AgriInsurance trusts held by the Manitoba Agricultural Services Corporation (MASC)

The following has been compiled by the Office of the Provincial Comptroller and presented to the Manitoba Office of the Auditor General. The materials provide rationale for the accounting treatment of the AgriInsurance trust funds held by MASC for the benefit of the Agri-producers. The accounting treatment is in accordance with Public Sector Accounting Standards.

The trusts are not assets of the Government and they meet all the requirements to be treated as a trust under administration, which are excluded from the government reporting entity.

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June 3, 2019

Mr. Norm Ricard, CPA, CA
Auditor General
Office of the Auditor General
500-330 Portage Ave
Winnipeg, MB R3C 0C4

Dear Mr. Ricard:

The Department of Finance has reviewed the Office of the Auditor General's comments on the validity of the Production Insurance Trust and the Hail Insurance Trust (the Trusts) as trusts under the administration of Manitoba Agricultural Services Corporation (MASC) and the Province of Manitoba (POM). MASC (the Corporation) is a controlled entity of the POM and is fully consolidated into the Summary Financial Statements (SFS). MASC (Trustee) is the trustee of the Trusts.

Finance would like to take the opportunity to respond to the OAG's conclusion that the Trusts are not trust under the administration of the POM and should be accounted for as assets of MASC and the POM.

<u>Issues:</u>

The OAG arrived at two conclusions:

1. The Trusts meet the definition of an asset under PS 3210, and thereby must be included as assets of MASC, and the POM; and

2. The Trusts are not trusts under administration of MASC, as MASC is both the trustee and beneficiary, and is not administering a trust on behalf of the beneficiaries.

The Department of Finance does not agree that the Trusts are assets of MASC under PS 3210. MASC cannot deny or regulate access to the benefits by others and therefore does not control the economic resource. The Trust assets are irrevocable and are for the benefit of insurance participants only. Therefore one of the required characteristics of an asset is not met.

The OAG acknowledge that the agreements have created irrevocable legal trusts. However, when considering the substance over the legal form, the Trusts should be included within MASC's and the POM's reporting entity. As long as MASC's insurance programs continue to operate, with no plans to terminate the programs, there is no significant difference between the reserve funds outside of the trusts, and the funds in the Trusts.

The OAG have conflated the roles of MASC acting as a trustee, and MASC acting in its own right. The trust agreements are written in a manner to distinguish between MASC the "Corporation", acting in its own right, and MASC the "Trustee", acting in its capacity as trustee.

The ability of MASC, the Corporation, to identify program participants and to direct the manner and amounts of payments is referred to as a "power of appointment". It's our understanding of the law that a power of appointment may be given to a person, not only in its capacity as a trustee, but also to a person in his or its own capacity, regardless of whether such person is a trustee.

Characteristics of an Asset:

Assets are economic resources controlled by a public sector entity as of a result of past transactions or events and from which future economic benefits are expected to be obtained, Assets have 3 essential characteristics. Economic resources are not assets unless they meet the 3 essential characteristics:

1. Assets embody a future economic benefit that involve a capacity to provide goods and services, future cash inflows, or to reduce cash outflows. The Trusts will be used to pay out insurance indemnities otherwise payable out of MASC's own reserves. The Trusts meet the requirement of embodying a future economic benefit for the Corporation.

2. The public sector entity can control the economic resource and access to the future economic benefits. A public sector entity controls the economic resource and access to the future economic benefits when it:

   (a) Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows, or reduce cash outflows;

   (b) Can deny or regulate access to the benefits by others; and

   (c) Is exposed to the risks associated with the economic resource.

3. The event or transaction giving rise to the public sector entity's control has already occurred. The events and transactions creating the Trust assets have already

occurred. The agreements was established and executed in September, 2019, and thus, deemed to have occurred.

Control the Trust Assets:

Control of an economic resource and access to the future economic benefits is a required characteristic of an asset. The economic resources in question are an irrevocable $265 million transfer at March 31, 2018 and irrevocable annual contributions to the Trusts by the Corporation.

Beginning April 1, 2018 the Corporation is required to contribute an amount equal to the annual surplus of the insurance programs to the Trusts. The annual contributions are a liability and expense of MASC. The contributions to the trusts bear no relation to the indemnities payable in the Trusts to the program participants. In most years the annual contribution to the Trusts will be significantly larger than the indemnities payable to the insurance participants.

The indemnities payable are a legal liability of the Trusts that have to be paid as directed by the Trustee. The indemnities payable are recorded in the Trusts and are discharged using Trust assets.

The Trusts are irrevocable and can never be returned to the Corporation. The trust agreements state that the capital of the Trusts shall be used for the benefit of insurance program participants, as identified by the Corporation. The Corporation is unable to deny or regulate access to the future economic benefits associated with the Trusts. The Trusts are economic resources of the program participants. MASC (the Corporation) does not have the ability to liquidate, repossess, or direct the use of the economic resource.

The Corporation has also given up control over the investment income of the Trusts. The investment income on the Trusts does not benefit the Corporation but the program participants. Investment income of the Trusts is only “deemed” to be income of the Corporation for tax purposes. The most common use of “deeming” is to create a “legal fiction”.

For accounting purposes the Primary Income is not actually transferred to MASC. The Secondary Income is income on the Primary Income and is therefore also deemed for tax purposes to be income of the Corporation. The investment income remains in the Trusts for the beneficiaries.

The Corporation does not control the assets of the Trusts as they cannot deny or regulate access to others. The Trust assets are managed by the Trustee, for the benefit of the program insurance participants, in accordance with the trust agreements.

The Corporation could be viewed as being exposed to the risk associated with the Trusts. If the Trust assets are insufficient to cover the indemnities payable the shortfall would have to be covered from the Corporation's remaining reserves. If the Corporation's reserves are insufficient the responsibility would be transferred to the Province of Manitoba.

In conclusion the Trusts are not assets of the Corporation. The Corporation does benefit from the economic resource of the Trusts and is exposed to the risk that the assets in the Trusts will be insufficient to discharge all the indemnities payable. However the Corporation does not have access to the Trusts and cannot control or deny access to the assets of the Trusts by others. Further the Trust assets cannot be returned to the Corporation.

The second characteristic of assets, the public sector entity can control the economic resource and access to the future economic benefits, has not been met.

<u>Criteria for Trusts Under Administration:</u>

PS 1300.40 to .46 outlines the criteria and accounting treatment for trusts under administration. Trusts under the administration of a public sector entity should be excluded from the reporting entity. In order to meet the definition of a trust under the administration, of MASC and the POM, the following criteria must be met:

1. The public sector entity must have a fiduciary relationship to the beneficiaries;
2. The public sector entity hold title to the property;
3. The property must conveyed to the trustee to fulfill a particular objective;
4. The public sector entity cannot have unilateral authority to change conditions set out in the trust agreement;
5. The property of the trust must be administered on behalf of beneficiaries as specified in an agreement or statute; and
6. The public sector entity must be accountable to third parties for the use and disposition of the properties?

Fiduciary Relationship to the Beneficiaries

MASC is in a fiduciary relationship with the program participants because it is administering the Trusts for their benefit. As Trustee, MASC must put the interests of the program participants ahead of its own interests. If the primary income is not sufficient to pay the indemnities, then in accordance with the agreement, MASC the Trustee, can direct the Trusts to encroach on the capital for the benefit of the participants who are entitled to be paid. If the capital in the Trusts is insufficient the beneficiaries can access the reserves of the Corporation.

MASC Holds Title to the Property

MASC, the Trustee, will hold all contributions in trust and pay or apply the income and capital to or for the benefit of any or all program participants on account of indemnities payable to them to them under insurance contracts in accordance with the terms and conditions of the Trust agreements.

In accordance with section 2.1 of the Trust agreements, the Trustee may in its discretion, hold title to or ownership of any or all of the property forming part of the Trusts. The Trustee may carry out any transaction on behalf of the Trusts, and enter into any contract or arrangement or otherwise exercise any of the powers, discretions and authorities conferred upon it in the agreements.

Objectives of the Conveyed Property

The funds have been conveyed to the Trusts to be set funds aside by the Corporation for future indemnities payable under insurance contracts and reduce volatility in the Corporation and the Summary Financial Statements. The reduction in volatility will allow the POM to better budget and project financial results while ensuring the funds are available for participants in years with extremely high indemnity claims.

Unilateral Authority to Change the Trust Agreement

The Trusts are irrevocable which means that they cannot be changed, reversed or recovered. The trust agreement may only be amended solely to deal with any changes in the law including the MASC Act which would also require the approval of the Federal government.

Property Administered on Behalf of the Beneficiaries

The agreements do not specifically identify a beneficiary. The OAG view the Corporation as being the beneficiary because the capital will be used to pay indemnities to the program participants owing under the insurance contracts with MASC.

It is not uncommon, that when a trust is established, the beneficiaries of the trust are unknown. The Contribution and Trust agreements clearly identify that the Trusts are for the benefit of the program participants as identified by the Corporation. MASC the Trustee administer and disburses the funds in accordance with the Trust agreements, from among those participants whose indemnities under the insurance contracts which have not been paid in full. MASC, as the trustee, has no authority or discretion to distribute any portion of the capital of the Trusts to itself, for its own use.

MASC Accountable to Third Parties

The Trust agreements require the Trustee to provide annual reports and audited financial statements for the Trusts. The financial statements must be approved by the Trustee, or its board of directors, no later than September 30th after the year end.

An entity which holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses is a publicly accountable enterprise. As publicly accountable enterprises the Trusts must report using International Financial Reporting Standards.

Conclusion

Based on the analysis above, the agreements which establishes the Trusts, does result in trusts under the administration of MASC and the POM, in accordance within PS 1300. All the criteria of a trust under administration have been met. In addition, the three characteristics of assets under PS3200 have not been met because The Corporation does not control the assets of the Trusts as they cannot deny or regulate access to others.

Please confirm if you agree with the Department's position on the Trusts. If you disagree please provide a response indicating your reasons. Time is of the essence.

Should you have any questions or comments on the above responses, please do not hesitate to contact us.

Sincerely,

Original signed by Aurel Tess

Mr. Aurel Tess, CPA, CGA
Provincial Comptroller

INTRODUCTION

In documenting our position on this matter, we were assisted by a national accounting firm, however, we did not obtain an accounting opinion or any form of assurance from the firm.

The following analysis applies specifically to Manitoba's AgriInsurance program and reflects its unique features. It is an insurance program funded by the Government of Canada, the Province and the participating producers. The program is administered by the Province in accordance with the terms and conditions agreed to by the Government of Canada and the Province. The terms and conditions require the program to be self-sufficient and the surplus that currently exists is the result of the application of sound actuarial practices as required by the agreements between the parties.

PS 1300 – TRUSTS UNDER ADMINISTRATION

Analysis

Trusts administered by a government or government organization should be excluded from the government reporting entity. [PS 1300.40]

MASC has created a legal trust structure in which the annual surplus in the Production Insurance Fund (the "Fund") is conveyed to a trustee to be administered as directed by the Production Insurance Trust Agreement (the "Trust Agreement"). The annual surplus, or surplus funds, is primarily comprised of (a) annual premiums received by MASC, and (b) income earned on the reserve retained in MASC.

MASC is the trustee administering the Production Insurance Trust (the "Trust") and the Province has assessed the following application guidance and concluded the Trust is a trust under administration that is required to be excluded from the government reporting entity in accordance with PS 1300.40:

Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary. [PS 1300.41]

To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity. [PS 1300.42]

A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities. Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government, and should not be included in the government reporting entity. [PS 1300.43]

In reaching its conclusion, the Province considered both the legal form and the substance of the arrangement, as discussed below.

A. *The property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned*

The implementation of the trust structure fulfills the Province's objective of ensuring the surplus funds of the Fund are used solely for the benefit of the producers participating in the Production Insurance Program (the "Insurance Program").

As long as the Insurance Program (or a comparable replacement) continues to exist, provincial legislation and the Federal-Provincial AgriInsurance Agreement prevent MASC from using surplus funds for anything but the Insurance Program. However, the Federal-Provincial AgriInsurance Agreement can be terminated by the Province with two years notice and provides that if the parties do not enter into a new agreement, the surplus or deficit in the provincial insurance fund is the responsibility of the party that holds the account.

Accordingly, without the trust structure, there is nothing to prevent the Province from terminating the Insurance Program, amending the provincial legislation and then using the surplus funds, or a portion thereof, for other purposes.

The Trust Agreement is irrevocable and the terms can only be amended in two circumstances; (i) if the Insurance Program is terminated and replaced within one year with a replacement program, the Trust Agreement can be amended to ensure the Trust Fund is used in support of the replacement program participants, and (ii) if the Insurance Program is terminated and the Trust is wound up or terminated, the Trust Agreement can be amended to ensure deemed disposition rules in the Tax Act do not apply.

Once surplus funds are contributed to the Trust, they can only be used to make indemnity payments to participants of the Insurance Program (or a comparable replacement program). If the Insurance Program is terminated and not replaced, surplus funds remaining in the Trust will be donated to Manitoba 4-H Endowment Fund Foundation Inc. The Trust Agreement explicitly states that “no part of the Trust Fund, other than undistributed Secondary Income, shall revert to Manitoba or the Corporation in any manner or in any event”.

B. *In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.*

A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute.

As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities

Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government

The participating producers, MASC and Manitoba 4-H are all legal beneficiaries of the Trust:

- Primary Income (income earned on capital) and capital of the Trust is paid to participating producers;
- Secondary Income (income earned on Primary Income) is paid to MASC; and
- If the Insurance Program is terminated and not replaced, any remaining Primary Income and capital of the Trust is donated to Manitoba 4-H Endowment Fund Foundation Inc.

Secondary Income, to which MASC is the beneficiary, is inconsequential for the following reasons:

(a) Primary Income funds indemnity payments. Capital of the Trust is used for indemnity payments once Primary Income has been fully paid out. Since indemnity payments are expected to exceed Primary Income, there is little, if any, Primary Income left over to generate Secondary Income.
(b) The Trust follows a risk-adverse investment strategy, so any Secondary Income earned would be at a very low rates.

Based on the relative entitlement of each party, the Province has concluded it is most appropriate to consider the participating producers the beneficiary for purposes of applying the guidance in PS 1300.40-.43. This conclusion is consistent with the Province’s objective in implementing the trust structure, which is guaranteeing the surplus funds of the Fund will be used solely for the benefit of the participating producers.

The overall objective of the Insurance Program is to stabilize a participating producer's income by minimizing the economic effects of production losses caused by natural hazards. Through the receipt of indemnity payments, participating producers are the direct beneficiaries of the Insurance Program, irrespective of whether the indemnity payments are made directly by MASC or through the Trust.

The Province acknowledges the payment of indemnities by the Trust benefits MASC by fulfilling MASC's legal obligation under the insurance contract, but does not believe this outweighs the support that the participating producers are, in substance, the primary beneficiaries of the Trust as it relates to applying the guidance under PS1300.

Under the trust structure, the trustee holds legal title to the property and the beneficiaries hold equitable title. In its role as trustee, MASC holds legal title to the Trust Assets for the benefit of the participating producers who will ultimately obtain ownership, and, therefore, stands in a fiduciary relationship to administer the Trust on behalf of the participating producers. The participating producers are third parties to whom MASC is accountable for the use and disposition of Trust Assets and for the funds derived from activities of the Trust.

C. Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute.

The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture.

As noted above, the Trust Agreement is irrevocable, so MASC does not have unilateral authority to change the conditions set out in the Trust Agreement. Surplus funds contributed to the Trust must be administered by MASC, in its role as trustee, as directed in the Trust Agreement.

The terms of the Trust Agreement do, however, state the following (emphasis added):

*…The Primary Income shall be paid or applied to or for the benefit of any or all of the Production Insurance Program Participants **identified by the Corporation** from among those who are entitled to be paid an indemnity under their production insurance contract on account of that indemnity, which payments shall be made **at such times, in such amounts and in such manner as the Corporation shall direct the Trustee**. [Section 3.1(a)]*

*Subject to article 4, the Trustee shall, at the direction of the Corporation, encroach upon so much of the capital of the Trust (other than the Settlement Property) and pay or apply the same to or for the benefit of those Production Program Participants **identified by the Corporation** from among those whose indemnity under their production insurance contract has not otherwise been paid in full on account of that indemnity, which payments shall be made **at such times, in such amounts and in such manner as the Corporation shall direct the Trustee**. [Section 3.1(a)]*

Since MASC is both the Corporation and the Trustee, it raises the question whether MASC's ability to identify the program participants who will receive payments and to direct the timing and amount of such payments puts MASC in a position where they are doing more than merely administering the terms and conditions in the Trust Agreement.

For the reasons discussed below, the Province has concluded that MASC's role, in substance, both before and after the implementation of the trust structure, is that of an administrator.

Canada's federal, provincial and territorial governments have been working together for decades to mitigate the financial impacts of production losses by providing affordable insurance protections. The current AgriInsurance program was introduced in 2007, with its predecessors dating back to the late 1950s. Premiums for AgriInsurance are cost-shared between the producer, the province and the federal government.

The Government of Canada has entered into a Federal-Provincial AgriInsurance Agreement allowing Provinces to administer the AgriInsurance program. In accordance with the following excerpt from the Federal-Provincial AgriInsurance Agreement, Manitoba has delegated the responsibility for administering the AgriInsurance program to a Crown Corporation, MASC:

It is understood that the Province may delegate to a provincial body any or all of its powers, duties, and authority to ***administer*** *the terms and conditions of this Agreement as it relates to the Province, including identifying the Responsible Officer. Where a Province makes such a delegation, the Province shall ensure that the provincial body receiving the Province delegated authority is bound by the obligations imposed under this Agreement to the Province, including identifying the Responsible Officer. Any other third party engaged by a provincial body that has received from the Province delegated authority to administer the program shall also be bound by these obligations. [12.5]*

MASC is authorized under the Manitoba Agricultural Services Corporation Act (the "MASC Act") to administer the AgriInsurance program and, accordingly, has issued the Manitoba Agricultural Services Corporation Act AgriInsurance Regulation (the "AgriInsurance Regulation"). The AgriInsurance Regulation requires every Insurance Contract to take the same form.

The AgriInsurance Regulation reflects the requirements of a number of other agreements entered into between the Province and the Government of Canada. More specifically, the Government of Canada has entered into a bilateral agreement with Manitoba to develop an AgriInsurance program that meets the specific needs of the Province. The current bilateral agreement existing between the Government of Canada and Manitoba is the Operational Document Related to the Canadian Agricultural Partnership: Federal-Provincial AgriInsurance Agreement (the "Operational Document").

The Operational Document has been developed in accordance with (a) the Farm Income Protection Act, (b) the Canada Production Insurance Regulations, (c) the Canadian Agricultural Partnership Framework Agreement, and (d) the Federal-Provincial AgriInsurance Agreement included as Annex B to the Canadian Agricultural Partnership Framework Agreement. Collectively, these documents set out an extensive list of elements the bilateral agreement must contain. Accordingly, the items addressed in the Operational Document executed by the Government of Canada and Manitoba include, but are not limited to, the following:

- conditions for participant eligibility
- insurable agricultural products
- the process for the introduction of a new insurable agricultural product
- enrolment, seeding and harvesting deadlines
- the process for changes related to enrolment, seeding and harvesting deadlines
- geographic coverage areas
- probable yield methodologies, including certification and testing
- coverage levels
- production value determination methodologies, including testing
- perils eligible for coverage
- methodology for determining premium rates and premiums

The AgriInsurance Regulation, while detailed and extensive, reflects the terms and conditions in the Operational Document. Therefore, MASC's ability to identify the program participants who will receive payments and to direct the timing and amount of such payments represents the administration of the AgriInsurance program documented in the Operational Document that was determined collectively between the Government of Canada and Manitoba. Manitoba does not have the unilateral authority to change the significant terms and conditions of the AgriInsurance program and the underlying agreements support that MASCs role is to administer the terms and conditions of the agreements.

Conclusion

The Trust meets all the requirements to be considered a trust under administration and, therefore, is required to be excluded from the government reporting entity in accordance with PS 1300.40 and this accounting is supported by both the underlying substance and the form of the arrangements.

PS 3210 – ASSETS

Analysis

The concept of a trust under administration is also discussed in PS 3210, Assets:

A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries. [PS 3210.24]

Consistent with the Province's conclusion that the Trust is a trust under administration, the Province has also concluded the assets of the Trust are not assets of MASC because MASC does not control the assets.

As per Section 3210.04, assets have three essential characteristics:

1. They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
2. The public sector entity can control the economic resource and access to the future economic benefits.
3. The transaction or event giving rise to the public sector entity's control has already occurred.

#1 - Embody future economic benefits that involve a capacity to provide goods and services, to provide future cash inflows, or to reduce cash outflows

As discussed above, the participating producers are, in substance, the beneficiary of the AgriInsurance program. The underlying premiums collected by MASC (including surplus funds) are, however, assets that benefit MASC as they assist the Corporation in administering the AgriInsurance program, which achieves the objective of mitigating the financial impacts of production losses by providing affordable insurance protection. This holds true for the surplus funds regardless of whether they are held by MASC or the Trust.

#2 - Public sector entity can control the economic resource and access to the future economic benefits

Per Section 3210.16 - a public sector entity controls the economic resource and access to the future economic benefits when it:

A. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;
B. can deny or regulate access to those benefits by others; and
C. is exposed to the risks associated with the economic resource.

As discussed below, the Province has concluded MASC does not control the assets of the Trust because it cannot deny or regulate access to those benefits by others:

A. Benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows

This condition is met for the surplus funds regardless of whether they are held by MASC or the Trust. See #1 above.

B. Deny or regulate access to those benefits by others

MASC the Corporation administers claims in accordance with Insurance Contracts and directs MASC the trustee to make indemnity payments. MASC the Corporation determines the recipients, timing, amount and manner of payments, while MASC the trustee merely makes the payments as directed by MASC the corporation in accordance with the trust agreement.

However, in determining the recipients, timing, amount and manner of indemnity payments under the authority of the MASC Act and the related AgriInsurance Regulation, MASC the Corporation is, in substance, merely administering the terms and conditions of the AgriInsurance program agreed to by both the Government of Canada and Manitoba in the Operational Document. The following excerpt from the Federal-Provincial AgriInsurance Agreement supports MASC's role is that of administrator (emphasis added) "*It is understood that the Province may delegate to a provincial body any or all of its powers, duties, and authority to **administer** the terms and conditions of this Agreement as it relates to the Province, including identifying the Responsible Officer."* Therefore, regardless of whether indemnity payments are made by MASC or the Trust, access to those benefits is actually being denied and regulated by the terms and conditions of the Operational Document, not MASC. MASC does not have the unilateral authority to change the significant terms and conditions of the AgriInsurance program and has been delegated the role of administering the program.

The current AgriInsurance program and predecessor programs have collectively been in place for close to 70 years. In the event MASC elects to terminate the AgriInsurance program and not implement a replacement program, it would be extremely complicated and cumbersome to determine and implement a methodology to equitably distribute Trust Assets directly to individual producers. As a practicable alternative in that situation, ownership of the Trust Assets reverts to the Manitoba 4-H Endowment Fund Foundation Inc. (Manitoba 4H is a not-for-profit, non-governmental agency with a strong relationship with Manitoba Agriculture). While this technically gives MASC the ability to regulate access to the surplus funds between participating producers and the Manitoba 4-H Endowment Fund Foundation Inc., it is, in substance, a way for producers to indirectly receive the benefit of the Trust Assets when direct distribution is not practicable. Since the benefit of the surplus funds is ultimately going to producers, the ability for MASC to decide if the benefit is received directly or indirectly is not a substantive opportunity for MASC to deny or regulate access to the surplus funds.

Based on the above, the Province has concluded MASC does not deny or regulate access to surplus fund once they have been contributed to the Trust and become Trust Assets.

It should be noted, however, that while the MASC Act prevents the use of reserve funds for anything but future indemnity payments, there is nothing to prevent the Province from terminating the AgriInsurance Program and then using the funds in the reserve, or a portion thereof, for other purposes. Although the Province is unlikely to take this action, it does provide MASC the ability to circumvent the terms and conditions of the Operational Document and, therefore, the opportunity to deny and regulate access to funds in the reserve. To clarify, this opportunity no longer exists for assets once irrevocably contributed to the Trust, as the Province no longer has the substantive ability to deny or regulate access. Trust Assets are solely for the benefit of the producers either through indemnity payments or the 4H endowment. .

C. Exposed to the risks associated with the economic resource

MASC has some exposure to the risks associated with the surplus funds contributed to the Trust. On a short-term basis, if the assets in the Trust are insufficient to cover the indemnities payable, the shortfall would have to be covered from MASC's remaining reserves and if MASC's reserves are insufficient the responsibility would be transferred to the Province.

In the long-term, since premiums are set with the goal of the AgriInsurance program being self-sufficient, risk is shared among the Government of Canada, the Government of Manitoba and participating producers through higher premiums.

#3 - Transaction or event giving rise to the public sector entity's control has already occurred

This condition is not applicable as MASC does not control the economic resource and access to the future economic benefits. See #2 above.

Conclusion

Excluding the Trust Assets from the government reporting entity is consistent with the application of the criteria in PS 3210.04, as MASC no longer controls surplus funds once they become Trust Assets.

CONCLUSION

The Trust meets all the requirements to be considered a trust under administration and, therefore, the Trust Assets are required to be excluded from the government reporting entity in accordance with PS 1300.40. This is consistent with the application of the criteria in PS 3210.04, as MASC no longer controls surplus funds once they become Trust Assets and, therefore, the definition of an asset is not met. Excluding the Trust Assets from the government reporting entity represents a change in the accounting for the AgriInsurance program. The fact the implementation of the trust structure was initiated by the Province does not preclude such a change, as the new accounting for the Trust Assets is supported by both the form and substance of the new arrangement.

MASC controls the funds of the AgriInsurance program that are retained as a reserve in the Corporation. This control does not exist by virtue of MASC's role as the administrator of the AgriInsurance program, but because there is nothing to prevent the Province from terminating the program, amending the provincial legislation and then using the funds in the reserve, or a portion thereof, for other purposes.

Once surplus funds are contributed to the Trust, they can only be used to make indemnity payments to participants of the Insurance Program (or a comparable replacement program). If the Insurance Program is terminated and not replaced, surplus funds remaining in the Trust will be donated to Manitoba 4-H Endowment Fund Foundation Inc. The Trust Agreement explicitly states that "no part of the Trust Fund, other than undistributed Secondary Income, shall revert to Manitoba or the Corporation in any manner or in any event". Accordingly, MASC does not control surplus funds after they become Trust Assets.

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Personal & Confidential
Solicitor/Client Privileged

Aurel Tess, CPA, CGA
Provincial Comptroller
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Dear Mr. Tess:

Re: Hail Insurance Trust and Production Insurance Trust

We have acted as external legal counsel to the Province of Manitoba in connection with the establishment of the trusts known as the "Hail Insurance Trust" and the "Production Insurance Trust" (collectively, the "**Trusts**").

As such counsel, we have reviewed copies of:

(a) the Hail Insurance Trust Agreement made effective as of the 28th day of February, 2018, between Her Majesty The Queen in Right of the Province of Manitoba, as represented by the Minister of Agriculture and the Minister of Finance (collectively, "**Manitoba**") and Manitoba Agricultural Services Corporation ("**MASC**"), which governs the Hail Insurance Trust; and

(b) the Production Insurance Trust Agreement made effective as of the 28th day of February, 2018, between Manitoba and MASC, which governs the Production Insurance Trust (together with the Hail Insurance Trust Agreement, the "**Trust Agreements**").

The comments expressed in this letter are limited to the laws of the Province of Manitoba and the laws of Canada applicable therein.

For the purposes of the comments expressed in this letter, we have assumed the legal capacity of all persons, including bodies corporate, the accuracy of all dates, the genuineness of all signatures and the conformity to authentic original documents of all imaged or electronic copies of the Trust Agreements.

On the basis of the foregoing, we are of the view that the Trusts are validly constituted and existing trusts under the laws of the Province of Manitoba.

A familiar definition of "trust" that has been approved by the Courts in Canada is to be found in *Underhill's Law of Trusts and Trustees*:

> A trust is an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or *cestuis que trust*), of whom he may himself be one, and anyone of whom may enforce the obligation.

The term "beneficiary" means all those persons who may benefit from the trust fund. The right or interest of a beneficiary to receive any income or capital of a trust may be immediate or in the future, absolute or contingent, or fixed or conditional on or subject to the exercise of any discretion by any person or persons (including, for example, the trustee or trustees).

Accordingly, a beneficiary may have a fixed interest or a discretionary interest in the trust fund and may be considered a primary beneficiary (i.e. first named to receive any income or capital) or a contingent beneficiary (i.e. named secondary or even tertiary to receive any income or capital). A trust may have more than one beneficiary, each with a different right or interest to receive any income or capital, or both, of the trust fund. It is not a condition or requirement to be a beneficiary that the person actually receive a particular benefit from the trust or be less exposed to a particular risk. In fact, a person may be a beneficiary of a trust (e.g. a discretionary or contingent beneficiary) without ever actually benefiting in any way from the trust.

In the present case, the Trust Agreements identify MASC as the trustee of each of the Trusts. While they specify MASC as an income beneficiary of the Trusts, they also provide that the Primary Income and capital of the trust funds are to be paid or applied to or for the benefit of certain Program Participants, and they specifically identify Manitoba 4-H Endowment Fund Foundation Inc. ("**Manitoba 4-H**") as a contingent beneficiary of the Primary Income and capital of the trust funds.

The income of the Trusts is distinguished between "Primary Income" and "Secondary Income" which are defined in Paragraph 1.1 of the Trust Agreements. In Subparagraph 3.1(a), the Trust Agreements provides that the Primary Income shall be paid or applied to or for the benefit of any or all of the Hail Insurance Program Participants or the Production Insurance Program Participants, as the case may be, identified by MASC from among those who are entitled to be paid an indemnity under their insurance contract on account of that indemnity. No part of the Primary Income may be retained by MASC as all of it must be paid to or for the benefit of any or all of such Program Participants.

The Trust Agreements provide in Subparagraph 3.1(b) that all of the Secondary Income shall be paid or payable to MASC, in its own right, on the last day of the particular taxation year of the Trusts. Unlike the Primary Income, the Secondary Income may be retained by MASC and used for its own administrative, operational or other use or purpose. No part of the Secondary Income is required to be paid or applied to or for the benefit of any Program Participants.

Subparagraph 3.1(c) in each of the Trust Agreements states that "the income beneficiary of the Trust with respect to the Primary Income and the Secondary Income is the Corporation." It is our understanding that this provision is intended to clarify that, for income tax purposes, all of the income of the Trusts in a particular taxation year is considered to be payable to MASC as the beneficiary thereof. As MASC is not a taxable entity, such income of the Trusts is not subject to tax under the *Income Tax Act* (Canada) and *The Income Tax Act* (Manitoba) as long as it is paid or payable to the Trusts on or before the last day of the particular taxation year of the Trusts. The income tax treatment of the Primary Income does not take away from the fiduciary obligation of MASC, in its capacity as the trustee the Trusts, to see to the application of the Primary Income and ensure that it is paid or applied to or for the benefit of the Program Participants who are entitled to be paid an indemnity under their insurance contract.

With respect to any distributions of capital of the trust funds prior to the termination of the Trusts, Paragraph 3.2 of the Trust Agreements provides that the capital of the trust funds may only be paid or applied to or for the benefit of certain Program Participants. The class of persons who are entitled to benefit from payments out of the capital of the Trusts are comprised of "those Hail Insurance/Production Insurance Program Participants identified by the Corporation from among those whose indemnity under their production insurance contract has not otherwise been paid in full on account of that indemnity." The role of MASC is to identify such Program Participants and to direct the trustee in regards to the timing, manner and exact amounts of such payments (i.e. the amounts required to be paid in order for the indemnities to be fully paid). MASC therefore stands in a fiduciary capacity to the Program Participants. MASC has no power or discretion, either in its own right or as the trustee of the Trusts, to distribute any portion of the capital of the trust funds to itself for its own administrative, operational or other use or purpose.

MASC has no ability to deny or regulate access of the Program Participants, whose indemnity under their insurance contracts has not otherwise been paid in full on account of that indemnity, to the capital of the Trusts. The funds held in the Trusts are held by MASC, in its capacity as the trustee, and are subject to the terms and conditions of the Trust Agreements. They are not subject to the terms and conditions of the agreements with Program Participants. Once the Program Participants whose indemnity under their insurance contracts has not otherwise been paid in full on account of that indemnity have been ascertained by MASC, the Program Participants become entitled to receive payments out of the capital of the Trusts. MASC does not have the power, either in its own right or as a trustee of the Trusts, to deny access of such Program Participants to such distributions of capital. Similarly, MASC does not have the power to regulate access of such Program Participants to the trust funds because such access under the Trust Agreements arises automatically once those Program Participants have not been paid in full under their insurance contracts. The ability to regulate *access* to the capital of the trust funds (i.e. determining which of those Program Participants are entitled to, and therefore have access to, capital distributions), which MASC does not have, is not the same thing as regulating the timing and the manner of such payments out of the capital of the trust funds.

On the termination of the Trusts, Paragraph 4.1 of the Trust Agreements provides that, if there is no replacement insurance program, the balance remaining in the trust funds, other than any undistributed Secondary Income, shall be paid and distributed to Manitoba 4-H. Therefore, Manitoba 4-H is clearly a beneficiary of the Trusts with a contingent but fixed remainder interest in the Primary Income and capital of the trust funds in the event the Trusts are terminated and no insurance programs are introduced to replace the existing programs.

Again, MASC does not have the ability, in its own right or acting as a trustee of the Trusts, to deny or regulate access of Manitoba 4-H to the Primary Income and the capital of the Trusts in the event noted in Paragraph 4.1 of the Trust Agreement. If the insurance programs are terminated and not substituted with comparable replacement programs, the balance of the trust funds, other than any undistributed Secondary Income, are required to be distributed outright to Manitoba 4-H.

As a beneficiary of the Trusts, Manitoba 4-H has certain rights, including a right to request an accounting from the trustee of the trusts (e.g. if MASC, in its capacity as the trustee, is in breach of its duties under the Trust Agreements) and a right to sufficient information about the Trusts and their administration to know how to enforce its rights. The corollary is that MASC, in its capacity as the trustee, stands in a fiduciary capacity to Manitoba 4-H with certain obligations, including the duty to exercise those powers, and only those powers, available under or pursuant to the Trust Agreements, the duty to act honestly and in good faith, the duty to exercise prudence, care and skill, the duty to account, the duty to act in the best interests of all the beneficiaries of the Trusts, and the duty to provide information on request regarding all material matters concerning the Trusts. MASC, in its capacity as the trustee, may not exercise its powers, discretions and authorities under the Trust Agreements in a manner that disregards the interests of Manitoba 4-H.

Whether the event giving rise to an obligation on MASC, in its capacity as the trustee, to distribute the balance remaining in the trust funds to Manitoba 4-H is likely or unlikely to occur in the short-term or the long-term, that does not change the fact that Manitoba 4-H is a beneficiary of the Trusts with certain rights and that MASC, in its capacity as the trustee, stands in a fiduciary relationship with Manitoba 4-H.

Paragraph 8.1 of the Trust Agreements declares that the Trusts are irrevocable and that "no part of the Trust Fund, other than any undistributed Secondary Income, shall revert to Manitoba or the Corporation [i.e. MASC] in any manner or in any event." In other words, no amounts contributed and, therefore, divested by MASC to the Trusts will ever revert to MASC, other than any undistributed Secondary Income.

With respect to the roles and responsibilities of MASC under the Trust Agreements, it is important to note that a person, including a body corporate, may act in more than one capacity. To distinguish between roles, the Trust Agreements sometimes refer to MASC as the "Corporation" when it is designated as a beneficiary or when it is acting or required to act in its own right, or to MASC as the "Trustee" when it is acting or required to act in its capacity as the trustee of the Trusts. Subparagraph 1.1(i) of the Trust Agreements defines the term "Trustee" to mean "the Corporation and any legal successor thereto." However, the term "Corporation" is not defined to mean the "Trustee" of the Trusts. To ignore the distinction between the different roles or capacities and the usage of the terms "Corporation" and "Trustee" throughout the Trust Agreements is to misconstrue them and blur the different capacities in which a person such as MASC may act.

As noted in the legal definition of "trust" provided above, a person may be both a trustee and a beneficiary of a trust. A "trust" essentially designates the relationship between a person(s) as the trustee(s) and a person(s) as the beneficiary(ies). In this instance, the Trusts designate the relationship among:

(a) Manitoba, as the settlor of the Trusts;

(b) MASC, in its capacities as the trustee of the Trusts and also as a beneficiary of the Primary Income and Secondary Income of the Trusts;

(c) the Program Participants whose indemnity under their insurance contracts has not otherwise been paid in full on account of that indemnity who are entitled to be paid out of the Primary Income or capital of the Trusts; and

(d) Manitoba 4-H, as a contingent beneficiary with a fixed remainder interest in the Primary Income and capital of the trust funds.

As the trustee of the Trusts, MASC is required to administer the Trusts in accordance with the terms and conditions of the Trust Agreements.

Apart from its role as a trustee, MASC in its own right as the "Corporation" has the responsibility under Subparagraph 3.1(a) of the Trust Agreements to identify Program Participants who are entitled to be paid an indemnity under their insurance contracts on account of that indemnity. MASC also has the responsibility under Paragraph 3.2 of the Trust Agreements to identify and ascertain Program Participants whose indemnity under their insurance contracts has not otherwise been paid in full on account of that indemnity. By using the term "Corporation" as opposed to the term "Trustee" in Paragraphs 2.4, 3.1 and 3.2, it is clear that these responsibilities are granted to MASC, not in its capacity as the trustee of the Trusts, but in its own right. If MASC were to be substituted as the trustee of the Trusts by a Court Order, it would still have these responsibility unless the Court Order also varies the terms of the Trust Agreements.

Finally, MASC may be required, in its own right, to make additional contributions and, therefore, divest itself of additional funds to the Trusts. This requirement referenced in Paragraph 2.3 of the Trust Agreements arises not by virtue of the Trust Agreements, but by virtue of certain contribution agreements made between the Province of Manitoba and MASC acting in its own right. Paragraph 2.3 simply acknowledges the existence of such contribution agreements. The fact of being required to make any additional contributions and, therefore, divest itself of additional funds does not impact the role of MASC, acting as the trustee of the Trusts, to administer the trust funds, including any additions thereto, in accordance with the terms and conditions of the Trust Agreements. If MASC were to be substituted as the trustee of the Trusts by a Court Order, it would still have this obligation under such contributions agreements.

The trustee of the Trusts has a limited ability to amend certain terms of the Trust Agreements in the following circumstances:

- If an insurance program set out in the MASC Act is terminated but is substituted with a replacement program to support the industry that benefitted from the terminated program, the trustee may amend the Trust Agreements under subparagraph 4.2(a) to ensure that the trust funds are used in support of the participants in the industry that the replacement program is designed to support;

- After obtaining advice from a tax professional at least three (3) years prior to the twenty-first (21^{st}) anniversary of the Trusts on the potential application to the Trusts of any deemed disposition rule contained in the *Income Tax Act* (Canada), the trustee may amend the Trust Agreements to ensure that no such deemed disposition rule applies to the Trusts; and

- Subject to the foregoing, the trustee may amend the Trust Agreements solely to deal with any changes in the law that are applicable to MASC or the Trust.

MASC does not have the power or authority, either as a trustee of the Trusts or in its own right, to change the terms or conditions set out in the Trust Agreement other than in the limited circumstances and for the specific purposes summarized above. In other words, MASC does not have any power or authority to amend the Trust Agreements so that the capital of the trust funds (i.e. the amounts contributed and divested by MASC to the Trusts) may revert to MASC.

Should you have any questions in regards to the foregoing comments on the Trusts or any of the terms or conditions of the Trust Agreements, please advise us.

Yours truly,

TAYLOR McCAFFREY LLP

Per:

MARC E. MARION

cc: Treasury Board Secretariat, Manitoba Finance
Attention: Richard, Groen, Assistant Deputy Minister
Fiscal Management and Capital Planning

cc: Taylor McCaffrey LLP
Attention: Brian D. Sexton

KAP *The voice of Manitoba farmers*

The Honourable Ralph Eichler
Minister of Agriculture
Room 165, The Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

May 22, 2018

Dear Minister:

Re: Manitoba Agricultural Services Corporation (MASC) Trusts

Crop and hail insurance are important business risk management tools for farmers.

Under the AgriInsurance program, 90% of annual crop acres are insured and 40% of the premiums are paid by farmers. Under the MASC Hail Insurance program, 100% of the premiums are paid by farmers. As with any insurance program, the security of the funds and sound financial practices to maintain it are paramount to ensure the program's long-term sustainability for the producers who count on it.

KAP supports the establishment of the MASC trusts provided that it does not require, or result in, changes to the current program or the current federal-provincial cost-share agreement. The funds should continue to be available to insured producers and not for alternate uses by the provincial government in the future.

Yours sincerely,

Bill Campbell

Bill Campbell, President
Keystone Agricultural Producers of Manitoba

The Public Service Group Insurance Fund (PSGIF)

. . . .

Comparison to the MASC trusts

Prepared by:
Office of the Provincial Comptroller for
Manitoba Office of the Auditor General

Manitoba

September 5, 2019

The Legislation

Public Servants Insurance Act

Custody of fund

4(2) The fund shall be in the custody of the Minister of Finance.

Administration of agreement

6(2) The board shall, on behalf of the government, government agencies and specified employers administer and interpret agreements made under this Act including the determination of amounts of insurance of insured employees and the payment of premiums.

Contracts of Insurance with the Province

Employees of the Province enter into a contractual arrangement with employees for insurance upon commencing their employment for three plans:

- Life Insurance
- Accidental Death
- & Dismemberment

Note: Section 2 of the act gives the Minister the authority to do so.

Source of the PSGIF

- Each pay period central payroll remits group life premiums deducted from employees plus the employer portion to the CSSB
- CSSB is the administrator of the funds (the trustee) however the act states that the Minister has custody of the fund
- The asset balance is $245M at March 31, 2019 @FMV

How the PSGIF is used

- The PSGIF is used to payout indemnities for insurance contracts that exist between the Province (the employer) and employees (the beneficiaries)
- The act requires that an actuarial assessment be performed every three years

Administrator or Trustee

- CSSB is the administrator of the funds (the trustee)
- The Minister however holds custody of the funds under the act
- Five of nine board members are appointed by OIC to the CSSB (56%)
- CSSB is not in the GRE, however this not a requirement under PS.1300

Beneficiaries

- The beneficiaries of the trust are the employees of the Province
- The funds are used to payout claims to eligible provincial employees or their dependents

How the fund is accounted for

- The fund is treated by the Province as a trust under administration (see note 10 of the SFS)
- This treatment has been in place for many years

Timing and amount of payments from the fund

- CSSB contracts the administration of the claims as per the act to insurance agency GWL.

What happens if the fund has a surplus?

Section 12.1 and 12.2 indicate that the actuarially determined surplus comes back to the Province

What happens if the insurance plan is terminated

- The act indicates that all surplus funds are returned to the Minister of Finance
- If the plan is terminated, according to the CSSB the surplus would be returned to the Province in accordance with the act

Comparison to MASC

Description	PSGIF	MASC Trusts
Administrator / Trustee	CSSB	MASC (Trustee Capacity)
Beneficiaries	Employees	Producers
Premiums paid and funded by	Employees / Province	Producers / Province / Feds Note: Feds contribute to Agri. Ins. only
Indemnities and future liabilities	Funds are used to settle future liabilities of the Province as employer	Funds are used to settle insurance contracts between MASC and producers
Ability to deny access to the assets	Province has no ability to deny access to the insurance indemnity payments to employees under the group plan	Province has no ability to deny access to the insurance indemnity to producers as per trust agreement
Program termination or wind up	Surplus funds are returned to the Province for allocation	*Funds never come back to the Province, they are irrevocable. In the case of termination they flow to the 4H club

Comparison to MASC

Description	PSGIF	MASC Trusts
Actuarial Assessment	Required under the act every three years	Performed by MASC and must make trust funds sustainable as per trust agreement
Timing and amount of indemnities paid	The CSSB has agreements with GWL that directs the trust fund to pay indemnities to eligible claimants	MASC in their corporate role adjudicates claims and directs the trust by way of agreement to make payments to eligible claimants
Accounting standard used by the Trust	IFRS	IFRS