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By email: pensions.governance@dwp.gov.uk

Stuart O'Brien
Pensions Climate Risk Industry Group
c/o Sackers & Partners LLP
20 Gresham Street
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Dear Stuart

Aligning your Pension Scheme with the TCFD Recommendations: a consultation on guidance – our response

I am responding on behalf of Squire Patton Boggs (UK) LLP to the DWP's consultation on the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations laid out in the Pensions Climate Risk and Industry Group (PCRIG) March 2020 consultation document.

Squire Patton Boggs is a leading global law firm that has one of the largest and most experienced teams of specialist pension lawyers in the UK. Our clients include a large number of trustees and sponsoring employees of occupational pension schemes of all sizes and types and from all sectors.

We are responding on our own behalf, and have not been asked by our clients to raise any specific points.

We have used the same definitions as those used in the consultation document. Please note that we have not responded directly to the questions on the consultation questionnaire, but instead wish to provide some general comments on the consultation document.

Style and form

We agree with and endorse PCRIG's intention to provide clear, concise and comprehensive advice on how trustees may tackle climate change-related issues in their assessment of financial risks and opportunities as environmental issues closer to the forefront of business focus in the near future. The consultation is timely, given the increased willingness of many trustees to set environmentally responsible objectives and make investments on the same lines. To that end, the guidance serves as a practical as well as an aspirational tool.

While the level of detail is appropriate for a wide-ranging audience, PCRIG may wish to promote, with the final version of its guidance, a more digestible list of key principles and action points serving as a practical summary of the minimum steps required by trustees in the first instance. This could be done in a format similar to the Quick Start Guide, by expanding the section on steps to getting started. The suggested trustee actions and recommended disclosures at the end of each chapter are comprehensive and well-presented.

Given the Government's expectation that all listed companies and large asset owners, including occupational pension schemes, will disclose in line with TCFD by 2022, it is important that guidance is made available to trustees for both educational and, eventually, compliance purposes as soon as practicably possible. As the guide rightly highlights, the encouragement of trustees to develop good practice prior to the new disclosure regulations coming into force is an important part of the process.

Stricter standards for master trusts and superfunds

While the guidance recognises that smaller schemes may have fewer resources to address some of PCRIG's objectives, we suggest that PCRIG considers the possibility of a tiered system of compliance with stricter disclosure standards set for master trusts and superfunds. Although the guidance makes it clear at Chapter 10.3 that risk assessment should be carried out proportionately to the scheme's size and resources, more explicit guidance on PCRIG's expectations for schemes with new structures. At present, there is no express reference to master trusts or superfunds in the guidance.

There may be scope, for instance, for a degree of interaction with The Pensions Regulator (TPR) guidance on superfunds issued recently in June 2020. [1] The TPR guidance makes brief reference to the need for a climate risk management plan as part of a superfund's integrated risk management framework. Clearer detail on the expectations placed on these large schemes may be sensible in PCRIG's final guidance, if nothing else, for the sake of consistency.

Insurers' standards

We would recommend a degree of alignment with insurance companies' standards. In our view, the standards set for insurers should be as strong, if not stronger, than the requirements imposed on trustees. Insurers' climate-risk profiles should be made public to enable trustees and employers to consider these and other ESG credentials when conducting pre-buy in/out due diligence. This may help to mitigate the risk of member complaints if during or after the course of a scheme buy in/out it transpired that the insurance company involved demonstrated questionable ESG credentials.

Non-financial factors

Whilst we welcome the distinction drawn between DB and DC schemes throughout the consultation document, particularly the additional guidance given to DB scheme trustees at Chapter 8, there could be further analysis of differing approaches to climate-related risk

[1] The Pensions Regulator, "DB superfunds: guidance", June 2020, accessed June 30 2020, https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/db-superfunds.

analysis given the significant contrasts in investment powers and purposes between the two types of scheme.

Related to this is the importance of a discussion of non-financial considerations which we think should be mentioned in the current guidance. We take the view that "non-financial factors", as described in the Law Commission's 2014 report, should be acknowledged in the guidance. Recent obiter comments in the Supreme Court judgment of R (on the application of Palestine Solidarity Campaign and another) v Secretary of State for Housing, Communities and Local Government [2020] UKSC 16 show that this is growing as an area of legitimate focus for fiduciaries.

Non-financial factors include, but are not limited to, the concerns of members. At Chapter 5.1, the guidance states that climate change should be considered as part of trustees' "investment beliefs", but these should not be confused with "ethical or moral" beliefs. Whilst this may be right for trustees, it is likely that in the coming years the ethical or moral beliefs of members' will arguably form a greater part in investment decision-making in DC schemes – if only because of the different age profiles of DC scheme members vis-à-vis DB schemes. It may be prescient to make greater allowance for non-financial factors such as these to be considered by trustees.

Equally, schemes that are close to or building towards buy-out in the short term may be less immediately concerned with climate-related risks in general, although as noted above, trustees may wish to seek comfort that any annuity provider (or superfund providing a bridge to buy out) can satisfy them as far as climate related due diligence. Given the size of the deficits involved and sensitivity regarding buy-out objectives for DB schemes, trustees and their advisers may appreciate the opportunity for greater leniency in meeting TCFD obligations. With this in mind, we suggest that some of the nuances between the priorities of DB and DC schemes may be explored.

Scenario analysis

We envisage that the section on scenario analysis, including a reminder of existing and expected legal requirements, will prove useful to trustees. Increased exposure to the tools available for both quantitative and qualitative analysis, such as PACTA and the Transition Pathway Initiative, will prove valuable to many. The case study on Lloyds Banking Group's pension schemes' risk assessment will no doubt be interesting to many clients, particularly in its use of a colour-coded system to assess severity of risk. Additional case studies, if available, may be useful for schemes with profiles less comparable to that of Lloyds.

Metrics

Likewise, the guidance given on suggested metrics will be valuable to trustees commencing their climate change risk assessments. The availability of additional suggested metrics for larger corporate schemes will also be appreciated by trustees wishing to set standards and increase opportunity exposure. This will also be useful should a tiered system of compliance emerge for larger schemes.

Lastly, it may be a minor point, but a number of the metrics identify "greenwash" as a potential drawback. Similarly, at Appendix 2, trustees are urged to "be able to identify and avoid greenwash." Further definitional guidance on what may or may not constitute greenwash, and some examples of key indicators, would be appreciated so as to assist trustees when making enquiries of asset managers.

We have no further comments.

If you wish to discuss any of the above please feel free to contact me.

Yours sincerely

Clifford Sims
Partner
For Squire Patton Boggs (UK) LLP