



CORRECTED

TO: Business Board

SPONSOR: Richard Nunn, Past-Chair, Business Board
David Wilson, Chair, Business Board

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DATE: September 14 for September 27, 2010

AGENDA ITEM: 8

ITEM IDENTIFICATION:

Pension Committee: Establishment and Terms of Reference and Corresponding Revisions to the Terms of Reference of the Business Board and the Audit Committee

JURISDICTIONAL INFORMATION:

The Governing Council is the sponsor of the University of Toronto Pension Plan and the University of Toronto (OISE) Pension Plan (the “pension plans”) and is also the legal administrator of the pension plans within the meaning of that term as defined by the Pension Benefits Act, R.S.C. 1990, c. P8.

Section 2(14) (e) of the University of Toronto Act empowers the Governing Council to “appoint committees and delegate thereto power and authority to act for the Governing Council with respect to any matter or class of matters, provided that where power and authority to act for the Governing Council are delegated, a majority of members of the committee shall be members of the Governing Council.”

PREVIOUS ACTION TAKEN:

- The 2007-09 Memorandum of Agreement between the University and the University of Toronto Faculty Association, signed following arbitration, included an agreement to establish a working group to consider “an appropriate forum for the Association to have a voice concerning pension plan governance and issues related thereto”

- In 2009, a further arbitration award followed the inability of the parties to reach agreement in the working group discussions. The award of Arbitrator Martin Teplitsky, dated August 17, 2009, specified that the Governing Council delegate the responsibilities of pension plan administrator, currently performed by the Business Board, to a new Pension Committee of the Governing Council. “In essence, the administrator’s role which has been delegated to the Business Board will be transferred to the Pension Committee, including the matters in paragraph 5 of the Terms of Reference of the Business Board that apply to the Pension Plans.” The majority of members of the Committee would be members of the Governing Council because the Governing Council “bears the financial risk” for the funding of the plan and because a majority of Governing Council members is required for a delegation of authority to the Committee.

Professor Hildyard presented the outcome to the Business Board, which authorized the Chair of the Business Board, working with the Governing Council Secretariat and the administration, to develop a plan to implement the arbitration award and to report to the November 2009 meeting of the Board on the intended approach. Mr. Nunn and Ms Riggall so reported.

- The Vice-President, Human Resources and Equity, the Vice-President, Business Affairs and members of the Human Resources Department conducted discussions with employee groups other than the Faculty Association, including those represented by unions. Those groups expressed support both for the proposed terms of reference and of the composition of the proposed Committee. Their sole concern was the achievement of appropriate representation for the groups other than the faculty. (There will be further dialogue with those groups concerning the allocation of places on the Committee to members appointed on the recommendation of the unionized administrative-staff groups, with a view to equitable representation over a multi-year cycle.)
- Further arbitration was required with respect to the specific terms of reference of the Pension Committee. The arbitrator ruled with respect to the specific matters in September, 2010.

HIGHLIGHTS:

- The proposal is viewed by the President, the Vice-President, Business Affairs, and the Vice-President, Human Resources and Equity, as an important, positive step in enhancing pension-plan governance. They support the proposal and they are committed to its successful implementation.
- The proposed Pension Committee would be a committee of, and reporting directly to, the Governing Council. A majority of its members would be members of the Governing Council, enabling Council to delegate to it authority to make decisions on behalf of Council in Council’s role as plan sponsor and administrator.
- Specifically excluded from the Committee’s role is the determination of the terms of the pension plans, including benefits to be paid to retired members and contributions to be made by active members and by the University. Such matters are to be “determined through the

University's usual processes including the budget process and, where applicable, collective bargaining or some similar process."

- The Committee would consist of twenty members other than *ex officio* members: eleven members of the Governing Council, five members appointed on the recommendation of the Faculty Association (including one retired member of one of the pension plans), three members appointed on the recommendation of the unionized administrative staff groups, and one member appointed on the recommendation of non-unionized, administrative staff members of the pension plans. As with all Governing Council committees, the Chair, Vice-Chair, President and Chancellor are voting *ex officio* members, but no more than eleven "Governing Council appointed members shall be voting members at a meeting." It is required that members of the Committee have a reasonably strong level of knowledge in pension matters. Moreover, Committee members will oversee the investment of a multi-billion-dollar pension fund. It is therefore anticipated that the Governing Council appointees will have a high level of financial expertise and that most will also serve on the Business Board.
- Up to three senior members of the University administration with expertise in pension matters, nominated by the President and approved by the Committee, will serve as non-voting assessors.
- The Chair and Vice-Chair are elected for two-year terms. One position will be occupied by a member of the Governing Council and the other by another member, with the position of Chair alternating between a member of Council and another member. Members of each group (Governing Council members and others) are responsible for electing the Chair or Vice-Chair, as applicable, from amongst their group.
- The Committee is to be responsible for policy, and monitoring and oversight of matters affecting the registered pension plans. It is responsible for the same functions with respect to the Supplementary Retirement Arrangement, apart from the investment of the funds set aside by the University to meet its obligations under the S.R.A. Those funds are invested as a part of a larger pool including the endowment funds – i.e. the Long-Term Capital Appreciation Pool.
- The functions of the Committee include the assumption of the functions hitherto carried out by the Business Board with the addition of a number of more specific functions. Like the Business Board, the Committee would approve, reject or refer proposals back to the administration. Those functions include review, and approval / rejection / or referral back of recommendations concerning: appointment of the pension plan's actuary; the actuarial valuation (including actuarial assumptions and methodologies); the financial statements of the plans; the annual report on the pension plans; the delegation of authority to the University of Toronto Asset Management Corporation (or "other entity established for a similar purpose" to manage investment of assets (including general oversight of investment management); the Statement of Investment Policy and Goals for the pension funds; and a plan to improve communication with members of the pension plans. The Committee would review semi-annual or more frequent reports on investments, and annual or more frequent reports on the administration of the plans.
- Specific provision is made for orientation, training and outside advice.

- The Committee would meet at least quarterly and in closed session.
- The Terms of Reference of the Business Board would be amended to remove the responsibilities to be carried out by the proposed Pension Committee. Two functions concerning the pension plans would remain. First, the Business Board of course would retain its full responsibility for oversight of the “fiscal integrity of the University.” Given the importance of the funded status of the pension plans in the University’s financial well-being, the Board would continue to receive and review the annual report on the pension plans with a view to assessing their effect on the financial health of the University and with a view to drawing to the attention of the President or the Governing Council the need for any action to maintain that financial health. Second, the Board would retain its current responsibility for review and approval of salary and benefit agreements and amendments to benefits plans, including the pension plans.
- The Terms of Reference of the Audit Committee would require one significant amendment. That Committee would continue to review, from its perspective, the annual financial report on the pension plans, but it would recommend the financial statements to the Pension Committee, rather than the Business Board, for approval (or rejection or referral back). It would continue to review “management’s assessment of the financial assessment of the financial soundness of the pension plans,” and it would continue to include the pension plans in its review of the “annual management report on significant business, financial and regulatory risks”

RECOMMENDATION:

Be it recommended to the Governing Council:

- (a) THAT the proposal to establish a Pension Committee, as a Committee with delegated authority from the Governing Council and reporting to the Governing Council, be approved;
- (b) THAT the Terms of Reference of the Pension Committee, a copy of which are attached hereto as Attachment 1, be approved;
- (c) THAT the amendments to the Terms of Reference of the Business Board, as described in Attachment 2 hereto, be approved; and
- (d) THAT the amendments to the Terms of Reference of the Audit Committee, as described in Attachment 3 hereto, be approved.

**PENSION COMMITTEE
TERMS OF REFERENCE**

1. MEMBERSHIP

1.1 Composition

Total membership is 20, including:

- 11 members of the Governing Council;
- 4 members appointed on the recommendation of the University of Toronto Faculty Association;
- 1 retired member of the teaching staff or retired librarian, who is a member of a one of the University's registered pension plans, appointed on the recommendation of the University of Toronto Faculty Association; and
- 4 members, 3 of whom would be appointed on the recommendation of the unionized administrative-staff groups and 1 of whom would be appointed on the recommendation of the non-unionized administrative-staff plan members.

It is expected that all members of the Committee will have a reasonable level of knowledge of matters related to the pension plans and pension matters in general.

In addition, the Chairman and Vice-Chairman of the Governing Council, the President, and the Chancellor are *ex officio* voting members of all Standing and Special Committees of the Governing Council. No more than 11 Governing Council appointed members shall be voting members at a meeting.

1.2 Non-Voting Assessors¹

Up to 3 senior members of the University administration with expertise in pensions and/or financial matters, as nominated by the President, and approved by the Committee, will serve as non-voting assessors reporting to the Committee.

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¹ The Report of the Chairman's Advisory Committee on Governance (the "Balfour Report") approved by the Governing Council on May 19, 1988, states that "the duties of the President with respect to the work of Governing Council and its committees are discharged in part by other senior officers of the University acting for the President. In this capacity they are collectively called 'Presidential assessors'." Normally, "where committee terms of reference explicitly provide membership for a specific number of assessors, they are voting members." Notwithstanding that provision, the assessors to the Pension Committee are non-voting members.

The duties of the non-voting assessors are described below in paragraph 9.4 of these terms of reference - fundamentally to bring forward proposals and reports for the Committee's consideration on matters within these terms of reference.

1.3 Term

Members are normally appointed for three year terms. They may be reappointed.

Terms begin on July 1 and continue to June 30..

1.4 Chair and Vice-Chair

The Chair and Vice-Chair are elected for two year terms. Each position will be occupied either by (a) a member of the Governing Council or (b) by another member of the Committee, provided that both positions are not filled by a member of either group (a) or (b). When the position of Chair or Vice-Chair is filled by a member of group (a) or group (b) for a particular term, that position shall be filled by a member of the other group for the next two-year term. Members of group (a) or (b), as applicable, are responsible for electing the Chair or Vice-Chair, as applicable.

The Committee shall have a Secretary that is not a Member of the Committee. The Secretary shall keep minutes of meetings.

2. QUORUM

One half of the voting members of the Committee.

3. COMMITTEES

The Pension Committee has no standing subcommittees. However, the Pension Committee may establish and direct special committees or subcommittees, in both cases whose members are members of the Pension Committee.

4. FUNCTION

The Pension Committee is responsible for consideration of policy and for monitoring and oversight of matters affecting the administration of the University's two registered pension plans: the University of Toronto Pension Plan and the University of Toronto (OISE) Pension Plan. The Committee is also responsible for consideration of policy and for monitoring and oversight of matters affecting the administration the Supplemental Retirement Arrangement (S.R.A.), apart from the investment of the assets set aside by the University to meet its liability under the S.R.A., which assets are invested as part of a larger pooled fund. For purposes of these terms of reference, the two registered plans and the S.R.A. shall collectively be referred to as the "pension plans" or "plans."

The Pension Committee is not responsible for recommending or determining the terms of the pension plans, including the benefits to be paid to the retired members of the pension plans, the contributions required from the active members of the plans to earn those benefits, and the groups of employees who are to be members of the plans. Such matters are determined through the University's usual processes including the budget process and, where applicable, collective bargaining or some similar process.

5. AREAS OF RESPONSIBILITY

The Pension Committee holds delegated authority to act for Governing Council in respect of the administration of the Plan except for matters²:

- (i) which Governing Council or its Business Board are required by statute to approve; or
- (ii) which are reserved to Governing Council or the Business Board by these terms of reference, as amended from time to time by Governing Council.

The President or designate holds delegated authority to act for Governing Council with respect to approval of transactions in the normal course of business.

The authority of the Pension Committee in specific matters is as follows. The specific items below are intended to supplement, not limit, the general statements in section 4 above.

- review, approve, reject or refer back the recommendation for the appointment of the pension plan actuary and oversee the actuary's performance.
- review, approve, reject or refer back the actuarial valuation of the pension plans including approval of the actuarial assumptions and methodologies for the valuation, and any amendments thereto.
- on the recommendation of the Audit Committee, review, approve, reject or refer back the audited financial statements of the registered pension plans.
- review, approve, reject or refer back the terms of the delegation of authority to a University-controlled asset management corporation (or other entity established for a similar purpose) to manage the investment of the pension fund master trust and carry out oversight.
- review, approve, reject or refer back, at least annually, the Statement of Investment Policies and Goals for the pension fund master trust and any amendments thereto. The Statement will include, without limitation: return objectives, normal risk tolerance, asset allocation, and benchmarks for the evaluation of performance,
- initiate, review, approve, reject or refer back a communication plan to enhance and facilitate communications of important features of the plans with members and former members of the plans

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² The Pension Committee performs the role with respect to pension plan administration that was previously delegated by the Governing Council to the Business Board. The general limitations on that delegated authority are identical to those that apply to the Governing Council's delegation of authority to the Business Board.

The Business Board will receive for its information and review the annual financial report on the pension plans and the statement of investment policies and goals for the pension master trust. That Board is expected to give particular attention to their implications for the financial health of the University.

5. AREAS OF RESPONSIBILITY (Cont'd)

- review, approve, reject or refer back an annual financial report on the pension plans. The annual financial report shall include, without limitation:
 - Information on: the funded status of the plans; the plan liabilities and substantial changes thereto; the plan assets, including contributions and the investment performance of the pension fund master trust; and fees and expenses to be paid by the pension plans for the investment management of the pension fund master trust.
 - key excerpts from the actuarial valuations of the plans;
 - the audited financial statements of the registered pension plans; and
 - any other information of importance to the Pension Committee in the discharge of its duties, to the Business Board in its role with respect to the fiscal integrity of the University, and to the Governing Council in its role as plan administrator.
- reviews, at least semi-annually or more frequently if specified by the Committee, reports on the investment of the pension fund master trust. Such reports will include, among other things, reports on investment performance and risks being incurred.
- reviews and oversees, at least annually or more frequently if specified by the Committee, reports on matters affecting the administration of the pension plans.

6. STANDARD OF CARE

Members of the Committee bear a fiduciary responsibility to the members of the pension plans. In carrying out their responsibilities relating to the administration of the pension plans, members of the Pension Committee shall act with the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person. In addition, each member shall use all relevant knowledge and skill that the member possesses, or, by reason of the members' profession, business or calling, ought to possess.

7. ORIENTATION, TRAINING AND ADVICE

An annual Pension Committee Orientation session shall be provided to Committee members, as shall such additional Committee training sessions as may be deemed useful by the Committee from time to time to enable members to carry out their fiduciary duties and to exercise an appropriate standard of care.

Such additional educational opportunities in pension and investment matters as may be requested by members of the Committee shall be provided as required..

The Pension Committee may from time to time determine a need for advice beyond that provided to the Committee in the normal course of business and in additional instances by the assessors, the pension fund actuaries, the pension funds' auditors, the University's legal counsel, and the investment manager. In such cases, the Committee may engage external consultants, with the cost being funded from the assets of the pension plans, provided that such costs would be proper administrative expenses to be charged to the funds.

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8. CONFLICT OF INTEREST

The Committee shall develop and maintain a conflict-of-interest policy, having regard for Section 27 of Governing Council By-Law Number 2.

9. PROCEDURES

9.1 Meetings

The Committee usually meets in closed session. Where matters before the Committee are of a particularly confidential or sensitive nature, the Committee may, pursuant to section 33 of By-Law Number 2, meet *in camera*.

Reports of Committee meetings shall be made public, in the manner usual for reports of committees of the Governing Council. Matters considered *in camera* are not included in the Committee's public reports.

The Committee meets a minimum of four times per academic year. Any five (5) members of the Committee may call a special meeting of the Committee with seven (7) days' written notice to all members of the Committee.

Meetings may be held by teleconference or other means of electronic communication.

Each member of the Committee shall have one (1) vote, including the Chair and the Vice Chair. Decisions of the Committee shall be by majority vote. An equality of votes shall mean that the question is decided in the negative.

9.2 Confidentiality

The Committee shall develop and maintain a policy concerning confidentiality.

9.3 Agenda

In establishing the agenda for meetings of the Committee, the Chair will usually be advised by an agenda planning group that includes the Vice-Chair, the non-voting assessors and the Committee's secretary. Any member of the Committee may suggest an agenda item through the Chair. The proposed agenda for a meeting, together with background documentation, is reviewed at an agenda planning meeting, usually scheduled ten to fourteen days prior to the Committee meeting.

9.4 Committee and administrative responsibility³

Given the nature of its responsibilities, the Committee exercises its oversight powers (a) through judging proposals brought forward by the Committee's assessors; (b) through monitoring reports from those assessors on matters within these terms of reference; and (c) through requesting proposals or reports to be brought forward by the Committee's assessors.

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³ The Pension Committee performs the role with respect to pension plan administration that was previously delegated by the Governing Council to the Business Board. The provisions with respect to the Committee's and the administration's responsibility are essentially the same as those in the Business Board's terms of reference.

The Committee will rely on its assessors to develop proposals and options for its consideration. The President's responsibility as Chief Executive Officer would oblige him/her or his/her appointees as assessors to advise the Committee on all issues within its terms of reference.

The Committee will accept or reject proposals from the appropriate assessor(s) or refer them back for further consideration of a particular aspect(s). The Committee may amend proposals developed by the assessors which are minor amendments (a) that do not contravene the sense of the original motion or negate it, and (b) that are accepted by the appropriate assessor.

**BUSINESS BOARD
TERMS OF REFERENCE**

Item 3.1. Standing Committees

Item 3.1. currently reads “the Audit Committee reports to the Business Board. It is proposed to add a parenthetic note:

(The Audit Committee recommends the financial statements of the pension plans to the Pension Committee for approval.)

Item 5.1. Financial Policy and Transactions: (a) Governing Council

At present, the Governing Council is responsible for “review of reports from the Business Board at least annually on the Board’s receipt and discussion of reports on investment matters.” It is proposed to replace that statement with the following:

- review of reports from the Business Board at least annually on the Board’s receipt and discussion of reports on the investment of University funds.
- review of reports from the Business Board at least annually on the Board’s receipt and discussion of reports on the on the financial integrity and strength of the University’s endowment funds, pension funds and other substantial invested funds.

Item 5.1. Financial Policy and Transactions: (b) Business Board

- (1) At present the Business Board is responsible for “review of regular reports on matters affecting the finances of the University and on financial programs and transactions.” No change is proposed, but footnote number 3 provides examples of the regular reports “on matters affecting the finances of the University.” That footnote reads, “For example, financial forecasts, reports on borrowing and reports on investment activities.” It is proposed that the footnote be amended. There is need to limit the Board’s responsibility for receipt of reports on investment activities to University funds. However, to enable the Board to continue to carry out its responsibility for the overall fiscal integrity of the University, it would continue to receive and review the annual financial report on the pension plans. The Board would assess the effect of the plans on the financial health of the University and with a view to drawing to the attention of the President or the Governing Council the need for any action to maintain that financial health. It is proposed that the revised footnote 3 read:

For example, financial forecasts, reports on borrowing, reports on investments of University funds, and reports on the financial status of the pension plans.

- (2) At present, the Business Board is responsible for “review from time to time of the asset allocation for the investment of the University funds and the pension funds.” It is proposed that the section be amended to read:

-review from time to time of the asset allocation for the investment of University funds

- (3) At present, the Business Board is responsible for “annual review and approval of investment policies for the pension funds and amendments thereto.” It is proposed to eliminate that statement. The responsibility would reside with the Pension Committee.
- (4) At present, the Business Board is responsible for the following duties:
- approval of the delegation of authority to a University-controlled asset management corporation for the management of the investment of University funds and pension funds
 - approval of provisions for the appointment of a Board to oversee the work of that corporation and arrangements for the appointment and removal of its members

The Terms of Reference of the proposed Pension Committee: (a) make that Committee responsible for approving the delegation of authority to manage the investment of the pension funds (the Pension Fund Master Trust), and (b) make provision for carrying out that responsibility with respect to some “other entity established for a similar purpose” should such delegation to the current University of Toronto Asset Management Corporation be superseded by other arrangements. To take those provisions into account, it is proposed that the sections be amended to read as follows:

- approval of the delegation of authority to a University-controlled asset management corporation (or other entity established for a similar purpose) for the management of the investment of University funds
 - approval of provisions for the appointment of a Board to oversee the work of that corporation and arrangements for the appointment and removal of its members (or approval of the establishment of some other entity to achieve a similar purpose)
- (5) At present, the Business Board is responsible for the “review of annual reports, or more frequent reports as the Board may from time to time determine, on the investment of University and pension funds, such reports to include, without limitation: (i) reports on investment risk and return; and (ii) reports on fees and expenses incurred.” It is proposed that the provision be amended to read as follows, specifying that the Board will (a) carry out its current review of reports on investments only as they concern University funds, but (b) will also review reports on investment of the pension funds for the more specific purpose of discharging its responsibility to ensure “the fiscal integrity of the University.”
- review of annual reports, or more frequent reports as the Board may from time to time determine, on the investment of University funds, such reports to include,

without limitation: (i) reports on investment risk and return; and (ii) reports on fees and expenses incurred.

- review of annual reports, or more frequent reports as the Board may from time to time determine, on the investment performance of the pension funds, to discharge the Board's responsibility to ensure the fiscal integrity of the University.

Item 5.1. Financial Policy and Transactions: (c) President or designate

At present, the Terms of Reference of the Business Board specify the following role for the President or designate with respect to investment management.

- with the advice of the Investment Advisory Committee, approval of asset allocation for the University Funds and review of the asset allocation for the Pension funds
- negotiation and settlement of an investment management agreement between the University and a University-controlled asset management corporation, including criteria for assessment of services provided and investment performance in comparison to risk and rate of return objectives specified in approved investment policies and other benchmarks established through this agreement from time to time.
- preparation of a statement of investment policies and procedures for the pension funds, through the compilation of:
 - (i) University of Toronto Pension Fund Master Trust Investment Policy as approved by the Business Board from time to time,
 - (ii) such investment strategies and policies as may be approved by the Board of Directors of the University of Toronto Asset Management Corporation ("UTAM") from time to time pursuant to section 2.3 of the University of Toronto Pension Fund Master Trust Investment Policy;
 - (iii) the Delegation of Authority from the Governing Council of the University of Toronto to UTAM; and
 - (iv) the Investment Management Agreement between the Governing Council of the University of Toronto and the University of Toronto Asset Management Corporation in force from time to time.

The first statement above remains entirely appropriate in the new circumstances. The President would, with the advice of the new Investment Advisory Committee, continue to approve the asset allocation for the investment of University funds and would now only review the asset allocation for the pension fund. (The asset allocation of the pension fund is to be approved by the Pension Committee as part of the Statement of Investment Policy and Goals.)

The second statement above also remains partly appropriate. The President would continue to negotiate and settle the detailed Investment Management Agreement with UTAM under the terms of the separate delegations of authority for the pension fund (as approved by the Pension Committee) and University funds (as approved by the Business Board). There is, however, need for two changes. First and most obviously, the Business Board is now directly concerned with the management only of University funds. Therefore, the reference to the

Investment Management Agreement would concern itself only with University funds. Second, there is again need to make parenthetical reference, consistent with that in the Terms of Reference of the Pension Committee, to some “other entity established for a similar purpose.”

Because the third statement deals entirely with the statement of investment policies and procedures for the pension funds, it no longer belongs in the Terms of Reference of the Business Board. Any relevant provisions belong solely in the Terms of Reference of the Pension Committee.

It is therefore proposed that the section read as follows:

- with the advice of the Investment Advisory Committee, approval of asset allocation for the University Funds (and review of the asset allocation for the Pension funds)
- negotiation and settlement of a detailed investment management agreement between the University and a University-controlled asset management corporation (or other entity established for a similar purpose), pursuant to the approved delegation of authority to the corporation (or other entity) for the management of University funds. The Agreement would include for University funds criteria for assessment of services provided and investment performance in comparison to risk and rate of return objectives specified in the approved investment policy and other benchmarks established through this agreement from time to time.

**AUDIT COMMITTEE
TERMS OF REFERENCE**

There is need for only one change in the Terms of Reference of the Audit Committee.

Item 5.1.1. Financial Reporting

Section (d) makes the Audit Committee responsible for the following function:

- (d) Reviews management's annual financial report on the pension plans, including the audited financial statements of the pension funds and the auditors report thereon, and recommends the financial statements to the Business Board for approval. In carrying out this duty, the Committee reviews management's assessment of the financial soundness of the pension plans.

Given its expertise in financial reporting and in the assessment of financial soundness and risk, it is well worthwhile that this third body (in addition to the Business Board and the Pension Committee) review the annual financial report on the pension funds – particularly but by no means exclusively the financial statements.

It is proposed that section (d) be amended to read as follows:

- (d) Reviews management's annual financial report on the pension plans, including the audited financial statements of the pension funds and the auditors report thereon, and recommends the financial statements to the Pension Committee for approval. In carrying out this duty, the Committee reviews management's assessment of the financial soundness of the pension plans.