June 12, 2017

Superintendent's Powers – Special Orders
Pension Initiatives Unit, Pension Policy Branch
Ministry of Finance
5th Floor, Frost Building South
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Via Email: Pension.feedback@ontario.ca

To Whom It May Concern:

Re: Proposed Amendments to Regulation 909 of the PBA Special Orders by the Superintendent

The Association of Canadian Pension Management (ACPM) is pleased to have the opportunity to provide comments on the proposed amendments to Regulation 909 under the *Pension Benefits Act* (PBA), posted on May 9, 2017, which would provide the Superintendent of Financial Services with the authority to make a special order requiring certain parties to prepare and file a new valuation report or another prescribed type of report.

Who We Are

ACPM is a national non-profit volunteer-based organization acting as the informed voice of plan sponsors, administrators, and their service providers, advocating for improvement to the Canadian retirement income system. Our membership represents over 400 retirement income plans consisting of more than 3 million plan members.

ACPM's Comments

The Regulatory goal of subsection 87(6) of the PBA combined with the proposed circumstances to be prescribed under section 16.3 of Regulation 909 is not clear. Paragraph 86(6)(a) requires that the Superintendent have reasonable and probable grounds to believe there is a "substantial risk to the security" of the benefits payable under the plan. There may be circumstances where it would be appropriate from a regulatory standpoint to order a new valuation where the benefits are at risk. However, in contrast, paragraph (b) merely requires that there has been "a significant change in the circumstances of the pension plan".

It is unclear what is meant by a "significant change in the circumstances" when it is not otherwise linked to a regulatory concern. Merely needing "a significant change", coupled with the proposed broadly-defined prescribed criteria and the exclusion of the special order from the NOID process, the Superintendent would be given an almost unlimited authority to order a new valuation at the administrator or employer's own cost, even if such order served no regulatory purpose. This kind of regulatory uncertainty will not serve to encourage the establishment or maintenance of defined benefit plans in Ontario.

Our concerns could be addressed by amending the Regulations to require the Superintendent to seek input from the plan administrator and/or employer, as appropriate, before making the order, as well as narrowing the prescribed criteria proposed for the Regulations by linking them only with paragraph 87(6)(a). In other words, the proposed prescribed circumstances would apply to paragraph 87(6)(a) only, effectively leaving no prescribed circumstances under which a special order could be made under paragraph 87(6)(b).

We offer the following additional comments on the specific proposed prescribed criteria:

Decline in Members

It is unclear what a new valuation would accomplish if triggered due to a decline in membership. Any amortization payments required by prior valuation would not change as a result of reductions in headcount and typically normal cost contributions are stipulated as a percentage of payroll or specified dollar amount per member which naturally is adjusted when there are changes in the member population. Secondly, the regulations do not take the size of the pension plan into consideration. A decline in membership of 400 people may be meaningful to a pension plan that has 900 members, but have no material impact for a plan that has 70,000 members. As worded, even a decline of one member would permit the trigger of a valuation. As with the former partial wind up triggers in section 69, “decline” needs to be given some definition in relation to the overall size of the plan, so as to avoid absurd results.

Decrease in total contributions or decrease in normal contributions

There are a number of reasons that contributions in a plan could decrease that are unrelated to the financial sustainability of the plan, even if accompanied by a “significant change in circumstances”. For example, a decrease in total contributions may be due to a prior schedule of going concern or solvency amortization special payments ceasing or dropping off, which should not be a trigger for a new valuation. A decrease in normal cost may be due to a small number of members or lower overall pensionable earnings in a year. This is particularly true in plans where bonus or commissions are pensionable whereby current service cost could naturally increase or decrease year over year. Even if the decrease is associated with a decline in plan membership due to a significant downsizing, closing the plan to new members, or a sale of a business, the sustainability of the plan is not automatically of concern.

Decrease in GC or solvency assets

Having a criterion to order a new valuation based solely on a decrease in assets may make some sense if the decrease is due to changes in market conditions, which for plans who do not have a liability driven investment strategy could indicate a decline in the funded position of the plan. For plans that do have a liability driven investment strategy, a decrease in assets, if due to a reduction in their fixed income assets (as a result of bond rates rising), would likely mean that there was a corresponding reduction in liabilities such that there would not be a negative impact to the funded status of the plan. Similarly, if the reduction in assets is due to large lump sum payments from the plan, again there would be a corresponding reduction to the liabilities, so the funded status may not have been negatively impacted.

Sale of a Business

As noted above under Decline in Members, a sale does not necessarily mean that circumstances exist that should cause regulatory concern. Under the former partial wind up criteria in former section 69, there had to be some assessment of the magnitude of the event before regulatory action (i.e. ordering a partial wind up) became necessary. In the case of a sale, it was that the purchaser did not establish a successor pension plan, so the partial wind up would trigger certain rights of the affected members. Not only is this section not linked with any related or associated event that could impact members, it is not clear how members would benefit from a new valuation being ordered in these circumstances.

Information on which the Superintendent's decision would be based

As we noted above, there is no requirement for the Superintendent to consult with the administrator or employer before making such an order, or even going through the NOID process. This raises the question of what information the Superintendent will use to make his or her decision. Will it be media reports? The Annual Information Return? Making such significant decisions based on media reports, which might contain rumors, will not foster certainty in the regulatory environment and arguably breaches the principles of natural justice.

The Superintendent should be required to consult with the administrator and/or employer prior to concluding that there are "reasonable and probable grounds to believe".

Payment of Cost of Report

Section 87(7) permits the Superintendent to require the administrator or employer to pay the cost of the report. We note that if a plan administrator is not an employer and is unable to pay the cost of the new report out of a pension fund and has no separate account from which to make the payment, there would be no way to pay the administrative penalty without violating the *PBA*. This restriction also conflicts with pension plans created by legislation who are only able to meet expenses out of plan funds.

Even for single employer plans, the possibility of having to pay for the cost of a new report in circumstances where benefits are not at risk and there is no other clear regulatory purpose is an unnecessary risk associated with the operation and maintenance of a pension plan.

If such power is to be retained, then it should be qualified by requiring that only "reasonable" costs be payable by the administrator/employer.

Timing of the Proposed Regulations

The timing of these amendments to the Regulations seems premature given the pending funding reform, under which the timing of valuations may change and be required more frequently. Until more is known, we suggest that the amendments be delayed so that they can be tailored to the new funding regime (if they are even needed at all).

Thank you for considering our comments. We are available to discuss any of our comments at your convenience.

Yours very truly,

Bryan D. Hocking
Chief Executive Officer, ACPM