



**CPP
INVESTMENT
BOARD**

Tab No. B-3

TERMS OF REFERENCE FOR A DIRECTOR

February 11, 2010

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1.0 STANDARDS FOR DIRECTORS

1.1 Statutory Standards of Care

The **Act** requires Directors, in exercising their powers and discharging their duties, to:

- (a) Act honestly and in good faith with a view to the best interests of the CPP Investment Board.
- (b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Directors must understand that they hold their appointment under the authority of the **Act**, and even though appointed from a particular region, their primary duty is to act in the best interests of the CPP Investment Board. This also means a Director must not act in the best interests of some special interest group or constituency or in his or her own self interest.

The **Act** also imposes expert standards upon Directors as follows:

- (a) A Director who possesses, or ought to possess, a particular level of relevant knowledge or skill must employ such knowledge or skill in exercising his or her powers and discharging his or her duties as a Director.
- (b) In determining the level of knowledge or skill which a Director ought to possess, the **Act** takes his or her profession or business into account. For example, Directors with accounting, actuarial, investment, business, or legal expertise are subject to a higher standard of care in areas relating to their particular expertise than persons lacking such expertise.

The **Act** deems Directors to have complied with the standard of care imposed by the Act if they rely in good faith on:

- (a) financial statements of the CPP Investment Board represented by an Officer, or in a written report of the CPP Investment Board's auditor, to be a fair reflection of the CPP Investment Board's financial condition; and
- (b) reports by accountants, lawyers, notaries or other professional persons whose professions lend credibility to their statements.

1.2 Performance Standards

A Director must be proactive in the performance of his or her duties by:

- (a) attending meetings;

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- (b) participating in a meaningful way;
- (c) being vigilant to ensure the CPP Investment Board is being properly managed and is complying with laws affecting the CPP Investment Board; and
- (d) certifying periodically their eligibility to serve as a director in accordance with the **Act**. (See form of certificate attached as Appendix A.)

2.0 CONFLICTS OF INTEREST

2.1 Statutory Standards

The **Act** sets out minimum conflict of interest standards and procedures with which Directors must comply. Accordingly, Directors must:

- (a) make full disclosure of their interest in a transaction¹ or proposed transaction; and
- (b) refrain from voting on a resolution or participating in a discussion to approve any transaction involving the interest.

The **Act** provides Directors with a mechanism to fulfill their ongoing duty to disclose in writing or in the minutes of a meeting of the Board or Board Committee any interest in a transaction or proposed transaction. A general notice in writing provided to the Board is a sufficient declaration of interest in relation to any transaction made, and Directors are expected to periodically provide such notice. (See form of notice attached as Appendix B.)

The **Act** is specifically concerned with conflicts of interest where Directors:

- (a) are parties to transactions or proposed transactions with the CPP Investment Board;
- (b) are directors or officers of entities that are parties to transactions or proposed transactions with the CPP Investment Board; or
- (c) hold a material interest² in any entities that are parties to transactions or proposed transactions with the CPP Investment Board.

¹ The Act defines “transaction” as including a contract, a guarantee or an investment.

² The Act does not define what is meant by a “material interest in an entity” for the purposes of the conflict of interest rules. A “material” interest in an entity is not restricted to the minimum 10% investment threshold which securities legislation uses to define insiders for the purposes of insider reports and trading. The conflict of interest test does not lend itself to such clear quantitative measurement. The relevant question is: would a reasonably well-informed person conclude that a Director’s interest in another entity could affect the Director’s exercise of a power, or performance of a duty, on behalf of the CPP Investment Board?

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The prohibition against Directors voting on transactions with the CPP Investment Board to which they are parties is subject to three exceptions. Directors may vote on:

- (a) transactions relating primarily to their remuneration as Directors or as directors of one of the Subsidiaries;
- (b) directors' indemnities and insurance; and
- (c) transactions with a Subsidiary.

2.2 Code of Conduct

In addition to the statutory conflict of interest standards, the CPP Investment Board has established, and the Board has approved a **Code of Conduct** that goes beyond the minimum established in the **Act**.

Each Director is obligated to adhere to the **Code of Conduct**.

2.3 Related Party Transactions

The **Regulations** set out rules for transactions between the CPP Investment Board and related parties. The term “Related Parties” is defined in the **Regulations** to include Directors, their spouses and children and any corporation directly or indirectly controlled by such persons or entities in which they would have a substantial interest.

The CPP Investment Board may enter into a transaction with a related party if:

- (a) the transaction is required for the operation or administration of the CPP Investment Board; and
- (b) the terms and conditions are not less favourable to the CPP Investment Board than market terms and conditions.

Directors are obligated to advise the CPP Investment Board should a transaction arise which, to their knowledge, would involve a related party so that the above requirements are complied with.

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3.0 STANDARDS OF BEHAVIOUR ESTABLISHED BY THE BOARD

The Board has established the following standards of behaviour for Directors.

3.1 General

As a member of the Board, each Director will:

- (a) fulfill the legal requirements and obligations of a Director, which includes a comprehensive understanding of their statutory and fiduciary roles; and
- (b) always ensure the best overall interests of the CPP Investment Board are paramount.

3.2 Directors Activity

As a member of the Board, each Director will:

- (a) act with integrity;
- (b) respect confidentiality;
- (c) proactively and constructively apply his or her ability, experience, knowledge and influence to Board issues;
- (d) be available as a resource to Management and the Board;
- (e) advise the Chairperson or the President in advance of introducing significant and previously unknown information at a Board meeting;
- (f) as necessary and appropriate, communicate with the Chairperson and with the President between meetings; and
- (g) demonstrate a willingness and availability for individual consultation with the Chairperson or President.

3.3 Preparation and Attendance

To enhance the effectiveness of Board and Board Committee meetings, each Director will:

- (a) attend meetings well prepared, having completed background reading and having consulted other Directors and/or Management, if required; and
- (b) maintain an excellent meeting attendance record³.

³The target is 100% attendance. Anything less than 80%, without extenuating circumstances, would create considerable concern for the Board.

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3.4 Communication

Communication is fundamental to Board effectiveness and therefore each Director will:

- (a) participate fully and frankly in the deliberations and discussions of the Board;
- (b) be a team player - work effectively with fellow Directors and be a positive and constructive force within the Board;
- (c) communicate persuasively and logically; voice concerns; listen; raise questions in a manner that encourages free and open discussion of the CPP Investment Board's affairs by the Board;
- (d) establish an effective, independent and respected presence and a collegial relationship with other Directors;
- (e) focus inquiries on issues related to strategy, policy, and results rather than issues relating to the day-to-day management of the CPP Investment Board; and
- (f) recognize that the President is the principal spokesperson for the CPP Investment Board and individual Directors may only be involved in external communications at the request of and/or with the approval of, and in coordination with the President and/or the Chairperson.

3.5 Board Committee Work

In order to assist Board Committees in being effective and productive, each Director will:

- (a) participate on Board Committees and become knowledgeable about the purpose and goals of each Board Committee; and
- (b) understand the process of Board Committee work, and the role of Management supporting the Board Committee.

3.6 Industry and Corporate Knowledge

Recognizing that decisions can only be made by well-informed Directors, each Director will:

- (a) become generally knowledgeable of the business of the CPP Investment Board and its industry, including developing an understanding of emerging market trends and significant strategic and reputational issues and risks;

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- (b) demonstrate financial literacy
- (c) participate in Director orientation and development programs developed or supported by the CPP Investment Board from time to time;
- (d) maintain an understanding of the duties and role of a Director and of the regulatory, legislative, business, social and political environments within which the CPP Investment Board operates;
- (e) keep abreast of developments in the field of governance, particularly as they affect the CPP Investment Board and its business; and
- (f) become acquainted with Management of the CPP Investment Board.

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APPENDIX A



DIRECTOR'S CERTIFICATE OF ELIGIBILITY

I have read section 10* of the Canada Pension Plan Investment Board Act, and advise that I would not be disqualified from being a director of the Canada Pension Plan Investment Board under the various subsections.

Dated this _____ day of _____, 20_____.

(Name)

(Signature)

Please return to:

Corporate Secretary
Canada Pension Plan Investment Board
One Queen Street East, Suite 2600
Toronto, Ontario M5C 2W5

* See Summary on reverse.

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SUMMARY

Section 10 of the Canada Pension Plan Investment Board Act deals with the appointment of directors to the CPP Investment Board, and their reappointment, removal, remuneration and benefits. The section also specifies the following as persons who are disqualified from being directors:

- a person who is less than 18 years of age;
- a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- a person who has the status of bankrupt;
- a person who is not a natural person;
- a person who is an agent or employee of Her Majesty in right of Canada or in right of a province;
- a person who is a member of the Senate or House of Commons of Canada or a member of a provincial legislature;
- a person who is an agent or employee of the government of a foreign country or any political subdivision of a foreign country; and
- a person who is not a resident of Canada.

APPENDIX B



**INSTRUCTIONS FOR COMPLETION OF
DIRECTOR'S GENERAL NOTICE OF DISCLOSURE OF INTEREST FORM**

The information required to provide the Director's General Notice of Disclosure of Interest Form is specified in the Canada Pension Plan Investment Board Act (the "Act"), as well as the By-Laws of the Canada Pension Plan Investment Board (the "CPP Investment Board"). For ease of reference, a summary of the relevant sections is set out below. This summary is not intended to be exhaustive, and it is recommended that a Director consult with legal counsel should there be any questions concerning the interpretation of the Act or proper course to be taken in respect of conflict of interest.

In addition to annually completing a Director's General Notice of Disclosure of Interest Form, Directors are reminded to advise of any changes to this information as they occur during the year.

Any questions with respect to this Form may be addressed to the Corporate Secretary.

Please return to:

Corporate Secretary
Canada Pension Plan Investment Board
One Queen Street East, Suite 2600
Toronto, Ontario M5C 2W5

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SUMMARY

Subsection 22(1) of the Act addresses the topic of disclosure by Directors of their interest in transactions with the CPP Investment Board. In terms of this subsection, Directors have an ongoing duty to disclose in writing to the CPP Investment Board, or to request to have entered in the minutes of the meetings of Directors, the nature and extent of a Director's interest in any transaction or proposed transaction with the CPP Investment Board, (a) to which the Director is a party, or (b) to which any entity of which the Director is a director or officer is a party or (c) in which the Director has a material interest in any entity which is a party.

By-Law No. 1 section 4.14 of the CPP Investment Board mirrors the above provision of the Act.

Subsection 22(5) of the Act precludes a Director from being present or voting on any resolution in which the Director has an interest, unless the transaction falls within certain specified exemptions.

Subsection 22(6) of the Act provides Directors with a mechanism for “continuing disclosure.” It states that “ a general notice to the board of directors or to one of its committees by a director or officer, declaring that the director or officer is a director or officer of, or has a material interest in, an entity and is to be regarded as interested in any transaction made with that entity, is a sufficient declaration of interest in relation to any transaction so made.”

Section 2 of the Act defines “entity” to include a body corporate, trust, partnership, fund, association or government agency.

Subsection 22(9) of the Act defines “transaction” to include a contract, a guarantee and an investment.

The Act has not defined the term “material interest”. Generally, the effect of section 22 of the Act is to emphasize the fiduciary duty of a Director. The use of the expression “material interest” indicates that disclosure is required when either the transaction or proposed transaction with the CPP Investment Board, or the Director's interest in a party to such contract, is of such significance as to cause a potential conflict between the Director's fiduciary duty and their personal interest. For example, a Director should be considered to have a material interest in a company having, or proposing to enter into, a transaction with the CPP Investment Board if the Director owns or controls, directly or indirectly, substantial shareholdings in that company or such shareholdings represent an important portion of their total assets, whether or not the Director is a director or officer of that company. It is a question of fact as to whether or not a particular transaction or the interest of a Director in a party to such transaction is material.

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DIRECTORS GENERAL NOTICE OF DISCLOSURE OF INTEREST FORM

NAME OF DIRECTOR: _____

- A. LIST OF CORPORATIONS OF WHICH I AM A DIRECTOR OR OFFICER AND FIRMS OF WHICH I AM A MEMBER.

Name of Corporation or Firm

Position(s) Held

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- B. LIST OF CORPORATIONS AND FIRMS IN WHICH I HAVE A MATERIAL INTEREST.

(Note: It is not necessary to list corporations and firms already disclosed in Section A)

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- C. LIST OF CORPORATIONS AND FIRMS WITH WHICH I AM IN SOME WAY CONNECTED, ALTHOUGH NOT AS DIRECTOR OR OFFICER OR BY WAY OF MATERIAL INTEREST, AND DURING THE DISCUSSION OF WHOSE AFFAIRS I WISH TO WITHDRAW.

(Note: While not a regulatory or Board requirement, Directors may indicate they do not wish to be present at any Board or committee meeting during the time when discussion of a particular corporation or firm takes place.)

Pursuant to subsection 22(6) of the Canada Pension Plan Investment Board Act, I hereby give notice and declare that as of the date hereof I am a director or officer of, or have a material interest in, the aforementioned entity or entities, and I am to be regarded as interested in any transaction made with any such entity or entities.

Dated this ____ day of _____, 20____.

(Signature)