Confidential

MB20 Submission

New Schedule of Benefits under OPSEU Pension Plan
for Expansion to Not-For-Profit and Broader Public Sectors

TREASURY BOARD SECRETARIAT

Centre for Public Sector Labour Relations and Compensation Division

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I. PURPOSE OF THE REQUEST

OPTrust, as administrator of the OPSEU Pension Plan (Plan), is proposing the expansion of plan membership under a separate defined benefit schedule called OPTrust Select (Select) to employees in the Broader Public Sector (BPS) and not-for-profit sector, including registered charities. See Appendix A for a description of Select in comparison to the main Plan.

Commented [CV1]: Please define who these entities are –BPS is used by us to describe hospitals, colleges and school boards, but I believe the definition used in this context is broader.

The Plan is jointly sponsored by OPSEU and the Government of Ontario (as represented by Treasury Board Secretariat (TBS)). Select requires approval of both Sponsors.

In this regard and subject to certain terms and directions, TBS recommends that Treasury Board / Management Board of Cabinet (TB/MBC) provide approval to the President of the Treasury Board to proceed to implement Select on behalf of the Crown as joint sponsor of the Plan.

II. KEY CONSIDERATIONS

Scope of Application:

Upon approval,

1. Direct the President of the Treasury Board to implement Select on behalf of the Crown as joint sponsor of the Plan in accordance with the terms summarized in the Letter of Agreement attached hereto as Appendix B, subject to obtaining prior written confirmation from OPSEU, in its role as the other co-sponsor of the Plan, of its approval to establish Select;

2. In particular, direct the President of the Treasury Board, to amend the Plan documentation as necessary in order to establish Select as a schedule to the Plan, subject to the prior written agreement of OPSEU to such documentation. More particularly, the following documentation will be created or amended, as applicable:
   i. The Letter of Agreement,
   ii. The Plan text,
   iii. The Sponsorship Agreement,
   iv. A new Participation Agreement to be executed by employers who wish to join Select and a Letter of Acknowledgment to be executed by non-OPSEU bargaining agents in order to, among other things, waive their collective bargaining rights in respect of the terms and conditions under Select.

3. Direct the President of the Treasury Board, in due course following implementation of Select, to recommend an amendment to the *OPSEU Pension Act, 1994* to expand the definition of "employer" for consistency with the definition in the *Pension Benefits Act* to make it more clear that

regulatory measures to enforce employer payments would apply to new Select employers.

Commented [CV2]: What does this mean?

Technical Working Committee:
OPTrust, and the joint sponsors of the Plan; OPSEU and TBS, have each provided three representatives to create a Technical Working Committee to address potential policy, legal, actuarial, and governance issues and risks and to finalize the documentation for Select.

TBS engaged external counsel for legal advice on Plan governance, the potential implication to the Jointly Sponsored Pension Plan (JSPP) designation of the Plan, and feedback on proposed amendments to Plan documents to implement Select.

Commented [CV3]: Suggest that for each of the legal and actuarial advice obtained, the description be expanded – from who, form of advice (opinion or some other level) and the summarized advice provided be included.

Re: Aon – why isn't there an actual report from Aon on their analysis (what I saw was a two page document on white paper).

TBS engaged an external actuary to provide advice on the actuarial assumptions applied by OPTrust, funding expectations on the sustainability for the Plan and risk of cross subsidization.

TBS also consulted with the Ministry of Finance Pension Policy team and legal counsel to obtain feedback regarding: policy direction of the JSPP model, compliance with the requirements for JSPPs under the PBA and consequences of losing JSPP status.

The Technical Working Committee has attempted to address and mitigate the potential policy, legal and actuarial risks associated with the establishment of Select. While some mitigation strategies and protections were achieved, a number of risks remain as part of this initiative as set out in Section VI of this Submission.

Matters for Consideration

<u>JSPP Status</u>
As a JSPP, the Plan is defined under the Pension Benefits Act as:

- A pension plan in which decision making and contributions are jointly shared by both plan members and their employer(s). This includes all decisions about the terms and conditions of the plan, any amendments to the plan, and the appointment of the plan administrator.
- Gains and losses are shared equally between the members and the employer sponsors.
- JSPPs are not subject to Solvency Funding requirements
- JSPPs are not protected by the Pension Benefits Guarantee Fund (PBGF)

OPTrust's proposal for a new schedule of benefits within the Plan is unique because, under the proposal, the Select employers and employees have no direct role in governance. Some governance changes will be made to mitigate this risk, and to

Commented [CV4]: Please include what these changes are or reference to where these are described.

enhance arguments that the Plan is consistent with some important aspects of the legal and policy framework applicable to JSPPs under the PBA. However, a loss of JSPP status could have a number of negative implications including the potential loss of the (i) current solvency funding exemption, (ii) the requirement to make PBGF assessments, and (iii) anticipated exemption from enhanced going concern funding under Ontario's new funding regime. There could also be negative fiscal implications with changes in governance resulting in the requirement to record a full valuation allowance against any net pension asset. A loss of JSPP status, combined with the narrow definition of employer under the *OPSEU Pension Act, 1994* could bolster potential employer arguments that they are not subject to the PBA requirements for making contributions and liquidating unfunded liabilities in the Plan – leaving the Sponsors responsible for pursuing such contributions by suing under contract. There is also the reputational risk of the government appearing to disregard the laws it has put in place to govern and protect other JSPP plan members in Ontario.

Target Market of Select Employers

The initial target market for Select has been identified as employees and management in the BPS and not-for-profit sector, including registered charities, that have an inferior workplace pension plan or no plan at all. This would include organizations with non-represented workers, and those with workers represented by non-OPSEU unions. These organizations typically employ lower income earners.

Preliminary analysis of Select's benefit model by Ministry of Finance indicated that a more appropriate savings vehicle for individuals earning at or around minimum wage may be a Tax Free Savings Account (TFSA) so that OAS and GIS benefits payable after age 65 will not be eroded. The expansion of the Canada Pension Plan will also provide benefit enhancements to workers for some workers earning more than minimum wage. There could be possible reputational risk to the Sponsors for implementing a schedule that is not in the best interest of certain lower income earners.

The Ontario Nonprofit Network (ONN) has recently released the results of a year-long task force mandated to develop recommendations on the design of a sector-wide pension plan for Ontario's not-for-profit and charities. The proposal by ONN for a Target-Benefit Multi-Employer Pension Plan directly competes with Select's target market, offers more flexibility than Select will be able to provide and employers and employees with a direct role in governance of the plan.

Critical Mass Required

OPTrust has determined that a critical mass of 20,000 Select members is needed to assist with the long term sustainability in the Plan.

Commented [CV5]: This concept needs to be further explained – e.g. how does adding lower income members from a more precarious work force assist in the long term sustainability of the plan.

Plan Governance

It has been agreed by the parties that Select members and employers will not have governance representation until such time as Select membership surpasses 20% of the total active membership of the Plan or liabilities of Select exceed 5% of the total liabilities of the Plan. Select members and employers, who are under a different (i.e. lower) benefit schedule than the main Plan will have no decision-making rights regarding Select until this threshold has been attained. As noted above, this is likely not consistent with the policy and legal framework for JSPPs under the *Pension Benefits Act.* If a complaint is made, there is a risk of FSCO and/or a court finding that the Plan is not in compliance with the JSPP requirements set out in the PBA.

Commented [CV6]: Is there a legal opinion on this risk? What is the assessment of this level of risk – e.g. high, medium, low?

Cross Subsidy

As Select is a schedule within the Plan, the design of Select needs to ensure that sufficient policy measures are in place to mitigate risk of one schedule subsidizing the other. Initial actuarial analysis shows that the greatest risk is most likely with Select members subsidizing the main Plan beneficiaries. This may be cause for concern as Select members and employers may be viewed as being brought in to subsidize the main Plan risk, with no decision-making rights until such time as Select represents 20% of the active membership of the Plan or its liabilities exceed 5% of the total Plan liabilities. There are no set rules or provisions in the revised Plan documents to prevent this occurrence and reliance would be placed on the OPTrust to make decisions under the Funding Policy to correct any persistent cross-subsidy.

Commented [CV7]: The key assumptions in the actuarial analysis should be highlighted and their risk articulated?

Has any sensitivity analysis been completed to understand the impact of a different demographic profile? If not, why not?

Employer Vetting

The vetting of potential employers is essential to mitigate the risk of potential employers defaulting on their contributions, and thereby placing the Plan and Sponsors at risk of additional liability. The vetting will be under the control of the OPTrust based on a net benefits test template, which will be approved by the Sponsors.

Commented [CV8]: Can you explain this more – what are the criteria?

III. RATIONALE

OPTrust's rationale for expansion is that it will: spread the Plan's investment volatility risk across increased numbers of active members in an effort to support Plan sustainability; and provide greater pension coverage for Ontario workers who do not have access to a defined benefit pension plan.

Commented [CV9]: Can you explain why increasing the active members supports Plan sustainability.

Rationale for the Province of Ontario is to:

- Build retirement security by providing a retirement option to lower income target market.
- Leverage the existing pension administration infrastructure to administer both schedule of benefits.

- Support the government's commitment to pooled asset management.

Commented [CV10]: How is pooled asset management related to this initiative?

Rationale for OPSEU is to:
- Expand OPSEU unionization in other sectors; and
- Build retirement security by providing a retirement option to lower income target market.

IV. FINANCIAL ANALYSIS

The Plan is currently in a net pension asset position for accounting purposes, meaning that the valuation of plan assets exceeds the accrued benefit obligation under Public Sector Accounting Standards (PSAS). Based on the government's current accounting policy, as a JSPP, the government is able to recognize its share of net pension assets (and the related in-year fiscal impacts) provided that no valuation allowance is required. Should the expansion result in the Plan no longer qualifying as a JSPP due to any change in plan governance that removes the government's shared control over the plan, the JSPP accounting rules would no longer apply and the Province would no longer be eligible to record these assets, and would be required to take a valuation allowance. The projected net pension asset position of the Plan at March 31, 2018 is $1billion. An additional annual valuation allowance would also be reported against any future net increase in the net plan asset position..

The Participation Agreement shall require the employer to acknowledge that if the employer receives transfer payments from the Government of Ontario, there will be no increased public financial support (and no decrease in any existing level of public services) related to its participation in Select.

V. PERFORMANCE MEASURES

The proposed outcome of Select is to assist the Plan with long term sustainability. Its success will be measured by Select's ability to attract sufficient members to positively influence to the Plan's long term needs.

VI. RISKS

Commented [CV11]: Additional risks:

■The actuarial analysis has been completed using the assumption that the demographics of the Select members mirror those of the existing members. That is not an appropriate assumption, and there has been no attempt to model using more appropriate assumptions or providing any type of sensitivity analysis.
■Is this binding a future government two months before an election? Can this decision be undone by the Province. Assuming not without the agreement of OPSEUPP.

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
Select employers will not be given representation under the current joint-sponsor governance structure which may jeopardize the Plan's JSPP status under the PBA.	High	Medium	The Participation Agreement executed when a new employer agrees to join Select states that the Government and OPSEU will respectively represent the employers and employees. An Advisory Committee (AC) will be established to provide feedback to the Board of OPTrust in order to meet some of the representation requirements of a JSPP in the PBA once there are 1000 members in Select. The AC will include representation from both Select employers and Select members. • AC would have disclosure rights similar to Sponsors, subject to possible redaction of information when warranted by privacy or financial concerns. • OPTrust would provide to the Sponsors a Report summarizing issues raised by the AC along with a Report from OPTrust detailing how issues would be addressed, if necessary. • AC would be established at a threshold of 1,000 active Select members. Sponsors will commit to review the governance structure of the Plan, and in particular the appointment of Trustees on the Board, to add additional representation rights for Select members and employers upon the earlier of either (i) the liabilities for benefits of Select members (as determined by OPTrust) exceed 5% of Plan liabilities as a whole, or (ii) the number of active Select members is greater than

Commented [CV12]: Disclosure to who?

Commented [CV13]: What power do the sponsors have re: approving or vetoing addressing the issues raised by the AC?

Commented [CV14]: On what basis? Funding, Accounting, etc? IFRS, PSAS, etc.

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
			20% of the total number of active members in the Plan as determined by OPTrust. OPTrust will not permit the number of Select members in the Plan to increase beyond 20% of total active members in the Plan or 5% of Plan liabilities unless governance changes are agreed to by the Province and OPSEU.
Select employer may default on submitting employee / employer contributions, resulting in the main Plan members and/or plan sponsors being responsible for the liability	Potential to be High	Low	The Sponsors have agreed in principle that all Select employers will pay an additional 0.2% reserve contribution during the first two years of joining Select. The pooled reserve account will be held and may be used to fund member benefits that would otherwise be impacted by the missing contributions, and thereby protecting the Plan from such liability. Sufficiency of the reserve will be addressed in the Funding Policy, approved by the Board and reviewed with the sponsors annually. The reserve may not be sufficient to cover losses if: • a number of participating employers default • an employer defaults, and whose membership increased significantly (but less than 100% grow requiring additional reserve funding)

Commented [CV15]: What is this based on – does Aon believe it is sufficient?

Has this additional contribution been taken into consideration in the cross subsidization analysis?

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
Select members may be subsidizing the main Plan members as both schedules will be valued together	Medium	Low-Medium	Sponsors will be depending on the OPTrust to administer the plan in accordance the funding policy to mitigate the risk of cross-subsidization on an ongoing basis.
Employer may not be suitable or meet the criteria for Select (i.e. within the definition of target employer, or financially able to meet the contribution requirements)	High	Low	The vetting process for potential employers will include a net-benefit test to mitigate risk of ineligible employers being admitted to Select. The net-benefit test template will be reviewed by both Sponsors but the Sponsors will not have a veto right based on public interest criteria such as: reputational risk, labour disruption, labour mobility or potential compromise to the organization's ability to deliver on its mandate. OPTrust will report regularly to the Sponsors on marketing efforts, sectors that are being targeted, applications that have been accepted or declined, and potential employers currently in discussion.
Create upward pressure from some BPS employers to expand their funding envelope	Medium	Medium	Participation Agreement to be signed by Select employers states that the employer will continue to provide the same level of service without additional funding from the Province.
Uptake of OPTrust Select exceeds expectations (i.e. membership numbers challenging those of the main plan), and thereby jeopardizes the governance	High	Unknown	OPTrust will report on a regular basis to the Sponsors on the current uptake and potential employers. Sponsors will be required to address any changes to representation rights should Select membership challenge main plan membership numbers.

Commented [CV16]: How does the funding policy mitigate the risk of cross subsidization?

Commented [CV17]: Why has there not been a market sounding so that level of interest is already known? Should TB approval be two steps with a report in after the market sounding is complete?

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
structure (i.e. greatly above 20% of total membership)			There may be a perception that OPSEU has received preferential treatment. This is mitigated by other plans also expanding, and that there may be other unions participating in that expansion. The risk of Select fracturing sectors and affecting labour mobility would pertain mostly to the NFP sector and the proposed ONN MEPP.

VII. TIMEFRAME

OPTrust has communicated that have interested employers waiting to join Select and are concerned that these employers may look to alternative retirement vehicles if Select is not implemented in the near future.

Commented [CV18]: How many and who?

The proposed implementation would proceed following approval of the OPSEU Sponsor and once all required documentation has been completed and signed by both sponsors.

VIII. RECOMMENDATION

Recommend Treasury Board / Management Board of Cabinet provide approval to the President of the Treasury Board, on behalf of the Crown as joint sponsor of the Plan, to proceed to implement a new schedule to the OPSEU Pension Plan entitled OPTrust Select that would provide a separate Plan benefit to employees in the BPS and Not-For-Profit sector, including registered charities upon securing required documentation and subject to obtaining prior written confirmation from OPSEU, in its role as the other co-sponsor of the Plan, of its approval to establish Select.

IX. COMMUNICATIONS PLAN

If Select is approved for implementation with all required documentation secured:

- OPTrust would be able to promote Select to the defined potential employer market.
- Provide potential employers with the necessary application and documentation.

Appendix A – OPSEU Pension Plan Schedule of Benefits

	Main Plan	OPTrust Select
Contribution Rates (Employer Matched)	9.4% to YMPE + 11% above YMPE	3% *first two years: Employer pays 3.2%, then afterwards pays 3%
Accrual Type	Based on best 60 consecutive month average earnings	Based on entire career earnings
Accrual Rate	1.345% to YMPE + 2% above	0.6%
Unreduced Early Retirement Benefits	• 90 Factor (age + service = 90) • 60/20 (minimum age 60 with 20 years of service)	None
Bridge Benefits	0.655% of 5-yr average YMPE per year of credit	None
Subsidized Joint and Survivor Benefits	Survivor Benefits funded at 60%	None – Life Only pension
Indexation	100% Indexing	100% - Conditional Indexing. Only paid if plan is sufficiently funded

Appendix B – Letter of Agreement