THE BOARD OF THE PENSION PROTECTION FUND

Guidance in relation Contingent Assets
Part 4
Type C Contingent Assets

2020/2021

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1 THE GUIDANCE

1.1 Guidance Introduction

1.1.1 The Guidance in relation to Contingent Assets is comprised of four Parts. These are:

(a) Part 1 - General Requirements;

(b) Part 2 - Type A Contingent Assets (group company guarantees);

(c) Part 3 - Type B Contingent Assets (charges over assets); and

(d) Part 4 - Type C Contingent Assets (letters of credit / bank guarantees) (the

"**Contingent Asset Guidance**").

1.1.2 This Part 4 of the Contingent Asset Guidance covers specific requirements in respect of Type C contingent assets and should be read in conjunction with Part 1 of the Contingent Asset Guidance.

2 TYPE C CONTINGENT ASSETS

2.1 General

2.1.1 Type C Contingent Assets are letters of credit or demand guarantees issued to the trustees for an amount in sterling.

2.1.2 The Board has published two Type C standard forms: Types C(i) and C(ii). Each can form the basis of a letter of credit or a demand guarantee. It is not possible to "mix and match" elements from each standard form.

2.1.3 The Board will also recognise surety bond arrangements within its existing Type C(i) and C(ii) Contingent Asset standard form agreements, and has updated the agreements accordingly.

2.1.4 Both form C(i) and form C(ii) may now be issued by any "Acceptable Financial Institution" (as defined in paragraph 4(2) of the Contingent Asset Appendix) as a result of the Board's decision to allow for surety bond arrangements within both the C(i) and C(ii) standard forms.

2.1.5 Type C(i) arrangements contain "evergreen" provisions allowing a demand if they are not renewed or replaced. Type C(ii) arrangements have a fixed term but must support a defined schedule of deficit-reduction contributions.

2.1.6 Both forms aim to prevent deterioration in the scheme's funding level. The evergreen Type C(i) will remain in place until replaced by cash in the scheme. The value of the letter of credit may be reduced if the scheme funding position improves. There is no obligation on the employer to make deficit-reduction contributions.

2.1.7 Type C(ii) arrangements have a fixed term chosen by the parties. The employer must make deficit-reduction contributions via a pre-prepared schedule (as well as regular contributions under the scheme's schedule of contributions). Each contribution reduces the value of the asset by an equivalent amount so that at the end of the term the total deficit-reduction contributions made will equal the initial value. A demand may be made under the Type C(ii) arrangement if any planned contribution is missed or an insolvency event occurs.

2.1.8 The Type C(ii) contingent assets contain a mechanism for the replacement of an issuer where the incumbent issuer is no longer an Acceptable Financial Institution (see clause 3 of the January 2018 standard form). For the avoidance of doubt, we expect the replacement agreement to marry up with the Planned Contributions, such that the duration of the replacement Type C(ii) is, as a starting point, expected to extend to the end of the levy year in which the final Planned Contributions are made.

2.2 Format

2.2.1 The certification and documentation requirements for Type C Contingent Assets are set out in paragraphs 38-43 of the Contingent Asset Appendix.

2.3 Requirements as to the Purchaser as Employer's Associate

2.3.1 The purchaser of the Type C Contingent Asset must be an Employer's Associate, as defined in paragraph 4(7) of the Contingent Asset Appendix. See paragraph 5.7 of Part 2 of the Contingent Asset Guidance for further information.

2.4 Recognition for levy purposes

2.4.1 Where there is more than one Type C Contingent Asset, the values are simply added together for the purposes of the levy.

2.4.2 Full details of how Type C Contingent Assets are recognised for levy purposes can be found at paragraphs 17 and 18 of the Contingent Asset Appendix.

2.5 New Type C

2.5.1 A new Type C(i) agreement executed on or after 18 January 2018 must be on the new standard form, and all the requirements for a new Contingent Asset will need to be met.

2.6 Recertification

2.6.1 Provided it is executed on the 2017/18 recognised standard form before 18 January 2018, the submission of a Type C(i) Contingent Asset which is on the same terms as, and replaces, the previous recognised arrangement (under the "evergreen" provisions) which is due to expire should be treated as a recertification rather than as a new Contingent Asset.

2.6.2 The Re-execution Requirement (see paragraph 4(16) of the Contingent Asset Appendix) does not apply to Type Cs for the levy year 2020/21. The Board reserves the right to change its position on this in future levy years (for example, in order to require re-execution onto the January 2018 standard forms where levy credit is sought).

2.7 Variations to the January 2018 standard forms

2.7.1 We consulted on the January 2018 standard forms towards the end of 2017. A number of stakeholders came to us with comments after that consultation had closed. In particular, a number of drafting comments were raised as part of the 2019/20 Levy Consultation. After having considered the drafting comments, we decided they do not require a republishing of the standard forms, but we are including the following guidance to assist schemes and their advisers when considering variations to the standard form. Fundamentally, though, it remains for schemes and their legal advisers to satisfy themselves that any changes to the standard form are not of a materially detrimental effect on the rights of the trustees (see paragraph 3.2 of Part 1 of the Contingent Asset Guidance (General) for more information) and we do not expect to routinely see significant departures from the standard form.

2.7.2 Example 1. Paragraph 2(b) of the Type C standard forms - which does not permit the Issuer to investigate Demands. We do not consider that the drafting has any bearing on the Issuer's ability to investigate whether a demand is fraudulent. We understand that some Issuers may prefer to make this caveat for fraud express in the agreement.

2.7.3 Example 2. Type C standard form and Requisite Rating. This refers to the credit rating. We understand that some issuers that are sureties may have a "insurer financial strength" rather than a credit rating.

2.7.4 Example 3. Type C standard form and definition of Acceptable Financial Institution. We understand that some sureties may be FCA regulated and approved only.