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Dear Ms Donnelly and Ms Bird

Response to consultation on clarifying and strengthening investment duties

I am writing to you on behalf of the Railways Pension Trustee Company Limited (RPTCL) in response to the invitation to comment on the draft Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations. It is helpful to have an opportunity to provide input on this consultation.

Before providing responses to your consultation questions, I have set out some background information to put the responses in context.

Background

RPTCL is the corporate trustee of the main pension schemes in the UK railway industry, the largest of which is the Railways Pension Scheme (RPS). The RPS is an industry-wide occupational pension scheme covering around 350,000 members with around £28bn of assets. A subsidiary of RPTCL, RPMI Railpen, acts as the investment manager for the RPS. RPMI Railpen is regulated by the Financial Conduct Authority (FCA).

The Trustee has a long history as an active and engaged shareholder, with a strong heritage in corporate governance. This includes policies relating to ESG factors.

One of the Trustee's core investment beliefs relates to sustainable ownership which takes account of ESG factors. RPMI Railpen devotes significant resources implementing an active approach towards stewardship, including an in-house corporate governance and sustainable ownership team. We expect this approach to protect and enhance the value of the Scheme's investments in the long-term. However, we recognise that not all pension funds are large enough to adopt a similar approach.

In its Statement of Investment Principles (SIP), RPTCL currently sets out its requirement for investment managers to take into account all material financial factors and ESG considerations into the decision making process of all fund investments where they consider it may have a material impact on our investments. RPTCL expects this to be done in a manner which is consistent with our investment objectives, legal duties and other relevant commitments such as the UK Stewardship Code, which we have strongly supported since its inception in 2010.

As a consequence, we are generally supportive of the underlying principles of encouraging other pension schemes to take account of ESG factors within the delivery of investment duties. However, there are some practical issues to consider relating to these. These issues are included within the responses to your questions set out below. Where relevant, we have provided links to documents held on our websites to support the comments.

Response to consultation questions

- 1. We propose that the draft Regulations come into force approximately 1 year after laying, with the exception of the implementation report, which would come into force approximately 2 years after laying. a) Do you agree with our proposals? b) Do you agree that the draft Regulations meet the policy intent?**

We agree that schemes should outline how they take account of financially material considerations, including (but not limited to) those arising from environmental, social and governance (ESG) factors. However, as scheme trustees have primacy in investment decisions, we believe that this may be best served through separate additional disclosure in the form of a responsible investment policy, rather than requiring incorporation within the SIP.

- 2. We propose to require all trustees of all schemes which are obliged to produce a SIP to state their policy in relation to financially material considerations including, but not limited to, those resulting from environmental, social and governance considerations, including climate change. a) Do you agree with the policy proposal? b) Do the draft Regulations meet the policy intent?**

We agree that schemes should state their policy in relation to financially material considerations, including those related to environmental, social and governance factors, in the SIP. However, to provide an appropriate level of detail to address the matters referred to in the draft regulations, we consider that it would be more appropriate to allow schemes to choose to provide additional information in a standalone responsible investment policy. This will help to avoid the SIP becoming dominated by ESG factors.

Publishing a responsible investment policy on a website alongside an annual report on how the scheme has undertaken its stewardship responsibilities may be more informative to scheme members and interested members of the public than necessarily publishing the SIP. As an example, our [Sustainable Ownership report](#) for 2017 is available on our website, and the long-term risks and opportunities section details how we integrate climate risk considerations into our investment process and encourage our portfolio companies to improve their disclosures to support their transition to a low-carbon economy.

- 3. When trustees prepare or revise a SIP, we propose that they should be required to prepare a statement, setting out how they will take account of scheme members' views. a) Do you agree with the policy proposal? b) Do the draft Regulations meet the policy intent?**

The Law Commission has emphasised that the ability to take account of members' wishes is permissive when the scheme trustees have good reason to think that members hold concern and when the decision should not involve significant financial detriment. Further to this, The Law Commission has made clear that scheme trustees are not obliged to take account of these non-financial factors.

While we agree that schemes should outline their policy in relation to environmental, social and governance factors where they have a material financial impact, we believe that consultation with members should be done only when the scheme trustees reasonably believe that the members hold concern regarding the current policy.

In addition, we believe that exercises to seek member views will typically suffer from low levels of member engagement and involvement. Consequently, we have concerns that views obtained may not be representative of the membership as a whole.

4. Do you agree with our proposal not to require trustees to state a policy in relation to social impact investment? If not, what change in legislation would you propose, and how would you address this risk of trustee confusion on this point?

We agree with the proposal and would like to highlight how RPMI Railpen invests in companies that not only measure and report their wider impact on society, but also hold themselves accountable for delivering and increasing positive impact under the current regulations.

The first is in our use of the Sustainable Development Goals (SDGs) to monitor impact within private markets as detailed on page 4 of our Sustainable Ownership report for FY2017. We discuss the SDGs in engagements with our listed equities portfolio companies. We also made an initial commitment to the [Palatine Impact Fund](#), which seeks to invest in unlisted UK businesses and can generate market-rate financial returns alongside positive social or environmental impact.

5. We propose that trustees should be required to include their policy in relation to stewardship of the investments, (including monitoring, engagement and voting) in the SIP. a. Do you agree with the policy proposal? b. Do the draft Regulations meet the policy intent?

In the draft regulations on page 12 of the consultation, we agree that schemes should disclose their approach to stewardship in the SIP. This should cover “how they take account of financially material considerations, including (but not limited to) those arising from Environmental, Social and Governance (ESG) considerations, including climate change”. We believe this is a reasonable requirement to place on all schemes of all sizes.

However, we do not agree that they should also include in the SIP “their policies in relation to the stewardship of the investments, including engagement with investee firms and the exercise of the voting rights associated with the investment”.

Publishing the voting and engagement priorities for a scheme on a website alongside details of how the scheme has undertaken its stewardship responsibilities may be more informative to portfolio companies and scheme members than necessarily publishing this detail in the SIP. As an example, our global voting [policy](#) and our voting [records](#) are available on our website.

- 6. When trustees of relevant schemes produce their annual report, we propose that they should be required to: - prepare a statement setting out how they have implemented the policies in the SIP, and explaining and giving reasons for any change made to the SIP, and - include this implementation statement and the latest statement outlining how trustees will take account of members' views in the annual report. a) Do you agree with the policy proposal? b) Do the draft Regulations meet the policy intent?**

We agree that the policy proposal is reasonable, provided that it is made clear (e.g. via regulatory guidance) how various types of scheme should comply with the new requirements. It is also important that changes to requirements for relevant schemes do not have any unintended consequences on the complexity of annual reports for other types of scheme, such as for mixed benefit schemes like the RPS.

- 7. We propose that trustees of relevant schemes should be required to publish the SIP, the implementation report and the statement setting out how they will take account of members' views online and inform members of this in the annual benefits statement. a) Do you agree with the policy proposal? b) Do the draft Regulations meet the policy intent?**

We agree that the scheme SIP should be available to members, and under current regulations, members and other relevant persons can request a copy of the current SIP, which the scheme trustees are required to provide within 2 months. We support the current regulation.

The Law Commission has emphasised that the ability to take account of members' wishes is permissive when the scheme trustees have good reason to think that members hold concern and when the decision should not involve significant financial detriment. We believe that consultation with members should be done only when the scheme trustees reasonably believe that the members hold concern regarding the current policy.

In addition, we believe that exercises to seek member views will typically suffer from low levels of member engagement and involvement. Consequently, we have concerns that views obtained may not be representative of the membership as a whole.

- 8. Do you have any comments on the business burdens and benefits, and wider non-monetised impacts we have estimated in the draft impact assessment?**

We do not have any specific comments on the information within the impact assessment. However, it would be helpful to give trustees sufficient flexibility within the regulations to help minimise the overall burden on schemes (e.g. allowing trustees to set out ESG related policies within a standalone document rather than prescribing inclusion of these within the SIP).

- 9. Do you have any other comments on our policy proposals, or on the draft Regulations which seek to achieve them?**

We have no other comments to add on the policy proposals.

10. Do you agree that the revised Statutory Guidance clearly explains what is expected of trustees in meeting their duty to publish the SIP, implementation statement, and statement of members' views?

We have no suggestions to make regarding the clarity of the Statutory Guidance.

11. What evidence or views do you have of how well the other requirements in the SIP are working? What areas for further consideration and possible future change would you suggest?

We have no further suggestions to make on the requirements of the SIP.

We hope that these comments are of use as part of this consultation and we would welcome the opportunity to meet further with you and your colleagues to discuss our comments in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Chilman', with a large, stylized initial 'J'.

John Chilman
Chairman, Railways Pension Trustee Company Limited