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of Financial Institutions Canada

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**To: Pension Distribution List**

Please find attached a document that sets out principles that should be satisfied in order for the Office of the Superintendent of Financial Institutions to propose that amendments be made to the *Pension Benefits Standards Regulations, 1985*.

Yours truly,

Carol Taraschuk  
Counsel  
Legal Services

Att.



## PRINCIPLES FOR A PROPOSAL PROVIDING FOR FUNDING RELIEF

OSFI would be prepared to propose an amendment to the *Pension Benefits Standards Regulations, 1985* in order to provide for funding relief in respect of employers under *CCAA* or Part III of the *Bankruptcy and Insolvency Act*. In order to propose a change, OSFI must be provided with a funding proposal submitted jointly by the employer and the appropriate representatives of the various plan beneficiaries. OSFI would also need to be satisfied that such a proposal addresses the following principles. All parties should be advised that a final decision on any changes to the Regulations lies with Cabinet on the recommendation of the Minister of Finance.

1. Regulations concerning funding of pension plans under the *Pension Benefits Standards Act, 1985* can only be made on a plan by plan basis.
2. Payments to eliminate a solvency deficiency may be made over a maximum period of ten years. A flexible payment schedule may be agreed upon provided that there is some control that would prevent a substantial amount of the payments being made in the last half of any payment schedule (for example, for a payment schedule to be acceptable, at least 40% of the payments that would be made over a 10 year schedule, based on equal annual payments, would have to be made in the first half of a 10 year schedule). Valuations must be prepared on a basis consistent with the methodology previously employed by Air Canada e.g. non-smoothed basis.
3. New solvency deficiencies that arise after exiting *CCAA* i.e., identified in valuation reports filed subsequent to the first report identifying the solvency deficiency to which funding relief is applicable, will be funded in accordance with the current funding regulations i.e., 5 years.
4. There must be an informed buy-in by the various classes of plan beneficiaries. Consent will be required from each class of plan beneficiaries e.g., actives as one class and retirees and other beneficiaries as another. The unions and court appointed representatives may consent on behalf of their respective constituents. All plan beneficiaries should be provided with sufficient and adequate information concerning the risks associated with the election of funding relief by an employer. Consideration should be given to the consent levels required under section 9.2 of the *PBSA, 1985* i.e., two-thirds consent of members and two-thirds consent of other beneficiaries.
5. **Downside Protection.** Given the present economic environment, a requirement to fully fund deficiencies on plan termination will not be implemented until wider consultation is undertaken. However, since funding relief will increase the risk of loss to the plan beneficiaries, acceptable downside protection must be provided. Downside protection may include, among other things, any or all of the following:
  - (a) On termination of a plan, the employer will fund up to the initial solvency ratio i.e., the solvency ratio as at the date the solvency deficiency to which the funding relief would apply was identified;

- (b) If a plan is terminated or most of the active members are terminated (i.e., most of the remaining liabilities of the plan are in respect of retirees' interests), adequate payments will continue in accordance with the payment schedule until the solvency deficiency is eliminated on a plan by plan basis;
  - (c) Surplus withdrawals will not be permitted where there are solvency deficiencies in other plans or the solvency ratio is below a prescribed amount;
  - (d) Top up to initial solvency ratio while the plan is ongoing in respect of the retirees' benefits;
  - (e) Amounts owing will be accrued on a 5 year basis but be payable over 10 years
6. Opting out of the funding relief by the employer must not result in the reamortization of deficiencies over a longer period (e.g. if an employer opts out of the funding relief with 3 years remaining in the payment schedule, the deficiency would not be reamortized over 5 years).
  7. Some control over benefit improvements when the plan still has a significant deficiency.
  8. Deemed trust and compliance with regulations and directions – Provisions recognizing deemed trusts and requiring compliance are contained in the Act and cannot be contracted out of. OSFI is open to discuss any proposal to satisfy the directions issued prior to Air Canada's filing under CCAA.