



FINANCIAL SERVICES COMMISSION OF ONTARIO

**REPORT OF THE
PENSION PLAN EXAMINATION OF THE ONTARIO
MUNICIPAL EMPLOYEES RETIREMENT SYSTEM**

Plan Registration Number 345983

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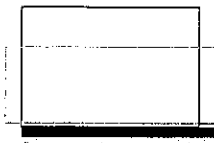


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Section 1 Executive Summary

In 2004, the Financial Services Commission of Ontario (FSCO) received allegations and complaints regarding the possibility of non-compliance with the Pension Benefits Act, R.S.O. 1990 c.P.8, as amended and Regulation 909, R.R.O. 1990, as amended (collectively referred to as the PBA) by the Administrator of the Plan and Fund under the Ontario Municipal Employees Retirement System (OMERS). Reports also appeared in the media about certain investment activities of the administrator of the OMERS Plan and the OMERS Fund. As a result, FSCO conducted an examination of OMERS to determine whether the Plan and the Fund were administered in compliance with the PBA. The examination focused on activities undertaken by OMERS during the period January 1, 1997 to December 31, 2004.

This report sets out FSCO's findings based on records filed with FSCO by OMERS and on documentation made available to FSCO. In general terms, as part of its examination of OMERS, FSCO reviewed:

- The OMERS Act, which sets out the Plan provisions, the OMERS Board authorities and responsibilities, and duties that may be delegated under the OMERS Act;
- OMERS Board oversight and plan governance practices;
- The responsibilities of the President, the method by which the Board delegates additional duties and responsibilities to the President and monitors these delegated duties and responsibilities, the method whereby the President delegates to other persons and monitors such delegations;
- All policies, procedures, guidelines and manuals related to OMERS' investment activities, including the process by which an investment or loan is selected, undertaken and monitored;
- The authority of OMERS to make certain types of investments including private equity, real estate and infrastructure;
- The authority of OMERS to create the structures to support its investment activities;
- OMERS' internal compliance procedures and processes;
- Selected service provider agreements related to OMERS' investments; and
- Selected due diligence reports and studies.

The findings in the Report are not a commentary on the allegations or complaints that prompted the examination. They are reflective of issues FSCO identified as relevant to the administration of the Plan and the Fund for the purposes of the PBA.

Requirements

The Report sets out requirements that must be met for the purposes of bringing the Plan and Fund into compliance with the PBA. They are:

Delegation of Responsibilities: FSCO requires that all delegations be readily available in a standard form for inspection by those eligible under the PBA.

Nominal and Immaterial Threshold in Related Party Transactions: FSCO requires that OMERS review the criteria set out in its Statement of Investment Policies and Procedures (SIP&P) to be used to establish whether a related party transaction is nominal or immaterial to the Plan, having regard to all factors set out in the PBA, which includes the Federal Investment Regulations (FIR).

Recommendations

The Report makes recommendations that, in FSCO's opinion, will assist in ensuring that the Plan and Fund are administered in accordance with the requirements of the PBA in the future. They are:

Due Diligence: FSCO recommends that due diligence, as it relates to the PBA, be documented and maintained in each investment file and that the documentation support any conclusions and positions arising out of such due diligence.

FSCO recommends that the documentation be sufficient to facilitate independent confirmation of due diligence with respect to the application of the relevant legislation.

Provision of Information to OMERS Staff: FSCO recommends that OMERS document and maintain in each investment file, information sufficient for OMERS staff to be able to monitor the Plan and the Fund for compliance with the requirements of the PBA.

Monitoring of Board Policies: FSCO recommends that OMERS review its monitoring mechanism to ensure that its internal policies are followed.

Updating the Statement of Investment Policies and Procedures (SIP&P): FSCO recommends that OMERS establish guidelines and update the SIP&P before undertaking a new category of investment.

FSCO also recommends that OMERS consider including in the mandate of the legislative compliance officer the responsibility for monitoring the SIP&P, to ensure that it is updated as necessary.

Delegation of Responsibilities: FSCO recommends that OMERS review the delegation processes to ensure that the processes provide for clear written documentation of the responsibilities being delegated.

Service Providers as Agents: FSCO recommends that OMERS establish and implement procedures determining whether a service provider is an agent for the purposes of the PBA.

FSCO recommends that OMERS advise service providers, determined to be agents, of their status as agents.

Section 2 Introduction

In 2004, the Financial Services Commission of Ontario (FSCO) received allegations and complaints regarding the possibility of non-compliance with the Pension Benefits Act, R.S.O. 1990 c.P.8, as amended and Regulation 909, R.R.O. 1990, as amended (collectively referred to as the PBA) by the Administrator of the Plan and Fund under the Ontario Municipal Employees Retirement System (OMERS). Reports also appeared in the media about certain investment activities of OMERS. As a result, FSCO conducted an examination of OMERS to determine whether the OMERS Plan and OMERS Fund were administered in compliance with the PBA. The examination focused on activities undertaken by OMERS during the period January 1, 1997 to December 31, 2004. This period is referred to as the “primary review period.”

This Report of the Pension Plan Examination of the Ontario Municipal Employees Retirement System (Report) sets out FSCO’s findings based on records filed with FSCO by OMERS and documentation made available to FSCO. The findings in the Report are not a commentary on the allegations or complaints that prompted the examination. They are reflective of issues FSCO identified as relevant to the administration of the OMERS Plan and the OMERS Fund for the purposes of the PBA. FSCO reviewed a large number of documents and files on identified activities, transactions and investments, but has not commented on every matter reviewed in the course of its examination.

FSCO has attempted to recognize actions taken by OMERS when it was relevant to the issue under consideration.

The Report sets out requirements that must be met for the purposes of bringing the Plan and the Fund into compliance with the PBA. The Report also makes recommendations that, in FSCO’s opinion, will assist in ensuring that the Plan and the Fund are administered in accordance with the requirements of the PBA in the future.

Section 3 **OMERS**

OMERS Act

The Ontario Municipal Employees Retirement System Act, R.S.O. 1990 c.O.29 and Regulation 890, R.R.O. 1990 (collectively referred to as the OMERS Act) came into effect in 1962 and established the OMERS Plan and the OMERS Fund.

The Plan and Fund are subject to the PBA. A certificate of registration has been issued. The Ontario registration number for the Plan is 345983.

The legislation in effect during the primary review period was the OMERS Act. The pension standards legislation applicable to OMERS was the PBA, which included the Ontario investment rules, which were repealed after December 31, 2000 (the Prior PBA Investment Regulation) and the Federal Investment Regulations (FIR), which were incorporated under Regulation 909 by reference as of January 1, 2001.

OMERS Board

In FSCO's view, under the PBA, the OMERS Board and the individuals serving as directors of the Board were responsible for ensuring that the responsibilities and obligations of the administrator, as required by the PBA, were carried out. The Board Member Handbook specifies that the Board members, as individuals, have fiduciary, trustee, and PBA administrator's responsibilities and duties.

Under the OMERS Act, the OMERS Board was charged with the management and administration of the Plan and with investing the Fund. The OMERS Board consisted of 13 directors vested with the responsibility for administration and management of OMERS, which includes the Plan and the Fund.

The OMERS Act sets out the powers and responsibilities of the OMERS Board. The OMERS Board had broad powers of delegation, including to:

- Appoint or cause to be appointed such officers, employees, legally qualified medical practitioners and advisors as are necessary to carry out the responsibilities of the Board and to select an auditor and an actuary;
- Establish committees and to delegate to the committees any of the Board's powers;
- Determine the composition, duties, responsibilities, limitations and operating procedures of its committees and determine the term of office of committee members;
- Appoint individuals other than members of the Board to its committees and determine their remuneration; and

- Make rules and regulations for the management and the administration of the Plan and Fund and assign to appointees such of its duties as it decides are necessary or desirable.

OMERS Act 2006

The OMERS Act was replaced by the OMERS Act 2006, S.O. 2006, c.9, Schedule K, (New OMERS Act) effective June 30, 2006. Under the New OMERS Act there are two corporations made responsible for OMERS: an Administration Corporation and a Sponsors Corporation.

The New OMERS Act continues the existing OMERS Board under the name of OMERS Administration Corporation. The Administration Corporation has a board of directors that is responsible for the administration of the OMERS pension plans and acts as trustee of the pension funds. This Board also has responsibility for preparing revised plan documents (as the pension plan documents will no longer form a part of the New OMERS Act).

FSCO will be looking to the Board of Directors of the Administration Corporation, as the continuation of the prior administrator, to take actions to address the requirements and recommendations of this Report, either directly or through formal delegations to OMERS staff.

FSCO is responsible for the administration and enforcement of the PBA.

The PBA sets out the legislative standards applicable to a pension plan as defined in the PBA. The PBA requires that the pension plan and the pension fund be administered in accordance with the documents filed with the Superintendent, for which a certificate of registration has been issued, and in accordance with the PBA.

Complaint Handling Process

FSCO has a process for handling allegations and complaints. Initially, FSCO must determine whether an allegation or complaint relates to a matter over which it has authority under the PBA. If so, FSCO then collects information to determine whether the activities described in the allegations or complaints have actually occurred. FSCO will then take steps to determine whether the pension plan and the pension fund have been administered in accordance with the requirements of the PBA.

The regulatory process used by FSCO in its review of the allegations and complaints about the Plan and Fund began with a request for documents and proceeded to an onsite examination. The process was an examination and should not in any way be construed as an investigation.

OMERS was made aware of the general substance of the allegations and complaints. When OMERS requested a copy of the specific allegations and complaints, the request was denied. FSCO treats such communications as confidential and does not make them available without the express written consent of the complainant. It is FSCO's position that making them available would interfere with its ability to carry out its regulatory functions.

Scope of the OMERS Examination

FSCO's examination focused on the management and administration of the Plan and Fund with regard to activities, transactions and investments among OMERS, Borealis Capital Corporation (BCC) and its entities, and the Borealis Executives during the primary review period.

Special attention was paid to investments made in certain identified projects, including the Detroit River Tunnel Project, the BCC transactions and the Oxford Properties Group Inc. (Oxford).

With respect to the transactions involving BCC, the review centered on the relationship between OMERS and BCC and its entities, and between OMERS and the Borealis Executives, as well as whether there were conflicts of interest and related party

transactions benefiting BCC and the Borealis Executives contrary to the requirements of the PBA.

The OMERS investment structure is complex and, according to OMERS, was adopted in order to deal with many intricate tax and regulatory considerations, including the requirements of the co-investors. The structure of some investments was reviewed to determine whether or not the Plan and Fund were being administered in accordance with the requirements of the PBA and the OMERS Act, which sets out the terms of the Plan.

FSCO reviewed the powers, authorities, obligations and responsibilities under the OMERS Act as they related to the role of the OMERS Board. FSCO also considered obligations under the PBA that relate to the OMERS Board. These obligations under the PBA are in addition to its obligations as administrator set out in the OMERS Act.

In general terms, FSCO reviewed:

- The OMERS Act, which sets out the Plan provisions, the OMERS Board authorities and responsibilities, and duties that may be delegated under the OMERS Act;
- OMERS Board oversight and plan governance practices;
- The responsibilities of the President, the method by which the OMERS Board delegates additional duties and responsibilities to the President and monitors these delegated duties and responsibilities, the method whereby the President delegates to other persons and monitors such delegations;
- All policies, procedures, guidelines and manuals related to OMERS' investment activities, including the process by which an investment or loan is selected, undertaken and monitored;
- The authority of OMERS to make certain types of investments including private equity, real estate and infrastructure;
- The authority of OMERS to create the structures to support its investment activities;
- OMERS' internal compliance procedures and processes;
- Selected service provider agreements related to OMERS' investments; and
- Selected due diligence reports and studies.

While the OMERS Board had authorized infrastructure investments in 1994, OMERS began its actual investment in 1997 through equity investing in an infrastructure company called CFMC Funds Management Corporation. OMERS issued a press release to this effect in October 1997. Direct investments in infrastructure began in 1999.

Thus, FSCO examined OMERS' files and records from 1997 onwards. FSCO also looked at information related to periods prior to 1997 where it was relevant to the activities, transactions or investments being reviewed. The period for review extended to February 2004, the time at which OMERS completed the buyout of all of the BCC shareholders and further to December 31, 2004. For completeness, FSCO did not strictly

limit its examination to this period. Other activities undertaken by OMERS that preceded or followed were considered if they were related to the transactions and investments under review.

Examination Process

Initially, information was gathered about the Plan and the Fund from records filed with FSCO by OMERS, as well as from public sources.

FSCO's first communication with OMERS occurred in June 2004 when FSCO wrote and requested material under the authority of section 98 of the Act. FSCO requested that OMERS provide documentation on its processes, practices, policies, procedures and manuals, as well as information relating to specified investments and transactions. Also requested were delegation documents, contracts related to the activities and transactions being examined, and other documentation related to the administration of the Plan and Fund.

Following the review of the documents provided, FSCO wrote to OMERS on August 31, 2005 to advise of its intent to review information on identified files at OMERS' corporate offices and at the offices of its external auditors, KPMG and PricewaterhouseCoopers. This onsite examination was conducted under the authority of section 106 of the Act, and took place from November 2005 through March 2006.

FSCO and OMERS communicated throughout the examination process. At each step of the process, OMERS was made aware of issues of concern to FSCO and provided with an opportunity to submit documents addressing the issues and make submissions. Further, after FSCO's examination was concluded, OMERS was provided with FSCO's draft findings and given an opportunity to meet with FSCO and make submissions relating to the draft findings before this Report was finalized.

The information was collected and the examination undertaken for purposes of determining if the OMERS Plan and the OMERS Fund, in respect of the transactions, activities and investments under consideration, were being administered in accordance with the requirements of the PBA.

Section 5 Discussion of Findings

5.1 Standard of Care

The PBA imposes fiduciary duties on a plan administrator. Specifically, since 1998 section 22 of the Act requires the administrator to exercise the care, diligence and skill in the administration and investment of the pension plan and the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person. The PBA also imposes fiduciary obligations on employees and agents of the administrator.

Prudent behavior can be measured by taking into account a broad range of conduct and the processes followed. One aspect of prudence is the governance system in place. As set out by the Office of the Superintendent of Financial Institutions in its “Guideline for Governance of Federally Regulated Pension Plans” (May 1, 1998), a proper plan governance structure is essential to ensure that a pension plan and pension fund are being administered and invested in accordance with their terms and the requirements of applicable legislation.

Governance is a broad concept that covers many individual activities and institutional practices and is intended to give direction to and demonstrate prudent behavior. FSCO takes the position that the prudence in section 22 of the Act, as it relates to investments, is considered a test of conduct and not performance. FSCO’s position is consistent with the position taken by the Pension Commission of Ontario (PCO).¹ Therefore, in the course of the examination, FSCO considered the processes through which an investment was selected, implemented and monitored rather than the performance of the investment itself. FSCO also considered the activities and transactions that related to the selected investments.

In discussions and correspondence with OMERS, FSCO identified some specific items that it would consider in assessing, in general terms, whether the administrator met the prudent person requirement of section 22 of the Act. The items identified by FSCO were derived in part from the common law duties of a trustee to a beneficiary, case law under the Employee Retirement Income Security Act (United States of America) and the Canadian Association of Pension Supervisory Authorities Guideline No. 4 - Pension Plan Governance Guidelines and Self-Assessment Questionnaire.²

¹The PCO published a policy entitled “Prudence – PBA, 1987 s.23, s.63” in May 1990, which was archived when the FIR was adopted in 2001. The position set out in that policy relating to prudence is still, in FSCO’s view, applicable.

² In 2002 the Canadian Association of Pension Supervisory Authorities (CAPSA) initiated a review of pension plan governance with a view to producing a document summarizing good governance principles and practices for use by pension regulatory authorities and pension plans across Canada. A draft version was released in October 2003 and the final document was released on October 25, 2004. Since the early 1990’s, pension governance in Canada has received much public attention with various industry reports and discussions of what constitutes best practices.

FSCO looked at the factors OMERS considered before selecting its investment. Also, in assessing whether OMERS met the test for prudence in a specific investment, FSCO considered the role of the investment in the portfolio, the risk of loss/opportunity for gain (advantages/disadvantages) associated with such an investment, the composition of the portfolio in terms of diversification and systemic risk, as well as the matter of competence of the delegates selected by the administrator, reasonableness of the terms and conditions of the delegations, the monitoring mechanisms and provisions for exiting the investment.

In this Report, FSCO identifies certain concerns about OMERS' processes during the period under review where FSCO is of the opinion that the processes could be strengthened to ensure that the Plan and Fund are administered in accordance with the PBA. FSCO recognizes that prudence is a continuous process and acknowledges the steps taken by OMERS since 2004 to strengthen its governance processes. For example, OMERS has established an internal legal department and an internal audit department, as well as creating the new position of legislative compliance officer.

5.1.1 Due Diligence

Findings

In its review of OMERS and its activities related to identified transactions and investments, FSCO found that OMERS conducted a significant amount of due diligence before entering into the activities, transactions or investments under review. However, FSCO could not conclude that OMERS obtained advice on PBA compliance matters and whether it thereby complied with its prudence obligation under section 22 of the Act.

Discussion of Findings

In determining whether an investment or transaction met the prudent person requirement in section 22 of the Act, FSCO looked at, among other things, whether OMERS exercised due diligence in researching all aspects of the transaction or investment prior to selecting and/or entering into the transaction or investment, including compliance with the PBA. FSCO also considered the process, including obtaining legal advice, by which OMERS decided to enter into a transaction or investment, as well as the process by which the decision was implemented.

During the examination, FSCO was notified by OMERS that "it maintained privilege over documents that record solicitor-client legal advice concerning the transactions under review." OMERS submitted that sufficient non-privileged documents and information had been made available to enable FSCO to conclude that OMERS conducted appropriate legal due diligence during the review period. Without contesting OMERS' claim over privilege, FSCO limited its review to these "non-privileged" documents and information.

In these materials, FSCO looked for documentation that a number of matters had been assessed as a part of OMERS' overall due diligence, including legal due diligence, prior to undertaking the investment or after undertaking the investment if there had been a change in the structure of the investment. These matters included:

- The authority to undertake the investment under the Plan, the Fund, the PBA, the Statement of Investment Policies and Goals (SIP&G), and the Statement of Investment Policies and Procedures (SIP&P);
- The provisions under the PBA applicable to the investment;
- The applicable quantitative limits of the FIR; and
- Constraints to the investment including conflict of interest and related party provisions.

In these non-privileged materials, FSCO found that there was insufficient documentation to conclude that OMERS obtained advice related to the matters set out above for certain identified transactions and investments and whether it had, therefore, complied with its obligations under section 22 of the Act.

For example, in the Detroit River Tunnel Project there was an internal 70-page report detailing all the due diligence that was done prior to undertaking the investment. While the report indicated that certain legal due diligence was undertaken, there was no indication that this due diligence related to the PBA and its application to the project. There were files that went to the Board indicating that legal due diligence for purposes of the PBA had been done. However, in FSCO's view, there was insufficient material for FSCO to independently confirm what due diligence had actually been done in relation to application of the PBA.

In the Scotia Gas Networks PLC (initially known as Project Blackwater), FSCO noted that the investment memos put to the Board for approval did not indicate that due diligence in respect of the application of the PBA had been considered. OMERS submitted that such due diligence was done. Again, there was insufficient material for FSCO to conclude independently what due diligence in respect to the PBA had actually been done and the conclusion arising out of such due diligence.

Similarly, in OMERS' investment in Oxford and in its transactions with Borealis Infrastructure Management Inc. (BIMI) and Borealis Real Estate Management Inc. (BREMI), there was insufficient material for FSCO to conclude whether advice had been sought by OMERS in respect of the application of the PBA.

Likewise, when OMERS completed the buyout of all BCC shareholders and brought the operation of the Borealis Private Equity Fund (BPEF) in-house, FSCO expected the administrator to consider whether OMERS had the authority under the PBA, the OMERS Act or the Plan documents to operate the BPEF internally for itself and other investors, before undertaking this move. FSCO was not provided with material to be able to conclude that it did.

With respect to its decision to move into investing in infrastructure, OMERS acknowledged in a press release dated October 1, 1997, that its investment in an infrastructure company was a first for a Canadian pension fund, and that OMERS would look at similar investment opportunities in the future where all factors pointed towards prudent investment of the Fund. With a move into a new field of investment FSCO expected to see: an analysis by OMERS of infrastructure investing with respect to the Plan and PBA compliance; documentation to support the decision made; and changes to the SIP&G prior to any investment in infrastructure being undertaken. The material reviewed by FSCO did not include such documentation and therefore, FSCO was unable to conclude that OMERS met its obligations under section 22 of the Act.

OMERS submitted that its corporate attestation process and certifications in the President's Annual Report were, among other things, evidence of its due diligence with respect to the PBA. It is FSCO's view that such documents are too general in nature and do not confirm that appropriate processes were followed prior to undertaking the transactions and investments.

FSCO notes that OMERS' current policy for submissions to the Board in respect of a transaction or investment requires a statement that the proposal complies with the PBA.

Recommendation

FSCO recommends that due diligence, as it relates to the PBA, be documented and maintained in each investment file and that the documentation support any conclusions and positions arising out of such due diligence.

FSCO recommends that the documentation be sufficient to facilitate independent confirmation of due diligence with respect to the application of the relevant legislation.

5.1.2 Provision of Information to OMERS Staff

Findings

OMERS did not have an individual or group of individuals charged with an oversight function to determine whether the Plan and the Fund, as a whole, were administered in accordance with the requirements of the PBA and other applicable legislation.

OMERS did not ensure that sufficient information was provided to OMERS staff charged with oversight of an activity, transaction or investment to permit them to determine that the Plan and the Fund were administered in accordance with the requirements of the PBA.

Discussion of Findings

Ensuring that Plan and Fund administration is in accordance with the PBA requires an appropriate mechanism for monitoring the activity, transaction or investment. OMERS had a number of mechanisms in place to monitor compliance. However, the large and complex structure of OMERS makes it difficult to monitor compliance and FSCO's examination identified some gaps in the monitoring process.

Throughout the period under review, FSCO noted that there was no one individual or group of individuals charged with an oversight function to determine whether the Plan and the Fund as a whole were administered in accordance with the requirements of the PBA and other applicable legislation. OMERS indicated that there was a Special Projects Manager who was the acknowledged "go-to" person for regulatory issues for the Finance and Administration and Investment Divisions and that this person could be consulted on legislative matters. However, FSCO observed that the individual in question was not charged with providing centralized legislative policy and compliance processes for OMERS.

Staff or other persons who are charged with the compliance oversight of the investments at various steps, are a major component in the monitoring process for the purpose of ensuring compliance with the requirements of the PBA. To be effective, such persons need to be aware of the provisions of the PBA that are applicable to the activity, transaction and/or investment in which they are involved. This information would also form the basis of a review by an internal audit department, another step in the monitoring process, when considering whether the Plan and Fund are being administered in accordance with the requirements of the PBA.

Based on its review, FSCO was unable to conclude that OMERS staff and other persons were provided with sufficient information to provide proper oversight with regard to the PBA in the instances of the Oxford and the BCC buyout. Therefore, FSCO could not conclude that OMERS had met the standard of care, implicit in section 22 of the Act, to provide the appropriate persons with sufficient information to monitor the Plan and Fund for compliance with the requirements of the PBA.

In 2005-2006, OMERS created a new position and retained a legislative compliance officer charged with the oversight of the Plan and the Fund as it relates to compliance with the PBA and other legislative requirements. The mandate of the office includes the engagement of specialized compliance staff to provide a centralized supporting function working with the business units performing compliance functions. This position has also been charged with undertaking an OMERS-wide educational program related to the legislative requirements applicable to OMERS. This position and its mandate will address the concerns raised by FSCO about a single source having responsibility for overall compliance and OMERS staff being made aware of the legislative requirements.

Recommendation

FSCO recommends that OMERS document and maintain in each investment file, information sufficient for OMERS staff to be able to monitor the Plan and the Fund for compliance with the requirements of the PBA.

5.1.3 Monitoring of Board Policies**Findings**

OMERS did not follow its internal policies in certain instances.

Discussion of Findings

OMERS developed internal policies to meet its standard of care requirements under section 22 of the Act. FSCO expected that these policies would be monitored to ensure they were being followed. FSCO identified instances where OMERS' internal policies were not followed. For example, in October 2003, a report to the Board indicated that to complete the buyout of all of the BCC shareholders, BCC "will have to be restructured to ensure compliance" with the PBA. OMERS' internal policies required that an investment being presented to the Board for approval include documentation to indicate how the investment will be structured and administered to ensure compliance with the PBA. No documentation was made available to FSCO to indicate that the internal policy was followed in this case.

Recommendation

FSCO recommends that OMERS review its monitoring mechanism to ensure that its internal policies are followed.

5.1.4 Updating the SIP&G and SIP&P**Findings**

OMERS was investing in infrastructure, a category or sub-category of investments, which was not specifically provided for in its SIP&G during the years 1997 to 2000, and for which guidelines had not been established in the SIP&G contrary to the requirements of the Prior PBA Investment Regulation.

OMERS was investing in infrastructure, a category or sub-category of investments, which was not included in its SIP&P during the years 2001 to 2004.

Discussion of Findings

The PBA places the responsibility for establishing appropriate investment policy statements (SIP&G prior to January 1, 2001 and SIP&P on and after January 1, 2001) for a pension plan on the plan administrator. The PBA sets out the minimum legislative standards for a SIP&G and a SIP&P.

The SIP&G and the SIP&P identify, in a broad way, the investment policies of a pension fund including the guidelines for such investments. Staff and agents involved in selecting investments are expected to invest the assets of the plan in accordance with these investment policies. These policies are adopted by the administrator and are available to the plan beneficiaries. The administrator is required to review and either accept or amend the policies annually.

OMERS' SIP&G did not show infrastructure as a category or sub-category of investment or loan that was permitted or for which guidelines were established, at the time the first investments were made in 1997 and during the period from 1997 to 2000.

OMERS submitted that the infrastructure investments were treated as a sub-category of the investments in its private placement portfolio initially and were not required to be identified separately. OMERS also submitted that the Board was exercising "their judgement reasonably" in making the determination when to include infrastructure in the SIP&P.

SIP&G

Prior to amendments to the PBA effective January 1, 2001, the administrator was prohibited from selecting an investment or loan except "in a category or sub-category of investment or loan that is specifically permitted and for which guidelines are established in the statement of investment policies and goals." FSCO is of the opinion that infrastructure, as announced by OMERS as a new field of investment in its October 1997 press release, represented a stand alone category. Even if FSCO was to accept OMERS' submission that infrastructure was a sub-category of its private placement portfolio, FSCO is of the opinion that infrastructure is a sub-category for purposes of the SIP&G.

FSCO found that the first investment in infrastructure was undertaken in October 1997 based on the Board approval granted in 1994 for infrastructure investment. According to the Prior PBA Investment Regulation, infrastructure should have been included as a category or sub-category of private placement and guidelines established prior to that date.

SIP&P

Effective January 1, 2001, the Prior PBA Investment Regulation was replaced by the FIR. The FIR requires that the administrator of a plan establish, on behalf of the plan, a written

SIP&P in respect of the plan's portfolio of investments and loans, including categories of investments and loans, derivatives, options and futures. The administrator is to confirm or amend the SIP&P at least once each plan year.

Infrastructure was not included in OMERS' SIP&P until February 2004 and the guidelines for investments in both private equity and infrastructure were not developed and formalized for the purpose of the SIP&P until December 2004. At that time, based on the information contained in the OMERS 2003 Annual Report, private equity assets were \$0.9 billion (2.8% of total net investment assets of \$32.7 billion) and infrastructure commitment was \$2.3 billion with \$1.2 billion invested.

FSCO is of the opinion that OMERS was investing in a category of investment in respect to which it had not established policies and procedures as required under the PBA.

Recommendation

FSCO recommends that OMERS establish guidelines and update the SIP&P before undertaking a new category of investment.

FSCO also recommends that OMERS consider including in the mandate of the legislative compliance officer the responsibility for monitoring the SIP&P, to ensure that it is updated as necessary.

5.1.5 Delegation of Responsibilities

Findings

FSCO found no Board resolution on the specific responsibilities delegated from the OMERS Board to the President, and through the President, to senior management and OMERS staff.

Discussion of Findings

As noted earlier, one aspect of prudence is the implementation and maintenance of a proper governance system. One of the elements central to a proper governance system is that any acts required in the administration of the pension plan and in the administration and investment of the pension fund that are delegated, whether internally or to external service providers, must be properly delegated.

In FSCO's view, the standard of care in section 22(1) of the Act requires that such delegations be reasonable and prudent and that those to whom the tasks are delegated have proper skills. Further, each delegation should be set out in writing in a document detailing the specific responsibilities that are delegated and, if applicable, the authority of

the person to further delegate responsibilities to others. Such further delegation should also be documented. All documentation would be available for inspection to prescribed persons, including members and other plan beneficiaries, as required by the PBA.

In the case of the delegation to the President, OMERS indicated that the oversight of the delegated authority is set out in the employment contract. An employment contract is, by its nature, a private document and would not be available to the members of the Plan.

While OMERS directed FSCO to other documents on delegations, none of the documents included the precise details of the delegations or the parameters for exercising such delegations. It is FSCO's opinion that delegations should be documented in such a way that the members and participating employers of the Plan are able to exercise their right to inspect the delegations pursuant to section 45(1)6 of the Regulation.

FSCO's concerns relating to the communication of delegations and the need to strengthen the requirements for monitoring and reviewing the exercise of the delegated authority is consistent with an internal audit report. The auditor recommended that the Board policies be reviewed and revised to provide management with appropriate operational authority in order to be effective in managing day-to-day operations. The auditor also recommended the expansion and clarification of the delegated authorities. FSCO observed that the system for monitoring and reviewing the delegated authority is under review by the Board with a view to strengthening the system.

Requirement

FSCO requires that all delegations be readily available in a standard form for inspection by those eligible under the PBA.

Recommendation

FSCO recommends that OMERS review the delegation processes to ensure that the processes provide for clear written documentation of the responsibilities being delegated.

5.2 Service Providers as Agents

Findings

BREMI, BIMl and BCC were agents within the meaning of the PBA.

Discussion of Findings

In the discussion of service providers as agents, FSCO has focused mainly on the relationship among OMERS, BCC, BREMI and BIML.

In its review, FSCO considered the relationship between OMERS and BCC and its entities and between OMERS and the Borealis Executives within the context of the PBA. One of the issues FSCO considered was whether BCC and its entities (specifically BREMI and BIML) and the Borealis Executives, were agents of OMERS within the meaning of the PBA.

The PBA imposes a special standard of care not only on those who administer a pension plan but also on an employee and an agent of an administrator carrying out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund (section 22). The agents of the plan administrator (as well as the employees of the plan administrator) are subject to the same standard of care as applies to the plan administrator.

It is FSCO's position that, for the purposes of the Act, in particular section 22(5), an agent is anyone hired/retained by the administrator to perform a function that the administrator is responsible for performing in the administration of the pension plan and in the administration and investment of the pension fund.

OMERS and the Borealis Executives rely on the narrow common law definition that an agent is a person who is able to affect the principal's legal position in respect of strangers to the relationship by making contracts or disposing of property. It is FSCO's view that the narrow definition of agent does not apply in the context of the PBA. For example, section 56(1) of the Act makes it clear that agent is not to be so narrowly interpreted.

FSCO concluded that BCC, BREMI, and BIML were agents of OMERS because BCC, BREMI and BIML all performed functions OMERS was responsible for performing in the administration of the Plan and in the administration and investment of the Fund. They were not merely providing advice that may or may not be acted upon by OMERS. They all, therefore, fell within the definition of agent.

FSCO further noted that the BREMI and BIML Management Services Agreements (MSAs) included limitation of liability and indemnity provisions. In FSCO's view, the PBA would prevail over any such contractual arrangements.

With respect to the Borealis Executives, FSCO relies on the Ontario Superior Court's decision in *Mackinnon v. Ontario Municipal Employees Retirement Board et al* (August 16, 2006), that the duty of care imposed upon an agent of the administrator of a pension plan pursuant to section 22(8) of the Act does not apply to employees of an agent. Based on this decision, the Borealis Executives did not fall within the definition of agent. FSCO notes that this decision is under appeal.

Since all service providers may not be agents for purposes of the PBA, FSCO expects that guidelines would be available for OMERS staff to assess whether a service provider is considered to be such an agent. FSCO was not provided with documentation to indicate that such guidelines existed.

Recommendation

FSCO recommends that OMERS establish and implement procedures determining whether a service provider is an agent for the purposes of the PBA.

FSCO recommends that OMERS advise service providers, determined to be agents, of their status as agents.

5.3 Nominal and Immaterial Threshold in Related Party Transactions

Findings

The criteria that OMERS has set out in its SIP&P for determining whether a related party transaction is nominal or immaterial does not have regard to all the factors required by the PBA.

Discussion of Findings

FSCO considered whether the transactions related to the BIMI and BREMI MSAs and the acquisition by OMERS of the shares held in BCC by the Borealis Executives were prohibited related party transactions under the PBA.

OMERS had established a nominal and materiality threshold in its SIP&P of 3 per cent of the market value of all assets in the Fund. In respect of each of these transactions, FSCO accepts that their values did not exceed the 3 per cent threshold for determining whether a related party transaction was nominal and immaterial and would, therefore, fall under the exceptions set out in the PBA.

Related party transactions are transactions in which the potential misuse of plan assets is particularly great. The purpose of the related party provisions is to safeguard the interests of plan members and their beneficiaries. Related party transactions that are otherwise prohibited may be entered into with a related party on behalf of a plan if the value of the transaction is nominal or if the transaction is immaterial to the plan.

For the purposes of related party transactions permitted under section 17 of the FIR, section 7.1(1) (h) of the FIR requires that the administrator, in its SIP&P, set out “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.”

The FIR places the responsibility for selecting the criteria to be used to establish whether a transaction is nominal or immaterial to the plan on the administrator. Presumably, this is because the administrator is the person most knowledgeable about the plan, including all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations. In selecting the criteria, the administrator is also subject to the fiduciary duties imposed on it by section 22 of the Act, including a duty to protect the interests of the members and beneficiaries of the Plan.

From the outset, in its SIP&P, OMERS set the nominal and immateriality threshold at 3 per cent of the market value of all assets for all transactions, even though the funding and solvency of the Plan and its ability to meet its financial obligations has changed over the period 2001 to date. Three per cent of the market value of all assets in the case of the OMERS Fund currently translates into an amount in excess of \$1 billion.

Although 3 per cent may be appropriate in some transactions, it may not be appropriate in all circumstances.

Requirement

FSCO requires that OMERS review the criteria set out in its SIP&P to be used to establish whether a related party transaction is nominal or immaterial to the Plan, having regard to all factors set out in the PBA, which includes the FIR.

Section 6 **Glossary of Terms**

For convenience, abbreviated terms are used throughout the Report. The meanings of these terms, for purposes of the Report are as follows.

“Act” means the Pension Benefits Act, R.S.O 1990, c.P.8 as amended.

“BCC” means Borealis Capital Corporation, the company resulting from the renaming of Dorset Partners Inc. in July 2001 (see “Dorset”).

“BIMI” means Borealis Infrastructure Management Inc.

“Borealis Executives” means Messrs. Ian D. Collier, R. Michael Latimer and Michael Nobrega.

“BPEF” means the Borealis Private Equity Fund managed by BCC and later brought in-house by OMERS.

“BREMI” means Borealis Real Estate Management Inc. incorporated by BCC in May 2002.

“CAPSA” means the Canadian Association of Pension Supervisory Authorities.

“Dorset” means 1355557 Ontario Inc. incorporated on May 17, 1999; renamed Dorset Capital Inc. on December 9, 1999; renamed Dorset Partners Inc. on March 28, 2000; renamed Borealis Capital Corporation (“BCC”) on July 30, 2001.

“FIR” means the Federal Investment Regulations, specifically sections 6, 7, 7.1 and 7.2 and Schedule III to the Pension Benefits Standards Regulations, 1985, made under the Pension Benefits Standards Act, 1985 (Canada) as it read on December 31, 1999, and incorporated by reference into Regulation 909.

“FSCO” means the Financial Services Commission of Ontario.

“MSA” or “MSAs” means the management services agreement(s) made with respect to the management of OMERS’ real estate and infrastructure assets.

“New OMERS Act” means the Ontario Municipal Employees Retirement System Act, 2006, S.O. 2006, c. 9, Schedule K, passed on February 23, 2006 and proclaimed effective June 30, 2006.

“OMERS” means the Ontario Municipal Employees Retirement System and for the purposes of this Report is the OMERS Board and OMERS staff. The affairs of OMERS

are conducted through the OMERS Board directly or as legally delegated to OMERS staff and others as are necessary to carry out the responsibilities of OMERS.

“OMERS Act” means the Ontario Municipal Employees Retirement System Act, R.S.O. 1990, c.O. 29 and Regulation 890, R.R.O. 1990, in effect prior to June 30, 2006.

“OMERS Board Member” means an individual person appointed by the Lieutenant Governor in Council to serve on the OMERS board of directors for a specified term.

“OMERS Board” or “Board” means the thirteen-member board of directors whose members are appointed from time to time by the Lieutenant Governor in Council. The Board is created as a corporate entity under the OMERS Act to manage and administer the OMERS Plan and OMERS Fund. The Board serves in the capacity of trustee, fiduciary and administrator for purpose of the PBA to supervise, direct, and oversee the business and affairs of OMERS, directly or through documented delegation, for the purposes of governance, management and administration of the OMERS Plan and investment of the OMERS Fund.

“OMERS Fund” or “Fund” means those assets in the Ontario Municipal Employees Retirement Fund that relate to the OMERS Plan.

“OMERS Plan” or “Plan” means the OMERS Plan registered under the PBA and includes the OMERS Fund, created under the OMERS Act to provide pension benefits and other benefits to employees of Ontario municipalities and other named employers.

“OMERS Regulation” means Regulation 890, R.R.O. 1990, as amended, made under the “OMERS Act.”

“OMERS staff” means such persons, including the President, officers and other employees as may be appointed to carry out the responsibilities of the OMERS Board.

“Oxford” means Oxford Properties Group Inc.

“PBA” means the Ontario Pension Benefits Act, R.S.O 1990, c.P.8 as amended and Ontario Regulation 909, R.R.O 1990, as amended.

“Prior PBA Investment Regulation” means the Ontario investment rules as set out in Regulation 909, R.R.O 1990, as amended, in effect prior to January 1, 2001.

“Regulation” means Regulation 909, R.R.O 1990, as amended, made under the “PBA.”

“Report” means the Financial Services Commission of Ontario Report of the Pension Plan Examination of the Ontario Municipal Employees Retirement System, July 2007.

“SIP&G” means that Statement of Investment Policies and Goals under the “Prior PBA Investment Regulation.”

“SIP&P” means the Statement of Investment Policies and Procedures as required by the “FIR.”

Section 7 Applicable Legislation

For ease of reference, the sections of the legislation that are discussed in the Report are set out below.

Pension Benefits Act

Definitions

1. “Administrator” means the person or persons that administer the pension plan;

Duty of administrator

19. (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.
- (2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.
- (3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,
- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
 - (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.
- (4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Care, diligence and skill

22. (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund.

Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Employee or agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Benefit by administrator

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Member of pension committee, etc.

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Payment to agent

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

Duty re payment of contributions

56. (1) The administrator of a pension plan and the agent, if any, of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.

Investment of Pension Fund

62. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations.

Regulation 909

Adoption of the FIR by Ontario, effective January 1, 2001 [R.R.O. 1990, Reg. 909, as amended by O.Reg.114/00]

66. (1) In this Part,

“federal investment regulations” means sections 6, 7, 7.1 and 7.2 and Schedule III to the “Pension Benefits Standards Regulations, 1985” made under the Pension Benefits Standards Act, 1985 (Canada) as it read on December 31, 1999;

“Ontario investment rules” means this Part as it read on December 30, 1999.

(2) For the purposes of this Part, a reference in the federal investment regulations to the Superintendent shall be deemed to be a reference to the Superintendent as defined in section 1 of the Pension Benefits Act.

78. (1) Beginning on January 1, 2001, the administrator of a pension plan shall establish a statement of investment policies and procedures for the plan that meets the requirements of the federal investment regulations.

(2) The federal investment regulations apply with respect to the statement of investment policies and procedures for the plan.

79. Beginning on January 1, 2001, the assets of every pension plan shall be invested in accordance with the federal investment regulations, despite the provisions of the plan or an instrument governing the plan.

80. (2) Each investment must meet the requirements of the federal investment regulations no later than December 31, 2004 and if the investment does not meet the requirements by that date, the administrator shall dispose of the investment no later than January 1, 2005.

Prior PBA Investment Regulation, in effect prior to January 1, 2001, [R.R.O.1990, Reg.909]

67. (1) The administrator of a pension plan shall establish and adopt a written statement of investment policies and goals for the plan.

(2) In the establishment and application of the written statement of investment policies and goals, the selecting of investments shall be made with consideration given to the overall context of the investment portfolio without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation given the nature of the investment.

(3) The statement of investment policies and goals referred to in subsection (1) shall identify the type of pension plan, the nature of the liabilities of the pension plan and shall contain at least guidelines that set out,

- (a) the investment portfolio diversification including the aggregate and individual investment limits;
- (b) the asset mix policy and rate of return expectations;
- (c) the categories and sub-categories of investments and loans that may be made;
- (d) the policy to be followed where there is an actual or perceived conflict of interest on the part of the administrator, a member of a pension committee, board of trustees or any agency, board or commission acting as the administrator or any employee or agent of the administrator;
- (e) minimum disclosure requirements with respect to an actual or perceived conflict of interest including the timing of the disclosure;
- (f) the lending of cash or securities;
- (g) the retention or delegation of voting rights acquired through pension plan I investments; and
- (h) the basis for the valuation of investments that are not regularly traded.

(4) Subject to subsections (8) and (9), a person engaged in selecting an investment for or making a loan from a pension fund shall not select an investment or make a loan except in a category or sub-category of investment or loan that is specifically permitted and for which guidelines are established in the statement of investment policies and goals.

(9) Every investment that is made by a pension plan on or after the 1st day of January, 1988 shall be in conformance with this Regulation.

(10) The administrator shall ensure that on and after the 1st day of January, 1993, the entire pension fund is invested in accordance with this Regulation.

68. (1) The statement of investment policies and goals shall be reviewed by the administrator at least once each year and confirmed or amended.

(2) All amendments to the statement of investment policies and goals shall be filed within 90 days of the adoption of the amendment.

69. (1) The administrator and any agent of the administrator assuming the responsibility for investing and administering the pension fund shall adhere to the statement of investment policies and goals adopted for the pension plan.

(2) Subsection 22 (4) of the Act does not apply to an employee or agent of an administrator with respect to an investment or transaction to which the employee or agent is a party or has a direct or indirect beneficial interest in the investment or transaction where,

- (a) complete disclosure of the person's interest in the investment or transaction has been given to the administrator prior to entering into the investment transaction; and

(b) the investment or transaction complies with the requirements of the statement of investment policies and goals adopted for the pension plan.

Federal Investment Regulation

6. (1) Every plan shall provide that the moneys of the pension fund are to be
(a) invested in accordance with Schedule III;

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 III 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

(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.

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.

OMERS Act

Definitions

1. "Board" means the Ontario Municipal Employees Retirement Board;

"Fund" means the Ontario Municipal Employees Retirement Fund;

"System" means the Ontario Municipal Employees Retirement System;

System continued

3. The system is continued under the name Ontario Municipal Employees Retirement System in English and Régime de retraite des employés municipaux de l'Ontario in French.

Board continued

4. (1) The Ontario Municipal Employees Retirement Board is continued as a corporation under the name Ontario Municipal Employees Retirement Board in English and Commission du régime de retraite des employés municipaux de l'Ontario in French, and the management and administration of the System are vested in the Board.

Appointment of officers and employees

(3) The Board shall appoint or cause to be appointed such officers, employees, legally qualified medical practitioners and advisers as are necessary to carry out the responsibilities of the Board and shall appoint an auditor and an actuary and determine the remuneration of all such persons.

Committees

(4) The Board may establish committees and may delegate to the committees any of the Board's powers under this Act.

(5) The Board may determine the composition, duties, responsibilities, limitations and operating procedures of its committees and the term of office of committee members.

(6) The Board may appoint individuals other than members of the Board to its committees and determine their remuneration.

Rules and regulations

(7) The Board may make rules and regulations for the management and administration of the System and may assign to the persons mentioned in subsection (3) such of its duties as it decides are necessary or desirable.

Fund continued

- 5. (1) The Ontario Municipal Employees Retirement Fund is continued for the payment of pension benefits to members, their surviving spouses and children, in accordance with the regulations.
- (2) The Fund shall include the cash, investments and other assets and the liabilities and the reserves of the Board.
- (3) The contributions of the employers and of the members, the income from investments plus profits less losses on the sale of investments and any other credits of the Board shall be deposited in the Fund.
- (4) The benefits and the expenses of the Board shall be paid out of the Fund

Investments

8. The Board shall invest the Fund in accordance with the Pension Benefits Act.

OMERS Regulation [Regulation 890]

Definitions

1. "President" means the president appointed by the board;

Management and Administration

- 2. (1) The Board shall be composed of,
 - (a) nine members who are employees of any employer who has elected to participate in the System, four of whom shall be officers of such an employer;
 - (b) two persons who are members of the council of a participating municipality or of a participating local board of a municipality;
 - (c) one official of the Province of Ontario; and
 - (d) one other member who is in receipt of a pension under section 13 or 17 or is considered totally disabled under section 14 whether or not in receipt of a pension.

(2) The members of the Board shall be appointed by the Lieutenant Governor in Council and, subject to subsection (3), shall hold office for three years or such lesser period as the Lieutenant Governor in Council may determine and until their successors are appointed.

(3) If any member of the Board dies, becomes incapable of acting, resigns, is removed from office or ceases to hold the qualifications necessary for the member's appointment, he or she thereupon ceases to be a member of the Board.

(4) The Lieutenant Governor in Council shall appoint another eligible person to fill any vacancy on the Board as soon thereafter as is practicable and the person so appointed

shall hold office for the unexpired portion of the term of the member being replaced, or for such lesser period as the Lieutenant Governor in Council may determine.

- (5) A majority of the members of the Board holding office at the time any meeting is held constitutes a quorum for the purposes of such meeting.
- (6) The Board shall elect from its members a chair and a vice-chair.
- (7) The fiscal year of the Board is the calendar year.
- (8) The Board shall forward a copy of the annual report to every participating employer.
- (9) The Board shall provide to members or other persons, as the case may be, such information, in the prescribed form and within the prescribed time, as is required under the Pension Benefits Act.

Duties of the President

- 4. (1) The president,
 - (a) shall maintain the books of account, records and documents of the Board and whatever information is necessary for the financial, administrative and actuarial requirements of the Board;
 - (b) shall receive, deposit and pay all money of the Fund in such manner as the Board directs;
 - (c) shall receive, keep safely and deliver all securities of the Fund in such manner as the Board directs;
 - (d) may borrow from time to time, as approved by the Board, such sums as are necessary to meet the needs of the Board;
 - (e) shall determine whether or not a benefit is payable, the amount of a benefit that is payable, and to whom a benefit is payable under this Regulation;
 - (f) shall determine, in the case of a disagreement, the date on which a benefit becomes or should have become payable under this Regulation;
 - (g) shall prepare an annual report to the Board on the affairs of the System;
 - (h) may, for the purposes of this Regulation, determine the individual who is the surviving spouse of a member; and
 - (i) shall prepare and distribute the information necessary to meet the Board's obligations under subsection 2 (9).
- (2) Any person aggrieved by a determination made by the president or by the failure of the president to make a determination under clause (1) (e) or (f) or under any other provision of this Regulation relating to an approval, consideration or direction to be given or other action to be taken by the president may appeal to the Board from such determination or failure to make a determination.