

March 10, 2005

MONSANTO: IMPLEMENTATION ISSUES

The Association of Canadian Pension Management (ACPM) has compiled a list of issues that have been raised by our members in respect of the implementation of the *Monsanto* decision. The list is not intended to be comprehensive of all the implementation issues, and the Association expects more will be added. The Association has clearly defined positions on a number of these questions, and we would be pleased to discuss them in the context of an industry committee established to work through some of the more problematic issues.

Notice

1. Should there be a requirement that notice of a proposed surplus allocation and distribution be sent to all plan members, not only the members affected by the partial wind up (PWU)?

Other Jurisdictions

2. Will Manitoba, Saskatchewan, Nova Scotia, Newfoundland and the federal authorities interpret their legislation to require a distribution of surplus on a PWU? Quebec, Alberta and B.C. for the years their similar legislation was in effect?
3. How is surplus to be allocated among the jurisdictions? If on the basis of liabilities, is grow-in to be taken into account, increasing the share of surplus for Ontario and Nova Scotia members? Do the other jurisdictions agree to this? How is agreement among the jurisdictions to be reached?
4. If surplus is allocated on the basis of liabilities, is the approach to be final location? Do all jurisdictions agree? How is agreement to be reached?

Note: We believe FSCO has a responsibility to raise these issues with the other regulators, and arrive at common understandings.

Benefit Improvements

5. Are benefit improvements given on a PWU or shortly before (e.g. early retirement windows) considered to be a distribution of surplus?
6. If the cost of benefit improvements on a PWU exceeds the surplus allocated to the affected members (or where there is no surplus) does the shortfall have to be funded immediately or can it be amortized?

7. Benefit improvements on PWU or shortly before usually are designed to help older plan members. If benefit improvements are a distribution of surplus, the question arises as to whether benefit improvements have to be proportional to the benefit value given to all affected members either in benefits or in cash. Will FSCO entertain proposals that allocate surplus among the affected members on some other basis than proportionate as long as the allocation is equitable in the circumstances and supported by reasonable underlying principles; for example, allocation along the lines of any of the examples given in FSCO Policy S900-900 or comparable methods?

Retroactivity

8. How does the regulator propose to deal with retroactivity beyond the partial wind ups that were identified by FSCO in the *Monsanto* proceedings and thereafter? We would like to assist in developing acceptable guidelines respecting retroactivity and associated issues.

9. Where a partial wind up has been declared in the past, but surplus has not been distributed, will FSCO require actuarial reports filed subsequent to the partial wind up date to be refiled?

The Impact of Plan Mergers and Asset Transfers on PWUs

10. How do we deal with the impact of PWUs on past plan mergers and asset transfers whose validity may now be in question because of the *Transamerica* decision and FSCO's reaction thereto?

Annuity Purchases

11. What is the legal basis for the view of FSCO that annuities must be purchased on a PWU? This needs to be made very clear, as there are conflicting views in the pension community.

Note: If there is a legal requirement that annuities must be purchased on a PWU where there is surplus, logically they must be in a PWU where there is no surplus. There are good policy reasons for permitting a member to elect to purchase an annuity from the continuing portion of the plan under subsection 42(1), and thereby ensure coverage for post-retirement health benefits and/or ad hoc benefit increases. We note the decision of the FST in Monsanto on this issue, which was not appealed.

Expenses – Small Surplus

12. Will FSCO establish formally or informally a minimum requirement for the distribution of surplus related to the amounts and numbers of members involved? In some cases the expenses of distributing surplus, even if all is distributed to the members, will clearly exceed the surplus available.

Determination of Surplus

13. When tracing forward, what are the acceptable methodologies of determining the amount of surplus existing today?
14. Will FSCO accept qualified actuarial certifications?

Allocation of Surplus

15. Is it acceptable for the employer and actuary to use their discretion, acting equitably, to allocate surplus, taking into account mergers and asset transfers and conversions?
16. Is it acceptable that surplus allocated on the original PWU report be changed to a more equitable allocation now that the requirement to distribute surplus is clear?

Payment of Surplus

17. If the employer can establish it owns the surplus on wind up, must there be a distribution of surplus? Can the employer simply leave the surplus in the plan?
18. If there is a surplus sharing, may the employer leave its share in the plan?
19. If there are a number of PWUs in the history of the plan, may the employer wind up the entire plan and allocate surplus to all the affected employees on the basis of the surplus in the plan at the time in some way that appears equitable?
20. Where a pension plan had a surplus at the time of the partial wind up that has subsequently become a deficiency, why is the obligation to fund the deficiency backdated to the partial wind up date (FSCO's published position)?