PBSA Update

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PBSA Update is issued by the Private Pension Plans Division (PPPD), Office of the Superintendent of Financial Institutions (OSFI). OSFI administers the *Pension Benefits Standards Act, 1985* (PBSA) in respect of some 1,200 federal pension plans across Canada.

In this issue:

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Note to our stakeholders

During 2003, OSFI staff, including the Superintendent of Financial Institutions, Nick Le Pan, spoke to various groups about current challenges faced by private pension plans in Canada. Speeches highlighted concerns OSFI has as a result of the impact of three successive years of falling equity values on the solvency position of pension plans, and particularly where corporate pension plan sponsors experienced serious financial problems. OSFI continued to address these concerns during 2004.

This issue of *PBSA Update* highlights some of the activities of the federal pension regulator in dealing with these concerns.

OSFI has stepped up its monitoring activities and is following up with specific pension plans, as required. We are conducting solvency testing every six months to help identify problem plans earlier and minimize funding problems. Where appropriate, we verify the plan's situation with the administrator and determine if a reasonable plan of action is in place to deal with the situation. If we have concerns, we request more detailed information about the plan including: its investments, contribution holidays, and level and detail of disclosure to plan members on the financial condition of the plan. In some instances, we have requested to be notified in advance before any contribution holidays can be taken. OSFI emphasizes pension plan governance, including the responsibility of the Board of Directors for oversight and awareness of the state of the plan. See Section II of this document for more information on OSFI's intervention activities.

I Supervision of the *Pension Benefits Standards Act, 1985* (PBSA) in 2003-2004

Amendments to the Regulations

No amendments were made to the *Pension Benefits Standards Act, 1985* or to the Regulations in 2003.

On August 9, 2004, the government adopted the Air Canada Pension Plan Solvency Deficiency Funding Regulation, which has been published in the Canada Gazette Part II. This regulation provides limited relief to Air Canada in the funding of the solvency deficiencies of its pension plans as part of the restructuring of its operations under the *Companies' Creditors Arrangement Act*. More details, including the text of the Regulation, can be found on our Web site.

During the year, OSFI reviewed and analyzed comments received on proposed changes to the funding standards in the Regulations referred to in PBSA Update, Issue 23, that would require full funding on plan termination as well as amendments concerning the application of actuarial gains. In light of the significant changes in the pension industry, additional consultation will be required.

Subsection 29(5) of the Act—Partial plan wind-up

In the previous issue of *PBSA Update*, OSFI indicated it was reviewing its policy on partial terminations and deferring decisions on any partial terminations submitted to the Office until the review was complete. An update is available under Pensions, Frequently Asked Questions, on the OSFI Web site.

OSFI's policy with respect to partial terminations is that, when a partial termination is declared, assets equal to the value of the pension liabilities may be transferred out of the plan (subject to subsection 26(4) of the PBSA, 1985) once the Superintendent has approved this aspect of the partial termination report. However, OSFI will not give final approval of the partial termination report of the plan pursuant to subsection 29(10) of the PBSA until a review of the Supreme Court of Canada decision and reasons in *Monsanto Canada Inc.* v. *Ontario (Superintendent of Financial Services)* is completed.

Other asset transfers, such as sale of business and mergers, require the Superintendent's permission pursuant to section 10.2 of the PBSA. The issues arising from the Monsanto court case do not apply in these situations, unless a partial termination has been declared.

A reminder on remittance of contributions

Subsection 9.1(1) of the Act—Notification of remittance

The Act requires the plan administrator to notify the holder or custodian of the pension fund of all amounts that are to be remitted to the pension fund and the expected date of remittance. Subsection 9(14) of the Regulations details when payments to a plan are required to be made.

Paragraphs 9.1(2)*(a)* and *(b)* of the Act—Effect of late remittance

If the payment to a pension fund is not remitted within 30 days after the expected date of remittance, it is the responsibility of the administrator, or, if the administrator is the employer, the custodian or holder of the pension fund, to notify the Superintendent in writing immediately. Section 10 of the Regulations also provides that the administrator of a plan who fails to remit the required payments is liable for the outstanding payment and interest thereon.

II OSFI intervention activities

Various activities and interventions may be undertaken by OSFI based on the authority in the PBSA if there is a possible threat to pension benefits or to the best interests of the plan members or pensioners. Following the results of OSFI's solvency[1] testing and calculation of estimated solvency ratios (ESR) conducted last year, OSFI has revised the risk profile of certain plans and commenced intervention activities. To date, we have instructed certain plans to file early valuation reports or, in some cases, to cease taking contribution holidays. We have followed up quickly if valuation reports were not filed on time and, in the case of defined contribution plans, we have instructed plan administrators to provide remedial action plans to deal with non-remittance of contributions. The Superintendent and his Office use their discretion in choosing which intervention measures to implement, depending on the plan's risk profile. Following are descriptions of the various intervention activities at OSFI's disposal.

Solvency testing

OSFI tests the solvency of defined benefit pension plans using the market value of assets. We identify "plans at risk" as those whose sponsors are operating in industries under stress, showing solvency deficiencies, and taking contribution holidays. Where plans are identified as being "at risk", OSFI contacts the plan sponsors/administrators to request validation of the results of the solvency testing and the ESR and updated information, if available. Depending on the validation results, OSFI can and does implement some or all of the following intervention actions:

Early filing of valuation reports

OSFI's current policy provides for triennial reports generally and annual reports when the solvency ratio (SR) is less than 1.0 as reported in a regular filing.

OSFI increases a plan's risk profile when the ESR falls below 1.0 based on the market value of assets.

OSFI may request valuation reports earlier than the next due date either at the most recent or next year-end, when the ESR is significantly less than 1.0.

Contribution holidays

In OSFI's opinion, contribution holidays are not appropriate when a plan may be underfunded, even though it may have reported a surplus in the last filing.

OSFI may write to the plan administrator recommending that contributions resume if the ESR is below or marginally above 1.0.

OSFI will require the administrator to inform plan members if the ESR is below or marginally above 1.0 and the sponsor continues to take contribution holidays. A new actuarial report may be requested for the next year-end.

Notwithstanding other actions outlined in the previous two points, if the contribution holidays continue, OSFI will review the disclosure made to plan members and ask what authorizations have been given by the plan administrator for the contribution holiday.

If the ESR is significantly below 1.0, OSFI will take the necessary steps to ensure that contributions resume.

1. *PBSA Update*, Issue 23, Spring 2003 article on market downturn.

Late valuation reports and other filings

OSFI views valuation reports as a key component in the supervision of private pension plans and places significant importance on their timely filing. OSFI has noted a number of cases where valuation reports have not been filed on time. We remind administrators that a valuation report must be filed within six months after the end of the plan year to which the report relates.

Late filing of a valuation report can influence OSFI's view of the pension plan's risk profile and our intervention level. Consequently, plan administrators should be aware that OSFI may take intervention measures if a valuation report is not filed with OSFI on time.

In cases where a valuation report has not been filed on time, OSFI will contact the plan administrator to indicate what actions must be taken regarding the non-compliance with the filing requirements. OSFI will generally require the plan administrator to inform plan members of the late filing and to provide OSFI with reasons for the delay and an action plan that addresses the issues that led to the late filing. Additional measures may be taken, depending on the circumstances.

Non-remittance of contributions for defined contribution plans

Failing to remit pension contributions by the required deadline (30 days after the end of the period in respect of which the contribution is made) penalizes plan members and increases the risk of loss to members in the event of plan termination or sponsor financial difficulty. The following interventions apply to late or non-remittance of contributions for defined contribution plans.

Non-compliance will result in the plan administrator having to inform all members that contributions were late or not remitted to the plan fund. In addition, the sponsor may have to cease pension payroll deductions until the problem is corrected.

In cases where the administrator or sponsor is not cooperating, OSFI may consider taking further steps, such as legal action, to recover late payments.

Plan administrators are required to deal with non-compliance immediately upon notification.

III General supervisory issues

Solvency Information Return (SIR, form OSFI-575)

In order to obtain up-to-date information earlier in the year, we asked defined benefit plan administrators to provide us with some information before the submission of the Annual Information Return. The *Solvency Information Return* will be used to collect information on contribution holidays taken in the previous year as well as the actual fund rate of return for that year. OSFI will use this information to validate the results of its solvency testing exercise and to identify appropriate intervention measures for specific plans.

We expect that plan administrators will require little time to complete this new return.

This year, as a transition measure, we asked that the form be returned by March 31. In the future, it is expected that the form will be mailed to the plan administrator in January each year for a return to OSFI by February 15 each year or 45 days following plan year-end.

Refund of Surplus Instruction Guide—Section 4.4, Arbitration

OSFI is aware that there may be questions concerning the requirement for arbitration of surplus claims pursuant to subsection 9.2(5) of the PBSA, Winding up of employer, as described in section 4.4, page 11, of the Instruction Guide.

OSFI would like to clarify its interpretation and the policy for requiring arbitration under subsection 9.2(5). Establishing employer entitlement to surplus based on plan provisions is not an option when an employer is winding up. Under subsection 9.2(5), if a pension plan has been terminated and the employer is winding up or being liquidated, the employer must either establish a claim to surplus, pursuant to the procedures outlined in subsection 9.2(3), or the claim must be submitted to arbitration within 18 months of the date of the termination of the plan.

Canadian Association of Pension Supervisory Authorities (CAPSA) update

CAPSA documents can be found on CAPSA's Web site at www.capsa-acor.org. Your comments on all CAPSA initiatives are valuable. As a member of CAPSA, OSFI encourages your participation in all CAPSA consultations. The CAPSA Secretariat coordinates all consultations, and the comments are shared with the membership.

CAPSA Model Law Committee

CAPSA released *Proposed Regulatory Principles for a Model Pension Law* on January 19, 2004. The proposed principles reflect current legislative standards and best practices. They are intended to provide the basis for a model law that would serve as a model for the federal and provincial governments to consider. The ultimate goal is to harmonize and simplify pension regulation across Canada when amendments to legislation are made. Comments to CAPSA were requested by June 30.

CAPSA Governance Committee

On July 18, 2003, CAPSA released its revised draft of *Pension Plan Governance Guidelines and Self-Assessment Questionnaire*. The draft guidelines and questionnaire were "road-tested" during the period of November 17, 2003 to February 20, 2004 to determine whether, and to what extent, plan administrators need additional instructions to complete the questionnaire. The Committee reviewed the road-testing results and released a final version of the guidelines on October 25, 2004.

CAPSA Investment Policy Committee

On February 5, 2004, CAPSA submitted to Nick Le Pan, the Superintendent of Financial Institutions, recommendations for addressing certain concerns regarding the federal investment rules. The letter and Mr. Le Pan's March 5, 2004 reply are posted on the CAPSA Web site. These rules are found in Schedule III of the *Pension Benefits Standards Regulations, 1985* (PBSR). The recommendations followed receipt of submissions from a consultation paper released in April 2003.

Canadian Institute of Actuaries (CIA) update

The Canadian Institute of Actuaries has adopted a new standard of practice for determining pension commuted values which will come into effect on February 1, 2005. In accordance with the PBSR, calculation of commuted values must be performed using the new standard as of that date. Solvency valuations prepared at dates starting February 1, 2005 must also use the new standard. Please consult your plan actuary for details. The Standard of Practice can be found on the CIA Web site at www.actuaries.ca.

IV Other news

Acknowledgement letters discontinued

Effective immediately, OSFI no longer issues acknowledgement letters for documents received from registered pension plan administrators, consultants or custodians. This practice is consistent with procedures covering receipt of documents for other OSFI divisions. If you have questions concerning the receipt of documents submitted to the Office, please contact Leslie Karook at (613) 990-8124 or by e-mail at Leslie.Karook@osfi-bsif.gc.ca.

Update on electronic filing by diskette

Electronic filing of forms OSFI-49 and OSFI-60 has been available for voluntary use by pension plan administrators for plan year-ends starting October 2004. Plan administrators will be given a grace period of one year before electronic filing of the forms is required beginning in October 2005.

Software used to produce electronic filing is currently being tested by OSFI. Once the software has been approved, a list of approved software packages will be available through our Web site for plan administrators who do not wish to develop their own electronic filing software.

We will keep our stakeholders informed on all electronic filing developments through our Web site. Questions regarding this initiative should be directed to Jasia ("Yasha") Foottit, Database Applications Analyst, at (613) 990-7866 or by e-mail at Jasia.Foottit@osfi-bsif.gc.ca.

Life Income Fund (LIF) Maximum Payment Amount Table

OSFI has prepared for the first time, and posted to its Web site, a Life Income Fund Maximum Payment Amount Table for the use of custodians (typically financial institutions) responsible for administering the funds in accordance with section 20.1 of the Regulations. This table provides users with a value representing the percentage of the fund, which may be drawn during each year for former members whose pension benefit credits have been transferred to a LIF. The table will be updated annually by OSFI using the prevailing applicable CANSIM interest rate (B14013). An explanation and the table are found on the Frequently Asked Questions page of the Web site.

Staff comings and goings

The Private Pension Plans Division announces the following staff changes:

Jasia Foottit, Database Applications Analyst, and **Leslie Karook**, Administration Officer, have transferred from the Private Pension Plans Division to OSFI's Regulatory Information Division following a recent consolidation of OSFI's management of supervisory data and business.

Sylvia Bartlett (Andrews) has returned to OSFI after a five-year absence and joined the Division as a Senior Supervisor. Before leaving OSFI in 1998, Sylvia worked in the former Property and Casualty Insurance Division as a Senior Operations Analyst (1991–1998) and in the Private Pension Plans Division (1987–1991). Sylvia holds a Bachelor of Commerce degree from Memorial University of Newfoundland.

Gavan Power has joined the Division as Manager, Supervision, moving from OSFI's Office Management and Technical Services Division. Gavan joined OSFI from the Bank of Canada in January 2001. Gavan holds Bachelor of Science (Mathematics) and Master of Business Administration degrees from the University of Ottawa. Gavan is responsible for the registrations and approvals for pension plans as well as for special projects.

Paul Rozon has joined the Division as a supervisor. Paul holds a Bachelor of Commerce from Queen's University in Kingston, Ontario, and recently completed his Master of Business Administration at the University of Ottawa. He also brings banking experience to the Supervision Sector.

Nancy Begg-Durkee retired in April 2004 after more than 30 years of service, almost entirely with OSFI and its predecessor, the Department of Insurance, and mostly in the Private Pension Plans Division.

If you wish to discuss content, guidelines, policies or other issues that have been covered in this or any previous edition of *PBSA Update*, please contact **Sylvia Bartlett** at (613) 990-7856 or by e-mail at sylvia-bartlett@osfi-bsif.gc.ca.

General inquiries should be directed to OSFI's toll-free information line at 1 800 385-8647 (613) 990-6011 for local calls between 8:30 a.m. and 5:00 p.m. eastern time, Monday to Friday, or to our Communications and Public Affairs e-mail address: extcomm@osfi-bsif.gc.ca.

Useful federal government numbers and links

Reference Canada: 1 800 O-Canada (1 800 622-6232); www.canada.gc.ca

Financial Consumer Agency of Canada: 1 866 461-3222; www.fcac-acfc.gc.ca

Canadian Government Publishing: 1 800 635-7943; www.cgp-egc.gc.ca