formal statements of investment policy. A key step in the consultation was the government's signalling that the reforms were consistent with established practice in fiduciary duty, thereby removing the "regulatory chill" that applied formerly to pension trustee duties.

Third, that there is no evidence that the U.K. reforms have resulted in negative impacts on costs or efficiency; indeed, these apparently threat-free U.K. reforms are now being adopted elsewhere in the world, consistent with a general desire for more transparency and accountability in corporate governance and performance being promoted by the OECD and other bodies.

Fourth, that pension fund reform requires active engagement by the fund managers, pension professionals, pension forums and civil society actors. In the U.K., this engagement occurred in the aftermath of significant problems that emerged during the 1990s as a direct result of mismanagement of pension assets by corrupt individuals and sharp practice by large financial institutions. Happily, Canada has not, to date, suffered the scale of controversy associated with pension fund assets experienced in the U.K., where mis-selling of pension policies and misappropriation of funds led to very active demands for reform and especially for improved accountability and transparency.

However, recent commentary has raised public awareness of the need for more rigorous oversight of pension assets. This commentary has drawn attention to the Ontario Municipal Employees Retirement System's expensive changes of policy on outsourcing and problems at Air Canada and Stelco with respect to bankruptcy and underfunding (Campbell, 2004; Canadian Press, 2004). Meanwhile, federal government plans to limit pension investments in income trusts have also generated some controversy (Church and Scoffield, 2004). We believe therefore that Canada is ready for governmental leadership and a broader national debate on pensions and their governance.

From this we recommend that the federal and provincial governments now consider:

- i) The need for Canada to adopt legislation similar to the U.K. requirement for pension funds to disclose *the extent (if at all) to which social, environmental and/or ethical (SEE) considerations are taken into account in the selection, retention and realization of investments; and the policy (if any) directing the exercise of the rights (including voting rights) attaching to investments* in both the Statement of Investment Policies and Procedures (SIPP) and the annual reports to members. This should be accompanied by active clarification of the fact that exploration of SEE issues in investment decision making for the purposes of *risk minimization and/or long-term value maximization* is not in conflict with the established fiduciary duties of pension fund managers and trustees.⁴⁵
- ii) The need for a broader public policy and civil society debate on the effective management and supervision of Canadian pension funds (to include such issues as general transparency [including SEE criteria], representation of pensioners and deferred pensioners on boards of trustees, protection of pensioners and deferred pensioners from underfunding, impacts of bankruptcy, members' awareness and understanding of pension plans, etc.).

There are various mechanisms by which such recommendations might be actioned. These include convening an all-party parliamentary committee of inquiry or direct intervention by the federal and provincial governments.

We also believe that Canadian pension fund associations and regulators⁴⁶ have a very important leadership role to play in helping to clarify and promote international best practice in Canada. So we recommend that these groups consider:

- iii) The need for Canadian financial institutions to become more broadly familiar with both mandatory and voluntary pension fund transparency practices—particularly in relation to SEE criteria—in Europe and elsewhere in order to ensure that best-practice standards are observed in Canada.
- iv) The need to promulgate model pension fund laws consistent with international best practice on transparency that may require the inclusion of policy statements on SEE criteria in Canadian statements of investment

⁴⁵ It may be relevant here to cite one of the recommendations of the Standing Senate Committee on Banking, Trade and Commerce (Kirby & Tkachuk, 1998) with respect to mutual fund governance: "Investors are entitled to know the risk management and governance practices of their mutual fund manager. They have a right to know what processes are in place to monitor the decisions taken on the risk exposures of the mutual fund, and that monitoring is taking place."

⁴⁶ Such associations include the Canadian Association of Pension Supervisory Authorities, the Pension Investment Association of Canada and the Association of Canadian Pension Management.

policies and procedures for pension funds, recognizing that there is no evidence of negative impacts arising from such transparency.

In this regard, we note that the Canadian Association of Pension Supervisory Authorities is currently consulting on priorities for new model pension fund laws in Canada.

We also note that Australia has amended transparency regulations dealing with all financial bodies so that a SIP-type provision now applies to all pension funds and mutual funds and charities/foundations.⁴⁷ In Canada, it might make sense to include pension funds, mutual funds and charities in new disclosure requirement legislation. This would require a higher level of coordination altogether, since in Canada financial regulation remains highly complex and fragmented.

Finally, we are aware that, in concert with the need for governmental and pension fund institutional leadership, there is also a need for more research to inform leadership action. Certainly, there is a need for further examination of the options for streamlining and simplifying financial regulation.⁴⁸ In addition, it is still entirely unclear whether the U.K. *Pensions Act* changes have led to significantly higher take-up of social, environmental and ethical issues by pension funds *in addition to their adoption of policy*. We received somewhat conflicting views on this point from our interviewees. Equally, it is not clear that the introduction of transparency on SIP/SEE in the U.K. has stimulated interventions such as the adoption of widespread screening in addition to the somewhat less onerous if wider-scale adoption of corporate engagement practices by fund managers. And, of course, we still do not know whether inclusion of a risk-based, long-term value-oriented approach to SEE is guaranteed to improve pension performance and security (although there is increasing evidence that it may).

We do not believe that research is a necessary precondition to action by governments, pension fund professionals and others. Nevertheless, we observe that it would be instrumentally helpful if the research community could address:

- v) The need for further research to determine the case (or absence of a case) for legislative reform (e.g., the streamlining of federal and provincial pension fund laws and regulations within the context of SEE criteria and more effective financial regulation generally).
- vi) The need for further research to determine the case (or absence of a case) for consideration of SEE criteria as a way to protect the interests of pensioners and deferred pensioners with respect to portfolio risk minimization and/or long-term value maximization.

⁴⁷ There are 301 Canadian foundations with total assets of \$11.1 billion. These foundations have \$4.7 billion in investments (Rogers, 2003).

⁴⁸ There is a similar review of Canadian securities regulators promoting the creation of a single regulator built on a joint federal–provincial model (Wise Persons' Committee website).

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CPP Investment Board	www.cppib.ca
Department of Trade and Investments	www.dti.gov.uk & www.societyandbusiness.gov.uk
Ethical Investment Research Service	www.eiris.org
European Social Investment Forum	www.eurosif.org
Institutional Investors Group on Climate Change	www.iigcc.org
Just Pensions	www.justpensions.org
Local Authority Pension Funds Forum	www.lapfforum.org
National Association of Pension Funds	www.napf.co.uk
Ontario Municipal Employees Retirement System	www.omers.com
Ontario Teachers Pension Plan	www.otpp.com
Pensions Investment Research Consultants	www.pirc.co.uk
Shareholder Association for Research and Education	www.share.ca
Social Investment Organization	www.socialinvestment.ca
U.K. Social Investment Forum	www.uksif.org
Universities Superannuation Scheme	www.usshq.co.uk
Wise Persons' Committee	www.wise-averties.ca

Appendix A: U.K. Interview Participants

(Interviews conducted in 2004)

1. Tony Colman, Member of Parliament (Putney) U.K.; Chair of the All-Party Parliamentary Group on Socially Responsible Investment (APPG)
2. Olivia Lankester, Senior Analyst, Governance & Socially Responsible Investment, ISIS Asset Management
3. Melissa Gamble (Telephone Interview), Morley Fund Management
4. Alan MacDougall, Managing Director, PIRC
5. Mark Mansley, Strategy and Communication Manager, Rathbone Greenbank Investments
6. Alan Napier, Pensions Policy, The Pensions Group, Department for Work and Pensions
7. Tom Powdrill, Pension Investment Officer, TUC
8. Tony Pryce, Manager of Investment, NAPF
9. Nick Robins (Telephone Interview), Henderson
10. David Russell, Adviser, Responsible Investment, USS
11. Penny Shepherd (Telephone Interview), Executive Director, London Sustainability Exchange (Former Executive Director, UKSIF, 1997–2001)
12. Raj Thamotheram, Senior Adviser, Socially Responsible & Sustainable Investment, USS
13. Steve Waygood, Director, Investor Responsibility, Insight Investment
14. Peter Webster, Executive Director, EIRIS
15. Helen Wildsmith, Executive Director, UKSIF

Appendix B: Chronology of Related Events Surrounding the Disclosure Requirement for Pension Funds on SEE Issues in the U.K.

	ROLES				
	U.K. Government	NGOs	Pension Funds	Financial Sector	Other
1983 and 1984		Setup of Ethical Investment Research Service (EIRIS, 2003b)		Launch of the Friends Provident Stewardship Fund (Shepherd, 2001)	
1991		Formation of UKSIF, which brought together key figures across the full range of ethical and socially responsible investment to cooperate in sharing knowledge and advancing the SRI agenda (Shepherd, 2001)			
1993					The Goode Committee on Pension Law Reform highlighted the legality of ethical investment for pension funds and declared that trustees are “perfectly entitled to have a policy on ethical investment and to pursue that policy, so long as they treat the interests of the beneficiaries as paramount and the investment policy is consistent with the standards of care and prudence required by law” (Mansley, 2000: 14)

ROLES					
	U.K. Government	NGOs	Pension Funds	Financial Sector	Other
1998	All-Party Parliamentary Group on SRI set up with secretariat provided by UKSIF. Tony Coleman chairs the group (UKSIF website)		A group of university lecturers launches the “Ethics for USS” campaign to promote SRI as a viable investment strategy for their pension fund (USS) (Eurosif, 2003)		17% of shareholders vote in favour of a resolution at Shell’s AGM regarding its social and environment policy—engagement becomes a key trend within U.K. SRI (Eurosif, 2003)
1998	John Denham, the then Pensions Minister, announces proposals for amending the 1995 <i>Pension Act</i> , the SRI Pensions Disclosure Regulation, at UKSIF’s annual lecture in July (Eurosif, 2003)	UKSIF responds to the Treasury’s “Financial Services and Market Bill Consultation” document and argues that “trustees should incorporate certain environmental consideration as part of their financial considerations.” Advocates that regulated persons be required to “ask consumers whether they have any ethical, social or environmental concerns which they wish to have taken into account in financial advice which they receive” (Waygood, 2004)			

ROLES					
	U.K. Government	NGOs	Pension Funds	Financial Sector	Other
1999	Stephen Timms introduces the requirement to Parliament	War on Want (U.K. anti-poverty NGO) launches “Invest in Freedom Campaign” aimed at union members, requesting support for the promotion of engagement with their occupational pension fund. The report “does not advocate disinvestments in those companies that have violated workers rights. Rather, we encourage and organise pension fund holders and their trustees to use their combined financial might to pressure companies to (establish and implement) a code of conduct enshrining ILO Core Labour Standards” (Waygood, 2004)			
2000	The enactment of the SRI Pension Disclosure Regulation, under the 1995 <i>Pensions Act</i> , comes into effect on July 3, requiring occupational pension funds to disclose the extent (if at all) to which they take SEE issues into account (Eurosif, 2003)	A consortium “Just Pensions” is established in February by development charities War on Want and Traidcraft. The aim was to produce guidance material for pension fund trustees, pension fund managers and pension fund advisers on development-related issues and their links with investment and to communicate this guidance to the investment community. The consortium has been taken over by UKSIF (Waygood, 2004)	USS published its first SRI report (Eurosif, 2003)		

Post-Implementation of SEE Disclosure Regulation

ROLES						
	U.K. Government	NGOs	Pension Funds	Financial Sector	Associations	Other
2000			UKSIF survey in October finds that 59% of the largest pension funds, representing over £230 billion in assets, have incorporated SEE issues in their SIPs (Mathieu, 2000)	Various fund managers—ISIS (previously Friends Ivory & Sime), AMP/NPI/Henderson, Aviva/Morley, the Co-operative Insurance Society (CIS), Insight Investment, Jupiter and Standard Life—adopted SRI engagement overlays (Eurosif, 2003)		Dutch union FNV calls for pension funds to draw up investment codes (Eurosif, 2003)
2001	The <i>Myners Review of Institutional Investment</i> in the U.K. advocated shareholder activism across a broad range of issues (Blake, 2003)			Launch of social index—FTSE4GOOD family of social indices—to enable investors to compare social and environmental performance of companies (Eurosif, 2003)	The Association of British Insurers publishes new guidelines asking companies to report on material SEE issues relevant to their business activities (Eurosif, 2003)	Similar regulations follow in Belgium and France. European Union steps into CSR strategy (Eurosif, 2003)

ROLES						
	U.K. Government	NGOs	Pension Funds	Financial Sector	Associations	Other
2002	<p>Over 250 MPs sign an early-day motion urging the government to enshrine policies in company law to ensure that companies disclose information on the SEE impacts of their business (Eurosif, 2003)</p> <p>The Cabinet office publishes its Review of Charities Law 'Private Action, Public Benefit'; which proposes similar regulation for U.K. charities with income of more than £1 million. (UKSIF website)</p>				<p>Institutional Shareholders Committee (ISC) issues new statements of principles for investors, which include monitoring the performance of and establishing a regular dialogue with investee companies; evaluating the impact of investor activism; and reporting back to clients/beneficial owners (ISC, 2002)</p>	<p>Germany adopts regulation for private pension funds (Eurosif, 2003)</p>

ROLES						
	U.K. Government	NGOs	Pension Funds	Financial Sector	Associations	Other
2003	<p>The Home Office accepts the recommendations made in Review of Charity Law, stating that the government's review of the effectiveness of legislation requiring pension funds to disclose their SRI policies will inform the framing of the equivalent provision for charities (UKSIF website)</p> <p>The Department of Trade and Industry's Operating and Financial Review Working Group on Materiality publishes its consultation document, which recommends that company directors use an auditable process to determine which social and environmental issues are material to the business and should be reported (DTI, 2003)</p>					

Appendix C: NAPF Response to Government Consultation

Source: NAPF website

How Funds Are Invested

“36. We said in our response to the Consultation Document, *Strengthening the Pensions Framework*, that the original suggestion in July 1998 that the Government was considering requiring trustees to disclose, in their Statement of Investment Principles (SIP), the extent to which they had taken account of ethical and social considerations in their investment strategy caused considerable concern amongst pension scheme trustees. It would have been possible that scheme members with particular moral, social or ‘ethical’ beliefs could attempt to influence trustees’ investment strategies. Employers sponsoring final salary schemes were concerned that trustee boards could have used the proposed new policy to act irresponsibly, to the financial detriment of the fund. The sponsoring company would then have been required to make good any shortfall and, against that background, there was a significant risk that employers would be unwilling to continue to underwrite the final salary promise. The wording proposed in the Consultation Document gave the NAPF less cause for concern because we considered it to be sufficiently flexible to re-assure employers that it could not be used to justify imprudent investment decisions by trustees with strong personal social/moral/ethical viewpoints. This continues to be our view.

“37. The phrase ‘non-financial considerations’ is the only term which we regard as being sufficiently broad as not to restrict trustees’ investment powers. We would be strongly opposed to the use in regulations of such terms as ‘socially responsible investment’ or ‘ethical investment’ unless the term or terms were clearly defined. Trustees would be placed in an impossible position if they were required to state their policies towards ‘socially responsible’ or ‘ethical’ investments if the terms were not defined. The scope for litigation in these circumstances would be immense.

Any scheme member with an ethical or socially responsible viewpoint that was at variance with that of the trustees would be able to challenge the trustees’ investment policies. Pressure groups would have a field day.

“38. There would also be a detrimental effect on investment returns. The SIP, once agreed, is binding on the trustees and investment managers. If any restrictions are incorporated in the SIP, investment managers will have no alternative but to screen the stocks in which they invest. They will not be able to manage a portfolio so as to produce the best financial returns for the trustees. This will inevitably lead to under-performance and consequently will be contrary to the best financial interests of the beneficiaries. The NAPF would much prefer the Government not to proceed with an ‘ethical investment’ regulation as we believe this is both unnecessary and potentially unhelpful. However, if the Government decides to proceed it is imperative to retain the wording proposed in the Consultation Document and to avoid the use of terms which, in our view, are not capable of definition.

“39. The NAPF is continuing to research the extent to which its member funds are already taking account of non-financial matters within their investment strategy process. We have some preliminary results of a telephone survey conducted amongst 100 NAPF members. When asked for their reaction if the Government introduced a regulation under which the SIP had to include a statement of the trustees’ investment strategy relating to moral and social issues, 70% of respondents replied that they would take only financial considerations into account, 10% replied that they would take account of moral and social issues, and the remaining 20% were unable to reply. We will publish the full results of the survey when the analysis has been completed.”

8 March 2000



Dear Member

Socially Responsible Investment

As you will be aware, the NAPF felt that the Government was somewhat premature in announcing its intention to compel trustees to amend their Statement of Investment Principles (SIP) to reflect the extent, if any, to which socially responsible considerations are taken into account. We had fewer concerns with the Government's desire to encourage disclosure on voting practices. So far as SRI is concerned, we felt that the debate should have run a little longer and that trustees should not have been forced to grapple with this particular issue when they and their plan sponsors have so much else on their agenda.

In June 1999, however, Stephen Timms, the then Pensions Minister, while confirming his intention to proceed with the regulations, reassured us that he was interested in increased transparency rather than securing direction of investment via the back door. In this spirit, the NAPF told the Minister that we would play an active part in helping our Members come to terms with their increased responsibilities.

A key component of this strategy was a Fund Members' seminar that attracted representatives from more than 120 schemes to our new headquarters in Westminster. So that we can provide similar assistance to those Members who were unable to attend our seminar, a detailed summary of the proceedings has been prepared. A copy of that summary is enclosed with this letter. I hope you will find it useful.

Although the regulation takes effect in July, like every other aspect of the SIP, the SRI and voting aspects will need to be kept under review. The NAPF will, in the coming weeks, be turning its attention to other ways in which we can best help trustees meet all the challenges they face in our increasingly complex world.

Yours sincerely,

A handwritten signature in black ink, which appears to read "Alan Pickering", is written over a thin vertical red line.

Alan Pickering
Chairman

The National Association of Pension Funds Limited
NIOC House, 4 Victoria Street, London SW1H 0NE Registered in England & Wales No.
1130269

Appendix D: Examples of U.K. SIPs

BP

“Consistent with its obligation to act in the best interest of the fund, the trustee supports a bias towards investments in companies with positive social, environmental and ethical policies. This is consistent with the stance taken by BP in respect of these matters and reflects the view that such companies can be reasonably expected to deliver superior financial performance over the longer term. The trustee has therefore delegated to the investment manager responsibility for taking into account when assessing the financial potential and suitability of investments and for exercising the rights (including voting rights) attaching to the Fund’s investments.” (Coles and Green, 2002)

USS

“As an institutional investor that takes seriously its fiduciary obligations to its members, the trustee company aims to be an active and responsible long-term shareholder of companies and markets in which it invests. The trustee company pursues this policy in order to protect and enhance the value of the fund’s investments by encouraging responsible corporate behaviour.

“The trustee company therefore requires its fund managers to pay appropriate regard to relevant corporate governance, social, ethical and environmental considerations in the selection, retention and realization of all fund investments. The management committee expects this to be done in a manner which is consistent with the trustee company’s investment objectives and legal duties.

‘The management committee has instructed its internal fund managers and called on its external managers to focus their effort on the engagement option, and thus seeks to use its influence as a major institutional investor to promote good practice by investee companies and by markets to which the fund is particularly exposed.

“The management committee expects the scheme’s fund managers to undertake appropriate monitoring of the policies and practices on material corporate governance and social, ethical and environmental issues of current and potential investee companies.

‘The aim of such monitoring should be to identify problems at an early stage, and enable engagement with management to see appropriate resolution of such problems. The trustee company will use voting rights as part of this engagement strategy, where voting should be undertaken in a prioritized, value-adding and informed manner. Where collaboration is likely to be the most effective mechanism for encouraging company management to address these issues appropriately, the trustee company expects its fund managers to participate in joint action with other institutional investors.

“The investment committee monitors this engagement on an on-going basis with the aim of maximizing its impact and effectiveness. The trustee company’s governance, social, ethical and environmental policies are also reviewed regularly by the management committee and, where appropriate, updated to ensure that they are in line with good practice for pension funds in particular, and institutional investors in general.” (www.usshq.co.uk)

Appendix E: Canadian Interview Participants

(Interviews conducted in 2004)

1. Keith Ambachtsheer, President, KPA Advisory Services; Past President, Association of Canadian Pension Management (ACPM)
2. Kathy Bardswick (Telephone Interview), President and CEO, The Co-operators Group Limited (telephone)
3. Jordan Berger (Telephone Interview), Supervisor of Strategic Planning & Policy Development, OPSEU; Board of Trustees and Investment Committee, OPSEU Pension Trust
4. Eugene Ellmen, Executive Director, Social Investment Organization (SIO)
5. Davin Hall, Policy Manager, Canadian Association of Pension Supervisory Authorities (CAPSA) Secretariat
6. Tessa Hebb (Telephone Interview), PhD Candidate, Oxford University
7. Michael Jantzi, President, MJRA
8. Michael Kainer (Telephone Interview), Pensions Lawyer, Sack Goldblatt & Mitchell
9. Bob Walker (Telephone Interview), Vice-President, Ethical Funds
10. Gil Yaron, Director of Law and Policy, Shareholder Association for Research and Education (SHARE)
11. Anonymous Investment Manager (Telephone Interview)

Appendix F: Canadian Pension Regulatory Bodies

Canadian Association of Pension Supervisory Authorities (CAPSA)

www.capsa-acor.org/

Provincial⁴⁹

Government of Alberta

www.finance.gov.ab.ca/business/pensions/index.html

Government of British Columbia

www.fic.gov.bc.ca/pensions

Government of Manitoba

www.gov.mb.ca/labour/pension/index.html

Government of New Brunswick

www.gnb.ca/0307/001e.htm

Government of Newfoundland and Labrador

www.gov.nl.ca/gsl/cca/ip

Government of Nova Scotia

www.gov.ns.ca/enla/pensions

Government of Ontario: Financial Services Commission of Ontario

www.fsco.gov.on.ca

Government of Quebec

www.rrq.gouv.qc.ca/an

Government of Saskatchewan

www.sfsc.gov.sk.ca/pensions/default.shtml

Federal

Office of the Superintendent of Financial Institutions (OSFI)

www.osfi-bsif.gc.ca/eng/pensions/index.asp

⁴⁹ Note that Prince Edward Island does not have a pension regulator.

Appendix G: Selected Sections from the Pension Benefits Standards Regulations, 1985 (Canada)

Source: <http://laws.justice.gc.ca/en/P-7.01/SOR-87-19/164385.html#section-7.1>

7. The administrator of a plan shall maintain a current record that clearly identifies every investment held on behalf of the plan, the name in which the investment is made and, where appropriate, the name in which the investment is registered.

7.1 (1) The administrator of a plan shall, before the later of July 1, 1994 and the day on which the plan is registered, establish, on behalf of the plan, a written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans, including

- (a) categories of investments and loans, including derivatives, options and futures,
- (b) diversification of the investment portfolio,
- (c) asset mix and rate of return expectations,
- (d) liquidity of investments,
- (e) the lending of cash or securities,
- (f) the retention or delegation of voting rights acquired through plan investments,
- (g) the method of, and basis for, the valuation of investments that are not regularly traded at a public exchange, and
- (h) related party transactions permitted under section 17 of Schedule III⁵⁰ and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan,

having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations.

(2) The statement of investment policies and procedures referred to in subsection (1) shall include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.

(3) The administrator of a plan shall submit the statement of investment policies and procedures referred to in subsection (1)

- (a) to any pension council that has been established, within 60 days after the later of
 - (i) the day on which the statement is established, and
 - (ii) the day on which the pension council is established; and

⁵⁰ [Footnote added by author and is not part of the regulation] Schedule III of the *Pension Benefits Standards Act* lays out the permitted investments. Available from: <http://laws.justice.gc.ca/en/p-7.01/sor-87-19/164578.html>

(b) where a plan is a defined benefit plan, to the actuary to the plan on or before the day that is the later of

(i) 60 days after the day on which the statement is established, and

(ii) the day on which the actuary is appointed. SOR/93-299, s. 2; SOR/2002-78, s. 5.

7.2 (1) The administrator of a plan shall review and confirm or amend the statement of investment policies and procedures referred to in subsection 7.1(1) at least once each plan year.

(2) A copy of all amendments to the statement of investment policies and procedures shall be submitted, within 60 days after the statement is amended,

(a) to any pension council that has been established; and

(b) where the plan is a defined benefit plan, to the actuary to the plan. SOR/93-299, s. 2; SOR/2002-78, s. 6.

REPORTING

12. (1) An information return required under subsection 12(1) of the Act to be filed annually shall contain information in respect of a plan that is related to that plan year.

(2) An information return required under subsection 12(1) of the Act to be filed other than annually shall contain all the information in respect of a plan relating to that portion of a plan year up to and including the date on which the information return is prepared.

13. An information return referred to in subsection 12(1) of the Act shall contain the information set out in Form 2 of Schedule II.

14. (1) The Superintendent shall require an administrator to file a cost certificate, prepared by an actuary, accountant or other professional advisor as of the effective date of an amendment to the plan that alters the cost of benefits under the plan or alters the contributions to the plan, in the case of

(a) a defined contribution plan where the contributions under the plan are allocated to individual plan members; and

(b) a defined benefit plan that is an insured plan.

(2) A cost certificate referred to in subsection (1) shall include

(a) the estimated cost of benefits under the plan and the contributions to the plan, showing separately employer and plan member contributions

(i) for the plan year following the effective date of the amendment, where the effective date falls on the last day of the plan year, or

(ii) for the plan year in which the effective date of the amendment falls, where the effective date falls on any other day of the plan year; and

(b) the formula for computing the cost of benefits, showing the formula for allocating the cost between the employer and the plan members for subsequent plan years.

15. (1) The Superintendent may require the administrator to file, at such intervals or times as the Superintendent directs,

(a) subject to subsection (2), a list of assets held by the plan on the date directed by the Superintendent, showing

(i) the book value of each asset,

(ii) the market value of each asset, and

(iii) such information as will permit the verification of the market value attributed to an asset and the determination of whether the requirements of section 6 have been met;

(b) an appraisal that will permit the verification of the market value attributed to an asset held by the plan;

(c) if the plan is not an insured plan,

(i) a financial statement of the pension fund,

(ii) any information that the *Handbook of the Canadian Institute of Chartered Accountants* requires to be set out in a financial statement of a pension plan, and

(iii) an auditor's report of the pension fund;

(d) information concerning the investments of the pension fund, including the information set out in Form 2.1 of Schedule II;

(e) any information relating to the determination of the solvency and funding status of a pension plan;

(f) the location of any books, records or other documents relating to a pension plan or to any securities, obligations or other investments in which pension fund money is invested;

(g) the name of the collective bargaining agent, if any, who represents the pension plan members;

(h) the information necessary to identify the employers who participate in or who have ceased participation in the plan;

- (i) a certificate of the administrator or any person preparing, compiling or filing any information on behalf of the administrator that certifies that the information submitted to the Superintendent is accurate;
 - (j) a record of, or any other document evidencing, any operating expenses paid from the plan fund or that are due or accrued from the plan fund, including the names of any payees, the purpose and amounts of any payments made or to be made to each payee, including the aggregate amounts; and
 - (k) a record of, or any other document evidencing, all direct and indirect compensation that a person received or that is due or accrued in relation to any service provided by the person in respect of the plan.
- (2) A list of assets is not required in respect of a plan under which benefits are provided through
- (a) a contract issued by a person authorized to carry on a life insurance business in Canada, other than a contract in respect of which separate and distinct funds are maintained by the person; or
 - (b) a contract issued by the Government of Canada. SOR/93-299, s. 4; SOR/95-171, s. 6; SOR/2002-78, s. 11.

INFORMATION TO BE PROVIDED

22. The written explanation, information and written statement to be provided pursuant to paragraphs 28(1)(a) and (b) of the Act shall be addressed to the plan member or the employee and that person's spouse or common-law partner as shown on the records of the administrator and shall be

- (a) given to the plan member or the employee at the place of employment; or
- (b) mailed to the residence of the plan member or employee. SOR/95-171, s. 6(F); SOR/2001-194, s. 5.

23. (1) The written statement to be provided in accordance with paragraph 28(1)(b) of the Act shall include

- (a) the name of the plan member;
- (b) the period to which the statement applies;
- (c) the date of birth of the plan member;
- (d) the period that has been credited to the plan member for the purpose of calculating the pension benefit of the plan member;
- (e) the date on which the plan member attains pensionable age;

- (f) the date on which the plan member is first entitled to an immediate pension benefit pursuant to subsection 16(2) of the Act;
- (g) the name of the spouse or common-law partner of the plan member listed on the records of the administrator;
- (h) the name of any person on the records of the administrator designated as the beneficiary of the pension benefit of the member;
- (i) the additional voluntary contributions of the plan member made for the plan year and the accumulated additional voluntary contributions of the plan member as of the end of the plan year;
- (j) the required contributions of the plan member made for the plan year and the accumulated required contributions of the plan member as of the end of the plan year;
- (k) in the case of a plan with a defined contribution provision, the contributions of the employer in respect of the plan member made for the plan year and the accumulated contributions of the employer in respect of the plan member as of the end of the plan year;
- (l) the amount of any funds transferred to the plan in respect of the plan member and the benefit under the plan attributable to that amount or the length of service credited to the plan member in respect of that amount;
- (m) in the case of a plan other than a defined contribution plan, the annual amount of the pension benefit accrued in respect of the plan member as of the end of the plan year and payable at pensionable age;
- (n) if applicable, the interest rates credited to the contributions of the plan member for the plan year;
- (o) the benefit payable on the death of the plan member and the extent to which that benefit would be reduced by a payment under a group life insurance plan;
- (p) a statement setting out the right to access the documents described in paragraph 28(1)(c) of the Act;
- (q) in respect of the defined benefit provisions of an uninsured defined benefit plan,
 - (i) if the ratio as calculated in accordance with paragraph (b) of the definition "solvency ratio" in subsection 2(1) is less than one,
 - (A) the value and description of the ratio,
 - (B) a description of the measures the administrator has implemented or will implement to bring that ratio to one, and
 - (C) the extent to which the member's benefit would be reduced if the plan were terminated and wound up with that solvency ratio; and

(ii) in any other case, a statement that the plan is fully funded based on the most recent solvency ratio of the plan.

(2) A written statement referred to in paragraph 28(1)(d) of the Act, in the case of a member who has retired from a plan, shall be in the form set out in Form 1 of Schedule IV.

(3) A written statement referred to in paragraph 28(1)(d) of the Act, in the case of a plan member who has ceased to be a member of the plan or where the whole or part of the plan has terminated and that member is entitled to a deferred pension benefit, shall be in the form set out in Form 2 of Schedule IV.

(4) A written statement referred to in paragraph 28(1)(d) of the Act, in the case of a plan member who has ceased to be a member of the plan and who is not entitled to a deferred pension benefit, shall be in the form set out in Form 3 of Schedule IV.

(5) A written statement referred to in paragraph 28(1)(d) of the Act, in the case of a plan member who has died, shall be in the form set out in Form 4 of Schedule IV. SOR/2001-194, s. 5; SOR/2002-78, s. 14.

23.1 For the purposes of paragraph 28(1)(e) of the Act, each person referred to in that paragraph may examine the written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans as described in subsection 7.1(1). SOR/2002-78, s. 15.

Appendix H: Selected Sections of Pension Benefits Standards Act, 1985 (Canada)

Source: <http://laws.justice.gc.ca/en/P-7.01/91985.html>

GENERAL REQUIREMENTS

Duty to Provide Information

Annual reporting requirements

12. (1) The administrator of a pension plan shall file with the Superintendent annually, or at such other intervals or times and in such form as the Superintendent directs,

(a) an information return relating to that pension plan, containing the prescribed information; and

(b) prescribed information regarding the extent, if any, to which inflation adjustments or other adjustments to pension benefits under that plan have been provided

(i) voluntarily by the employer, or

(ii) pursuant to a collective agreement,

whether or not those adjustments are provided for under the plan.

Other reporting requirements

(2) The administrator of a pension plan shall file with the Superintendent every three years, or at such other intervals or times and in such form as the Superintendent directs,

(a) information regarding the source of the funds used to make any adjustments referred to in paragraph (1)(b); and

(b) information regarding the application of gains, if any, from the pension fund.

Idem

(3) The administrator of a pension plan shall file with the Superintendent actuarial reports, financial statements, and any other information required by or pursuant to regulations made under paragraph 39(*d*), at such intervals or times as the Superintendent directs.

Actuarial reports and financial statements

(3.1) Except as otherwise specified by the Superintendent,

(a) the actuarial reports must be prepared in accordance with the standards of practice adopted by the Canadian Institute of Actuaries; and

(b) the financial statements must be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

Time limit for filing (4) Unless otherwise directed by the Superintendent, every document required to be filed pursuant to this section shall be filed within six months after the end of the plan year to which it relates.

R.S., 1985, c. 32 (2nd Supp.), s. 12; 1998, c. 12, s. 12.

[Information to members](#)

13. The administrator of a pension plan shall provide to the plan members, former members and any other persons entitled to pension benefits or refunds under the plan, at the time and in the manner specified by the Superintendent, any information that the Superintendent specifies.

R.S., 1985, c. 32 (2nd Supp.), s. 13; 1998, c. 12, s. 13.