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Dear Sir / Madam

### **Protecting Defined Benefit Pension Schemes – a Stronger Pensions Regulator**

The Association of Professional Pension Trustees is an organisation of over 160 individuals who act as professional independent trustees to UK occupational schemes, some as sole practitioners and some working in firms of such practitioners. Our members represent a large number of mainly larger pension funds with combined assets of several hundred billion pounds.

Our aims are to:

- encourage and promote the highest professional standards in those who practise as professional pension trustees
- promote the role of professional trustees

Our response to the questions as set out in the consultation document are as set out below.

Yours sincerely



Nita Tinn  
Association of Professional Pension Trustees

*Question 1: We have set out a number of proposed changes to the existing Notifiable Events Framework.*

*a. Do these proposals strike the right balance between improved regulations on business and protecting pensions?*

*b. Alternatively, are there any other significant business events which you think should be captured?*

(a) We are satisfied that the proposals strike an appropriate balance. Increasing the number of notifiable events will do much to improve the flow of relevant information between the Regulator and schemes and will bring problems to light sooner than is the case currently.

(b) We believe that the proposals are sufficiently comprehensive and that there are no other significant business events that need be considered.

*Question 2: Have we captured the right criteria for a significant change in the make-up of a board of directors?*

We agree that the correct criteria have been captured.

*Question 3: We are proposing to bring forward or specify more clearly the timing of reporting notification of certain events (as described above), for instance to the point at which Heads of Terms are agreed for some transactions. Is this appropriate or is there a better time/ event to pin the reporting notification to?*

We agree that the proposed changes to timing will represent an improvement.

*Question 4: What is the likely impact (either direct or indirect) on business of sponsoring employers being required to report earlier? How could the framework be modified to ensure that any adverse impact is mitigated?*

Reporting sooner is important if improved safeguards for members' benefits are to be achieved. We are satisfied that this new requirement will not have any significantly detrimental impact on sponsors' businesses.

*Question 5: Are there any additional changes that could further improve the design of the framework for sponsoring employers, trustees and the Regulator?*

We are satisfied that the proposed changes are adequate and that no additional changes are required.

*Question 6: We have set out a number of proposed transactions which would trigger a Declaration of Intent.*

*a. Do these proposals strike the right balance between improved regulations on business and protecting pensions?*

*b. Alternatively, are there any other significant business transactions which you think should be captured?*

(a) We believe that it is entirely appropriate that trustees be kept informed of any developments planned by the sponsor if these might impinge on the security of members' benefits. Whilst confidentiality is an obvious concern, we believe it is an important principle that trustees be adequately informed. We also believe that the introduction of a Declaration of Intent will make sponsors consider carefully any course of action which might prove detrimental to the strength of the covenant.

(b) We do not believe any additional transactions need be considered.

*Question 7: Is there any further information which could be included in a Declaration of Intent to improve understanding of the proposals to strengthen the position of the pension scheme?*

We are satisfied that no additional information need be included.

*Question 8: At which point in the transaction process should sponsoring employers a) engage with trustees and b) issue a Declaration of Intent to them?*

If trustees are not to be presented with a *fait accompli* it would be necessary for trustees to be advised of any transaction on its commencement. We suggest that an

appropriate point for a Declaration of Intent to be issued would be on the agreement of Heads of Terms.

*Question 9: What would be the impact (both direct and indirect) of our proposals on businesses, for example on transactions or administration costs of notification?*

We are satisfied that the proposals would not have any significantly detrimental impact on the sponsor's business.

*Question 10: What more could we do to increase trustees' involvement in negotiations to ensure there is due consideration of the potential transactional risks to pension schemes?*

We believe it is important that trustees be given sufficient time to seek professional advice to ensure that they can form an appropriately informed view on any proposed course of action. It is also important that trustees are not 'railroaded' by the employer.

*Question 11: Are these the right areas for the Pensions Regulator to focus on in relation to improvements to their existing guidance? Should anything else be considered?*

We agree that that these are the right areas of focus for the Regulator.

*Question 12: What are the likely effects and impacts on business and trustees of the introduction of this proposed new system of penalties?*

We believe that the proposed penalties will do much to focus sponsors' minds on their responsibilities towards schemes and their members. We would not expect the proposed changes to affect the approach adopted by trustees. We believe that the proposed penalties will do much to force employers to consider scheme funding particularly seriously and that this can only represent an improvement on the current situation.

*Question 13: Are there other behaviours that should attract sanctions? If so, what are they?*

We are satisfied that the proposed list is sufficient.

*Question 14: We have proposed a new civil penalty (up to a maximum £1m) for example to take action for non-compliance with providing a declaration of intent. Will this deter wrongdoing? If not, what would be a suitable deterrent?*

In the past, there have been instances where fines have been criticised as inadequate. We believe that increased fines will serve as a more effective deterrent.

*Question 15: We have proposed a new criminal offence for wilful or reckless behaviour in relation to a pension scheme, and for failures to comply with Contribution Notices and the Notifiable Events Framework. Do you agree with these proposals? Will this deter wrongdoing? If not, what would be a suitable deterrent?*

Like many commentators, we question how 'wilful or reckless behaviour' would ultimately be recognised by the Courts. We respect the intention, but at this stage are sceptical about the extent to which the idea will ultimately prove workable in law.

*Question 16: If yes, should the maximum penalty for these offences be:*

*a. Unlimited fines?*

*b. Custodial sentence and/or fine for the worst offenders – do you have views on the appropriate maximum term?*

Assuming that these offences were to be enforceable – and, as we have noted in our previous answer, we are not convinced that they would be – we believe that sentences should be comparable to those convicted of serious fraud. We note that the maximum sentence that can be applied under the provisions of the Fraud Act 2006 is ten years, and would suggest that this would be appropriate for more extreme cases.

*Question 17: What more can we do to support the Pensions Regulator in enforcing legal requirements in an effective and proportionate way?*

We are not persuaded that any additional powers are necessary.

*Question 18: We have set out a number of proposed changes to the way Contribution Notices function.*

*a. Do these proposals strike the right balance between improved regulations on business and protecting pensions?*

*b. Alternatively, what else could we do to improve the way Contribution Notices work?*

- (a) We are encouraged by these changes, which we regard as a marked improvement on the existing regime.
- (b) We believe that the proposed new regime is a significant improvement and should be implemented.

*Question 19: What would be the most appropriate way of protecting the value of the Contribution Notice through uprating? What are the likely impacts of this?*

We suggest that the same actuarial factors which affect a scheme's funding level should be applied to the way in which a Contribution Notice is uprated.

*Question 20: What could be the impacts of changing the date at which the cap was calculated to a date closer to the final determination?*

The effect of this would be to ensure that the value of a Contribution Notice at the point where payment is made would more accurately reflect the real value of the scheme's liabilities.

*Question 21: What would be the likely impacts on business of a more streamlined Financial Support Direction regime?*

We do not believe that the impact on businesses would be unreasonable.

*Question 22: How could we best amend the ‘insufficiently resourced’ test to make it simpler and clearer?*

We are not persuaded that any significant amendment is necessary.

*Question 23: We propose to tighten up the forms of financial support the target is required to make to the scheme to include cash payments or statutory guarantees.*

*a. What would the impact of this approach be on business?*

*b. Are there other forms of support we should take into consideration?*

(a) We do not believe that there would be any significant impact on businesses.

(b) We do not believe that other forms of support need be considered.

*Question 24: What would be the impact on business of a longer ‘lookback’ period?*

We are concerned that a longer ‘lookback’ period - given the scope for sudden and dramatic changes in market conditions – could be problematic.

*Question 25: The proposals in this consultation are suggested as ways in which the Pension Regulator's powers could be increased or improved in order to clamp down on corporate wrongdoing and ensure improved compliance with all legal responsibilities by sponsoring employers.*

*a. Do these proposals strike the right balance between improved regulations on business and protecting pensions?*

*b. Alternatively, do you think there are other areas where the Pensions Regulator's powers could be increased or improved to achieve our intended outcomes?*

- (a) We are satisfied that the proposals represent an appropriate balance between competing priorities.
- (b) We do not believe that any additional powers are required.