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How will crypto disclosure rules impact federally regulated pension plans?

By: Julius Melnitzer | April 20, 2023 | 09:00

Julius Melnitzer

In its 2023 budget, the federal government announced plans to require that federally regulated pension plan sponsors disclose their cryptocurrency asset exposure.

To that end, the Office of the Superintendent of Financial Institutions will be consulting with impacted organizations on the content of the forthcoming guidelines.

"Just how these guidelines will affect standards of governance or regulatory burdens will depend on the details," says Jeffrey Sommers, a partner in pensions, benefits and executive compensation at Blake, Cassels & Graydon LLP. "What is clear is that the feds are looking at crypto as a unique asset class that requires continuous monitoring and special disclosure measures."

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The budget suggested the government will work with provinces and territories to discuss disclosure by Canada's largest pension plan sponsors within their jurisdictions, but doesn't specify whether all federally regulated plan sponsors, regardless of size, will be required to disclose. "The wording suggests that the government may be targeting only the largest plans, but how do you define 'largest?'" asks Sommers. "In any event, the provinces would have to amend their legislation to mandate the disclosure."

While the wording of the announcement suggests the disclosure will be to the regulator and not to plan members, the budget also noted the purpose of the discussions with the provinces and territories is to ensure Canadians are aware of their pension plans' potential exposures to crypto assets.

Sommers says this indicates the government is at least thinking about disclosure to plan members. "But what's interesting is that both the reference to size and the reference to members seems to apply only to provincially regulated plans. [There's] no mention of either criteria appears in relation to federal plans."

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The scope of the regulatory burden will depend on whom the funds must report to and the frequency of the required reporting, he says, noting the precise meaning of 'exposure' is also unclear. "Exposure might refer only to direct investments in Bitcoin, crypto [exchange traded funds] or crypto exchanges like FTX, which failed. But there's also indirect exposure, which is considerably broader."

For example, it isn't clear whether a pension plan sponsor that invests in an indexed fund that counts crypto entities among its assets or that invests in a company like Tesla Inc. — which at one point had US$1.5 billion in Bitcoin in its treasury — would be required to report these investments. "That would be a much greater burden, so let's hope it doesn't get to that level," he says.

However Joe Nunes, executive chairman of Actuarial Solutions Inc., says disclosure requirements won't affect pension plan sponsors' crypto-related investment decisions. "I don't know if the need to disclose will have any impact on how pension plans invest, even though the disclosure won't affect anything actuarial. My belief is that, if they want to invest, they'll invest regardless of the disclosure requirements.

"The larger message is a reminder to plan administrators that they really need to understand the investments they're selecting," he adds. "Although the [Ontario Teachers' Pension Plan], for example, is trying to wash away their crypto losses in the FTX collapse as 'only $100 million' that didn't represent a significant part of their portfolio, the fact is that money could have been used to pay benefits or reduce contributions."

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