Centre for Public Sector Labour Relations & Compensation
Total Compensation Strategies Branch

OPSEU Pension Plan Expansion

Deputy Minister's Briefing: March 13, 2018

– CONFIDENTIAL –

OPSEU Pension Plan : Plan Select

- OPTrust, as administrator of the OPSEU Pension Plan (Plan), is proposing the expansion of plan membership under a reduced defined benefit schedule called Plan Select (Select) (see Appendix A).
- OPTrust's rationale for expansion is to:
  i. spread the Plan's investment volatility risk across increased numbers of active members in an effort to support Plan sustainability; and
  ii. provide greater pension coverage for Ontario workers who do not have access to a defined benefit pension plan
- OPTrust has determined a critical mass of 20,000 Select members would be needed for Select to positively impact OPSEU Pension Plan's long term sustainability. OPTrust also advises that even signing up a minimum of a few hundred employees would cover the necessary increase in administration costs as existing technology can be leveraged.
- Select needs to be approved by both sponsors of the Plan: OPSEU and the Government of Ontario (as represented by Treasury Board Secretariat (TBS)).

Technical Working Committee

- OPTrust, OPSEU and TBS have each provided three representatives to create a Technical Working Committee to address potential policy, legal, actuarial, risk governance issues and to finalize documentation for Select.

- Thus far (as of March 12, 2018), the Committee has met eight times starting on February 1, 2018 with three more meetings scheduled through to March 23, 2018.

Technical Working Committee- Contributions to date:

TBS

<u>OPTrust:</u> OPTrust

- Sustainability analysis with information re risk pooling and cross subsidy
- Policy tracking document for key issues
- Engaged external counsel (Osler) for legal opinion of:
  - Plan text amendments required for Select
  - PBA implications of Jointly Sponsored Pension Plan (JSPP) designation – as requested by TBS
  - Intra-plan transfer issues – as requested by TBS
- Review in progress of other governing documentation that will be, or may be, required to be amended for Select:
    - OPSEU Pension Plan Act
    - Sponsorship Agreement
    - Trust Agreement
    - Participation Agreement

Technical Working Committee- Contributions to date (cont):

OPSEU:

- Provided list of BPS employers with OPSEU representation
- Resolution of policy issues at the table – non contentious
- Engaged legal counsel for opinion of:
  - Osler's legal opinion
  - to draft definition of proposed target market

Technical Working Committee- Contributions to date (cont):

TBS:

- Internal legal counsel is a participant on the committee
- Engaged external counsel (BMPK) for legal opinion of:
  - Osler's opinion regarding plan governance and potential implications to the JSPP designation
  - Need for statutory amendment to change definition of "employer" in *OPSEU Pension Act, 1994.*
  - Independent opinion of the JSPP issue from the perspective of both:
    - Plan Sponsor
    - Government of Ontario as administrator of PBA
- External/Internal counsel also provided feedback and changes to plan text amendments
- Resolution of policy issues at the table – pending approval– non contentious (see slide 8-9)

Technical Working Committee- Contributions to date (cont):

<u>TBS:</u> (cont)

- Engaged external actuary (Aon) to provide opinion on the assumptions applied, funding expectations on the sustainability for the OPSEU Plan, and risk of cross subsidization

- Engaged Ministry of Finance (MOF) Pension Policy team and legal counsel to provide an opinion on:
  - MOF Policy direction of the JSPP model
  - Compliance of JSPP status under the PBA
  - Risk of losing status as Select members will not be represented under governance of the OPSEU Pension Plan
  - Consequence of losing JSPP status
  - Target market – appropriateness of proposed plan design

Recommended Provisions for TBS Approval

Provision	Recommendation
Transfer of membership to/from Main Plan and Select	Given the differences in benefits offered, members should have the option to transfer their pension benefit from Select to the Main Plan, but transfers from the Main Plan to Select will not be permitted as this is not in the best interest of the member.
Post Retirement Insured Benefits (PRB) for Select	PRB will not be offered to Select members.
Select employer with a DB plan able to transfer assets	Transfers are prescribed under the PBA and would have to be considered on an individual basis.
Select employer with a RRSP, DC or group TFSA able to transfer assets	Funds can be transferred from RRSP, or DC Plan on wind up. Funds cannot be transferred directly from a TFSA
Amendment to Main Plan to clarify how multiple periods of membership should be treated for deferred members who rejoin the plan	Amendment documents OPTrust's current operational process.

Provisions Under Discussion

Provision	Discussion	Status
Select to be open to: i. Employers regardless of their union affiliation, and ii. All management and non-bargaining staff of potential employers.	Concern Select may fracture the sectors and any impact on labour mobility. Concern regarding costs to government from increased unionization in BPS. Concern regarding shift in paradigm for unionized employees in one plan (OPSEU Pension Plan) and non-unionized in another (Public Service Pension Plan).	TBS requested feedback from Ministry of Finance If proceeding, risk mitigation would require: i. a Memorandum of Understanding between employer and union to mitigate risk of other unions seeking to collectively bargain pension terms; and ii. a representation in the Participation Agreement that non-unionized employees have been advised that the terms of the plan are "as is" and there is limited employee representation in governance.

Provisions Under Discussion (cont)

Provision	Discussion	Status
Select be available to BPS and outside BPS. OPTrust has a stated objective of offering Select to Ontario Nonprofit Network (approximately 1 million employees, of which 600k are full time)	OPSEU provided their defined target market on March 5.	MOF identified concerns Government's regarding proposed scope of target market and OPSEU's request to be more expansive. Assessment of risks needed to determine if Select becomes: • Too big – effect on main plan and governance • Too small - cost and effect on main plan TBS Policy and Legal to counter-propose a definition for the target market in BPS, plus Ontario Nonprofit Network
Participating employers and/or unions other than OPSEU or the Government have governance over the Plan.	MOF's preliminary legal option is that the proposal does not comply with the JSPP legal requirements or policy construct under the PBA. TBS internal legal opinion is that to remove risk of PBA non compliance an advisory committee is required with stronger authority than OPSEU would be willing to accept. TBS external legal opinion has proposed different advisory committee options to mitigate risk of PBA non compliance. OPTrust's external legal opinion concludes there is a low risk in jeopardizing JSPP status OPSEU has not shared their legal advice but seem to accept the OPT position.	MOF to provide final opinion TBS external legal counsel to provide final opinion and proposal for Advisory Committee for Employer and Employee Sponsors. Direction needed to proceed to FSCO.

Provisions Under Discussion (cont)

Provision	Discussion	Status
Select will be a schedule of benefits within the Main Plan. Concerns of possible cross subsidization.	TBS is seeking actuarial opinion on OPTrust's analysis regarding assumptions used, discount rate applied, funding and cross subsidization.	External actuary (Aon) attended March 1, 2018 working group meeting. Aon to provide opinion. Opinion is likely to conclude that potential for cross subsidization exists (especially from Select to Main Plan) and reliance would be placed on OPTrust to make decisions fairly between the schedules. This could exacerbate governance tensions.
Definition of "employer" in *OPSEU Pension Act, 1994* is narrower than the definition in PBA. Need to ensure protection to enforce new participating employer contributions and address unfunded liabilities.	OPTrust's external legal opinion is the risk is low to the Plan, and legislative amendment can follow implementation. Pending amendment to OPSEU Pension Act to redefine "Employer" to align with PBA – risk mitigation strategies to include an amendment to the Sponsorship Agreement to permit new participating employers and include reference to appended participation agreement which includes the requirement for 4 months of advance contributions each year and other reps and warranties.	OPTrust raised the concern that Select employers may have small budgets and therefore unable to provide a letter of credit, and also the cost of a letter of credit is high. As an alternative, OPTrust has suggested that the employer may pay contributions in advance. Having the Act amended would provide the Superintendent the appropriate regulatory tool and powers to commence prosecutions and issue administrative penalties.

Provisions Under Discussion (cont)

Provision	Discussion	Status
Vetting process for potential Select employers	OPTrust would like a one-step process with OPTrust as sole decision maker. TBS view is that sponsor's role is needed in vetting process due to ultimate liability. If there is a role for sponsor's, OPSEU wants to participate.	Proposed vetting process currently under development with TBS.
Participation of low-earners in Select	MOF has raised the concern that this benefit may not be in the best interest for certain low earners (i.e. full time employees at minimum wage may be better off with a TFSA outside of Select). Consideration of potential employers to have designation of 'classes' of employees, and identify which classes would be members of Select.	

Next Steps - TBS

- TBS to confirm stance on:
  - Target market (with opinion from MOF)
  - JSPP status under the PBA (with opinion from MOF)
  - Plan design for sustainability (with opinion from Aon)
  - Cross subsidization (with opinion from Aon)
- TBS to complete proposed definition of "employer" for target market and draft vetting process for potential employers -for review and agreement from Technical Working Committee
- TBS to seek comments from Financial Services Commission of Ontario regarding Select

Next Steps – Technical Working Committee

- Technical Working Committee to finalize:
  - Agreement of target market
  - Plan text amendment
  - Sponsorship Agreement amendment
  - Vetting process for potential employers
  - Participation Agreement for Select employers
  - Memorandum of Understanding for bargaining agents (addendum to Participation Agreement)
  - Advisory Committee – framework, roles and responsibilities
  - Funding Policy

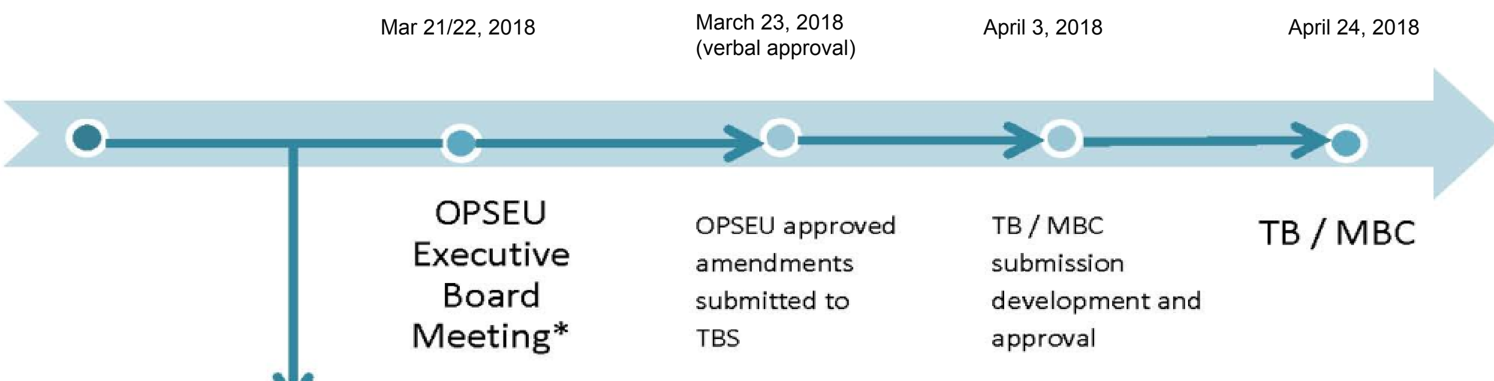
Minister Approval Required for Submission to TB/MBC:

Document	Status
Plan text amendment – new schedule for Select	TBS provided edits to original draft Osler's re-drafting Further review and agreement by all parties required
Sponsorship Agreement - amendment	Osler's drafting amendments Review and agreement by all parties required – tied to discussion regarding governance
Trust Agreement – governance amendment	TBS proposed amendments shared with OPSEU Sponsors to confirm final version of amendments
TB/MBC Submission and Minute	TBS to draft and receive necessary approvals

Minister Approval Required for Submission to TB/MBC (cont):

Document	Purpose
Advisory Committee	• Key terms and principles
Trust Agreement	• Required amendments as determined that are specific to Select provisions
Participation Agreement	• Required amendments as determined that are specific to Select
Memorandum of Understanding – as addendum to Participation Agreement	• Agreement with other bargaining agents relinquishing the union(s) right to bargain pensions
Advisory Committee (following implementation)	• Code of conduct • Duties and powers • Roles and responsibilities • Appointment process • Ability to recommend changes to Board
OPSEU Pension Plan Act, 1994 (following implementation)	• Amend the definition of ‘employer’ – can occur after implementation

Timeline for Trust Agreement & Plan Text Amendments to Enable Plan Expansion



Steps Required to amend Trust Agreement & Plan Text:

- discussion and agreement with OPTrust & OPSEU on required amendments
- Amendment drafting between the parties and their legal advisors
- Agreement from all parties on final amendments
- OPSEU approval through OPSEU Executive Board

*March 21-22, 2018 - OPSEU Executive Board Meeting Dates
March 23, 2018 – Technical Working Committee Conference Call – share OPSEU Exec Board decision
April 3, 2018 – TB/MBC Submission signed by Minister
April 24, 2018 – TB/MBC Meeting Date

Appendix

Appendix: Attributes of the Regular OPSEU Pension Plan, and Plan Select

	OPSEU Pension Plan	Plan Select
Contribution Rates (Employer Matched)	9.4% to YMPE + 11% above YMPE	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%
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
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