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PLEASE REPLY TO:  
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Dear Ms Park

## **Consultation on Draft Regulations**

### **The Occupational Pension Schemes (Winding up and Deficiency on Winding Up etc.) (Amendment) Regulations 2003**

Our main comments on the draft regulations are whether they achieve the desired intention as follows:-

- 1 They impose buy out costs whenever a scheme of a solvent employer is wound up whether that is at the instigation of the employer or the trustees. Paragraph 13 of the DWP 11 June document implied that buy out cost would only be applied if the employer chose to wind up. We are concerned that the conversion of an intention into a guarantee has substantially increased the employers' liability by some £300bn. In addition, the application of the buy out cost when Trustees choose to wind up a scheme gives the Trustee a very powerful power and alters the sponsor/Trustee balance in most schemes. There is a concern that Trustees of a scheme of a solvent employer, closed to future accrual, may choose to wind up the scheme to assure members' benefits. This can place a significant contingent liability on the employer. The impact of this contingent liability (which is outside the control of the company) may have an adverse impact on the company's accounts and could materially restrict a company's borrowing powers with the result that an otherwise solvent company could be forced into insolvency. In such circumstances, we believe buy out costs should exclude increases on pensions in payment, particularly where this is at the instigation of trustees. Additionally, we believe that the regulations should limit the statutory power of trustees to put a scheme into wind up to circumstances where the employer's contribution would be expected to lead to a deterioration in the level of benefit security. This would limit the circumstances in which the power could be used, prevent it from being used improperly as a bargaining lever, and take away from trustees the responsibility of having to actively consider whether to use such an extreme power.

- 2 We understand that there is insufficient capacity in the insurance market to enable the benefits to be bought out for larger schemes and there are uncertainties and risks for the trustees in running closed DB Schemes without a sponsoring employer.
- 3 The new regulations do not apply to the cessation of a participating employer. This can give rise to the situation whereby large solvent participating employers cease to participate and leave a resulting large debt with the remaining employer/employers. The resulting remaining employer may then become insolvent. This is a greater risk where the principal employer is a subsidiary of an overseas company.
- 4 'Insolvent' within the meaning of the Regulations includes voluntary winding up by resolution, and can therefore encompass situations where the company is not 'insolvent' as that word is understood by the man in the street.

These uncertainties are of concern to sponsors and Trustees of DB Schemes and we request that the position is clarified as soon as possible.

We need to stress that at a time when many sponsors are having to consider the on-going provision of defined benefit arrangements, applying well-intentioned but costly new regulatory requirements (which in our view far exceed the financial gains from the simplification measures on offer) is terribly unhelpful and draws into question the Government's real commitment towards encouraging occupational provision of this type.

Yours sincerely

**Helen James**  
Chairman  
ACA Pension Schemes Committee