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Dear Bob

Consultation on The Local Government Pension Scheme (Management and Investment of Funds) (Consolidation) Regulations 2009

Thank you for your letter of 6 February 2009, in which you sought comments on the above draft regulations.

As you know, CIPFA, via its Pensions Panel, has interest in the investment regulations and we have recently submitted to you our report on the investment regulations (*Local Government Pension Scheme Investment Regulations: Options for Change*) which arose from a survey of the views of a wide range of LGPS practitioners.

Whilst we are disappointed to see that not all of our recommendations have been considered at this time, we are conscious of the current sensitivities surrounding some of the issues raised in our report. We hope that in time CLG will be in a position to respond positively to the remaining recommendations, particularly in moving to remove some of the uncertainties regarding the permissibility of certain investment types.

We are however pleased to note that several of the recommendations have been incorporated into the draft regulations currently under consideration and as ever we are pleased to offer comments on the other aspects of the draft regulations on which opinions are sought.

Separate bank account for the pension fund - regulation 6

As noted in our report, we feel that, although not specifically required in the LGPS by existing pensions legislation, separation of bank accounts would be constituent with private sector requirements. It would also be within the spirit of legislation concerning the limitations on pension fund lending to and investing in sponsoring bodies (i.e. the administering authority and other contributing employers referred to at Recommendation 2) and Article 8 of the EU Pensions Directive which requires legal separation of a pension fund and its sponsoring institutions. Such a move would also address concerns raised by some auditors that the lack of separation of bank accounts raises issues of transparency

of pension fund operations. We are therefore happy to support the inclusion of this new regulation.

With regard to the implementation timescales, we are aware that a number of practitioners have concerns about the time necessary to put in place the required accounts and the associated systems and processes. Whilst we recognise that those funds which do not yet operate separate accounts will face some challenges in implementation, we would support the earliest possible implementation of this requirement.

On a related matter concerning separation of administering authority and local authority activity the Panel would also be supportive of a broad message to ensure that funds properly identify and allocate scheme management costs. This might possibly be supported by amending regulation 5(5) to refer to pension "scheme" rather than pension "fund".

Temporary borrowing power- regulation 15

We fully support the inclusion of this regulation. As noted in our report, the flexibility of permitted short-term borrowing will enable funds to better manage short-term cash-flows which can on occasion prove problematic when managing shortfalls between contributions and pension payments; meeting investment commitments where the timings are uncertain; and during transitional periods. The power to borrow will enable funds to meet these commitments without having to liquidate investments (potentially at less than optimal prices) to meet unpredictable cash calls or to hold excessive amounts of cash (achieving less than optimal returns) to cover potential timing gaps.

Statement of Investment Principles (SIP) : stock lending - regulation 11(2)(h)

In the interests of greater transparency, we support the extension of the SIP to include a requirement for funds to make a statement on their securities lending policy and do not believe that this will prove onerous to comply with.

Stocklending – References to COLL - regulation 3(8) & 3(9)

We note the clarifications to Regulation 3(8) and 3(30) regarding the references to the FSA handbook and would agree that it is not necessary to make further reference to FSA Handbook COLL 5.4.8G as these provisions are covered elsewhere in both regulation and in guidance to funds.

The SIP and risk - regulation 11(2)(c)

We welcome the proposed extension of the SIP to include a requirement for schemes to report on their risk management processes. This is an area of increasing concern for LGPS stakeholders and a transparent approach to the reporting of risk management reflects user demands and best practice in local government.

Reference to overriding regulations concerning employer-related investments - regulation 13(1)

We note the proposed inclusion of the Occupational Pensions Scheme Investment Regulations (OPSIR) 2005 provisions in respect of employer-related investment within the investment regulations. We feel that this addition to the regulations will bring some welcome clarity to this area of investment activity and would support its inclusion within the regulations.

Use of Fund Money by the Administering Authority - Revocation of existing regulations 3(4) and 12

We note the intention to revoke the regulations which permit the pension fund to extend loans to the administering authority. This is entirely consistent with the proposal to bring the LGPS regulations into line OPSIR in the matter of employer-related investment and is necessary to ensure that there no conflicts arise with the OPSIR provisions. We therefore support the revocation of these regulations.

OTHER FUTURE DEVELOPMENTS - Conflicts of Interest

We note the intention of CLG to bring forward guidance on managing conflicts of interests in line with TPR guidance in the corporate pensions sector. Given the range stakeholder interest in the LGPS, the Panel agrees that guidance in this area would be appropriate and we would welcome the opportunity to work with CLG on developing this guidance.

OTHER FUTURE DEVELOPMENTS – Duty of care, governance

We note that CLG have requested respondents to offer comments on the suggested definition of investment put forward in the Institute's report on the investment regulations. Naturally we support the adoption of this definition as a replacement to the existing provisions of Regulation 3 as it was intended.

I hope these comments are a useful contribution to the development of the investment regulations. If you would like to discuss further any of the points raised or would like further information regarding the longevity analysis referred to above, please do not hesitate to contact CIPFA via the Pensions Panel Secretary, Nigel Keogh, at nigel.keogh@cipfa.org.

Yours sincerely

Bob Summers
Chair, CIPFA Pensions Panel