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

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Our ref CVPS

Dear Sir

Taking action on climate risk, improving governance and reporting by occupational pension schemes

I am responding to the above consultation on behalf of Squire Patton Boggs, which 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 employers of occupational pension schemes of all sizes and types and for all sectors.

Because of our membership in various trade associations, we have had the benefit of seeing in advance the submissions of a number of bodies, in particular including the Society of Pension Professionals, which we would endorse in particular. The following comments therefore supplement those of the SPP from our perspective.

Questions 1 to 3: We agree with all of the proposals in respect of the timing of the introduction of mandatory climate governance and TCFD reporting but would note (as others have done in their responses) that the practical ability of large asset owners (as defined in question 1) to comply with the governance and reporting requirements will depend directly on the success of how well corporates and asset managers are themselves complying with the new regime and how well those parties can supply trustees with the requisite data to support directly the reporting requirements and indirectly the effectiveness of trustees' governance.

Question 4: We broadly support the policy direction and are pleased to note that the policy aim here appears to be to prescribe behaviours (adoption and maintenance of oversight of climate risks and opportunities, as well as processes by which trustees can demonstrate that they are assessing and managing such risks and opportunities) rather than attempting to tell trustees what they may or may not invest in. It is not the role of government to dictate or prohibit investments, either in the private sector or, as was demonstrated in the recent Supreme Court judgement in the Palestine Solidarity Campaign case, in the public sector.

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Question 5: We agree that the proposed regulations should define the parameters within which trustees should identify and disclose climate change risks and opportunities and we endorse the correlation with the funding strategies of DB schemes. It will be important to define relevant exceptions (particularly for those schemes which do not have a long or medium term future, for example, because they are close to buy-out or other risk transfer/settlement). It will also be challenging to differentiate between defined benefit and defined contribution obligations in this respect, despite the fact that the underlying risks and opportunities should not be differentiated between DB and DC.

Apart from the time horizon issue, we believe that there is a strong case for regulations recognising the structural ability of trustees to influence insurance company or other pooled investment product portfolios, where the actual asset owners of the underlying investments are not the trustees themselves. This comment applies to a wide variety of asset classes and to the majority of pension schemes in the UK, especially those of a small to medium size where the schemes in question can only provide value for money through collective or pooled products. It is important that government has an integrated approach to asset managers in this respect and we are pleased to see the FCA's actions in CP20/3.

Question 6: We agree that scenario testing is a good discipline and share the government's hope that the larger schemes will set the best practice in this regard. As a matter of principle, stress testing of assets and liabilities should not be a significant extra hurdle for DB schemes, but will be a new cost for DC arrangements which will need to be thought about in the context of the charge cap for automatic enrolment purposes. In that connection, we would welcome guidance from the government as to the extent to which duplication of stress testing by insurers or other pooled vehicle providers for DC schemes that are not master trusts can be avoided or minimised.

Question 8: We agree with the general approach of the proposals regarding the selection of metrics for quantifying the effects of climate change and believe that such metrics should be embedded into due diligence procedures when looking at new investments and not just a matter of historic reporting. Statutory or TPR guidance should make this distinction clear.

It follows that the proposed disclosure requirements can only address a scheme's current or past investments as at the disclosure date. We are not suggesting that the exercise of disclosing metrics is unnecessary or inappropriate, but are very conscious of the fact that historic data may be of limited use to the end user.

As a general point, we understand the government's policy aim is to enable disclosure not just to scheme members but to the wider public. Requiring disclosures about trustees' processes and the metrics which they use to the wider world could result in private sector schemes becoming subject to the same degree of scrutiny as applies in the public sector by virtue of the Freedom of Information Act 2000. While this may be unavoidable, the government may wish to consider ways in which private sector schemes can be protected from acquiring any duty of care towards third parties who are not directly related to the scheme as there may be unintended consequences in terms of governance resources to deal with activist groups who may challenge the processes or metrics to be adopted.

Questions 9 and 10: Please see above our comments in relation to the management of disclosure requirements, in particular in relation to question 8. We agree with the proposal

to set targets and to measure performance against targets, but would advise against these being generic (i.e. they should be scheme specific) and should be flexible (i.e. they should not give rise to penalties or rights of actions by members or third parties) if they are not met.

Question 11: we welcome the discretionary tone to the proposals in relation to penalties for non-compliance. In keeping with that approach and steering away from the constraints of TPR's jurisdiction over breaches of another disclosure regime, the DC chair's statement (which has caused arbitrary and unfair results for minor infractions), we would strongly advise proportionality in TPR's approach.

We have no comments on Question 12.

Yours sincerely

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