OMERS Sponsors Corporation

OMERS

BOARD COMPOSITION

BY-LAW REVIEW

May 25, 2016

Table of Contents

1. Executive Summary

The OMERS Sponsors Corporation determines the composition of the two boards that govern the OMERS plans – the OMERS Administration Corporation (OAC) Board and the OMERS Sponsors Corporation (SC) Board. The composition, desired competencies, method for nominating and appointing members and term limits, among other things, are set out in By-Law Nos. 4 and 13.

In 2015, the SC consulted OMERS stakeholders on these By-Laws, particularly with respect to:

- **Composition of the SC and OAC Boards -** Certain organizations have the ability to nominate or appoint Directors to the OAC and SC Boards.
- **Chairing of the two Boards** – In 2013 the SC added an Independent Board Chair (IBC) to the OAC Board. For itself, the SC Board has adopted a co-chairing approach.
- **Nomination and Appointment Process for Directors** - SC Directors are appointed directly to the SC Board by Sponsor Organizations. OAC Directors are nominated by Sponsor Organizations but appointed by the SC Board. The SC works with the OAC to appoint their independent chair.
- **Term Limits for Board Members** - OAC Directors have term limits SC Directors do not.

A number of organizations provided input and comments on the above points. Generally consistent positive comments were received in relation to the nomination and appointment processes for directors, and the new OAC Independent Board Chair role. On the other points, input was varied.

Having considered the input and the issues more broadly, the SC has elected to maintain the current composition of the OMERS Boards as well the appointment processes, and decided to make the following changes:

- Impose term limits of six years for the SC Co-Chair positions. Effective January 1, 2016 a Director may not occupy the Co-Chair seat for more than six years. As a transition measure, any incumbent Co-Chair as at December 31, 2015 may only serve three more years as Co-Chair.
- Strengthen the approach to engaging those members who are not affiliated with those organizations that currently nominate or appoint Directors to the OMERS Boards by:
  - Ensuring targeted and meaningful engagement, including formalizing a schedule of meetings to further improve engagement and seek input at the appropriate times with regard to key OMERS decisions and activities (e.g. plan design, strategic direction, etc.). It is important that diverse perspectives and views be discussed and considered during decision-making.
  - The prototype for this approach is the meetings that the SC Co-Chairs and OAC Chair have been having with professional organizations from the management and non-union space. The intent is to redouble these efforts by expanding the invitees to also include leaders from small unions whose membership comprises at least 0.5% of OMERS members[1].

The purpose of this report is to outline the changes that were made and the related rationale. The By-Laws are available at www.omerssc.com.

[1] *To keep the size of the meetings manageable, the SC has decided to invite small unions above the noted threshold. However, the SC will not exclude any of the smaller unions if they wish to participate.*

2. Distinctions between the Two OMERS Boards

The two OMERS Boards each have distinct roles and responsibilities reflective of their unique purpose within the overall governance of OMERS.

The SC is responsible for the design of the benefits provided by the OMERS Pension Plans and the contribution rates charged to its members and employers. The SC also determines the composition of the two OMERS Boards. The SC provides for strategic oversight and decision-making on major policy directions. SC Directors owe a fiduciary duty to the OMERS Sponsor Corporation, not to any one stakeholder organization or interest group regardless of who appoints them.

The OAC is accountable for the day-to-day operations of the Plan, including the management and strategy for investment portfolios, paying pension benefits, collecting contributions and ensuring compliance with legislation such as those governing actuarial valuations. The OAC Board has a fiduciary responsibility in the sense that it must act only in the interests of pension plan members as a whole and hence in fiduciary matters must maintain independence from sponsors.

These distinctions in purpose lead to differences in the two Boards. While both Boards must have an understanding of the stakeholder environment as well as the capacity[2] to consider the complex issues that come before them, the focus and emphasis is different for the two Boards. The differences:

- By-Law No. 13 imposes capacity requirements for OAC Directors and contemplates that competencies will be developed for the OAC Board as a whole, influencing appointments.

- Similarly, OAC Directors are limited to sitting three terms on the OAC Board to ensure the OAC Board evolves with the pension and investment environment.

- For the SC Board there is a greater emphasis and need for a deep understanding of stakeholder interests and as such similar restrictions are not imposed for the SC Board. While renewal and evolution are also important for the SC Board, the SC is of the view that Sponsor Organizations are well positioned to judge whether their SC Director is current with stakeholder interests.

- The OAC Board has an independent chair which reflects the importance of the OAC Board acting independent of sponsors. In contrast, the SC Board has Co-Chairs, one appointed by the member representatives and the other by employee representatives. This reflects the fact that the OMERS pension plans are jointly sponsored by employees and employers and that considering both perspectives is vital at the SC.

- Effective January 1, 2016, SC Directors are limited to serving 6 consecutive years as a Co-Chair. As a transition measure, any incumbent Co-Chair as of December 31, 2015 is limited to 3 more years. This will help ensure leadership renewal at the SC.

[2] *For the SC Directors see By-Law No. 6 Appendix B Member Education Policy and for OAC Directors see By-Law No. 13 Section 4 and the governance manuals of the respective organizations.*

- The greater emphasis on considering stakeholder interests at the SC Board also leads to other more minor distinctions between the composition of the OMERS Boards as follows:
  - CUPE Ontario appoints one SC Director, with an additional SC Director being appointed by CUPE 416 and CUPE 79 in rotation. CUPE Ontario nominates to two seats on the OAC Board.
  - The SC Board uses weighted voting with each AMO appointee having two votes, and the CUPE Ontario appointee having three votes. This allows the number of AMO and CUPE representatives to be fewer than their proportionate share of members enabling a larger number of organizations to be present at the table.
  - It warrants noting that the absence of an SC Director is considered a negative vote for purposes of certain critical decisions. In contrast, votes at the OAC Board are based on the majority of votes cast.

3. Composition of the OMERS Boards

At the inception of the current governance model in 2006, the Ontario government appointed the initial Directors of the two OMERS Boards, which provided the SC with a period of time to develop By-Laws for subsequent appointments. In the ensuing years, the SC reached agreement on the composition and appointment process for the SC and OAC Boards and laid out the details in By-Laws No. 4 and No. 13, respectively. The composition of the OMERS Boards developed by the SC for the two Boards was generally consistent with the approach taken by the Ontario government in 2006.

The following organizations have the ability to nominate or appoint Directors to one or both of the OMERS Boards. These organizations are referred to as Sponsor Organizations.

Organization	Notes
The Association of Municipalities of Ontario (AMO)	2 to each of SC and OAC
The Canadian Union of Public Employees (Ontario) (CUPE)	1 to SC, 2 to OAC
Locals 79 and 416 of the Canadian Union of Public Employees (CUPE 79, CUPE 416)	1 to SC, rotating between the organizations
Electricity Distributors Association (EDA)	1 to each of SC and OAC
The Ontario Association of Children's Aid Societies (OACAS)	1 to each of SC and OAC
Ontario Association of Police Services Boards (OAPSB)	1 to each of SC and OAC
Ontario Catholic School Trustees' Association (OCSTA) and Ontario Public School Boards' Association (OPSBA)	1 to each of SC and OAC, rotating between the organizations
Ontario Professional Fire Fighters Association (OPFFA)	1 to each of SC and OAC
Ontario Public Service Employees Union (OPSEU)	1 to each of SC and OAC
Ontario Secondary School Teachers' Federation (OSSTF)	1 to each of SC and OAC
The Police Association of Ontario (PAO)	1 to each of SC and OAC
The Retiree Group[3]	1 to each of SC and OAC
The City of Toronto	1 to each of SC and OAC

[3] *Comprised of The Association of Retired Fire Fighters of Ontario, The Municipal Retirees Organization of Ontario, The Police Pensioners Association of Ontario, The Police Retirees of Ontario Inc. and/or such other Ontario municipal employee retiree organizations as may be designated by majority vote of the Employee Members from time to time.*

An equal number of member and employer organizations nominate or appoint to each of the OMERS Boards. The OAC Board has an additional seat dedicated to an independent chair that is appointed in a joint process involving both OMERS Boards.

In 2006, the Ontario Government also enacted the *OMERS Review Act, 2006* which mandated a review of OMERS governance in 2012 considering the experience during the intervening years. In 2012 Mr. Tony Dean conducted the review on behalf of the Ministry of Municipal Affairs and Housing. Mr. Dean consulted both with stakeholders and OMERS in conducting his review. In 2013 the Minister of Municipal Affairs and Housing released the related report which addressed the appropriateness of the composition of the two OMERS Boards.

The report supported the composition of the OMERS Boards. First, it indicated that the process put in place by the SC works practically and is a reasonable effort to ensure that those groups representing the largest number of employers and employees are at the board table. Second, it noted that there was no compelling information suggesting that the current representational mix on the boards has resulted in inequities or unfairness in relation to those groups with no direct affiliation with Sponsor Organizations. Since then, and as recommended by Mr. Dean, OMERS has made significant efforts to the engage those groups to ensure they are heard and their issues considered. Changes noted in this report will further strengthen those initiatives.

4. Sponsor Organizations

The Sponsor Organizations have been selected from OMERS diverse stakeholder organizations based on the following guiding principles:

- **Equality between the number of employer and member representatives** - Both perspectives are important and neither group should have more influence than the other.
- **Proportionality based on headcount** - Board representation should primarily be allocated to organizations in proportion to the number of active members they represent or employ;
- **Retiree representation** - It is beneficial to the plan and its members for the Board to have at least one seat allocated to retirees; and
- **Board effectiveness and efficiency** - It is in the best interest of OMERS and all plan members that the Boards be effective and efficient.
- **Sector Representation** – To the extent possible, it is desirable for the Boards to reflect important sectors having distinct characteristics.

The principles compete with each other and the complexity of OMERS environment brings further challenges to applying them. In contrast to other jointly sponsored pension plans, OMERS members and their employers are a very diverse group. There are nearly 1,000 employers and more than 40 unions and associations, not to mention a significant number of members who are not affiliated with any union or association. This is further complicated by the relative size of these organizations, most of which are relatively small.

A key challenge is limiting the size of the OMERS Boards so they remain effective, while staying true to the other principles. With 14 and 15 members each, the OMERS Boards are large and the SC believes they would be less effective were they to grow in size. This is particularly important for the SC where the OMERS Act imposes a two-thirds threshold for significant votes, and considers the vote of absent members as negative.

The employer Sponsor Organizations, the Association of Municipalities of Ontario, City of Toronto, Police and Fire Service Boards, Electricity Distributors Association, School Board Associations, and the Association of Children's Aid Societies, employ directly, or indirectly, 90% of the employees that are members of OMERS. The remaining 10% of employees are spread amongst numerous employers. The SC is of the view that adding additional seats to the Board to expand 'coverage' would be counterproductive.

For the employee Sponsor Organizations, Canadian Union of Public Employees (CUPE Ontario, and locals 79 and 416), the Ontario Professional Fire Fighters Association, the Ontario Public Service Employees Union, the Ontario Secondary School Teachers Federation and the Police Association of Ontario represent close to 70% of active members.

The members that are not directly represented on the OMERS Boards are comprised of two groups.

The first group consists of management and non-union members. This group amounts to approximately 56,000 members. The majority of these members are not affiliated with any organization, and those that are, are spread amongst organizations each having a limited number of members in OMERS.

Within the management and non-union group the issue is complex. There are a number of professional organizations whose membership comprise a relatively small number of the total members[4] within this space. Furthermore, the SC is concerned that, for most of these professional organizations, when an individual becomes a member of the organization they are not giving the organization any authority or accountability for addressing employment issues on their behalf[5], such as one does by choosing to become a member of a union.

The second group of members not directly represented on the OMERS Boards consists of members represented by unions each of whom has a relatively small number of OMERS members, and do not meet the size threshold for a seat. In total, this group amounts to approximately 35,000 members. While the agency challenge does not exist amongst this group, members belong to one of numerous unions, each of which represents a small number of OMERS members.

The SC is of the view that dedicating a seat on the OMERS Boards to accommodate these groups would not provide for enhanced representation.

[4] *Estimated at fewer than 10,000 members, although membership in these organizations is not exclusive and this estimate may double count individuals who are in more than one organization.*

[5] *COTAPSA is the one professional organization which has such a mandate, but it is relatively small when compared to the size of the total management and non-union group.*

- Providing a seat would come at the cost of either increasing the size of the Board by at least two members (the balance of employer and employee representatives must be preserved) or by taking a seat from one of the existing employee Sponsor Organizations, each of whom have clear agency and scale, or from the Retirees. The SC believes this option would be counterproductive and would impact the effectiveness and efficiency of the OMERS Boards.
- Sharing an existing seat is far from ideal. For example, rotating a seat amongst such a large number of organizations would have very little added representative benefit and could harm the effectiveness of the Board if it creates frequent, undesirable turnover.
- Even if a satisfactory process could be created to appoint a Director to the Board on behalf of unaffiliated members, that Director would have no mechanism to ensure that they hear the voices of the diverse members they are meant to represent or any accountability for doing so. It is likely more efficient and effective to establish a process whereby OMERS can engage and seek input from all of these groups directly.

The SC also considered various other options such as a Board Observer or Advisory Committee but these alternatives suffer from many of the same challenges as noted above or, given confidentiality constraints, would offer no benefit over the enhanced engagement mechanism which will be described in the next section.

As such the SC is of the view that having selected the largest organizations with a clear accountability to their members[6] for pension related matters, the composition of the OMERS Boards is appropriate. As noted in the prior section, the current composition and principles are generally consistent with the conclusions from the Ontario Municipal Employees Retirement System (OMERS) Review 2012.

OMERS firmly believes that their views and the unique perspectives of its stakeholder groups are important and, as such, there is a need to find a way to give them a greater voice to provide input and to dialogue with OMERS on important issues.

5. Other Stakeholders

Given the large number of stakeholders, not every group can have a presence on the OMERS Board. It is critical then that OMERS puts in place measures to ensure it is fully aware of the entire breadth of the stakeholder environment to ensure those perspectives are considered in its decision-making. SC Directors owe a fiduciary duty to the OMERS Sponsor Corporation, not to any one stakeholder organization or interest group regardless of who appoints them. Making sure OMERS is aware of the interests of all stakeholders is very important.

The purpose of the engagement strategy is to engage with unaffiliated organizations at key points in OMERS decision-making process to ensure they are heard and their issues considered.

[6] *The Sponsor Organizations are the largest stakeholder organizations regardless of agency issues.*

The prototype for this approach is the meetings that the SC Co-Chairs and OAC Chair have been having with professional organizations from the management and non-union space. The intent is to redouble these efforts by:

- expanding the invitees to include leaders from small unions whose membership comprises at least 0.5% of OMERS members[7]; and
- ensuring targeted and meaningful engagement on the right issues and at the right time. This involves formalizing a schedule of meetings to ensure engagement and input at the appropriate times such as during the SC's plan-change decision-making process.

In addition, OMERS more broadly has embraced the need to enhance its communication and engagement with all members and employers. These efforts are also important since access to information provides more effective engagement.

Finally, the SC would like to thank the Ontario Municipal Administrator's Association, City of Toronto Administrative, Professional, Supervisory Association, Incorporated, Ontario Municipal Human Resources Association, Ontario Association of School Business Officials, Association of Municipal Managers, Clerks and Treasurers of Ontario and Municipal Finance Officers' Association for meeting with the SC Co-Chairs and OAC Chair over the last several years. Their interest in, and dedication to OMERS is clear and will no doubt lead to the success of the above approach.

[7] *To keep the size of the meetings manageable, the SC has decided to invite small unions above the noted threshold. However, the SC will not exclude any of the smaller unions if they wish to participate.*