

March 2010

## Ontario Teachers' Pension Plan's Approach to Say on Pay

### Introduction

As part of our ongoing efforts to keep our clients and friends aware of corporate governance developments related to executive compensation, we are providing our comments on a letter you may have received recently from Ontario Teachers' Pension Plan (Teachers', or the Plan), explaining how the Plan will evaluate and vote on Say on Pay proposals.

Teachers' has sent such letters to more than 1500 companies (approximately 400 Canadian and 1100 international), in which it holds an ownership position. The letter provides a brief summary of Teachers' position on Say on Pay and how Teachers' intends to respond to this particular shareholder initiative in this, the first year of its adoption in Canada, and going forward. A copy of the letter is attached and can also be found on Teachers' website at [https://docs.otpp.com/Say\\_on\\_Pay\\_letter\\_to\\_boards\\_02-2010.pdf](https://docs.otpp.com/Say_on_Pay_letter_to_boards_02-2010.pdf).

As only a few companies in Canada have adopted Say on Pay to date (13 will be holding a vote this year, with several more having committed to holding a vote in 2011), the relevance of Teachers' letter for most issuers may not be immediately obvious at this time. However, Teachers' approach to Say on Pay should be considered within the wider context of their commitment to monitoring executive compensation practices for compliance with their guidelines, including through shareholder engagement and, if deemed necessary, by withholding votes from compensation committee members. Consequently, **the letter could be relevant to any company whose shares are or may be owned by Teachers' since their executive compensation practices may at some point be assessed against these guidelines.**

Teachers' position on shareholder Say on Pay differs from that held by the majority of large Canadian institutional shareholders who have formally endorsed the measure. Teachers' view is that executive compensation decisions are complex matters that are best left to directors, given that they generally have more information than shareholders do on compensation issues and are better positioned to make informed decisions. In Teachers' view, the election and removal of directors is the most appropriate means for shareholders to influence an issuer's compensation practices.

## Teachers' Approach to Say on Pay

Accordingly, **Teachers' will generally vote against Say on Pay proposals submitted by shareholders** that request that the company adopt a Say on Pay vote.

In the case of **management Say on Pay resolutions**, where management is seeking shareholder endorsement of the company's executive compensation policies and practices, Teachers' is required to vote, as it must on all matters to come before shareholders, and **will assess the compliance of the company's policies and practices with Teachers' guidelines** and vote accordingly.<sup>(1)</sup>

Depending on the results of this assessment, Teachers' will take one or more of the following steps

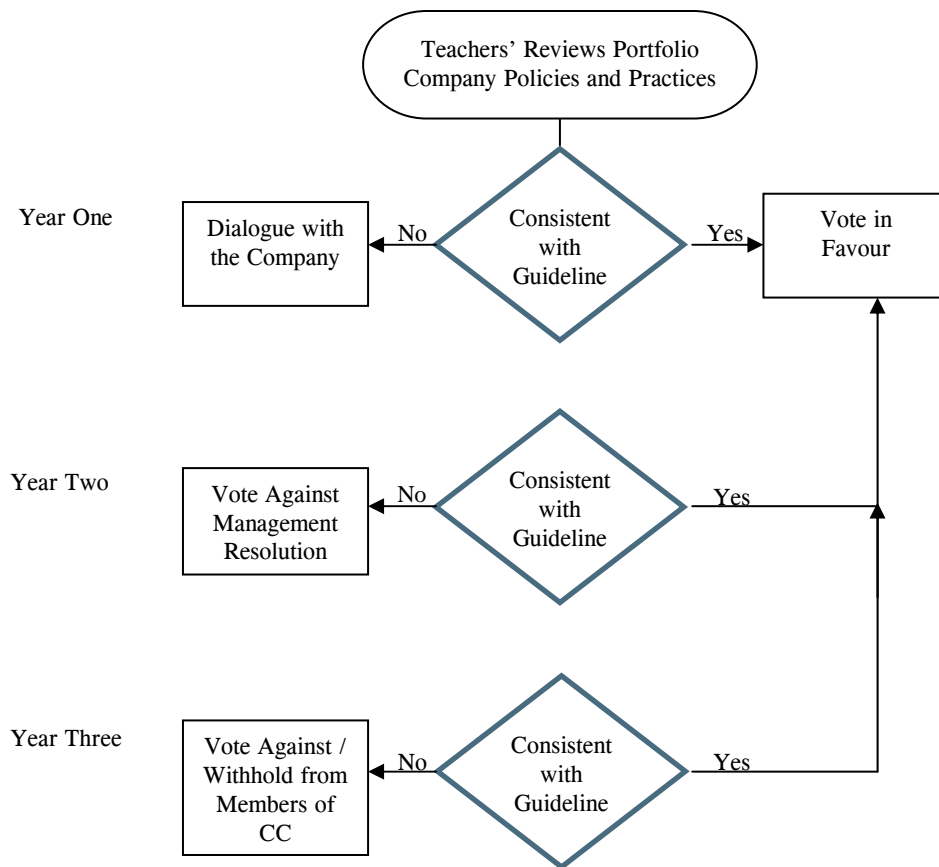
- If found to be compliant, Teachers' will vote in favour of management's say on pay resolution in 2010.

*<sup>(1)</sup> The guidelines are available on Teachers' website at [www.otpp.com/gov](http://www.otpp.com/gov) and consider such elements as the quality of the disclosure, connection with strategic goals, meaningful performance criteria, holding requirement, and simplicity.*

- If found not to be compliant, Teachers' will take a layered approach:
  - For the 2010 proxy season, Teachers will engage the company by notifying it in writing of Teachers' concerns with the "hope and expectation" that the chair of the compensation committee will respond by either:

- Addressing the concerns and resolving the issues, or
- Explaining why the current practices are appropriate
- If the actions taken or explanations offered are considered by Teachers' to be insufficient, then the following year (2011) Teachers' will vote against management's Say on Pay resolution
- If the issues continue to be unaddressed, Teachers' will vote against the members of the boards' compensation committee the following year (2012).

Teachers' Response to Management Resolution



From recent discussions with Teachers' we understand that they will focus their 2010 engagement exercise related to executive compensation on those companies who have adopted Say on Pay (13 in Canada), and whose compensation practices they determine to be inconsistent with Teachers' guidelines. Teachers' also indicates that they will continue, as they have in previous years, to approach companies whose compensation practices they consider to be egregious, regardless of whether the company has adopted Say on Pay. We understand that in 2010, Teachers' is unlikely to engage companies simply on the basis that their compensation practices do not meet all of Teachers' guidelines. However, we understand that in future years, Teachers' will gradually increase the number of companies they approach based on non-compliance with its guidelines.

Finally, Teachers' clearly welcomes and encourages companies to approach the Plan to discuss its guidelines, corporate governance issues generally and executive compensation matters in particular. Each company will need to consider this offer. The benefits of gaining insight and building a relationship with a large shareholder must be weighed against the possibility of raising issues the company may prefer not to address at this time.

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*For further information or to schedule a discussion about this topic, please contact any one of the following consultants:*

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