

**CITY OF HAMILTON**

**CORPORATE SERVICES**  
**Financial Planning & Policy Division**

<b>TO:</b> Chair and Members Audit, Finance and Administration Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> March 25, 2013	
<b>SUBJECT/REPORT NO:</b> Reserve/Revenue Funds and Trust Accounts Statement of Investment Policies and Procedures Review (FCS13017) (City Wide)	
<b>SUBMITTED BY:</b> Mike Zegarac Acting General Manager Finance & Corporate Services	<b>PREPARED BY:</b> Gerald T. Boychuk 905-546-4321 Rosaria Morelli 905-546-2424, x1390
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the 2009 approved Reserve/Revenue Funds and Trust Accounts Statement of Investment Policies and Procedures be deleted and replaced with the 2013 Reserve/Revenue Funds and Trust Accounts Statement of Investment Policies and Procedures attached as Appendix “A” to Report FCS13017.

**EXECUTIVE SUMMARY**

The “Statement of Investment Policies and Procedures” City of Hamilton – Reserve/Revenue Funds and Trust Accounts (the “Policy”) has been reviewed, as required under Section 1.10 of the Policy. The Policy has been amended and is attached as Appendix “A” to Report FCS13017.

There are two minor amendments to the Policy as follows:

Ontario Regulation 52/11 amended subsection 4.1(2) of the Eligible Investments Regulation by striking out “the public sector group of funds” in the portion before clause (a) and substituting “the One Investment Program”. (See page 30 of Appendix “A” to Report FCS13017.)

Ontario Regulation 373/11 amended subparagraph 1 vi.3 of section 2 of the Eligible Investments Regulation by revoking it and substituting it with “vi.3 a local housing corporation as defined in section 24 of the Housing Services Act, 2011, or”. (See page 24 of Appendix “A” to Report FCS13017.)

***Alternatives for Consideration – Not Applicable***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** There are no financial implications.

**Staffing:** There are no staffing implications.

**Legal:** The most recent amendment to Ontario Regulation 438/97 was in 2011.

**HISTORICAL BACKGROUND** (Chronology of events)

Section 1.10 of the Policy requires that the Policy be formally reviewed at least once in every calendar year.

In the formal review for the calendar years of 2011 (Report FCS12004) and 2010 (Report FCS11008), no changes were recommended to the Policy.

However, in the formal review for the calendar year of 2009 (FCS09110), the Policy was amended and subsequently approved to reflect changes to the Municipal Act, 2001 which took effect in 2009. These changes were material and included the treatment of Asset Backed Commercial Paper securities.

For this review for the calendar year of 2012, City Investments Division staff has contacted the Ontario Ministry of Municipal Affairs and Housing (OMMAH) to enquire whether, since the last review, there are any changes to the Municipal Act, 2001 that

would impact the Policy. OMMAH replied and advised that there were two minor amendments (in 2011) to Ontario Regulation 438/97, Eligible Investments and Related Financial Agreements (the “Eligible Investments Regulation”), under the Municipal Act, 2001.

#### **POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

“Statement of Investment Policies and Procedures” City of Hamilton - Reserve/Revenue and Trust Accounts.

Municipal Act, 2001

#### **RELEVANT CONSULTATION**

Legal Services in the City Manager’s Office confirmed there were no changes made to the applicable legislation impacting the Policy in 2012.

The Policy Supervisor in the Municipal Finance Policy Branch at OMMAH, contacted by City Investments Section staff, advised that two minor amendments were made in 2011 to the Eligible Investments Regulation: Ontario Regulation 52/11 and Ontario Regulation 373/11.

#### **ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The Policy has been formally reviewed as required under Section 1.10 of the Policy. Investments Section staff has reviewed the Policy and Legal Services has reviewed the applicable legislation impacting the Policy. Since the previous year’s review (FCS12004), there have been two minor amendments (in 2011) to the Eligible Investments Regulation impacting the Policy as follows:

Ontario Regulation 52/11 amended subsection 4.1(2) of the Eligible Investments Regulation by striking out “the public sector group of funds” in the portion before clause (a) and substituting “the One Investment Program”. (See page 30 of Appendix “A” to Report FCS13017.)

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corporation as defined in section 24 of the *Housing Services Act, 2011*, or". (See page 24 of Appendix "A" to Report FCS13017.)

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not Applicable.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective**

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

**APPENDICES / SCHEDULES**

Appendix "A" to Report FCS13017.



## Contents

<b>Executive Summary</b>	<b>3</b>
<b>Section 1 – Overview and Administration</b>	<b>5</b>
1.01 Purpose of Statement	5
1.02 Background	5
1.03 Delegation of Responsibilities	5
1.04 Performance Reporting	6
1.05 Downgrades in Credit Quality	6
1.06 Standard of Professional Conduct	6
1.07 Conflicts of Interest	7
1.08 Related Party Transactions	8
1.09 Monitoring of Asset Mix	8
1.10 Policy Review	8
1.11 City Treasurer’s Report	8
<b>Section 2 – Asset Mix and Diversification Policy</b>	<b>9</b>
2.01 Portfolio Return Expectations	9
2.02 Management Structure	9
<b>Section 3 – Reserve/Revenue Funds</b>	<b>10</b>
3.01 Fund Profile	10
3.02 Objectives	10
3.03 Investment and Risk Philosophy	11
3.04 Accounting Issues	11
<b>Section 4-Reserve/Revenue Funds: Permitted Investment and Performance Measurement</b>	<b>12</b>
4.01 General Guidelines	12
4.02 Permitted Investments	12
4.03 Grandfathered Investments-Non Bank ABCP	12
4.04 Minimum Quality Requirements	12
4.05 Investments in School Board Issued Securities	12
4.06 Maximum Quantity Restrictions	13
4.07 Currency	14
4.08 Securities Lending	14
4.09 Forward Rate Agreements	14
4.10 Performance Measurement	16
<b>Section 5 – Trust Accounts</b>	<b>18</b>
5.01 Profile	18
5.02 Objectives	18
5.03 Investment and Risk Philosophy	19
<b>Section 6 – Trust Accounts: Permitted Investments</b>	<b>20</b>
6.01 General Guidelines	20
6.02 Permitted Investments	20
6.03 Minimum Quality Requirements	21
6.04 Maximum Quantity Restrictions	21
6.05 General Restriction	22
<b>Appendix A – Sector and Issuer Limitations</b>	<b>23</b>
<b>Appendix B – Municipal Act, 2001 (Eligible Investments and Related Financial Agreements Ontario Regulation 438/97)</b>	<b>24</b>
<b>Appendix C – Trustee Act of Ontario (Investment Provisions)</b>	<b>35</b>
<b>Appendix D – CFA Institute Code of Ethics and Standards of Professional Conduct</b>	<b>41</b>

## Executive Summary

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### Section 1: Overview and Administration

- Policy provides investment framework for the City’s Reserve/Revenue funds and Trust Accounts.
- Overall objective is to ensure Funds and Trust Accounts are invested in accordance with existing legislation.
- Overall responsibility for Funds and Trust Accounts rests with the City Treasurer and Council, but many administrative duties and responsibilities have been delegated.
- The Chief Investment Officer (CIO) will complete and deliver a performance report to City Treasurer semi-annually and inform the City Treasurer of any security which experiences a credit downgrade in a timely manner.
- City’s Investment staff will comply with the Code of Ethics and Standards of Professional Conduct as promulgated by the CFA Institute and the City’s Code of Conduct.
- Council members, the City’s senior management team, and all external advisors are subject to the City’s guidelines pertaining to actual and perceived conflicts of interest.
- CIO will monitor the Funds’ and Trust Accounts’ asset mixes on a quarterly basis and will rebalance when necessary.
- City Treasurer must formally review the Policy at least annually.
- City Treasurer shall prepare and provide a comprehensive annual investment report to Council.

### Section 2: Asset Mix and Diversification

- CIO will arrange for the investment of the Funds and Trust Accounts to achieve a satisfactory return using diversified portfolios that conform with all legislative constraints.
- Asset mix policies have been established for the Funds and Trusts Accounts at acceptable risk levels.
- Funds and Trust Accounts will be managed by the City’s investment personnel.

### Section 3: Reserve/Revenue Funds

- A short description of the City’s Reserve/Revenue Funds and important cash flow considerations.
- The primary goals of the Funds include: 1) conforming to legislative constraints; 2) preserving capital; 3) maintaining adequate liquidity; and 4) maximizing returns.
- The performance objective is to outperform its benchmark composed of sixty-two decimal five percent (62.5%) DEX All-Gov’t Short Term Bond Index, twenty-seven decimal five percent (27.5%) DEX All-Gov’t Bond Index and ten percent (10.0%) DEX 91-Day T-Bill Index.
- Accounting issues will be taken into account when managing the City’s fixed income assets.
- Duration is to be maintained between one (1) year and six (6) years.

**Section 4: Reserve/Revenue Funds – Permitted Investments**

- The investments of the Funds must comply with the requirements and restrictions set out in the *Municipal Act, 2001*, specifically Eligible investments and Related Financial Agreements, Ontario Regulation 438/97 and any revisions thereof.
- Minimum quality standard for eligible individual bonds is “BBB” and for short term securities is “R-1 low” as rated by a recognized bond rating agency.
- Please refer to chart in Section 4.06 for maximum quantity restrictions.
- The City shall not invest in a security that is payable in any currency other than Canadian dollars.
- Securities lending is acceptable but must be properly securitized.

**Section 5: Trust Accounts**

- A very brief description of the City’s Trust Accounts is included.
- The primary goals of the Trust Accounts include: 1) conforming to legislative constraints; 2) preserving capital; 3) maintaining adequate liquidity and 4) maximizing returns.
- Individual performance objectives will be set for each Trust Account. A customized sub-policy will also be drafted and appended to this Policy because the composition of investment assets and asset mix may vary broadly for each Trust Account.

**Section 6: Trust Accounts – Permitted Investments**

- The investments of the Trust Accounts must comply with the requirements and restrictions set out in the *Trustee Act*.
- Permitted investments are set out in detail in Section 6.02.
- Minimum quality standard for eligible individual bonds is “A (low)” and short term securities is “R-1 low” at purchase, as rated by a recognized bond rating agency. However issues rated “BBB” are permitted subject to the individual Trust Account maximums.
- All investment must be reasonably liquid (capable of liquidation with six (6) months).
- Please refer to Section 6.04 for maximum quantity restrictions.
- If it is not obvious that an investment qualifies under this Policy, the CIO must consult with the City Treasurer prior to purchasing the investment.

**Appendix A – Sector and Issuer Limitations****Appendix B – *Municipal Act, 2001* (Eligible Investments and Related Financial Agreements, Ontario Regulation 438/97****Appendix C – *Trustee Act* (Investment Provisions)****Appendix D – CFA institute Code of Ethics and Standards of Professional Conduct**



## Section 1 – Overview and Administration

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### 1.01 Purpose of Statement

This Statement of Investment Policies and Procedures (the “Policy”) provides the framework for the investment of the assets of the City of Hamilton’s Reserve/Revenue Funds (the “Funds”) and the City of Hamilton’s Trust Accounts (the “Trust Accounts”).

The overall objective of the Policy is to ensure that the Funds and Trust Accounts are invested in accordance with existing legislation in such a way as to maximize investment returns while minimizing investment risk.

### 1.02 Background

The City Treasurer of the City of Hamilton (the “City”) establishes the Policy for approval by the Council of the Municipality for the City of Hamilton (“Council”) and ensures that the designated assets are managed in accordance with the guidelines set out in the Policy. Council has determined that the Funds and Trust Accounts shall be managed internally by the Chief Investments Officer (the “CIO”). The Custodian, as appointed by council, is to hold an account for the assets to be managed in accordance to this policy.

### 1.03 Delegation of Responsibilities

Overall responsibility for the Funds and Trust Accounts ultimately rests with the City Treasurer and Council. It is permitted however to delegate administrative duties and responsibilities to internal and external agents.

#### a) Chief Investment Officer

The CIO is responsible for:

- (i) monitoring asset mix and rebalancing as required;
- (ii) day-to-day liaison with the Custodian and the Investment Consultant;
- (iii) monitoring and budgeting for cash flow within the Funds and Trust Accounts.
- (iv) researching, recommending and implementing improvements to asset management of the City’s investment assets; and
- (v) directing and implementing investment strategies for City managed portfolios.

#### b) Custodian/Trustee

The custodian/trustee will:

- (i) fulfill the regular duties of a Custodian/Trustee as required by law;
- (ii) maintain safe custody over the assets of the Funds and Trust accounts;
- (iii) execute the instructions of the City Treasurer and the CIO; and
- (iv) record income and provide financial statements to the City Treasurer monthly, or as required.

#### c) Investment Consultant

The investment consultant will:

- (i) assist the CIO and the City Treasurer in developing a prudent long-term asset mix, and specific investment objectives and policies;
- (ii) monitor, analyze and report on the Fund’s investment performance and to support the City Treasurer on any investment related matters;

- (iii) assist with the selections of investment managers, custodians and other suppliers; and,
- (iv) meet with the City Treasurer and/or CIO as required.

**d) The City Treasurer**

The City Treasurer will provide annual audited financial statements of the Funds and Trust Accounts.

**e) City Solicitor**

The City's Solicitor will:

- (i) provide legal advice to the City Treasurer regarding compliance with relevant legislation; and
- (ii) provide legal counsel on a range of issues, including the review of contracts with suppliers.

The City Treasurer has the authority to retain other consultants/suppliers, as the City Treasurer deems necessary from time to time.

**1.04 Performance Reporting**

The CIO is required to complete and deliver a performance report to the City Treasurer and to Council semi-annually.

**1.05 Downgrades in Credit Quality**

In order to keep the City Treasurer informed, the CIO will take the following steps in the event of a downgrade in the credit rating of a portfolio asset by a recognized bond rating agency to below the purchase standards set out in Sections 4.04 and 6.03:

- within ten (10) business days, the CIO will advise the City Treasurer in writing of the course of action taken, or intended to be taken by the CIO, and his rationale;
- immediately upon downgrade, the asset will be placed on a Watch List subject to monthly review by the CIO with the City Treasurer until such time as the security is sold or is upgraded to a level consistent with the Policy's purchase quality standards; and
- if an investment falls below the standard required, the municipality shall sell the investment within one hundred and eighty (180) days after the day the investment falls below the standard.

**1.06 Standard of Professional Conduct**

The City's investment personnel are expected to comply, at all times and in all respects, with the Code of Ethics and Standards of Professional Conduct as promulgated by the CFA Institute and the City's Code of Conduct Policy.

The CIO will manage the assets with the care, diligence and skill that an investment manager of ordinary prudence would use in dealing with assets of this nature. The CIO will also use all relevant knowledge and skill that he or she possesses, as a prudent investment manager.

### **1.07 Conflicts of Interest**

The standard applies to individual members of Council, the City's senior management team, the Custodian, the Investment Consultant and any other external Advisor(s). All are subject to the following guidelines pertaining to both actual and perceived conflicts of interest.

#### **Disclosure of Council Members and the Senior Management Team**

Council Members and City employees shall subscribe to the City's Conflict of Interest guidelines. In addition:

- a) A member of Council and the City's senior management team shall fully disclose the particulars of any actual or perceived conflict of interest immediately upon becoming aware of the actual or perceived conflict, and in writing to the City Treasurer; and
- b) The person or persons in conflict as identified above shall not directly or indirectly participate in any discussion on the subject of the conflict nor participate in any vote on the matter. All such disclosures shall be recorded in the minutes of council or the senior management team meeting during which the apparent conflict was discussed.

#### **The Custodian, the Investment Consultant and any other Advisor(s) (the "Parties")**

While it is impossible to determine every circumstance or case which can give rise to possible conflicts of interest, the following indicates some of the types of activities that could result in an actual or perceived conflict of interest and must be disclosed:

##### **a) Disclosure of Conflict**

A representative of the Parties shall disclose to the City Treasurer any material conflict of interest relating to him, and any material beneficial ownership of investments involved, which could reasonably be expected to impair his ability to render unbiased and objective advice. These disclosures shall be made whenever one of the Parties wishes to make recommendations concerning an investment in which he has a material beneficial interest or perceived conflict.

##### **b) Disclosure of additional compensation arrangements**

The Parties shall disclose to the City Treasurer in writing any compensation including payments in cash or in kind, he receives from an issuer of securities or any person other than his employer for services he renders to his customers or clients which could reasonably be expected to impair his ability to render unbiased and objective advice with respect to the assets. An employee of the Parties shall also disclose, with the approval of his employer, special compensation arrangements with the employer that might conflict with the City's interests, such as bonuses based on short term performance criteria. Such written notice shall be presented within thirty (30) days.

##### **c) Disclosure of referral fees**

The Parties shall disclose any consideration paid to others for making a particular recommendation relating to asset matters. This disclosure statement shall be provided before the recommendation is implemented.

### **1.08 Related Party Transactions**

The City Treasurer, on behalf of the Funds and Trust Accounts, may not enter into a transaction with a related party unless:

- a) the transaction is both required for operation and or administration of the Funds and Trust Accounts and the terms and conditions of the transaction are not less favourable than market terms and conditions;
- b) securities of the related party are acquired at a public exchange; or
- c) the combined value of all transactions with the same related party is nominal or the transaction(s) is immaterial

For the purposes of this Section 1.08, transactions involving less than TEN THOUSAND DOLLARS (\$10,000.00) are considered nominal. A "related party" is defined to include any officer, director or employee of the City. It also includes a spouse or child of the persons named previously, or a corporation that is directly or indirectly controlled by the persons named previously, among others. Related party does not include government or a government agency, or a bank, trust company or other financial institution that holds the assets of the Funds and/or Trust accounts.

### **1.09 Monitoring of Asset Mix**

In order to ensure that the Funds and Trust Accounts operate within the minimum and maximum guidelines stated in the Policy, the CIO shall monitor the asset mix on a calendar quarterly basis. Rebalancing can take place over a reasonably short period of time after an imbalance has been identified. Rebalancing may be effected by redirecting the net cash flows to and from the Funds and/or Trust Accounts, or by transferring cash or securities.

### **1.10 Policy Review**

This Policy may be reviewed and revised at any time, but the City Treasurer and Council must formally review it at least once in every calendar year.

### **1.11 City Treasurer's Report**

The City Treasurer shall provide an investment report annually to Council by May 31 of the calendar year for the prior fiscal year that:

- a) contains a statement about the performance of the portfolio of investments of the City during the period covered by the report;
- b) contains a listing of the types of securities in which the portfolio invested during the period covered by the report;
- c) contains a listing of the securities and their credit ratings held by the portfolio at the date of the report;
- d) contains a description of the estimated proportion of the total investments of a municipality that are invested in its own long-term and short-term securities to the total investment of the municipality and a description of the change, if any, in that estimated proportion since the previous year's report;
- e) contains a record of the date of each transaction in or disposal of its own securities, including a statement of the purchase and sale of each security.
- f) contains a statement by the CIO as to whether or not, in his or her opinion all investments were made in compliance with this investment policy; and
- g) contains such other information that the council may require or that, in the opinion of the City Treasurer, should be included.

## Section 2 – Asset Mix and Diversification Policy

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### **2.01 Portfolio Return Expectations**

The City Treasurer has appointed the CIO to arrange for the investment of part or all of the assets of the Funds and Trust Accounts to achieve a satisfactory long-term rate of return through a diversified portfolio, consistent with acceptable risks and prudent management and that conforms with all legislative constraints.

An appropriate asset mix policy has been established for the Funds and Trust Accounts to provide a reference for long-term return requirements at risk levels acceptable to the City Treasurer. Risk is controlled by investing in well diversified and high quality portfolios.

### **2.02 Management Structure**

The Funds and Trust Accounts will be managed by the City's investment personnel.

## Section 3 – Reserve/Revenue Funds

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### 3.01 Fund Policy

The City’s Reserve/Revenue Funds were amalgamated in 2001. Little historical data is available to accurately project the pattern of cash flows for the Fund. But based on the pattern of cash flows experienced in the past, one can assume that cash flow will be added to the Funds between February and October and the Funds will be drawn down between November and February.

These assets of the Reserve/Revenue Fund will be managed on a total return basis and measured against performance benchmarks. Another important cash flow consideration relates to the Fund’s intra-month cash flow activity. According to City sources, there is a great deal of short-term cash activity every month and the Funds require a comprehensive cash management operation.

### 3.02 Objectives

The primary goals of the Funds are to ensure compliance with the *Municipal Act, 2001* and Eligible Investments and Related Financial Agreements, Ontario Regulation 438/97, to minimize investment risk, and to maximize investment returns.

The four basic objectives of the Policy are:

#### 1. Conform to Legislative Constraints

The City’s investment portfolios must conform with the *Municipal Act*, which is the guiding legislation for investment of municipal funds. In particular, the investments must conform to Eligible Investments and Related Financial Agreements, Ontario Regulation 438/97. Eligible investments are discussed in greater detail in Section 4.02.

#### 2. Preserve Capital

Ensuring the safety of principal is of paramount importance for the City. Proper diversification will help to ensure that this objective is met. The establishment of limitations relating to credit rating, sector exposure and term structure will ensure safety of principal by limiting the investment exposure to any one issuer, sector or term.

The limitations described in Section 4 reflect the requirements of the current legislation and the City’s own guidelines on prudent investment standards. All eligible investments must adhere to these limits.

#### 3. Maintain Adequate Liquidity

Maintaining adequate liquidity ensures that the Funds can be fully invested until required by the City. Liquid investments also afford more opportunities for investment management (i.e. lengthening or shortening the term of securities to take advantage of movements in interest rates or shifts in the yield curve).

The predictability of the City’s cash flows will be an important consideration in determining the degree of liquidity required in the portfolio.

#### 4. **Maximize Returns while Conforming to Other Objectives**

Investment returns should be maximized through opportunistic investment management without compromising the objectives of preservation of capital and maintenance of liquidity.

The CIO is responsible for managing the Fund’s investment assets. For the purposes of evaluating the Fund’s performance, all rates of returns will be measured over moving one-year and four-year periods. Return objectives will be on a total return basis and will include realized and unrealized capital gains or losses plus income from all sources. Returns will be calculated on a time-weighted basis and compared to the objectives described below.

##### **Performance Objectives:**

The Fund’s performance objective, as outlined in Section 4.10, is to outperform a benchmark portfolio constructed from a blend of returns composed of sixty-two decimal five percent (62.5%) of the DEX All-Government Short Term Bond Index, twenty-seven decimal five percent (27.5%) of the DEX All-Government Bond Index and ten percent (10.0%) of the DEX 91-Day Treasury Bill Index, measured over four-year cycles.

The City’s cash management objectives include the maintenance of positive cash flow, the development of prudent temporary borrowing strategies and the investment of the City’s idle funds to earn a competitive rate of return.

#### **3.03 Investment and Risk Philosophy**

##### **a) Investment Philosophy**

The Funds will be managed on a total return basis, as per the objectives, guidelines and constraints imposed by the Policy. Efforts will be made to maximize returns and avoid capital losses, while incorporating the Funds’ unique cash flow demands.

##### **b) Risk Philosophy**

The Funds shall be managed in a conservative manner with special care and attention being taken to minimize risk and preserve capital.

#### **3.04 Accounting Issues**

With the likelihood that the City’s fixed income portfolio may incur unrealized losses, it is extremely important to address the accounting treatment of such unrealized losses with the City’s auditors. Discussions with the City’s auditors reveal that they will adopt a very conservative approach in valuing the portfolio, but will distinguish between temporary and permanent impairments in value. Should the loss in value of a portfolio be deemed permanent, the investment will be written down to recognize the loss. A write down of a portfolio investment to reflect a loss in value will not be reversed if there is a subsequent increase in value.

Section PS 3040 – Portfolio investments, Paragraph .10 of The Canadian Institute of Chartered Accountants Official Pronouncements Collection states: *“that a decline in quoted market value below carrying value of an investment with a fixed maturity amount may be considered temporary unless it is anticipated that the investment will be disposed of before it matures or that the carrying value may not be realizable”*.

This information has important implications for the manner in which the City’s fixed income investments should be managed and its resulting term structure.

## Section 4 - Reserve/Revenue Funds: Permitted Investments and Performance Measurement

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### 4.01 General Guidelines

The investments of the Funds must comply with the requirements and restrictions set out in the *Municipal Act, 2001* S.O. 2001, c.25 (the “*Municipal Act*”), specifically Eligible Investments and Related Financial Agreements, Ontario Regulation 438/97 and any revisions thereof. Any changes or revisions to the *Municipal Act*, specifically Eligible Investments and Related Financial Agreements, Ontario Regulation 438/97, subsequent to the formal adoption of this Policy, will be effective immediately. This Policy will be updated to reflect the change(s) at the time of its annual review.

### 4.02 Permitted Investments

The City will invest only in securities permitted under the *Municipal Act* and its related regulations, as amended from time to time.

A list of Sector and Issuer Limitations (the List) will be established by the General Manager and the Chief Investments Officer (see Appendix A). The List will state explicitly the approved sectors and issuer limitations of securities that may be held in the portfolio. In addition, while all investments on the List must meet legislative requirements, specific minimum credit rating requirements, dollar limits and/or percentage limits (of the total portfolio) will be established for each issuer. The List will be amended from time to time by the Chief Investments Officer.

### 4.03 Grandfathered Investments—Non-Bank ABCP

Investments which were allowed under the *Municipal Act* will be grandfathered and considered acceptable investments provided that:

- a) the City invested in the security before January 12, 2009; and
- b) the terms of the City’s continued investment in the security have been changed pursuant to the Plan Implementation Order of the Ontario Superior Court of Justice dated January 12, 2009 (Court file number 08-CL-7440) and titled “In the matter of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended and in the matter of a plan of compromise and arrangement involving Metcalfe & Mansfield Alternative Investments II Corp. et al”. O. Reg. 438/97 s.2.1

### 4.04 Minimum Quality Requirements

The City shall not invest in a security that does not meet the credit rating requirements established under the *Municipal Act* and Regulations.

### 4.05 Investments in School Board Issued Securities

A municipality shall not invest in a security issued or guaranteed by a school board or similar entity unless the money raised by issuing the security is to be used for school purposes.



#### 4.06 Maximum Quantity Restrictions

The City shall not invest more than twenty-five percent (25%) of the portfolio in short-term debt issued or guaranteed by the City. Short-term debt means any debt instrument that shall be fully repaid no later than three hundred and sixty-four (364) days after the debt is incurred. The total investment in 'A' or equivalent rated debt on purchase must not exceed thirty-five percent (35%) of the market value of the City's bond portfolio.

Subject to the quality limits imposed above, the following quantity restrictions at the total fund level are to be respected. Please see the Sector and Issuer Limitations List in Appendix A for more details:

	Minimum %	Maximum %
Federal issues in aggregate	0	100
Federal Guarantee	0	100
Provincial holdings in aggregate	0	100
Single province exposure	0	50
Individual non-federal/non-provincial holding (*)	0	10
Non-federal/non-provincial holdings in aggregate	0	50
Municipal Issues (*)		
-individual muni issue rated "AAA"	0	10
-individual muni issue rated "AA"	0	10
-individual muni issue rated "A"	0	5
Municipal holdings in aggregate	0	30
Banks in aggregate	0	50
Asset-Backed in aggregate	0	25
Foreign Country Debt in Cdn dollars	0	25
Commercial paper in aggregate	0	20
ONE Funds in aggregate	0	10
Corporate Debt rated A or better < 5 years in aggregate	0	15
OSIFA/"AA" Broader Public Sector	0	15
Supranational	0	30
Short term securities in aggregate	0	50
Non charitable gift of bonds, debentures, promissory notes or other securities of a corporation, must be sold within 90 days	0	N/A
Shares of a corporation received through a court order in lieu of debt that is payable to the municipality	0	N/A
Forward Rate Agreement	0	N/A
Portfolio benchmark duration (Macaulay)	1 year	6 years

(\*) Except for City of Hamilton issues which have a limit of twenty-five percent (25%).

#### **4.07 Currency**

The City shall not invest in a security that is expressed or payable in any currency other than Canadian Dollars.

#### **4.08 Securities Lending**

The investments of the Funds may be loaned, for the purpose of generating revenue for the Funds on a fully indemnified basis.

For securities held in segregated accounts, such loans must be secured by cash and/or readily marketable government bonds, treasury bills and/or letters of credit, discount notes and bankers' acceptances of chartered banks. For bonds, the security held must have a market value of at least one hundred and two percent (102%) of the market value of the loaned securities. This market value relationship must be calculated at least daily.

The terms and conditions of any securities lending program will be set out in a contract with the Custodian. The Custodian shall, at all times, ensure that the City Treasurer has a current list of those institutions that are approved to borrow the Fund's investments.

#### **4.09 Forward Rate Agreements**

The City is authorized to enter into agreements to make prescribed investments as outlined in O. Reg. 438/97, on a future date and to that effect may enter into a one or more forward rate agreements.

##### **a) Description of a Forward Rate Agreement**

A Forward Rate Agreement ("FRA") is legally binding agreement between two parties to exchange cash flows based on interest rates (usually one party pays a fixed interest rate and the other party pays a floating interest rate) applied to a notional principal amount at a given future date.

##### **b) Purpose**

The FRA should be used to minimize the cost or risk associated with investments because of fluctuations in interest rates.

Overall, the FRA should provide the City with the possibility to protect the future returns in anticipation of fluctuating interest rates (i.e. fixes today the interest rate that will accrue on an investment occurring in the future). It will also allow the City's to plan for cash flows more effectively as future interest rates are no longer uncertain.

The FRA must be entered into with the intent of accomplishing the above purposes. For example, the fund may enter into a FRA to fix the rate of return for an investment that would meet the obligations of a sinking fund debenture.

##### **c) Standard FRA Contract**

The standard FRA contract shall include the following:

- A forward amount, which is the principal amount of the investment or that portion of the principal amount to which the agreement relates;
- A settlement day, which is a specified future date;
- A forward rate of interest, which is a notional rate of interest applicable on the settlement day;

- A reference rate of interest, which is the market rate of interest payable on a specified future date on an acceptance issued by a bank listed in Schedule I, II and III to the *Bank Act*, S.C. 1991, c. 46 (the "*Bank Act*"); and
- A settlement payment to be payable on the settlement day if the forward rate and the reference rate of interest are different.

**d) Type of investments**

The City is allowed to enter into a FRA in any of the fixed income securities prescribed in the Sector and Issuer Limitations list (Appendix A). Dealing in FRA's is permitted in Canadian dollars only.

**e) Counterparty**

The City shall not enter a FRA except with a bank listed in Schedule I, II and III to the *Bank Act* and only if the bank's long term debt obligations on the day the agreement is entered are rated A (high) or higher by DBRS, A+ or higher by Fitch, A1 or higher by Moody's or A+ or higher by S&P.

**f) Reference Rate**

The reference rate is the market rate of interest (floating interest rate) payable on a specified future date.

The parties are free to use any market rate of interest as a reference rate for entering into a FRA, provided the methodology of computing the rate is objective, transparent and mutually acceptable to counterparties.

**g) Size Limit**

The City should not enter a FRA if the forward notional amount, when added to all forward notional amounts under other forward agreements, if any, relating to the same investment, would exceed the total amount of the principal of the investment.

**h) Term**

The City shall not enter a FRA unless the settlement day under the agreement is within twelve (12) months of the day on which the agreement is executed.

**i) Valuation**

The FRA portfolio must be marked to market as determined by the custodian. The City shall apply the Generally Accepted Accounting Principles (GAAP) in reporting the impact of the FRA on the financial statements.

**j) Netting Settlement**

The agreement should be set up so that on the settlement date, all FRA payments to be exchanged will be net settled (i.e. only the differential between the fixed and floating is paid).

In case of insolvency, the claim of the counterparty provides for the netting of the transaction between the insolvent and the creditor. In such case, the amount payable by one party is set off against the amount payable by the other party and only the net balance is paid or received.

### **k) Risk Management Authorization**

All agreements will be negotiated by the CIO and authorized by the City Treasurer or Council of the City. The City Treasurer or Council will be presented with:

1. Estimated cost to the municipality resulting from the use of a FRA
2. Detailed estimate of the expected results of the use of a FRA
3. An analysis of financial and other risk to the municipality that would exist with and without the use of a FRA

#### **Contract**

A FRA contract should be developed and used as standard in all transactions. The standard shall clearly define the rights and obligations of each party.

#### **Credit exposure limits**

FRA with Schedule III banks should be limited to twenty-five percent (25%) of the entire FRA portfolio.

#### **Monitoring**

The CIO shall ensure that the appropriate infrastructure and monitoring systems such as ability to price the FRA, marked to market the positions, monitor limit exposures on an ongoing basis are put in place.

#### **Monitoring Report**

If the City has any subsisting FRA in a fiscal year, the City Treasurer of the City shall prepare and present to the City council once in that fiscal year, or more frequently if the council or desires, a detailed report on all those agreements.

The report must contain the following information and documents:

- A statement about the status of the forward rate agreements during the period of the report, including a comparison of the expected and actual results of using the agreements;
- A statement by the City Treasurer indicating whether, in his or her opinion, all the forward rate agreements entered during the period of the report are consistent with the City's statement of policies and goals relating to the use of forward rate agreements;
- Such information as the council may require; and
- Such other information as the City Treasurer considers appropriate to include in the report.

### **4.10 Performance Measurement**

For purposes of evaluating the performance of the Funds, all rates of returns are measured over moving one-year and four-year periods. Return objectives include realized and unrealized capital gains or losses plus income from all sources.

The Funds' performance objective is to outperform a benchmark portfolio constructed from a blend of returns composed of sixty-two decimal five percent (62.5%) of the DEX All-Government Short Term Bond Index, twenty-seven decimal five percent (27.5%) of the DEX All-Government Bond Index and ten percent (10.0%) of DEX 91-Day Treasury Bill Index.

**Total Fund**

Investment weightings and investment results are to be measured regularly against a long-term Benchmark Portfolio comprising:

<b>Benchmark</b>	<b>%</b>
DEX All-Government Short Term Bond Index	62.5
DEX All-Government Bond Index	27.5
DEX 91-Day Treasury Bill Index	<u>10.0</u>
	100.0

## Section 5 - Trust Accounts

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### 5.01 Profile

The City’s Trust Accounts consist of multiple accounts, each with distinct and unique objectives. The individual Trust Accounts therefore, although small, may not be co-mingled.

Notwithstanding the following, a subpolicy will be developed for each individual Trust Account and appended to this Policy. Each subpolicy will contain a statement of objectives, and constraints and guidelines customized to the unique requirements of the individual Trust Accounts.

### 5.02 Objectives

The primary goals of the Trust Accounts are to ensure compliance with the investment provisions of the Trustee Act, R.S.O. 1990, c. T.23 (the “*Trustee Act*”). Effective July 1, 1999, the investment provisions of the *Trustee Act* were amended to a “prudent investor” standard. The new legal standard of “prudent investor” allows for greater portfolio diversification and a less restrictive means of selecting appropriate investments.

The basic objectives of the Trust Accounts include:

#### 1. Conform to Legislative Constraints

The City’s Trust Accounts must conform with the *Trustee Act of Ontario*, which is the guiding legislation for investment of trust monies. In particular, the investments must conform to the requirements and restrictions imposed by Section 27 of the *Trustee Act*.

Among other criteria, Section 27 of the *Trustee Act* stipulates that a trustee:

- must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments;
- may invest trust property in any form of property in which a prudent investor might invest; and
- must diversify the investments of trust property to the extent that is appropriate.

#### 2. Preserve Capital

Ensuring the safety of principal is of paramount importance for the City. Proper diversification will help to ensure that this objective is met.

The limitations described in Section 6 reflect the requirements of the current legislation and the City’s own guidelines on prudent investment standards. All eligible investments must adhere to these limits.

#### 3. Maintain Adequate Liquidity

Maintaining adequate liquidity ensures that the Trust Accounts can be fully invested until required by the City. Liquid investments also afford more opportunities for investment management (i.e. moving in to or out of equity investments as dictated by prevailing market conditions or lengthening or shortening the term of fixed income securities to take advantage of movements in interest rates).

#### **4. Maximize Returns while Conforming to Other Objectives**

Investment returns should be maximized through opportunistic investment management without compromising the objectives of preservation of capital and maintenance of liquidity.

The CIO is responsible for managing the Trust Accounts' investment assets. For the purposes of evaluating the Trust Accounts performance, all rates of returns will be measured over moving one-year and four-year periods. Return objectives will be on a total return basis and will include realized and unrealized capital gains or losses plus income from all sources. Returns will be calculated on a time-weighted basis.

##### **Performance Objectives:**

The performance objectives of the individual Trust Accounts must be treated on an account- by account basis. The Trust Accounts are too diverse in nature to set specific performance objectives as individual objectives and constraints vary and the composition of investment assets and asset mix vary broadly.

#### **5.03 Investment and Risk Philosophy**

##### **a) Investment Philosophy**

The Trust Accounts will be managed on a total return basis, as per the objectives, guidelines and constraints imposed by the Policy and individual Trust Accounts. Efforts will be made to maximize returns and avoid capital losses.

##### **b) Risk Philosophy**

The Funds shall be managed in a conservative manner with special care and attention being taken to minimize risk and preserve capital.

## Section 6 - Trust Accounts: Permitted Investments

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### 6.01 General Guidelines

The investments of the Trust Accounts must comply with the requirements and restrictions set out in the *Trustee Act*, R.S.O. 1990, c. T.23 (the “*Trustee Act*”), specifically the requirements and restrictions imposed by Section 27 of the *Trustee Act*. Any changes or revisions to the *Trustee Act*, specifically Section 27, subsequent to the formal adoption of this Policy will be effective immediately. This Policy will be updated to reflect the change(s) at the time of the Policy’s annual review.

### 6.02 Permitted Investments

The following are prescribed, for the purposes of this investment policy, as securities that the City may invest in:

#### 1. Canadian and Foreign Equities

Permitted instruments are:

- common and convertible preferred equity listed on recognized stock exchanges;
- debentures convertible into common equity;
- rights, warrants and special warrants for common or convertible preferred stock;
- instalment receipts;
- American Depository Receipts and Global Depository Receipts; and
- exchange traded index participation units.

#### 2. Bonds

Permitted instruments are:

- bonds, debentures, notes and other evidences of indebtedness of Canadian issuers denominated in Canadian dollars;
- mortgage-backed securities, guaranteed by the federal government as to the timely payment of all payments under the *National Housing Act*, R.S.C. 1985, c. N-11;
- term deposits and guaranteed investment certificates; and
- Supra-National bonds issued by the International Bank for Reconstruction and Development denominated in Canadian dollars.

#### 3. Cash and Short Term Investments

Permitted instruments (defined to be securities with less than one (1) year to maturity) are:

- cash on hand and demand deposits including deposit accounts of the custodian,
- treasury bills issued by the federal and provincial governments and their agencies, obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances, and
- commercial paper and term deposits.

#### 4. Other Investments

Permitted instruments are:

- deposit accounts of the custodian which can be used to invest surplus cash holdings; and
- investments may be made in mutual funds.



### **6.03 Minimum Quality Requirements**

Within the investment restrictions for individual portfolios, including mutual funds, all portfolios should hold a prudently diversified exposure to the intended market.

The following minimum quality restrictions apply to all investments held in the portfolio:

- generally speaking, the minimum quality standard for individual bond issues is ‘A (Low)’ or equivalent, as rated by a recognized bond rating agency at the time of purchase, however, issues rated ‘BBB’ are permitted subject to the individual Trust Account maximums;
- the minimum quality standard for individual short term securities is ‘R-1 (Low)’ or equivalent, as rated by a recognized bond rating agency at the time of purchase; and
- all investments shall be reasonably liquid (i.e. in normal circumstances they should be capable of liquidation within six (6) months).

### **6.04 Maximum Quantity Restrictions**

The following restrictions are to be respected:

#### **Equities**

- The equity holdings will be well diversified and contain at least fifteen (15) securities. The maximum holding for any individual stock will be ten percent (10%) of the equity portfolio based on market value;
- Equity holdings representing more than ten percent (10%) of the voting shares of a corporation or more than ten percent (10%) of the available public float shall be disclosed on a quarterly basis; and
- Equity holdings representing more than twenty percent (20%) of the voting shares of a corporation or more than twenty percent (20%) of the available public float are not permitted. In addition, the combined share of all holdings in excess of ten percent (10%) of the voting shares or public float may not exceed three percent (3%) of the total equity portfolio. All calculations are based on market value.

#### **Bonds and Short Term**

- Except for federal and provincial bonds (including government guaranteed bonds), no more than ten percent (10%) of the bond portfolio may be invested in the bonds of a single issuer and its related companies;
- No one bond holding shall represent more than ten percent (10% of the market value of the total outstanding for that bond issue;
- No more than ten percent (10%) of the market value of the bond portfolio may be held in ‘BBB’ issues; and
- No more than ten percent (10%) of the market value of the bond portfolio may be held in real return bonds.

#### **Mutual Fund Investments**

The CIO may invest in mutual funds, provided that every effort is made to minimize investment management fees.

#### **Pooled Fund Investments**

Investments in pooled funds are not permitted, unless such funds can be deemed to be mutual funds.

### **Prior Permission Required**

The following investments may be permitted **provided that** prior approval has been obtained from the City Council:

- investments in private placements;
- direct investments in real estate;
- direct investments in venture capital financing or private equity limited partnerships;
- investments in bonds of foreign issuers;
- investments in units of investment trusts (e.g. REITs or resource trust units); and
- direct investments in mortgages.

No other investment is permitted.

### **6.05 General Restriction**

At all times, the CIO must meet the requirements for eligible investments as outlined in the *Trustee Act*.

If it is not obvious that an investment qualifies under this Policy, the CIO should consult with the City Treasurer of his concern about the investment before the investment is acquired.

## Appendix A – Sector and Issuer Limitations

	Minimum Credit Rating	Money Market Rating	Sector/Credit Exposure Limitations (maximum) (1)	
			Portfolio Limit	Individual Limit
<b>Federal Canada Government</b>	N/A	R1 high	100%	100%
Federal Guarantees	N/A	R1 high	100%	25%
<b>Provincial(2)</b>	AA	R1 mid	100%	50%
	A	R1 mid	20%	10%
	BBB	R1 mid	10%	10%
<b>Municipal</b>				
City of Hamilton	N/A		25%	25%
Other Municipalities and School Boards	AAA & AA		25%	10%
	A		15%	5%
<b>Municipal Totals</b>			<b>30%</b>	
<b>Asset-Backed</b>	AAA	RI high or mid	25%	10%
<b>Banks</b>				
Schedule I Banks	AA(L)	R1 mid	50%	10%
	A	R1 low	20%	5%
Schedule II Banks	AA(L)	R1 high	15%	5%
	A	R1 mid	10%	5%
Schedule III Banks	AA(L)	R1 high	15%	5%
	A	R1 mid	10%	5%
<b>Bank Total</b>			<b>50%</b>	
<b>Commercial Paper</b>		R1 high	15%	5%
		R1 mid	10%	2%
<b>Commercial Total</b>			<b>20%</b>	
<b>Foreign Country Debt (Cdn Issued)</b>	AA		25%	10%
<b>One Funds</b>			10%	10%
<b>Corporate Debt &lt; 5Yrs.</b>	A		15%	5%
<b>OSIFA/ “AA” Broader Public Sector</b>			15%	5%
<b>Supranationals</b>	AAA		30%	10%
<b>Securities of a Corporation(3)</b>			n/a	n/a
<b>Shares of a Corporation(4)</b>			n/a	n/a
<b>Forward Rate Agreements</b>			n/a	25% (5)

(1) – Exposure % limitations to be applied to the par value of the total portfolio.

(2) – Includes Provincial Guarantees.

(3) – Securities of a corporation received as a non-charitable gift. Must sell within ninety (90) days.

(4) – Shares of a corporation received if the corporation has a debt payable to municipality, under court order the corporation has received creditor protection, and in lieu of debt is authorized by the court order and in the opinion of the Treasurer of the municipality the debt would be uncollectible by the City.

(5) – FRA with Schedule III Bank limited to 25% of entire FRA portfolio.

## **Appendix B - *Municipal Act, 2001*, Ontario Regulation 438/97 (Eligible Investments and Related Financial Agreements)**

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### **ONTARIO REGULATION 438/97 (formerly under Municipal Act)**

#### **ELIGIBLE INVESTMENTS AND RELATED FINANCIAL AGREEMENTS**

Last amendment: O. Reg. 373/11

1. A municipality does not have the power to invest under section 418 of the Act in a security other than a security prescribed under this Regulation. O. Reg. 438/97, s. 1; O. Reg. 399/02, s. 1.

2. The following are prescribed, for the purposes of subsection 418 (1) of the Act, as securities that a municipality may invest in:

1. Bonds, debentures, promissory notes or other evidence of indebtedness issued or guaranteed by,
  - i. Canada or a province or territory of Canada,
  - ii. an agency of Canada or a province or territory of Canada,
  - iii. a country other than Canada,
  - iv. a municipality in Canada including the municipality making the investment,
    - iv.1 the Ontario Strategic Infrastructure Financing Authority,
    - v. a school board or similar entity in Canada,
      - v.1 a university in Ontario that is authorized to engage in an activity described in section 3 of the *Post-secondary Education Choice and Excellence Act, 2000*,
      - v.2 the board of governors of a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*,
      - vi. a local board as defined in the *Municipal Affairs Act* (but not including a school board or a municipality) or a conservation authority established under the *Conservation Authorities Act*,
        - vi.1 a board of a public hospital within the meaning of the *Public Hospitals Act*,
        - vi.2 a non-profit housing corporation incorporated under section 13 of the *Housing Development Act*,
        - vi.3 a local housing corporation as defined in section 24 of the *Housing Services Act, 2011*, or
      - vii. the Municipal Finance Authority of British Columbia.
2. Bonds, debentures, promissory notes or other evidence of indebtedness of a corporation if,

- i. the bond, debenture or other evidence of indebtedness is secured by the assignment, to a trustee, as defined in the *Trustee Act*, of payments that Canada or a province or territory of Canada has agreed to make or is required to make under a federal, provincial or territorial statute, and
  - ii. the payments referred to in subparagraph i are sufficient to meet the amounts payable under the bond, debenture or other evidence of indebtedness, including the amounts payable at maturity.
3. Deposit receipts, deposit notes, certificates of deposit or investment, acceptances or similar instruments the terms of which provide that the principal and interest shall be fully repaid no later than two years after the day the investment was made, if the receipt, note, certificate or instrument was issued, guaranteed or endorsed by,
  - i. a bank listed in Schedule I, II or III to the *Bank Act* (Canada),
  - ii. a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act*, or
  - iii. a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- 3.1 Deposit receipts, deposit notes, certificates of deposit or investment, acceptances or similar instruments the terms of which provide that the principal and interest shall be fully repaid more than two years after the day the investment was made, if the receipt, note, certificate or instrument was issued, guaranteed or endorsed by,
  - i. a bank listed in Schedule I, II or III to the *Bank Act* (Canada),
  - ii. a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act*,
  - iii. a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
4. Bonds, debentures, promissory notes or other evidence of indebtedness issued or guaranteed by an institution listed in paragraph 3.
5. Short term securities, the terms of which provide that the principal and interest shall be fully repaid no later than three days after the day the investment was made, that are issued by,
  - i. a university in Ontario that is authorized to engage in an activity described in section 3 of the *Post-secondary Education Choice and Excellence Act, 2000*,
  - ii. the board of governors of a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, or
  - iii. a board of a public hospital within the meaning of the *Public Hospitals Act*.
6. Bonds, debentures, promissory notes, other evidence of indebtedness or other securities issued or guaranteed by the International Bank for Reconstruction and Development.

- 6.1. Bonds, debentures, promissory notes or other evidence of indebtedness issued or guaranteed by a supranational financial institution or a supranational governmental organization, other than the International Bank for Reconstruction and Development.
7. Asset-backed securities, as defined in subsection 50 (1) of Regulation 733 of the Revised Regulations of Ontario, 1990 made under the *Loan and Trust Corporations Act*.
  - 7.1 Bonds, debentures, promissory notes or other evidence of indebtedness issued by a corporation that is incorporated under the laws of Canada or a province of Canada, the terms of which provide that the principal and interest shall be fully repaid more than five years after the date on which the municipality makes the investment.
  - 7.2 Bonds, debentures, promissory notes or other evidence of indebtedness issued by a corporation that is incorporated under the laws of Canada or a province of Canada, the terms of which provide that the principal and interest shall be fully repaid more than one year and no later than five years after the date on which the municipality makes the investment.
8. Negotiable promissory notes or commercial paper, other than asset-backed securities, maturing one year or less from the date of issue, if that note or commercial paper has been issued by a corporation that is incorporated under the laws of Canada or a province of Canada.
  - 8.1 Shares issued by a corporation that is incorporated under the laws of Canada or a province of Canada.
9. Bonds, debentures, promissory notes and other evidences of indebtedness of a corporation incorporated under section 142 of the *Electricity Act, 1998*.
10. Bonds, debentures, promissory notes or other evidence of indebtedness of a corporation if the municipality first acquires the bond, debenture, promissory note or other evidence of indebtedness as a gift in a will and the gift is not made for a charitable purpose.
11. Securities of a corporation, other than those described in paragraph 10, if the municipality first acquires the securities as a gift in a will and the gift is not made for a charitable purpose.
12. Shares of a corporation if,
  - i. the corporation has a debt payable to the municipality,
  - ii. under a court order, the corporation has received protection from its creditors,
  - iii. the acquisition of the shares in lieu of the debt is authorized by the court order, and
  - iv. the treasurer of the municipality is of the opinion that the debt will be uncollectable by the municipality unless the debt is converted to shares under the court order. O. Reg. 438/97, s. 2; O. Reg. 265/02, s. 1; O. Reg. 399/02, s. 2; O. Reg. 655/05, s. 2; O. Reg. 607/06, s. 1; O. Reg. 39/07, s. 1; O. Reg. 373/11, s. 1.

**2.1** A security is prescribed for the purposes of subsection 418 (1) of the Act as a security that a municipality may invest in if,

- (a) the municipality invested in the security before January 12, 2009; and
- (b) the terms of the municipality's continued investment in the security have been changed pursuant to the Plan Implementation Order of the Ontario Superior Court of Justice dated January 12, 2009 (Court file number 08-CL-7440) and titled "In the matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended and in the matter of a plan of compromise and arrangement involving Metcalfe & Mansfield Alternative Investments II Corp. et al". O. Reg. 292/09, s. 1.

**3.** (1) A municipality shall not invest in a security under subparagraph 1 iii, v.1, v.2, vi.1, vi.2 or vi.3 or paragraph 3.1 or 4 of section 2 unless the bond, debenture, promissory note or evidence of indebtedness is rated,

- (a) Revoked: O. Reg. 265/02, s. 2 (1).
  - (b) by Dominion Bond Rating Service Limited as "AA(low)" or higher;
    - (b.1) by Fitch Ratings as "AA-" or higher;
  - (c) by Moody's Investors Services Inc. as "Aa3" or higher; or
  - (d) by Standard and Poor's as "AA-" or higher. O. Reg. 438/97, s. 3 (1); O. Reg. 265/02, s. 2 (1); O. Reg. 399/02, s. 3 (1); O. Reg. 655/05, s. 3 (1, 2); O. Reg. 607/06, s. 2; O. Reg. 39/07, s. 2.
- (2) Revoked: O. Reg. 655/05, s. 3 (3).

(2.1) A municipality shall not invest in a security under paragraph 6.1 of section 2 unless the security is rated,

- (a) by Dominion Bond Rating Service Limited as "AAA";
- (b) by Fitch Ratings as "AAA";
- (c) by Moody's Investors Services Inc. as "Aaa"; or
- (d) by Standard and Poor's as "AAA". O. Reg. 655/05, s. 3 (4).

(3) A municipality shall not invest in an asset-backed security under paragraph 7 of section 2 that matures more than one year from the date of issue unless the security is rated,

- (a) by Dominion Bond Rating Service Limited as "AAA";
  - (a.1) by Fitch Ratings as "AAA";
- (b) by Moody's Investors Services Inc. as "Aaa"; or
- (c) by Standard and Poor's as "AAA". O. Reg. 265/02, s. 2 (2); O. Reg. 399/02, s. 3 (2); O. Reg. 655/05, s. 3 (5).

(4) A municipality shall not invest in an asset-backed security under paragraph 7 of section 2 that matures one year or less from the date of issue unless the security is rated,

- (a) by Dominion Bond Rating Service Limited as "R-1(high)";
  - (a.1) by Fitch Ratings as "F1+";
- (b) by Moody's Investors Services Inc. as "Prime-1"; or

(c) by Standard and Poor's as "A-1+". O. Reg. 265/02, s. 2 (2); O. Reg. 399/02, s. 3 (3); O. Reg. 655/05, s. 3 (6).

(4.1) A municipality shall not invest in a security under paragraph 7.1 of section 2 unless the security is rated,

(a) by Dominion Bond Rating Service Limited as "AA(low)" or higher;

(b) by Fitch Ratings as "AA-" or higher;

(c) by Moody's Investors Services Inc. as "Aa3" or higher; or

(d) by Standard and Poor's as "AA-" or higher. O. Reg. 292/09, s. 2 (1).

(4.2) A municipality shall not invest in a security under paragraph 7.2 of section 2 unless the security is rated,

(a) by Dominion Bond Rating Service Limited as "A" or higher;

(b) by Fitch Ratings as "A" or higher;

(c) by Moody's Investors Services Inc. as "A2"; or

(d) by Standard and Poor's as "A". O. Reg. 292/09, s. 2 (1).

(5) A municipality shall not invest in a security under paragraph 8 of section 2 unless the promissory note or commercial paper is rated,

(a) by Dominion Bond Rating Service Limited as "R-1(mid)" or higher;

(a.1) by Fitch Ratings as "F1+";

(b) by Moody's Investors Services Inc. as "Prime-1"; or

(c) by Standard and Poor's as "A-1+". O. Reg. 265/02, s. 2 (2); O. Reg. 399/02, s. 3 (4); O. Reg. 655/05, s. 3 (8).

(6) If an investment made under subparagraph 1 iii, v.1, v.2, vi.1, vi.2 or vi.3 of section 2 or paragraph 3.1, 4, 6.1, 7, 7.1, 7.2 or 8 of section 2 falls below the standard required by this section, the municipality shall sell the investment within 180 days after the day the investment falls below the standard. O. Reg. 292/09, s. 2 (2).

(6.1) Subsection (6) does not apply with respect to an investment made by a municipality under paragraph 7 of section 2 on a day before the day this subsection comes into force. O. Reg. 292/09, s. 2 (3).

(7) A municipality shall not invest in a security under paragraph 9 of section 2 unless, at the time the investment is made and as long as it continues, the investment ranks, at a minimum, concurrently and equally in respect of payment of principal and interest with all unsecured debt of the corporation. O. Reg. 265/02, s. 2 (2).

(8) A municipality shall not invest in a security under paragraph 9 of section 2 unless, at the time the investment is made, the total amount of the municipality's investment in debt of any corporation incorporated under section 142 of the *Electricity Act, 1998* that would result after the proposed investment is made does not exceed the total amount of investment in debt, including any interest accrued on such debt, of the municipality in such a corporation that existed on the day before the day the proposed investment is to be made. O. Reg. 265/02, s. 2 (2).



(9) Any investment made under paragraph 9 of section 2, including any refinancing, renewal or replacement thereof, may not be held for longer than a total of 10 years from the date such investment is made. O. Reg. 265/02, s. 2 (2).

(10) Subsections (7), (8) and (9) do not prevent a municipality from holding or disposing of a security described in paragraph 9 of section 2 issued by a corporation incorporated under section 142 of the *Electricity Act, 1998*, if the municipality acquired the security through a transfer by-law or otherwise under that Act. O. Reg. 655/05, s. 3 (9).

(11) A municipality shall sell an investment described in paragraph 10 or 11 of section 2 within 90 days after ownership of the investment vests in the municipality. O. Reg. 655/05, s. 3 (9).

(12) Revoked: O. Reg. 292/09, s. 2 (4).

4. (1) A municipality shall not invest more than 25 per cent of the total amount in all sinking and retirement funds in respect of debentures of the municipality, as estimated by its treasurer on the date of the investment, in short-term debt issued or guaranteed by the municipality. O. Reg. 438/97, s. 4 (1).

(2) In this section,

"short-term debt" means any debt, the terms of which provide that the principal and interest of the debt shall be fully repaid no later than 364 days after the debt is incurred. O. Reg. 438/97, s. 4 (2).

4.1 (1) A municipality shall not invest in a security under paragraph 7 of section 2 or in a promissory note or commercial paper under paragraph 8 of section 2 unless, on the date that the investment is made,

(a) the municipality itself is rated, or all of the municipality's long-term debt obligations are rated,

(i) by Dominion Bond Rating Service Limited as "AA(low)" or higher,

(i.1) by Fitch Ratings as "AA-" or higher,

(ii) by Moody's Investors Services Inc. as "Aa3" or higher, or

(iii) by Standard and Poor's as "AA-" or higher; or

(b) the municipality has entered into an agreement with the Local Authority Services Limited and the CHUMS Financing Corporation to act together as the municipality's agent for the investment in that security, promissory note or commercial paper. O. Reg. 265/02, s. 3; O. Reg. 399/02, s. 4; O. Reg. 655/05, s. 4 (1, 2).

(1.1) A municipality shall not invest in a security under paragraph 7.1 or 8.1 of section 2 unless, on the date the investment is made, the municipality has entered into an agreement with the Local Authority Services Limited and the CHUMS Financing Corporation to act together as the municipality's agent for the investment in the security. O. Reg. 655/05, s. 4 (3).

(1.2) Subsection (1.1) does not apply to investments in securities by the City of Ottawa if all of the following requirements are satisfied:

1. Only the proceeds of the sale by the City of its securities in a corporation incorporated under section 142 of the *Electricity Act, 1998* are used to make the investments.

2. The investments are made in a professionally-managed fund.
3. The terms of the investments provide that,
  - i. where the investment is in debt instruments, the principal must be repaid no earlier than seven years after the date on which the City makes the investment, and
  - ii. where the investment is in shares, an amount equal to the principal amount of the investment cannot be withdrawn from the fund for at least seven years after the date on which the City makes the investment.
4. The City establishes and uses a separate reserve fund for the investments.
5. Subject to paragraph 6, the money in the reserve fund, including any returns on the investments or proceeds from their disposition, are used to pay capital costs of the City and for no other purpose.
6. The City may borrow money from the reserve fund but must repay it plus interest. O. Reg. 655/05, s. 4 (3).

(2) The investment made under clause (1) (b) or described in subsection (1.1), as the case may be, must be made in the One Investment Program of the Local Authority Services Limited and the CHUMS Financing Corporation with,

- (a) another municipality;
- (b) a public hospital;
- (c) a university in Ontario that is authorized to engage in an activity described in section 3 of the *Post-secondary Education Choice and Excellence Act, 2000*;
- (d) the board of governors of a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*;
- (d.1) a foundation established by a college mentioned in clause (d) whose purposes include receiving and maintaining a fund or funds for the benefit of the college;
- (e) a school board; or
- (f) any agent of an institution listed in clauses (a) to (d.1). O. Reg. 265/02, s. 3; O. Reg. 655/05, s. 4 (4); O. Reg. 607/06, s. 3; O. Reg. 292/09, s. 3; O. Reg. 52/11, s. 1.

5. A municipality shall not invest in a security issued or guaranteed by a school board or similar entity unless,

- (a) the money raised by issuing the security is to be used for school purposes; and
- (b) Revoked: O. Reg. 248/01, s. 1.

O. Reg. 438/97, s. 5; O. Reg. 248/01, s. 1.

6. (1) A municipality shall not invest in a security that is expressed or payable in any currency other than Canadian dollars. O. Reg. 438/97, s. 6 (1).

(2) Subsection (1) does not prevent a municipality from continuing an investment, made before this Regulation comes into force, that is expressed and payable in the currency of the United States of America or the United Kingdom. O. Reg. 438/97, s. 6 (2).

7. (1) Before a municipality invests in a security prescribed under this Regulation, the council of the municipality shall, if it has not already done so, adopt a statement of the municipality's investment policies and goals. O. Reg. 438/97, s. 7.

(2) In preparing the statement of the municipality's investment policies and goals under subsection (1), the council of the municipality shall consider,

- (a) the municipality's risk tolerance and the preservation of its capital;
- (b) the municipality's need for a diversified portfolio of investments; and
- (c) obtaining legal advice and financial advice with respect to the proposed investments. O. Reg. 265/02, s. 4.

(3) Revoked: O. Reg. 655/05, s. 5.

(4) In preparing the statement of the municipality's investment policies and goals under subsection (1) for investments made under paragraph 9 of section 2, the council of the municipality shall consider its plans for the investment and how the proposed investment would affect the interest of municipal taxpayers. O. Reg. 265/02, s. 4.

8. (1) If a municipality has an investment in a security prescribed under this Regulation, the council of the municipality shall require the treasurer of the municipality to prepare and provide to the council, each year or more frequently as specified by the council, an investment report. O. Reg. 438/97, s. 8 (1).

(2) The investment report referred to in subsection (1) shall contain,

- (a) a statement about the performance of the portfolio of investments of the municipality during the period covered by the report;
- (b) a description of the estimated proportion of the total investments of a municipality that are invested in its own long-term and short-term securities to the total investment of the municipality and a description of the change, if any, in that estimated proportion since the previous year's report;
- (c) a statement by the treasurer as to whether or not, in his or her opinion, all investments are consistent with the investment policies and goals adopted by the municipality;
- (d) a record of the date of each transaction in or disposal of its own securities, including a statement of the purchase and sale price of each security; and
- (e) such other information that the council may require or that, in the opinion of the treasurer, should be included. O. Reg. 438/97, s. 8 (2); O. Reg. 655/05, s. 6.

(2.1) The investment report referred to in subsection (1) shall contain a statement by the treasurer as to whether any of the following investments fall below the standard required for that investment during the period covered by the report:

- 1. An investment described in subparagraph 1 iii, v.1, v.2, vi.1, vi.2 or vi.3 of section 2.
- 2. An investment described in paragraph 3.1, 4, 6.1, 7, 7.1, 7.2 or 8 of section 2.
- 3. An investment described in subsection 9 (1). O. Reg. 292/09, s. 4.

(3) Upon disposition of any investment made under paragraph 9 of section 2, the council of the municipality shall require the treasurer of the municipality to prepare and

provide to the council a report detailing the proposed use of funds realized in the disposition. O. Reg. 265/02, s. 5.

**8.1** If an investment made by the municipality is, in the treasurer's opinion, not consistent with the investment policies and goals adopted by the municipality, the treasurer shall report the inconsistency to the council of the municipality within 30 days after becoming aware of it. O. Reg. 655/05, s. 7.

**9.** (1) Despite this Regulation, an investment by a municipality in bonds, debentures or other indebtedness of a corporation made before March 6, 1997 may be continued if the bond, debenture or other indebtedness is rated,

(a) Revoked: O. Reg. 265/02, s. 6.

(b) by Dominion Bond Rating Service Limited as "AA(low)" or higher;

(b.1) by Fitch Ratings as "AA-" or higher;

(c) by Moody's Investors Services Inc. as "Aa3" or higher; or

(d) by Standard and Poor's as "AA-" or higher. O. Reg. 438/97, s. 9 (1); O. Reg. 265/02, s. 6; O. Reg. 399/02, s. 5; O. Reg. 655/05, s. 8.

(1.1) Despite subsection 3 (4.1), an investment in a security under paragraph 7.1 of section 2 made on a day before the day this subsection comes into force may be continued if the security is rated,

(a) by Dominion Bond Rating Service Limited as "A" or higher;

(b) by Fitch Ratings as "A" or higher;

(c) by Moody's Investors Services Inc. as "A2"; or

(d) by Standard and Poor's as "A". O. Reg. 292/09, s. 5 (1).

(2) If the rating of an investment continued under subsection (1) or (1.1) falls below the standard required by that subsection, the municipality shall sell the investment within 180 days after the day the investment falls below the standard. O. Reg. 438/97, s. 9 (2); O. Reg. 292/09, s. 5 (2).

## **FORWARD RATE AGREEMENTS**

**10.** (1) A municipality that enters into an agreement to make an investment on a future date in a security prescribed by section 2 may enter one or more forward rate agreements with a bank listed in Schedule I, II or III to the *Bank Act* (Canada) in order to minimize the cost or risk associated with the investment because of fluctuations in interest rates. O. Reg. 655/05, s. 9.

(2) A forward rate agreement shall provide for the following matters:

1. Specifying a forward amount, which is the principal amount of the investment or that portion of the principal amount to which the agreement relates.
2. Specifying a settlement day, which is a specified future date.
3. Specifying a forward rate of interest, which is a notional rate of interest applicable on the settlement day.
4. Specifying a reference rate of interest, which is the market rate of interest payable on a specified future date on an acceptance issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada).

5. Requiring a settlement payment to be payable on the settlement day if the forward rate and the reference rate of interest are different. O. Reg. 655/05, s. 9.

(3) A municipality shall not enter a forward rate agreement if the forward amount described in paragraph 1 of subsection (2) for the investment whose cost or risk the agreement is intended to minimize, when added to all forward amounts under other forward rate agreements, if any, relating to the same investment, would exceed the total amount of the principal of the investment. O. Reg. 655/05, s. 9.

(4) A municipality shall not enter a forward rate agreement unless the settlement day under the agreement is within 12 months of the day on which the agreement is executed. O. Reg. 655/05, s. 9.

(5) A municipality shall not enter a forward rate agreement if the settlement payment described in paragraph 5 of subsection (2) exceeds the difference between the amount of interest that would be payable on the forward amount calculated at the forward rate of interest for the period for which the investment was made and the amount that would be payable calculated at the reference rate of interest. O. Reg. 655/05, s. 9.

(6) A municipality shall not enter a forward rate agreement except with a bank listed in Schedule I, II or III to the *Bank Act* (Canada) and only if the bank's long-term debt obligations on the day the agreement is entered are rated,

- (a) by Dominion Bond Rating Service Limited as "A(high)" or higher;
- (b) by Fitch Ratings as "A+" or higher;
- (c) by Moody's Investors Service Inc. as "A1" or higher; or
- (d) by Standard and Poor's as "A+" or higher. O. Reg. 655/05, s. 9.

11. (1) Before a municipality passes a by-law authorizing a forward rate agreement, the council of the municipality shall adopt a statement of policies and goals relating to the use of forward rate agreements. O. Reg. 655/05, s. 9.

(2) The council of the municipality shall consider the following matters when preparing the statement of policies and goals:

1. The types of investments for which forward rate agreements are appropriate.
2. The fixed costs and estimated costs to the municipality resulting from the use of such agreements.
3. A detailed estimate of the expected results of using such agreements.
4. The financial and other risks to the municipality that would exist with, and without, the use of such agreements.
5. Risk control measures relating to such agreements, such as,
  - i. credit exposure limits based on credit ratings and on the degree of regulatory oversight and the regulatory capital of the other party to the agreement,
  - ii. standard agreements, and
  - iii. ongoing monitoring with respect to the agreements. O. Reg. 655/05, s. 9.

**12.** (1) If a municipality has any subsisting forward rate agreements in a fiscal year, the treasurer of the municipality shall prepare and present to the municipal council once in that fiscal year, or more frequently if the council so desires, a detailed report on all of those agreements. O. Reg. 655/05, s. 9.

(2) The report must contain the following information and documents:

1. A statement about the status of the forward rate agreements during the period of the report, including a comparison of the expected and actual results of using the agreements.
2. A statement by the treasurer indicating whether, in his or her opinion, all of the forward rate agreements entered during the period of the report are consistent with the municipality's statement of policies and goals relating to the use of forward rate agreements.
3. Such other information as the council may require.
4. Such other information as the treasurer considers appropriate to include in the report. O. Reg. 655/05, s. 9.

## **Appendix C - Trustee Act (Investment Provisions)**

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R.S.O. 1990, c. T.23

Amended by: 1992, c. 32, s. 27; 1993, c. 27, Sched.; 1994, c. 27, s. 43 (2); 1998, c. 18, Sched. B, s. 16; 2000, c. 26, Sched. A, s. 15; 2001, c. 9, Sched. B, s. 13; 2002, c. 24, Sched. B, s. 47; 2005, c. 5, s. 71; 2006, c. 19, Sched. B, s. 23.

### Definitions

#### 1. In this Act,

"assign" means the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, and "assignment" has a corresponding meaning; ("céder", "cession")

"contingent right" as applied to land includes a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained, and also a right of entry whether immediate or future, vested or contingent; ("droit éventuel")

"convey" applied to a person means the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein the person is entitled to a contingent right, either for the whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, and "conveyance" has a corresponding meaning; ("transporter", "transport")

"devisee" includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description; ("légataire immobilier")

"instrument" includes a deed, a will and a written document and an Act of the Legislature, but not a judgment or order of a court; ("acte")

"land" includes messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency; ("bien-fonds")

"mortgage" is applicable to every estate, interest or property, in land or personal estate, that is merely a security for money, and "mortgagee" has a corresponding meaning and includes every person deriving title under the original mortgagee; ("hypothèque", "créancier hypothécaire")

“personal estate” includes leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein; (“biens meubles”)

“personal representative” means an executor, an administrator, and an administrator with the will annexed; (“représentant successoral”)

“possessed” is applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land; (“possession”)

“securities” includes stocks, funds and shares; (“valeurs mobilières”)

“seized” is applicable to any vested interest for life, or of a greater description, and extends to estates, legal and equitable, in possession, or in futurity, in any land; (“saisi”)

“stock” includes fully paid-up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein; (“action”)

“transfer”, in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee; (“transfert”)

“trust” does not mean the duties incident to an estate conveyed by way of mortgage but, with this exception, includes implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and extends to and includes the duties incident to the office of personal representative of a deceased person, and “trustee” has a corresponding meaning and includes a trustee however appointed and several joint trustees; (“fiducie”, “fiduciaire”)

“will” includes,

- (a) a testament,
- (b) a codicil,
- (c) an appointment by will or by writing in the nature of a will in exercise of a power, and
- (d) any other testamentary disposition. (“testament”) R.S.O. 1990, c. T.23, s. 1; 2006, c. 19, Sched. B, s. 23.

## INVESTMENTS

### Investments authorized by other Acts or regulations

[26.](#) If a provision of another Act or the regulations under another Act authorizes money or other property to be invested in property in which a trustee is authorized to invest and the provision came into force before section 16 of Schedule B of the *Red Tape Reduction Act, 1998*, the provision shall be deemed to authorize investment in the property in which a trustee could invest immediately before the coming into force of section 16 of Schedule B of the *Red Tape Reduction Act, 1998*. 1998, c. 18, Sched. B, s. 16 (1).



### **Investment standards**

27. (1) In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. 1998, c. 18, Sched. B, s.16 (1).

### **Authorized investments**

(2) A trustee may invest trust property in any form of property in which a prudent investor might invest. 1998, c. 18, Sched. B, s. 16 (1).

### **Mutual, pooled and segregated funds**

(3) Any rule of law that prohibits a trustee from delegating powers or duties does not prevent the trustee from investing in mutual funds, pooled funds or segregated funds under variable insurance contracts, and sections 27.1 and 27.2 do not apply to the purchase of such funds. 2001, c. 9, Sched. B, s. 13 (2).

### **Common trust funds**

(4) If trust property is held by co-trustees and one of the co-trustees is a trust corporation as defined in the *Loan and Trust Corporations Act*, any rule of law that prohibits a trustee from delegating powers or duties does not prevent the co-trustees from investing in a common trust fund, as defined in that Act, that is maintained by the trust corporation and sections 27.1 and 27.2 do not apply. 1998, c. 18, Sched. B, s. 16 (1); 2001, c. 9, Sched. B, s. 13 (3).

### **Criteria**

(5) A trustee must consider the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.
4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Needs for liquidity, regularity of income and preservation or appreciation of capital.
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries. 1998, c. 18, Sched. B, s. 16 (1).

### **Diversification**

(6) A trustee must diversify the investment of trust property to an extent that is appropriate to,

- (a) the requirements of the trust; and
- (b) general economic and investment market conditions. 1998, c. 18, Sched. B, s. 16 (1).

### **Investment advice**

(7) A trustee may obtain advice in relation to the investment of trust property. 1998, c. 18, Sched. B, s. 16 (1).

### **Reliance on advice**

(8) It is not a breach of trust for a trustee to rely on advice obtained under subsection (7) if a prudent investor would rely on the advice under comparable circumstances. 1998, c. 18, Sched. B, s. 16 (1).

### **Terms of trust**

(9) This section and section 27.1 do not authorize or require a trustee to act in a manner that is inconsistent with the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).

### **Same**

(10) For the purposes of subsection (9), the constating documents of a corporation that is deemed to be a trustee under subsection 1 (2) of the *Charities Accounting Act* form part of the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).

### **Trustee may delegate functions to agent**

**27.1 (1)** Subject to subsections (2) to (5), a trustee may authorize an agent to exercise any of the trustee’s functions relating to investment of trust property to the same extent that a prudent investor, acting in accordance with ordinary investment practice, would authorize an agent to exercise any investment function. 2001, c. 9, Sched. B, s. 13 (5).

### **Investment plan or strategy**

(2) A trustee may not authorize an agent to exercise functions on the trustee’s behalf unless the trustee has prepared a written plan or strategy that,  
(a) complies with section 28; and  
(b) is intended to ensure that the functions will be exercised in the best interests of the beneficiaries of the trust. 2001, c. 9, Sched. B, s. 13 (5).

### **Agreement**

(3) A trustee may not authorize an agent to exercise functions on the trustee’s behalf unless a written agreement between the trustee and the agent is in effect and includes,  
(a) a requirement that the agent comply with the plan or strategy in place from time to time; and  
(b) a requirement that the agent report to the trustee at regular stated intervals. 2001, c. 9, Sched. B, s. 13 (5).

### **Trustee’s duty**

(4) A trustee is required to exercise prudence in selecting an agent, in establishing the terms of the agent’s authority and in monitoring the agent’s performance to ensure compliance with those terms. 2001, c. 9, Sched. B, s. 13 (5).

### **Same**

(5) For the purpose of subsection (4),  
(a) prudence in selecting an agent includes compliance with any regulation made under section 30; and  
(b) prudence in monitoring an agent’s performance includes,  
(i) reviewing the agent’s reports.

(ii) regularly reviewing the agreement between the trustee and the agent and how it is being put into effect, including considering whether the plan or strategy of investment should be revised or replaced, replacing the plan or strategy if the trustee considers it appropriate to do so, and assessing whether the plan or strategy is being complied with,

(iii) considering whether directions should be provided to the agent or whether the agent’s appointment should be revoked, and

(iv) providing directions to the agent or revoking the appointment if the trustee considers it appropriate to do so. 2001, c. 9, Sched. B, s. 13 (5).

### **Duty of agent**

**27.2 (1)** An agent who is authorized to exercise a trustee’s functions relating to investment of trust property has a duty to do so,

(a) with the standard of care expected of a person carrying on the business of investing the money of others;

(b) in accordance with the agreement between the trustee and the agent; and

(c) in accordance with the plan or strategy of investment. 2001, c. 9, Sched. B, s. 13 (5).

### **No further delegation**

**(2)** An agent who is authorized to exercise a trustee’s functions relating to investment of trust property shall not delegate that authority to another person. 2001, c. 9, Sched. B, s. 13 (5).

### **Proceeding against agent**

**(3)** If an agent is authorized to exercise a trustee’s functions relating to investment of trust property and the trust suffers a loss because of the agent’s breach of the duty owed under subsection (1) or (2), a proceeding against the agent may be commenced by,

(a) the trustee; or

(b) a beneficiary, if the trustee does not commence a proceeding within a reasonable time after acquiring knowledge of the breach. 2001, c. 9, Sched. B, s. 13 (5).

### **Protection from liability**

**28.** A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances. 1998, c. 18, Sched. B, s. 16 (1).

### **Assessment of damages**

**29.** If a trustee is liable for a loss to the trust arising from the investment of trust property, a court assessing the damages payable by the trustee may take into account the overall performance of the investments. 1998, c. 18, Sched. B, s. 16 (1).

### **Regulations, agents**

[30.](#) The Attorney General may make regulations governing or restricting the classes of persons or the qualifications of persons who are eligible to be agents under section 27.1 and establishing conditions for eligibility. 2001, c. 9, Sched. B, s. 13 (6).

### **Application, ss. 27-30**

[31.](#) Sections 27 to 30 apply to a trust whether it is created before or after the date section 13 of Schedule B to the *Government Efficiency Act, 2001* comes into force. 2001, c. 9, Sched. B, s. 13 (6).

[32.](#) Repealed: 1998, c. 18, Sched. B, s. 16 (1).

[33.](#) Repealed: 1998, c. 18, Sched. B, s. 16 (1).

[34.](#) Repealed: 1998, c. 18, Sched. B, s. 16 (1).

## Appendix D - CFA Institute Code of Ethics and Standards of Professional Conduct

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### PREAMBLE

The CFA Institute Code of Ethics and Standards of Professional Conduct (Code and Standards) are fundamental to the values of CFA Institute and essential to achieving its mission to lead the investment profession globally by setting high standards of education, integrity, and professional excellence. High ethical standards are critical to maintaining the public’s trust in financial markets and in the investment profession. Since their creation in the 1960s, the Code and Standards have promoted the integrity of CFA Institute members and served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. All CFA Institute members (including holders of the Chartered Financial Analyst® (CFA®) designation) and CFA candidates must abide by the Code and Standards and are encouraged to notify their employer of this responsibility. Violations may result in disciplinary sanctions by CFA Institute. Sanctions can include revocation of membership, candidacy in the CFA Program, and the right to use the CFA designation.

### THE CODE OF ETHICS

Members of CFA Institute (including Chartered Financial Analyst® [CFA®] charterholders) and candidates for the CFA designation (“Members and Candidates”) must:

### STANDARDS OF PROFESSIONAL CONDUCT

- Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession.
- Promote the integrity of, and uphold the rules governing, capital markets.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

### I. PROFESSIONALISM

**A. Knowledge of the Law.** Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government, regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.

**B. Independence and Objectivity.** Members and Candidates must use reasonable care and judgment to achieve and maintain independence and objectivity in their professional activities. Members and Candidates must not offer, solicit, or accept any gift,

benefit, compensation, or consideration that reasonably could be expected to compromise their own or another's independence and objectivity.

**C. Misrepresentation.** Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.

**D. Misconduct.** Members and Candidates must not engage in any professional conduct involving dishonesty, fraud, or deceit or commit any act that reflects adversely on their professional reputation, integrity, or competence.

## II. INTEGRITY OF CAPITAL MARKETS

**A. Material Nonpublic Information.** Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information.

**B. Market Manipulation.** Members and Candidates must not engage in practices that distort prices or artificially inflate trading volume with the intent to mislead market participants.

## III. DUTIES TO CLIENTS

**A. Loyalty, Prudence, and Care.** Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests. In relationships with clients, Members and Candidates must determine applicable fiduciary duty and must comply with such duty to persons and interests to whom it is owed.

**B. Fair Dealing.** Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.

### **C. Suitability.**

1. When Members and Candidates are in an advisory relationship with a client, they must:

- a. Make a reasonable inquiry into a client's or prospective clients' investment experience, risk and return objectives, and financial constraints prior to making any investment recommendation or taking investment action and must reassess and update this information regularly.
- b. Determine that an investment is suitable to the client's financial situation and consistent with the client's written objectives, mandates, and constraints before making an investment recommendation or taking investment action.
- c. Judge the suitability of investments in the context of the client's total portfolio.

2. When Members and Candidates are responsible for managing a portfolio to a specific mandate, strategy, or style, they must only make investment recommendations or take investment actions that are consistent with the stated objectives and constraints of the portfolio.

**D. Performance Presentation.** When communicating investment performance information, Members or Candidates must make reasonable efforts to ensure that it is fair, accurate, and complete.

**E. Preservation of Confidentiality.** Members and Candidates must keep information about current, former, and prospective clients confidential unless:

1. The information concerns illegal activities on the part of the client or prospective client.
2. Disclosure is required by law.
3. The client or prospective client permits disclosure of the information.

#### **IV. DUTIES TO EMPLOYERS**

**A. Loyalty.** In matters related to their employment, Members and Candidates must act for the benefit of their employer and not deprive their employer of the advantage of their skills and abilities, divulge confidential information, or otherwise cause harm to their employer.

**B. Additional Compensation Arrangements.** Members and Candidates must not accept gifts, benefits, compensation, or consideration that competes with, or might reasonably be expected to create a conflict of interest with, their employer’s interest unless they obtain written consent from all parties involved.

**C. Responsibilities of Supervisors.** Members and Candidates must make reasonable efforts to detect and prevent violations of applicable laws, rules, regulations, and the Code and Standards by anyone subject to their supervision or authority.

#### **V. INVESTMENT ANALYSIS, RECOMMENDATIONS, AND ACTION**

**A. Diligence and Reasonable Basis.** Members and Candidates must:

1. Exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions.
2. Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

#### **B. Communication with Clients and Prospective Clients.**

Members and Candidates must:

1. Disclose to clients and prospective clients the basic format and general principles of the investment processes used to analyze investments, select securities, and construct portfolios and must promptly disclose any changes that might materially affect those processes.
2. Use reasonable judgment in identifying which factors are important to their investment analysis, recommendations, or actions and include those factors in communications with clients and prospective clients.
3. Distinguish between fact and opinion in the presentation of investment analysis and recommendations.

**C. Record Retention.** Members and Candidates must develop and maintain appropriate records to support their investment analysis, recommendations, actions, and other investment-related communications with clients and prospective clients.

#### **VI. CONFLICTS OF INTEREST**

**A. Disclosure of Conflicts.** Members and Candidates must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with respective duties to their clients, prospective clients, and employer. Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively.

**B. Priority of Transactions.** Investment transactions for clients and employers must have priority over investment transactions in which a Member or Candidate is the beneficial owner.

**C. Referral Fees.** Members and Candidates must disclose to their employer, clients, and prospective clients, as appropriate, any compensation, consideration, or benefit received from, or paid to, others for the recommendation of products or services.

## **VII. RESPONSIBILITIES AS A CFA INSTITUTE MEMBER OR CFA CANDIDATE**

### **A. Conduct as Members and Candidates in the CFA Program.**

Members and Candidates must not engage in any conduct that compromises the reputation or integrity of CFA Institute or the CFA designation or the integrity, validity, or security of the CFA examinations.

### **B. Reference to CFA Institute, the CFA designation, and the CFA Program.**

When referring to CFA Institute, CFA Institute membership, the CFA designation, or candidacy in the CFA Program, Members and Candidates must not misrepresent or exaggerate the meaning or implications of membership in CFA Institute, holding the CFA designation, or candidacy in the CFA Program.