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. Employers may include charities registered under the *Income Tax Act (Canada),* not-for-profit corporations incorporated under Part III of the *Corporations Act (Ontario),* and broader public sector organizations such as hospitals, school boards, universities, colleges and agencies and organizations that receive a level of public funding sufficient to bring them within the scope of the *Public Sector Salary Disclosure Act.*

See Appendix A for a description of Select in comparison to the main Plan.

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

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.

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 (PBA) as:

- A pension plan in which contributions to the pension plan are jointly shared by both plan members and their employer(s) – collectively known as the plan sponsors. Both employers and plan members are required to fund any plan deficits. In light of this, employers and plan members are jointly responsible for making 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 between the members and the employer sponsors.
- Certain specifically named JSPPs are not subject to Solvency Funding requirements
- Pension benefits provided by JSPPs are not guaranteed by the Pension Benefits Guarantee Fund (PBGF)

OPTrust's proposal for a new schedule of benefits within the Plan is unique in a number of respects, including that under the proposal, the Select employers and employees will be subject to a separate schedule of contribution rates and benefits, including conditional benefits such as indexation. However, they will have no direct role in the sponsorship of the pension plan or in decision-making regarding the plan. As a result, there is a risk that the Superintendent of Financial Services (the pension regulator), the Financial Services Tribunal or a reviewing court may find that Select, if implemented, does not comply with the PBA. Some changes in the governance structure will be made to address this issue, while permitting Select to solicit members to determine viability. The changes would enhance arguments that the Plan is consistent with some important aspects of the legal and policy framework applicable to JSPPs under the PBA.

The loss of JSPP status could have a number of negative implications for the sponsors, including:

(i) the potential loss of the ~~(i)~~ current solvency funding exemption,
(ii) the requirement to make PBGF assessments, and
(iii) the potential loss of an anticipated exemption from enhanced going concern funding under Ontario's new funding regime.

There would also be negative fiscal implications as set out below in the section on Financial Analysis. A loss of JSPP status, combined with the narrow definition of employer under the *OPSEU Pension Act, 1994* could bolster potential Select employer arguments that they are not subject to the PBA requirements for making contributions and liquidating unfunded liabilities in the Plan. There is also the reputational risk of the government appearing to disregard the laws it has put in place that confer rights to members of JSPPs who, in exchange for being jointly responsible with the employer for funding the JSPP, have a right under the PBA to participate in the sponsorship and selection of the administration of the pension plan. However, as noted above, the governance model agreed to by the parties attempts to capture some of the policy intent of the JSPP model once the plan reaches a certain size.

<u>Target Market of Select Employers</u>

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 advantageous savings vehicle for individuals earning at or around minimum wage may be a Tax Free Savings Account (TFSA) so that Old Age Security and Government Income Supplement benefits payable after age 65 will not be eroded. This is similar to the pilot program for personal support workers announced in the 2018 Budget. However, a plan such as Select would be of benefit to moderate wage earners. For these workers, Select would provide a retirement plan option that could benefit unserved sectors. It would also be consistent with earlier agreements reached with OPSEU to support plan expansion as part of the 2012 benefit and contribution freeze.

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 will offer employers and employees a direct role in governance of the plan.

<u>Critical Mass Required</u>
OPTrust has determined that a critical mass of 20,000 Select members is needed to assist with the long term sustainability in the Plan.

<u>Plan Governance</u>
It has been agreed by the parties that the issue of representation for Select members and employers will not be addressed 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. Once this threshold is met, some representation will be negotiated between the parties before Select can continue to grow, although this representation is likely less than required under the policy and legal framework for JSPPs under the *Pension Benefits Act.* There is a risk of the Superintendent or the Financial Services Tribunal (in the event that a request for a hearing is made) and/or a reviewing court finding that the Plan is not in compliance with the JSPP requirements set out in the PBA. If this were to occur, consideration could be given to reviewing options to address additional governance changes and/or potential legislative changes to recognize the changing nature and models of JSPPs. This could address the issue from a prospective basis,

but may not be able to address it on a retroactive basis and may not protect the government from criticism by stakeholders and the public for failing to comply with its own laws.

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 representation until such time as Select represents 20% of the active membership of the Plan or its liabilities exceed 5% of the total Plan liabilities. Select employers and members will not at any point have representation as sponsors until if and when such threshold is reached.

There are no set rules or provisions in the revised Plan documents to prevent the occurrence of cross-subsidy and reliance would be placed on the OPTrust to make decisions under the Funding Policy to correct any persistent cross-subsidy.

Employer Vetting
The vetting of potential employers is essential to promote sustainability of the plan, 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. It should be noted that the net benefit test, which is based upon analysis the potential loss to each new member, is unique to public sector pension plans. It should also be noted that the reserve fund contemplated for new employer entrants (to mitigate risk of near term insolvency) is also unique to public sector pension plans.

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.

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 benefit schedules.

- Grow the membership base to spread the risk of losses across a larger membership base and reduce the need for future contribution increases, as per section V below.
- Uphold and support the government's previous commitment to OPSEU plan expansion

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. 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 sponsorship and 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 $1 billion. 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

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. While this may mitigate some risk, since this agreement would be a condition of participation in Select it may not be sufficient to constitute consent, in particular in respect of employees, and even more particularly, non- bargaining unit 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 1,000 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 in accordance with the most recent actuarial valuation) exceed 5% of Plan liabilities as a whole based on the most current valuation, or (ii) the number of active Select members is greater than 20% of the total number of active members in the Plan as determined by OPTrust. OPTrust will not permit the number of

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
			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. However, in order to comply with the Income Tax Act (Canada), the Plan's actuary must certify that the contribution is required to fund the intended benefit. Since the reserve is therefore not limited to use for default but is available to secure the payment of any benefit in OPTrust Select (e.g. to pay for indexing if the plan couldn't otherwise afford it) the security offered is reduced, at least theoretically. 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)
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 with the funding policy to mitigate the risk of cross-subsidization on an ongoing basis.

Risk	Impact (Low, Medium, or High)	Likelihood (Low, Medium, or High)	Mitigation Strategy
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 structure (i.e. greatly above 20% of total membership)	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 exceed 20%. 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 it has interested employers wanting to join Select and are concerned that these employers may look to alternative retirement vehicles if Select is not implemented in the near future.

The pending proposal by the Ontario Nonprofit Network to implement a MEPP a Target-Benefit Multi-Employer Pension Plan, which could be competitive with OPTrust Select, creates additional timing pressure.

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