

**Policy Sponsor:** CLO and Legal

**Summary:** The Policy describes the processes that OAC uses to manage certain transactions that involve related parties, and provides additional safeguards to be considered in those transactions. **This policy must be approved by the Investment Committee.**

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### 1. PURPOSE

OAC, acting as the administrator of the OMERS Pension Plans, or its Investment Entities, may from time to time enter into transactions which may be considered by legislation, the common law or OAC policies to be non-arm's length transactions or related party transactions ("Special Transactions").<sup>1</sup>

Special Transactions may in fact or appearance lack some of the important checks and balances of arm's length negotiated transactions. Certain checks and balances of arm's length transactions may be missing because of relationships that exist between the parties or other circumstances that create the potential for a perceived or actual conflict of interest. Special Transactions may therefore need to be undertaken with additional safeguards in place.

An example of a Special Transaction would be a sale of assets by a parent corporation to a subsidiary corporation where there are minority shareholders. The subsidiary may be inclined to accept the sale terms offered by the parent corporation because of the control or influence of the parent corporation. Minority shareholders may however need assurances with respect to the value of the assets being acquired by the subsidiary. These assurances could come from a third-party valuation of the assets or in other forms. In OAC's case, an example would be OAC entering into a transaction with a company in which a Director has a substantial interest. Where non-arm's length circumstances exist, this Policy identifies OAC's approach to managing them.

The intent of this Policy is to ensure that Special Transactions are presented, reviewed and, where appropriate, approved and are undertaken in a manner and on terms that are in the best interests of OMERS and its members and are viewed in that light by stakeholders.

<sup>1</sup> For a complete description of the requirements and restrictions imposed under the legislation, policies and procedures referred to in sections 1 through 11, reference should be made to the complete text of such legislation, policies and procedures. This Policy supplements, but does not limit, the requirements, restrictions and prohibitions imposed under such instruments.

## 2. TERMINOLOGY

Terminology is important to this Policy because of the use of terms such as “non-arm’s length” or “related party” in numerous contexts which apply to OAC. For example, “non-arm’s length” and “related party” appear frequently in the ITA. The ITA does not specifically define these terms but its general approach is to equate the relationship to related party relationships. Family relationships create “relatedness” among natural persons and, for corporations, relatedness is tied closely to voting control of a corporation by a person or group of persons who themselves are related.

The *Securities Act* (Ontario) (“OSA”) also adopts a precise approach to the meaning of “related party” and uses the concept in various contexts including Multilateral Instrument 61-101 which mandates special protections and safeguards in connection with related party transactions entered into by reporting issuers. Parties are often considered “related” where one entity holds more than 10% of the voting rights attached to another entity’s voting securities.

Transacting with “related parties” is an important concept in the [Federal Investment Regulations](#) (the “FIR”)<sup>2</sup>, which are incorporated into the PBA by reference. In the FIR, “related party” has quite a different meaning than it does in the ITA and the OSA. The FIR approach to relatedness is based on the objective of prohibiting certain investment transactions by plan administrators where the parties involved are closely related to the pension plan itself. For example, an employer who participates in the pension plan or any entity which is an affiliate of the employer is a related party as is a member of the plan or any child of a member. The FIR definition is notoriously unwieldy for pension plans as the factual determination and listing of all of the related parties in complex investment transactions can be daunting if not impossible to determine without making reasonable assumptions about the relationships the transacting parties may have with other entities associated with them as required by the FIR definition. For the sake of clarity, where this Policy is intended to refer to a “related party” as defined in the FIR, reference is made to “Related Party”.

There are, however, some common features to regulatory approaches to non-arm’s length or related party transactions or relationships. Common principles tend to revolve around defining circumstances where a party to a transaction or the person representing the party may be wearing several hats and may therefore not be able to (or, at least, may be perceived to be unable to) represent one bargaining position at the negotiating table to the best advantage of the transacting party. Such circumstances can compromise or can be perceived to compromise the outcome of the negotiations for stakeholders such as sponsors, plan members or regulators. It is these circumstances that may necessitate special protections for affected parties. Those protections may include requirements for enhanced disclosure and the use of special committees made up of independent persons and various other tools.

## 3. REVIEW STANDARDS FOR SPECIAL TRANSACTIONS

The purpose of this Policy is not to prohibit or unduly restrict Special Transactions from occurring where permitted by law but to recognize the importance of including safeguards when such transactions do occur or are proposed. This is similar to the approach taken by Canadian securities regulators with respect to regulating public company transactions where there are non-arm’s length features<sup>3</sup>.

Safeguards will not necessarily be the same for every Special Transaction. The safeguards need to be thoughtfully decided based on the factual circumstances in question. **The Policy therefore expresses a principled approach to Special Transactions as opposed to a strict code.**

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<sup>2</sup> The “federal investment regulations” are defined in subsection 66(1) of the regulations under the *Pension Benefits Act* (Ontario) as sections 6.7, 7.1 and 7.2 and Schedule III to the *Pension Benefits Standards Regulations, 1985* made under the *Pension Benefits Standards Act, 1985* (Canada) as they may be amended from time to time. Sections 6 and 7 and Schedule III are relevant to this policy.

<sup>3</sup> See Multilateral Instrument 61-101.

Aside from this Policy there are safeguards and standards which in some cases are already reflected in existing policies, procedures or processes of OAC; however, additional safeguards are also described in this Policy for application to certain Special Transactions identified in Section 12 and Section 15 where additional safeguards are particularly important.

#### **4. FIR COMPLIANCE AND RELATED PARTY CONSIDERATIONS**

OAC as a pension plan administrator is subject to the terms of the PBA, including the FIR. OAC and the Investment Entities place a high priority on compliance with the letter and the spirit of the PBA and the FIR. Subject to certain exceptions (“Permitted FIR Related Party Transactions”), such as the value of the transaction being nominal or immaterial to the plan as a whole<sup>4</sup>, the FIR prohibits the administrator of a pension plan, such as OAC, from directly or indirectly investing in, making loans to or entering into “transactions” with a “Related Party”. The FIR includes the definitions of “transactions” and “Related Party”.

Related Party includes the employer that formed and contributes to the pension plan for the benefit of its employees. The FIR prohibits transacting with the employer to ensure pension assets are not inappropriately used to invest in securities of the employer or are not improperly loaned to an employer, where the employer may have the ability to influence that outcome. The prohibition on the pension plan transacting with the employer responds to obvious concerns for employer pension plans about whether arm’s length negotiations could ever reasonably be expected to occur due to the close relationship between the employer and its pension plan.

For OMERS, as a multi employer pension plan, inclusion of employers as a Related Party for FIR purposes has far-reaching consequences, some of which arise from the operational and governance differences between OMERS and a typical single-employer pension plan. Currently, there are approximately 900 employers participating in OMERS, and more are anticipated to join. For a multi-employer pension plan like OMERS with the safeguard of an administrator with a broadly populated Board of Directors, provision for which is made in the OMERS Act, restrictions on OAC transacting with participating employers do not necessarily raise the same kind of conflict of interest concerns that would apply to a single employer pension plan. That having been said, the prohibition is in the PBA and must be observed, and any transaction with an employer would have to be a Permitted FIR Related Party Transaction. Similarly, the Related Party definition imposes restrictions on transactions with a union representing employees of an employer.

Safeguards mandated by this Policy with respect to the FIR include the requirement to obtain analysis regarding compliance with the FIR from professional advisors that every investment transaction, within the meaning of such terms as used in the FIR, if undertaken should be compliant with the PBA and should therefore not constitute a prohibited Related Party transaction. Such analysis must be obtained from external independent legal advisors unless the senior legal officer representing the relevant Investment Entity and the OAC CLO determine that in house legal advice is reasonable in the circumstances, taking into consideration the complexity and monetary value of the investment transaction. A second important safeguard is the requirement that submissions made to Approving Bodies<sup>5</sup> regarding investment transactions identify and discuss any related party connections for FIR purposes. If the Investment transaction is a Permitted FIR Related Party Transaction due to the value of the transaction being less than 3% of the market value of the Primary Plan Fund at the time the transaction is entered into, any safeguards that are proposed recognize that the transaction, although permitted, remains a Related Party transaction for FIR purposes.

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<sup>4</sup> For example, this is addressed in Section 18 of the Statement of Investment Policies & Procedures of the OMERS Primary Pension Plan.

<sup>5</sup> For the purposes of this Policy, “Approving Body” means the Investment Committee, and TAC (as defined in Section 8 of this Policy).

## 5. INCOME TAX ACT

The ITA, subject to certain exceptions, generally prohibits registered pension plans from, among other things, investing in certain transactions including investing in securities of an employer or members that participate in a pension plan and persons “connected with” or who do not act at “arm’s length” with such persons.

Safeguards mandated by this Policy regarding investment transactions and ITA compliance in relation to prohibited transactions require the obtaining of suitable analysis from external independent professional advisors that the proposed transaction would not be prohibited by the ITA and related regulations unless the Senior Vice President, Tax of OAC together with the senior legal officer representing the relevant Investment Entity determine in writing that in-house professional advice would be reasonable in the circumstances taking into account the complexity and monetary value of the transaction. It is also OAC’s policy to have investment approvals by Approving Bodies be conditional on ITA compliance to ensure that the transaction is not a prohibited investment for the purposes of the ITA.

## 6. OMERS ACT

The OMERS Act and related corporate statutes to which OAC and certain of the Investment Entities are subject, in whole or in part, impose requirements with respect to transactions with Directors or officers or with persons in which Directors or officers have a material interest. These requirements are in addition to the FIR and the ITA which also cover such transactions, but the provisions are not identical.

In OAC’s case, a Director or an officer who is party to a material contract or transaction or who has a material interest in a person who is a party to a material contract or transaction is required to disclose the interest in writing to OAC. This combined with the fiduciary duties included in the OMERS Act by reference to the *Business Corporation Act* (Ontario) (which includes the requirement to act always in the best interest of OAC), and the fiduciary obligations imposed on OAC as plan administrator under the PBA, are important provisions with respect to the safeguarding of how Special Transactions are processed. Directors must declare conflicts of interest at their earliest opportunity as potential transactions are introduced to OAC and the OAC Board for discussion. An officer must declare any interest in a transaction as soon as the officer becomes aware that such a transaction is under consideration.

Materiality for these purposes is viewed in a different way than materiality for the FIR or for accounting purposes. Consistent with the law of fiduciaries, any interest that might be perceived to be relevant to the OAC Board must be disclosed. There is no precise formula that determines the extent of detail that is required. It will depend in each case on the nature of the arrangement and the context in which it arises. Furthermore, having made disclosure, Directors and officers must continue to place the interest of OAC and plan members ahead of their own in all of their actions.

## 7. OAC CODE OF CONDUCT

The OAC [Code of Conduct](#) underpins the approach of OAC to Special Transactions involving employees. It extends beyond the officers referred to in Section 6 above to all employees. It also applies to Directors. It requires disclosure of all actual, perceived or potential conflicts of interest in a timely manner.

While the Code appropriately recognizes that conflicts of interest are not of themselves wrongful or illegal (they are just a state of facts), the Code sets out the steps to be taken to avoid subsequent potential wrongful conduct, such as exercising improper influence over the selection of a supplier to OMERS. The Code’s approach is simple. It starts with disclosure of any factual circumstances that

raise the spectre of conflict of interest and directs the employee's manager to decide what safeguards are appropriate (unless the conflict is immaterial), including, at a minimum, segregation of duties.

## 8. STATEMENT OF INVESTMENT AUTHORITIES

The OAC [Statement of Investment Authorities](#) (the "SIA") regulates the delegation of investment decision-making authority from the OAC Board to the President and CEO of OAC. The SIA also sets out the broad framework for delegation to the CEO of responsibilities with respect to making investment decisions up to a specified dollar amount. There are, however, limitations on such delegated authority based on considerations such as whether or not the transaction would be out of the ordinary course of business or would have a negative reputational impact on OAC. These limits on delegations affect Special Transactions, as such transactions will often not meet the test of ordinary course of business. Where these limits apply, the delegation is clawed back and the transaction will require Investment Committee oversight and approval. The delegated authorities and claw-backs of authority around transactions that raise reputational issues or are out of the ordinary course of business are also found in sub-delegations, for example, to TAC<sup>6</sup>.

## 9. INVESTMENT COMMITTEE MANDATE

The Investment Committee<sup>7</sup> has delegated authority from the OAC Board to approve investment transactions and authorize related expenditures. The Investment Committee mandate, approved by the OAC Board, makes note of the importance of related party transactions and contemplates approval of such transactions by the Investment Committee. This Policy authorizes the delegation to TAC to approve certain Special Transactions where specified standards are met and thresholds are not exceeded as outlined in Section 13 and Section 15 below.

## 10. PROCESSES AND CONTROLS

Certain processes and controls have been adopted as a matter of practice to promote enhanced oversight of Special Transactions and are mandated by this Policy. Consistent with the principled approach to Special Transactions called for by this Policy, the Investment Committee pre-meeting checklist, which is used by the Committee Chair and the CIO in relation to Investment Committee agenda planning, requires that the pre-meeting planning for each meeting of the Investment Committee include a discussion of any pending Special Transactions. These pre-meeting discussions occur well ahead of Investment Committee meetings.

Similarly consistent with the objectives of the Policy, Senior Management is obligated in the preparation of submissions going to the Investment Committee or TAC to expressly identify relationships or areas of potential conflicts of interest or other factors that might require a transaction to be treated as a Special Transaction.

## 11. DISCLOSURE OF SPECIAL TRANSACTIONS

There are a number of important financial statement disclosure requirements relating to financial reporting which are relevant to recording and disclosure of Special Transactions and which are recognized by this Policy. Applicable requirements can be found in International Accounting Standard 24 ("IAS 24"), which provides guidance on the proper recording of information with respect to Special

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<sup>6</sup> Delegations by the Investment Committee to the CEO are sub-delegated through the CIO to TAC. TAC is a broadly representative management committee that exercises delegated authorities.

<sup>7</sup> The Investment Committee is a committee of the whole OAC Board.

Transactions for financial statement disclosure and reporting purposes. IAS 24 broadly defines related parties and related party transactions for reporting and disclosure purposes.

Consistent with this Policy, IAS 24 notes that related party relationships are a normal feature of commerce and business. Having said that, IAS 24 also notes that having knowledge of an entity's relationships with related parties may affect third-party assessments of entity risk, as well as third-party knowledge of opportunities facing an organization.

If an entity has entered into any related party transactions during a reporting period, the entity is obligated to disclose the nature of the relationship as well as information about the transactions sufficient to enable users of the financial statements to understand the potential effect of the relationship on the financial statements of the entity.

## **12. ADDITIONAL REVIEW STANDARDS FOR DESIGNATED INVESTMENT TRANSACTIONS**

In addition to the safeguards and requirements previously described or set out in this Policy which apply to specific related party or potentially prohibited transactions, additional safeguards are mandated by this Policy for Designated Special Transactions. Designated Special Transactions relate to transacting primarily with Directors and officers or former Directors and officers as well as entities with specific explicit power to appoint representatives to the Sponsors Corporation or Directors to the OAC. Designated Special Transactions fall into two categories: (i) Designated Investment Transactions as defined in this Section 12, and (ii) Designated Outsourcing Transactions as defined in Section 15.

“Designated Investment Transactions” are transactions in which OAC or an Investment Entity<sup>8</sup> (i) acquires or disposes of an investment asset or (ii) enters into a borrowing or lending transaction, in any such case when such transaction is between OAC or an Investment Entity, on the one hand, and, to the knowledge of any member of Senior Management aware of the transaction, any of the following persons, directly or indirectly, on the other hand:

- a) any entity who has appointed a member to the OAC Board or the SC Board;
- b) any individual who is a member of the OAC Board, the SC Board or the board of an Investment Entity or any individual who has been a member of such a board in the past 24 months;
- c) an officer of OAC or any Investment Entity or any individual who has been an officer of OAC or any Investment Entity in the past 24 months;
- d) any individual who is or has been within the past 24 months employed by OAC or an Investment Entity;
- e) the spouse or common-law partner or a child (“family member”) of any individual listed in b) or c);
- f) a corporation or other entity that is directly or indirectly controlled (as defined in the FIR) by an individual referred to in paragraphs b), c), or e); or
- g) a corporation or other entity in which an individual referred to in paragraphs b), c), or e) directly or indirectly has a substantial investment (as defined in the FIR).

Notwithstanding the foregoing, the normal course purchase or sale of equity or debt securities on a “published market” (as defined in Multilateral Instrument 61–101) by OCM shall not constitute a Designated Investment Transaction for the purposes of this Policy.

Where, to the knowledge of any members of the Approving Body responsible for reviewing Special Transactions or any members of the Senior Management team involved in preparing and submitting a submission document in connection with seeking approval of any such transaction, the transaction

<sup>8</sup> For the purposes of this Policy, OMERS Investment Management Inc. and OMERS Finance Trust are included in the scope of “Investment Entity”.

would constitute a Designated Investment Transaction, the following additional safeguards must be followed:

i) CIO Oversight

The proposed transaction must be referred to the CIO or the CEO, where the CIO is conflicted, for oversight. If there is reasonable doubt whether the transaction is a Designated Investment Transaction, it should be submitted to the CLO for a decision.

ii) External Board Counsel

Designated Investment Transactions must be referred to the OAC Board's external independent legal counsel for comment. Such comment must be forwarded to the Chair and Vice Chair of the Investment Committee and the Designated Sponsor (as defined in paragraph iii) below), and must accompany the submission materials referred to below.

iii) Submission Materials

A member of the Senior Management team designated by the CIO (a "Designated Sponsor") must prepare any submission to the Approving Body with respect to Designated Investment Transactions. Such submission documents must include in addition to the usual description of the transaction and the principal terms thereof, (i) the basis for concluding the transaction is a Designated Investment Transaction, (ii) risks and mitigants, (iii) the rationale for undertaking the Designated Investment Transaction, (iv) a description of proposed safeguards as discussed below, (v) a recommendation as to why the Designated Investment Transaction should be pursued and completed, and (vi) a review of any other factors or information that the member of the Senior Management team believes should be considered by the Approving Body.

iv) Special Committee

The CIO may appoint a special committee of TAC to work with the Designated Sponsor where TAC has authority to approve the Designated Investment Transaction if required to ensure that any TAC decision is made only by non-conflicted members and to provide a sounding board for the Designated Sponsor. Where Investment Committee approval is required, the CIO will confer with the Chair of the Investment Committee (or the Vice Chair if the Chair is conflicted), who, in their discretion, may appoint a special committee of the Investment Committee for the same reasons. Any such special committee shall approve the submission documents to the Approving Body. All members of such special committee must be non-conflicted.

v) Advisors

An Approving Body or any special committee, if appointed, may engage, where it determines it is appropriate to do so, external counsel, external valuers and independent financial advisors to advise it in connection with its review of a Designated Investment Transaction.

vi) Independence of Approving Body

Any member of the Approving Body who is conflicted must be excluded from any decision of the Approving Body.

vii) Valuation

Where the Approving Body or any special committee, if appointed, determines it would be advisable to do so in the interests of plan members taking into account, among other things, the complexity of the transaction or the sensitivity of the transaction, it may require an external third-party valuation to be obtained in respect of a Designated Investment Transaction. The valuator that completes any such valuation should satisfy the independence standards applicable to formal valuations required under Multilateral Instrument 61-101.

viii) Factors Affecting Approval

In considering whether to approve a Designated Investment Transaction, the Approving Body, in addition to receiving the recommendations of any special committee, in discharging applicable fiduciary duties, must determine (A) that the transaction is on commercially

reasonable terms, and, where applicable, on terms no less favourable to OAC or the Investment Entity than general market terms, and (B) that the terms of the transaction are fair and reasonable and in the interests of OMERS plan members.

### **13. APPROVING BODY THRESHOLDS**

TAC is authorized to approve any Designated Investment Transaction if the value of the transaction is less than \$25,000,000 in the aggregate. For all other Designated Investment Transactions, the approval of the Investment Committee is required. When TAC will be considering a Designated Investment Transaction, the CIO must provide a copy of the submission materials to the Chair and Vice Chair of the Investment Committee for information when such materials are provided to TAC.

If the transaction is a Designated Investment Transaction by virtue of the fact that (i) any member of Senior Management, (ii) any family member of a member of Senior Management, or (iii) any corporation or other entity that is controlled by such a member or a family member of such member, or (iv) any corporation or other entity in which such member or a family member of such member has a substantial investment, then the approval of the Investment Committee is required for such Designated Investment Transaction, regardless of the value of the transaction.

The Approving Body may impose such terms and conditions on its approval as it deems appropriate.

### **14. FOLLOW-ON INVESTMENTS**

Where a Designated Investment Transaction has been approved by the appropriate Approving Body, follow-on additional investments or commitments may be made within the threshold limits established by this Policy without additional approvals being required, unless there has been a material change in the circumstances of the investment, in which case a new approval is required. By way of example, if the original Designated Investment Transaction was for \$15 million and approved by TAC, TAC may approve an additional investment of up to \$10 million as a follow-on investment before the Investment Committee's approval is required. Any follow-on investment approved by TAC in respect of any Designated Investment Transaction must be reported to the Investment Committee at the next meeting of the Investment Committee following the date of such follow-on investment.

### **15. DESIGNATED OUTSOURCING TRANSACTIONS**

If OAC or an Investment Entity enters into a transaction to outsource (i) an investment management function or (ii) a corporate IT, investment application or pension processing function with an entity or individual listed in paragraphs a) through g) of Section 12 (a "Designated Outsourcing Transaction"), then the review standards set out in Section 12 apply to such transaction. The CIO may delegate his authority to manage the review process as set out in Section 12 with respect to a Designated Outsourcing Transaction to any other non-conflicted member of the Enterprise Senior Leadership Team. TAC is authorized to approve any Designated Outsourcing Transaction if the value of the Designated Outsourcing Transaction is less than \$5,000,000 in the aggregate. For all other Designated Outsourcing Transactions, the approval of the Investment Committee is required.

### **16. REPORTING AND DISCLOSURE**

At each regularly scheduled meeting of the Investment Committee, the CIO shall provide a report to the Investment Committee on all Permitted FIR Related Party Transactions and Designated Special Transactions that have been approved by TAC since the Investment Committee's immediately preceding meeting. Such reports shall describe the material terms of each such transaction including the factors affecting approval as set forth in Section 12 above.

The Investment Committee must provide an annual report at the end of each year to the Audit Committee covering all Permitted FIR Related Party Transactions and Designated Special

Transactions to assist the Audit Committee in its deliberations regarding the discharge of its disclosure obligations with respect to the financial statements of OAC in accordance with IAS 24.

The CLO must prepare a list, following the end of each financial year, of all Designated Special Transactions, including any series of related Designated Special Transactions, entered into during that financial year that had a value in excess of \$5,000,000. Such report shall be made available by OAC through its annual report or otherwise on its public website.

**HISTORY**

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