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SECTION: Wind Up

INDEX NO.: W100-101

TITLE: Filing Requirements and Procedure  
- P BA, 1990, s. 52, s. 68, s. 70, s. 72-75, s. 77, s. 81  
- O. Reg. 909, s. 15, s. 16, s. 28, s. 29

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*Note: Due to legislative changes, references to "the Superintendent of Pensions" should read "the Superintendent of Financial Services" and references to "the PCO" should read "the Financial Services Commission of Ontario" or "FSCO", as appropriate. References to "Revenue Canada" should read "Canada Customs and Revenue Agency".*

### **Pension Plan Wind Up - Filing Requirements and Procedure**

The purpose of this administrative practice is to identify the filing requirements and procedure for winding up a pension plan in whole or in part. It is hoped that administrators and their agents will use this information in the preparation of wind-up filings that comply fully with the requirements of the *Pension Benefits Act*, the Regulations and related policies of the Commission. Improved compliance will enable PCO staff to process wind ups more quickly and efficiently.

The material which follows deals with key wind up requirements and procedure. Readers are reminded that the provisions of each pension plan are unique and the circumstances that trigger the wind up of a pension plan are various. Therefore, it is not possible to identify all issues that may be relevant to every plan situation in this paper. It should further be noted that the purpose of the administrative and actuarial guidelines set out in this paper is to assist plan administrators and their agents in the preparation of required wind-up filings and the PCO staff in the review of the filings. These guidelines do not preclude the use of other bases if deemed appropriate in the circumstances. It is the responsibility of the administrators and/or their agents to demonstrate that the bases chosen are in compliance with the *Pension Benefits Act* and Regulations.

If administrators and their agents have questions about plan wind ups, they should refer to the relevant sections of the *Pension Benefits Act* (the "PBA") and Regulations, as amended. Additional information may be obtained from published policies and practices of the Commission which deal with related wind-up issues. Policies and practices are intended to clarify how the PBA and the Regulations are interpreted in certain situations and to assist administrators and their agents in understanding the requirements of the PBA, the Regulations and of the Commission so that full compliance can be achieved.

## Plans Excluded

This practice does not deal with multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement, or situations involving a claim against the Pension Benefits Guarantee Fund (the "PBGF"). Surplus matters are only briefly referenced as administrative practices on this subject have been published previously (see Appendix B for titles and index references for related administrative practices).

*Throughout this document, the "PBA" or "Act" refers to the Pension Benefits Act, R.S.O. 1990, Chapter P.8 and the "Regulations" refer to Regulation 909, R.R.O. 1990, as amended.*

*Although we have tried to be thorough, it is not possible to anticipate and address all wind-up situations. Administrators, therefore, are reminded that the application of the Act and Regulation is subject to the facts of each case. Accordingly, the contents of this administrative practice should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if you have a particular interest in any of the matters addressed in this administrative practice.*

## Table of Contents

*Administrators and consultants for pension plans that provide only defined contribution benefits, need only reference sections I and IV.A and subsection 3.1 of this administrative practice. Unless otherwise specified, this administrative practice applies to full wind ups as well as to partial wind ups.*

### **SECTION I Wind-Up Process**

- 1.1 An Overview of the Process
- 1.2 Legislative Requirements and Current Administrative Practice

### **SECTION II Preparing the Wind-Up Report**

- 2.1 Compliance Items
- 2.2 Membership Data
- 2.3 Plan Provisions
- 2.4 Commuted Values of Benefit Entitlements
- 2.5 Financial Position of the Plan on Wind Up
- 2.6 Actuary's Statements of Opinion

### **SECTION III Treatment of Surplus/Deficit**

- 3.1 Surplus
- 3.2 Deficit

### **SECTION IV Specific Issues Related to Wind Up**

#### Section IV.A

- 4.1 Payment Approved by the Superintendent
- 4.2 Prior Plans and Policies
- 4.3 Notice of Termination of Employment

Section IV.B

- 4.4 Grow In Under Section 74 of the Act
- 4.5 Treatment of Special Benefits
- 4.6 Allocation of Assets for Multi-jurisdictional Plans

**APPENDIX A Guidelines on Actuarial Assumptions and Methods for the Calculation of Individual Commuted Values of Benefit Entitlements on Plan Wind Up**

- A.1 Use of Insurance Companies' Quotes
- A.2 Actuarial Guidelines for PCO Staff

**APPENDIX B A Summary of Related Policies and Administrative Practices with Index Number References and Publication Dates**

**SECTION I - Wind-up Process**

For all pension plans, the wind-up process consists of five stages. There is a sixth stage, if surplus remains after basic benefits have been distributed. For most stages, some specific action is required by either the administrator or the employer. Administrators should become familiar with this process in order to avoid delays which occur when a wind-up report or other required filings do not comply with the PBA, the Regulations and applicable policies of the Commission.

**1.1 An Overview of the Process**

*Stage 1 - The employer decides to wind up a pension plan or the Superintendent of Pensions so orders.*

The administrator is required to give notice of proposal to wind up the pension plan as identified under subsection 1.2 Legislative Requirements and Current Administrative Practice.

*Stage 2 - The administrator files a wind-up report and other wind-up documentation.*

The wind-up report is a key document which should include information about the funded status of the pension plan and the proposed methods of allocating and distributing assets.

PCO staff review the submitted wind-up documents. If the documentation is incomplete or deficient, including for instance, not being certified or signed, staff will write to the administrator or the administrator's agent to request the additional documents or information. Upon receipt and review of the additional documents or information, staff will make a recommendation to the Superintendent as to whether the wind-up report complies with the requirements of the PBA and the Regulations.

*Stage 3 - The administrator issues benefit statements.*

The administrator provides a statement setting out the entitlement and options (including deemed election) available to each person entitled to a benefit on the wind up of the plan. Depending on the situation, the administrator may decide to wait until after the Superintendent's approval of the wind-up report is received to issue benefit statements (see also stage 4).

*Stage 4 - The Superintendent approves the wind-up report or approves the disbursement of basic wind-up entitlements.*

If the wind-up report complies with the requirements of the PBA and the Regulations, the Superintendent will approve it. However, if there is a surplus issue to be addressed, the Superintendent will approve only the payment of basic

wind-up entitlements until the disposition of the surplus has been determined.

If the wind-up report does not comply with the requirements of the PBA and the Regulations, the Superintendent will refuse to approve it.

*Stage 5 - The administrator distributes benefits.*

When the administrator receives the Superintendent's letter confirming approval of the wind-up report/disbursement of basic wind-up entitlements, the distribution of benefits can take place in accordance with the wind-up report and the options elected, subject to any restrictions as prescribed.

*Stage 6 - The administrator distributes surplus.*

If a decision has been made to distribute all surplus available on wind up among plan members, former members or other eligible persons, the formula for distribution should be included in the wind-up documentation.

If the employer intends to withdraw or share the surplus with the members, an application is required to be made to the Commission.

**1.1.1. Other Considerations**

1) When a Notice of Proposal to Wind Up a Pension Plan Has Been Given

Subsection 70(2) of the PBA requires that once a notice of proposal to wind up a plan has been given, no payments or expenses can be made out of the pension fund until the Superintendent has approved the wind-up report. This restriction would not, however, interfere with the continuation of payment of a pension or any other benefit if the payment began before the declaration of wind up. Also, the administrator or an agent of the administrator may request that the Superintendent authorize payment of other benefits or expenses pursuant to subsection 70(3) of the Act prior to the approval of the wind-up report.

2) Approval of the Wind-Up Report and Distribution of Assets

Once a wind-up report is approved by the Superintendent, assets must be distributed in accordance with the wind-up report. A pension plan wind up is not complete until all assets of the pension fund have been disbursed.

**1.2 Legislative Requirements and Current Administrative Practice**

**1.2.1 Effective Date of Wind Up**

Subsection 68(5) of the Act provides that the effective date of wind up cannot be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension plans, or in any other case, on the date the notice is given to members. Where a wind up results from a specific event such as plant closure, bankruptcy or purchase and sale, the effective date may not be earlier than the date of the specific event precipitating the wind up unless the requirements of subsection 68(5) have been met prior to that date.

The Superintendent may change the effective date of wind up by order, if in the Superintendent's view, there are reasonable grounds for such a change as provided under subsection 68(6) of the Act. There may be circumstances for which the determination of the effective date of wind up may not be obvious. In such situations, the administrator or agent is encouraged to submit a written proposal justifying the selection of the effective date of wind up. PCO staff will consider the proposal in light of legislative requirements.

### **1.2.2 Notice of Proposal to Wind Up a Pension Plan**

An employer who intends to wind up a pension plan in whole or in part must give notice of proposal, as required under subsection 68(2) of the Act, to each of the following:

- the Superintendent;
- members;
- former members;
- any trade union(s) (if applicable);
- the advisory committee (if applicable); and
- any other person entitled to a payment from the pension fund.

The notice must contain the information prescribed in subsection 28(1) of the Regulations.

At a minimum, the administrator should provide PCO staff with:

- a certified copy of the wind-up notice;
- a statement outlining who (including any union, if applicable) received the notice; and
- the date the last notice was distributed.

In the event an employer declares bankruptcy or is placed in receivership, or otherwise ceases operations, the administrator or the administrator's agent should notify PCO staff immediately.

### **1.2.3 Persons Who Must be Included in the Wind Up**

When a pension plan is being wound up, all members, former members and other persons entitled to payments from the plan on the effective date of wind up must be included in the wind up. In circumstances where a plan is partially wound up, generally only those members affected by the partial wind up are included.

When a wind up results from an event affecting the employment of the members, such as plant closure, all members affected by the event, who are participating in the plan on or after the date notice of the event is released, must be included as members for the purposes of the wind up. This applies even if a member terminates or is terminated after the notice date but prior to the actual occurrence of the event.

If there has been a series of staggered layoffs prior to and/or after the wind-up date, the administrator or the administrator's agent should submit a written proposal to identify which group of employees, including those who may have terminated prior to the wind-up date and/or may terminate after the wind-up date, will be entitled to wind-up benefits.

### **1.2.4 Wind-up Documentation**

In addition to the notice of proposal to wind up, the following documentation must be filed.

#### Wind-up Report

The administrator must file a wind-up report pursuant to subsection 70(1) of the Act. The report must be prepared, pursuant to section 15 and subsection 29(1) of the Regulations, by an actuary (i.e., a Fellow of the Canadian Institute of Actuaries) unless it is in respect of:

- a) a defined contribution plan,
- b) a fully insured pension plan established prior to January 1, 1987 underwritten by a contract with an insurance company and that does not require employee contributions, or

- c) a pension plan underwritten by a contract issued by the *Government Annuities Act* (Canada).

Under a), b) or c) above, the report may be prepared by an accountant or a person authorized by an insurance company, a trust corporation or by the Annuities Branch of the Department of Labour of the Government of Canada, responsible for administering the pension plan or pension fund.

Specific items to be included in a wind-up report are set out under subsection 70(1) of the Act. Section III provides further detail to assist actuaries in preparing wind-up reports on pension plans that provide defined benefits.

#### Amendments, Resolutions and Form 1.1

Appropriate amendments and resolutions which affect the wind up should be filed in conjunction with the wind-up report. The proposals in the wind-up report must conform with the provisions of the plan and amendments.

If an amendment is required, for instance, where there are benefit improvements in conjunction with the wind up, Form 1.1, an application for the registration of a plan amendment should be included with the wind-up documentation. Form 1.1 (English and French) found at index number **R500-251** is applicable up to and including June 30, 1995. A new Form 1.1 (English and French) found at index number **R500-252** is effective on and after July 1, 1995.

A supplement to the Spring 1995 issue of the *PCO Bulletin* includes master proofs of Form 1.1 (effective on and after July 1, 1995) in English and French. These forms are intended to be duplicated to meet compliance requirements.

#### Superintendent's Checklist for Compliance on Plan Wind Up

The administrator should file a completed Superintendent's Checklist for Compliance on Plan Wind Up. This checklist is designed to assist plan administrators and their agents in compiling the required submissions. It also aids PCO staff in their wind-up review. Poorly completed checklists may result in delay of the wind-up process.

#### Other Required Filings in Respect of a Full Wind Up

Pursuant to section 29.1 of the Regulations, the administrator must file the following documents within six months after the effective date of wind up for the period from the most recent plan year end to the effective date of wind up:

- an Annual Information Return ("AIR")
- financial statements for the pension plan or fund

Within 90 days after the effective date of wind up, the administrator must review the pension plan's Statement of Investment Policies and Goals ("SIP&G"). Any amendment must be filed within 90 days after adoption of the amendment.

Prior to February 23, 1995, there was a requirement that administrators review the pension plan's SIP&G and file confirmations or amendments. Subsection 68(2) was amended by O. Reg. 73/95 to no longer require administrators to file a confirmation of review of the SIP&G where no change has occurred. On or after February 23, 1995, the administrator is asked, in such a circumstance, to certify on the AIR that a review of the SIP&G has been conducted.

The administrator is responsible for ensuring that all AIRs required up to the effective date of wind up are filed and that all prescribed and outstanding fees and assessments are paid. The administrator is required to comply with these requirements within six months after the effective date of wind up in accordance with subsection 29(4) of the Regulations.

### **1.2.5 Distribution of Benefits**

The administrator is required, under section 72 of the Act, to provide each person entitled to a benefit on wind up with a statement setting out the person's entitlement under the pension plan, the options available and other information as prescribed in subsection 28(2) of the Regulations. The statement should indicate, in accordance with clause 28(2)(t) of the Regulations, that the entitlements and options are subject to the approval of the Pension Commission of Ontario and of Revenue Canada, and may be subject to adjustment.

#### The Option Statement, Deemed Elections and Timing

A recipient of an option statement has 90 days after receipt of the statement to make an election and forward it to the administrator.

If the recipient fails to make an election within 90 days, that person shall be deemed to have elected to receive an immediate pension, if eligible. If the recipient is not eligible to receive an immediate pension, that person shall be deemed to have elected to receive a deferred pension commencing at the earliest date mentioned in clause 74(1)(b) of the Act. Information pertaining to a deemed election should also be specified in the option statement in accordance with subsection 72(2) of the Act and clause 28(2)(o) of the Regulations.

The administrator must comply with an election made by a person on wind up within 30 days after the later of:

- the receipt of the election, or
- the receipt of notice that the wind-up report has been approved by the Superintendent

subject, however, to the requirements of subsections 29(7) and (8) of the Regulations.

#### Final Distribution of Assets and Confirmation of the Distribution

Finally, within 30 days after final distribution of assets of the pension plan, the administrator shall give the Superintendent written notice that all of the assets of the plan have been so distributed as required under subsection 29.1(4) of the Regulations.

#### Transfer of Commuted Values

Effective on June 24, 1994, Regulation 909 was amended by O. Reg. 409/94 to resolve a conflict between the Act and the *Income Tax Act* (Canada) regarding the locking-in of pension benefits in situations where the commuted value of the benefits exceed the maximum amount that is permitted to be transferred from a pension plan on a tax-deferred basis under the *Income Tax Act* (Canada). Under subsection 21(1.1) of the Regulations, members may now transfer the locked-in portion of their commuted values to a LIRA or, where the individual is eligible to retire under the terms of the plan, to a LIF.

That portion of a commuted value that is in excess of the maximum transfer limit under the federal *Income Tax Act* must be transferred to a "regular" (non locked-in) RRSP or a RRIF depending on the option selected for the locked-in portion. The individual may withdraw the unlocked moneys and pay the appropriate tax or, retain the regular RRSP or RRIF as permitted by Revenue Canada. The amount up to the limit imposed by Revenue Canada must continue to be locked-in to preserve funds for retirement.

For further information on this amendment and explanatory notes, please see the Summer 1994 issue of the *PCO Bulletin*, page 5.

## SECTION II - Preparing the Wind-up Report

A wind-up report filed under subsection 70(1) of the Act must comply with the prescribed requirements of the Act and Regulations. As well, in preparing a wind-up report for a defined benefit plan, subsection 16(1) of the Regulations requires that an actuary "...shall use assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the Act and this Regulation". Applicable professional standards are set out in the document titled "*Standard of Practice for Valuation of Pension Plans*" by the Canadian Institute of Actuaries (the "CIA Standards").

Under subsection 70(1) of the Act, the wind-up report must set out at least the following:

- the assets and liabilities of the pension plan;
- the benefits to be provided under the pension plan to members, former members and other persons;
- the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- such other information as is prescribed

### 2.1 Compliance Items

The actuary should confirm compliance with respect to the following legislative requirements, where applicable:

- Minimum value of employee contributions with interest for pre-1987 benefits ..... ss. 39(1) & (2)
- Minimum 50% cost rule for post-1986 contributions ..... ss. 39(3) & (4)
- Early retirement options ..... s. 41
- Joint and 60% survivor option ..... s. 44
- Full vesting (where plan is fully funded) ..... ss. 73(1)(b)
- Grow in rights ..... s. 74
- Notice period under *Employment Standards Act* ..... ss. 74(5)
- Deemed consent of ancillary benefits ..... ss. 74(7)
- Benefits accrued under all prior plans included in the report ..... ss. 81(2)
- Minimum credited interest from date of wind up to date of payment ..... Reg. ss. 24(12)

### 2.2 Membership Data

The CIA Standards contain the following requirement:

#### 6.01 Report Contents

##### A. General Requirements

*The report on the valuation of a pension plan prepared by an actuary should contain information which will be sufficient to meet the purpose(s) of the valuation and to permit another actuary to make an appraisal of the valuation.*



In the past, when reviewing the calculations in wind-up reports, PCO staff have looked at the following information:

For members and deferred vested former members:

- age or date of birth
- sex
- years of continuous service, or date of hire (members only)
- years of credited service (members only)
- years of membership, or date of plan entry (members only)
- date of termination (if different than the effective date of wind up)
- accumulated (pre-1987 and post-1986) employee contributions with interest, if any
- salary upon which the benefits are based, if applicable
- accrued (pre-1987 and post-1986) pension
- bridging benefit, if any
- any other benefits provided under the plan
- commuted values of accrued (pre-1987 and post-1986) pension, bridging and other benefits
- excess contributions due to 50% rule
- additional voluntary contributions with interest, if any

For retired former members and other beneficiaries:

- age or date of birth
- sex
- date of retirement
- amount of pension payable
- bridging benefit, if any
- any other benefits provided under the plan
- form of pension payment
- commuted values of pension, bridging and other benefits

Some or all of this information may be requested by PCO staff in order to complete their review of a wind-up report. Such information should be provided in an anonymous form, i.e., no names, social insurance numbers or other personal identifiers should be provided.

Statistical Summary by Membership Categories

The CIA Standards also contain the following requirement:

*2.03 Disclosure of Data Source and Checks*

*... A summary of the statistics pertaining to the members should also be included in the valuation report in sufficient detail to permit another actuary to be satisfied as to the reasonableness of the valuation results.*

Accordingly, the report should provide a summary of statistics for various categories of membership, namely, members, deferred vested former members, retired former members, etc. It is also preferable that the report include a reconciliation of plan membership from the valuation date of the last filed actuarial report.

In the case of a partial wind up, a summary of the statistics pertaining to members who are remaining in the continuing portion of the plan should also be provided. However, if there had not been significant changes in membership since the valuation date of the last filed actuarial report, a reference to that report with respect to the remaining members

is generally acceptable.

### **2.3 Plan Provisions**

The report must include a summary of plan provisions that were reflected in the wind-up valuation. The actuary should ensure that the summary is consistent with the plan documents filed with the PCO.

### **2.4 Commuted Values of Benefit Entitlements**

Appendix A sets out the actuarial guidelines that are currently followed by PCO staff in their review of the determination of the commuted values of members' benefit entitlements on wind up. These guidelines do not preclude the use of any other actuarial basis if deemed appropriate by the actuary. However, the actuary should justify the basis used and demonstrate that the commuted values calculated using such a basis would comply with the Act and Regulations.

### **2.5 Financial Position of the Plan on Wind Up**

In addition to the determination of the commuted values of the benefit entitlements of the individual members, the wind-up report must provide information on the financial position of the pension plan as a result of the wind up. Determination and reporting of the financial position of a defined benefit pension plan must comply with the CIA Standards.

Until a formal professional standard governing the wind up of a plan is developed by the Canadian Institute of Actuaries, the following descriptions represent current PCO administrative practices.

#### **2.5.1 Valuation Balance Sheet in Respect of a Full Wind Up**

In the case of a full wind up, the report should provide a valuation balance sheet including the assets and the wind-up liability of the plan as of the effective date of wind up.

##### **Assets**

Assets should be valued at market, with adjustments for receivables or payables at the effective date of wind up. The actuary should describe in detail any estimates that were made of market values. In particular, if the actuary has reason to believe that there may be items which might adversely affect the quality of assets, the actuary should disclose this information and quantify the impact, to the extent possible. In making this determination, the actuary may rely on or use the opinion of another person if such reliance or use is justified in the circumstances. Cash out value should be used for insurance company guaranteed annuity contracts and general fund deposit administration contracts.

If expenses are expected to be paid from the fund and the payment of these expenses is permitted under the plan, a reasonable allowance for wind-up expenses should be identified and deducted from the value of plan assets. In determining the wind up funded ratio of the plan, this net asset value is taken as the numerator in the funded ratio formula.

It is preferable that the report include a reconciliation of plan assets from the valuation date of the last filed actuarial report.

##### **Wind-Up Liability**

The wind-up liability must reflect all benefits provided under the plan and the applicable legislation on wind up and should be separately summarized for each major category of membership. For members and former members who are expected to receive a commuted value, the wind-up liability must be consistent with the individual commuted

values of the benefit entitlements. For members and former members who are receiving or are expected to receive a pension benefit, the wind-up liability should reflect the approximate cost of purchasing the pension benefits. For this purpose, either a quotation from an insurance company or an estimate based on the interest and mortality assumptions that underlie the CIA transfer value basis is acceptable.

### **2.5.2 Valuation Balance Sheet in Respect of a Partial Wind Up**

In the case of a partial wind up, the report should provide a valuation balance sheet in respect of the wound up portion of the plan as of the effective date of wind up. The determination of the amount of assets related to a partial wind up must be done on a basis that is appropriate in the circumstances.

Where a plan covers only members with Ontario employment, PCO staff will accept, as a matter of practice, the splitting of assets between the wound up portion and the continuing portion of the plan in proportion to the wind-up liabilities as of the effective date of wind up ("standard method"). Splitting of assets in proportion to going concern or solvency liabilities at the effective date of wind up or at a date other than the effective date of wind up will also be acceptable if the actuary can confirm that, in his/her opinion, such a split would not be materially different than that under the "standard method". If the actuary uses any other basis, then comments supporting the appropriateness of the basis selected should be included in the report.

For the continuing portion of the plan, the actuary should confirm whether the funding requirements as set out in the last filed funding actuarial report would continue to apply or otherwise set out the new funding requirements in a separate actuarial cost certificate or funding actuarial report.

### **2.6 Actuary's Statements of Opinion**

The actuary must provide statements of opinion in accordance with the CIA Standards.

## **SECTION III - Treatment of Surplus/Deficit**

The term "wind up" is defined in the Act to mean the termination and distribution of the assets of the pension plan. Therefore, in addition to establishing the benefits to be provided to affected members and former members, the wind-up report should identify any assets remaining after satisfaction of the liabilities (i.e., surplus) or assets shortfall in satisfaction of the liabilities (i.e., deficit).

### **3.1 Surplus**

If the plan is in a surplus position on wind up, the administrator should indicate how the surplus assets will be dealt with. Generally, distribution of assets must conform with the proposals set out in the wind-up report approved by the Superintendent. If the wind-up report does not indicate how the surplus will be dealt with, a supplement to the initial report dealing with the surplus assets will be required.

Distribution and allocation of surplus are dealt with in the policies and administrative practices contained in the BBS. Refer to Appendix B which summarizes all other policies relevant to wind up.

### **3.2 Deficit**

If the wind-up report reveals that the plan does not have sufficient assets to pay the liabilities on wind up, the employer must pay into the pension fund amounts required under section 75 of the Act.

The amount of deficit to be funded pursuant to clause 75(1)(b) is the amount by which the Ontario wind-up liability, exclusive of the unfunded portion of non-plan-vested benefits, exceeds the value of plan assets allocated for payment of pension benefits accrued with respect to employment in Ontario. Pursuant to clause 29(9)(a) of the Regulations,

where payments are being made in accordance with section 75 of the Act, the employer is not liable to pay the unfunded portion (based on the wind up funded ratio) of non-plan-vested benefits.

If the employer wishes to fund the deficit immediately, the wind-up report may be processed as if the plan did not have a deficit. However, before approval can be given, a commitment from the employer must be obtained to fund on a lump sum basis by a certain date (for example, the date at which wind-up benefits are expected to be settled). In lieu of a lump sum payment, the deficit may be funded in accordance with section 31 of the Regulations by annual special payments over a maximum period of five years commencing at the effective date of wind up (for qualifying plans, by monthly special payments over one year).

The plan administrator is required under section 32 of the Regulations to file a report annually until the employer's obligation under section 75 of the Act has been fulfilled. This annual report must be prepared by an actuary and must satisfy all standards normally applicable to a valuation report. In addition, the report should provide a gain and loss analysis since the last report filed and specify the special payments required to liquidate the remaining liability obligation under section 75 of the Act.

Subsections 29(7) and (8) of the Regulations set out the restrictions on cash out, transfers and annuity purchases prior to the plan being fully funded.

In the case of insolvency or declaration of bankruptcy, and where there is no funding under section 75 of the Act, all pension benefits may be reduced to the level at which they are funded (based on the wind up funded ratio) according to section 77 of the Act and clause 29(9)(b) of the Regulations.

#### **SECTION IV - Specific Issues Related to Wind Up**

In this Section, a few specific issues related to wind ups are discussed. To the extent available, the current administrative practice with respect to those issues is explained.

##### **Section IV.A**

#### **4.1 Payments Approved by the Superintendent**

Prior to the PCO's review of a wind-up report, the Superintendent may approve, under subsection 70(3) of the Act, various kinds of payments, including the payment of expenses, commencement of monthly pension payments to retirees under a defined benefit plan and purchase of immediate annuities for eligible retirees under a defined contribution plan. Death benefits will also generally be approved if PCO staff are satisfied that the plan would be fully funded.

The administrator may obtain approval from the Superintendent for a payment of expenses out of the plan fund. However, the administrator must ensure that such payment would not contravene section 22 of the Act.

Subsection 70(3) approvals will also be given by the Superintendent for payment of all benefit entitlements once PCO staff have reviewed the wind-up report and are satisfied that all benefits have been provided for properly. However, an outstanding issue related to surplus may remain: either the administrator has not determined how the surplus is to be dealt with or there is a surplus refund proposal that requires the Commission's consent.

Once the wind-up report is approved, all payments must be made in accordance with it.

#### **4.2 Prior Plans and Policies**

Prior plans and policies sponsored by the same employer are deemed to be benefits associated with the current plan whether or not the assets were consolidated as set out under subsection 81(3) of the Act. To the extent these apply to

members affected by the wind up, such prior plans and policies must also be included for the purposes of the wind up.

#### **4.3 Notice of Termination of Employment**

Pursuant to subsections 74(5) and (6) of the Act, membership in a non-contributory plan should include the period of notice of employment required under the *Employment Standards Act*. The notice period is included for both benefit eligibility and benefit calculation purposes. For contributory plans the members must be given the option to make the required contributions in respect of the notice period in order to have the period included for benefit purposes.

### **Section IV.B**

#### **4.4 Grow in Under Section 74 of the Act**

In accordance with subsection 74(1) of the Act, a member, whose age plus service or plan membership equals 55 or more at the effective date of wind up (the "rule of 55"), will be eligible to receive:

- (a) an immediate pension, if eligible under the plan;
- (b) a pension beginning at the earlier of the normal retirement date under the plan, or the date on which the member would be entitled to an unreduced pension under the plan had the plan not been wound up and the member's membership continued to that date;
- (c) a reduced pension in the amount payable under the plan beginning on the date on which the member would be entitled to the reduced pension under the plan if the member's membership continued to that date.

The benefit entitlements for the "rule of 55" members must reflect this grow in provision.

Furthermore, pursuant to subsection 74(3) of the Act, if a "rule of 55" member has at least 10 years of continuous service or membership at the date of wind up, the bridging benefits to which the member would have been entitled if the plan were not wound up and if the member's membership continued, subject to proration under subsection 74(4), must be reflected in the member's benefit entitlements.

#### **4.5 Treatment of Special Benefits**

The treatment of certain special benefits on wind up is outlined below:

- **Consent benefits** must be provided on a plan wind up as required under subsection 74(7) of the Act.
- **Escalated adjustments or indexation** (including adjustments that have not been made) are not considered ancillary benefits. They are part of the pension benefit under the plan, and thus must be included in the wind-up benefits.
- **Early retirement window benefits** should be included to the extent that a member would have become eligible for the benefits prior to the close of the window, had the plan not been wound up and the member's membership continued.
- **Plant closure benefits** and **permanent layoff benefits** should be included for wind-up purposes where the wind up is in conjunction with or accompanied by one of these events.
- **Prospective benefit increases** are not required to be included on plan wind up.

Where applicable, grow in to these special benefits should be provided in accordance with section 74 of the Act.

#### **4.6 Allocation of Assets for Multi-jurisdictional plans**

In the case of a wind up covering members in more than one jurisdiction in which there are insufficient assets to cover all liabilities, the method for allocating assets among the various jurisdictions is prescribed in section 30 of the Regulations. The distribution of assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

#### **Appendix A**

#### **Guidelines on Actuarial Assumptions and Methods For the Calculation of Individual Commuted Value of Benefit Entitlements on Plan Wind Up**

Subsection 29(2) of the Regulations requires that:

If a pension plan is being wound up in whole or in part, the minimum commuted value for the purposes of subsection 73(2) of the Act of a pension, deferred pension or ancillary benefit shall be the amount required to purchase the benefit from an insurance company as of the effective date of the wind up.

For the purpose of subsection 29(2), PCO staff will accept, as a matter of administrative practice, commuted values determined from either of the following bases:

- (1) a bona fide annuity quotation or a certified pricing basis from an insurance company as in effect on the effective date of wind up, or
- (2) the CIA Recommendations for the Computation of Transfer Values from Registered Pension Plans, effective September 1, 1993 (the "CIA Recommendations"), or its predecessors, as in effect on the effective date of wind up.

#### **A.1 Use of Insurance Companies' Quotes**

If a quotation from an insurance company is used as the basis for compliance with subsection 29(2) of the Regulations, one of the following criteria should be met:

##### **A.1.1 Bona Fide Annuity Quotation**

The quotation is a written bona fide annuity quote. A bona fide quote is a genuine offer to enter into a contract and the offer must have a definite expiry period which includes the effective date of wind up. The specifications for the quote must reflect all benefits available to the affected members and former members, including normal forms, early retirement options, pre-retirement death benefits, indexation, if applicable, and any other benefits such as plant closure, permanent layoff or disability benefits.

The plan administrator must certify that the specifications for the quote reflect the plan benefits provisions as well as the minimum legislative requirements such as grow in rights, post-1986 50% rule and pre-1987 minimum employee contributions plus interest, etc.

##### **A.1.2 Insurer's Pricing Basis**

The commuted values may be calculated using a pricing basis quoted by an insurer provided the following conditions are satisfied:

- the basis includes an interest rate assumption;
- the basis includes an explicit expense assumption;
- the basis includes the mortality table and the method of projection, as applicable; and
- the basis is certified by an actuary employed or contracted by the insurer as the basis that would be used for a bona fide quote for the affected group or a group with similar characteristics as of the effective date of wind up.

In using such a basis, the actuary would also need to make assumptions regarding other factors (e.g., retirement age and unisex mortality basis) as appropriate for the plan.

## **A.2 Actuarial Guidelines for PCO Staff**

If neither a bona-fide annuity quotation nor an insurer's pricing basis is used, the following actuarial guidelines will be used by PCO staff in their review of commuted value calculations. These guidelines were developed from the CIA Recommendations.

### **A.2.1 Interest**

For non-indexed pensions and fully indexed pensions, the assumed interest rates should not be higher than the respective rates determined in accordance with the CIA Recommendations.

Partially indexed pensions should be valued using the method as prescribed in the CIA Recommendations.

### **A.2.2 Mortality**

As a matter of practice, the mortality assumption should not be weaker than the *1983 Group Annuity Mortality Table (GAM83)* (including a level 10 per cent margin) as published on pages 880 and 881 of Volume XXXV of the *Transactions of the Society of Actuaries*.

#### Pre-retirement Death Benefits

If the only pre-retirement death benefit is the commuted value of the member's pension, it is appropriate to assume no mortality before retirement. Otherwise, a full description of how the pre-retirement death benefit, if any, is valued should be provided.

#### Unisex Table

In compliance with section 52 of the Act, a unisex mortality table must be used to determine the commuted values of post-1986 benefits. The report should state clearly the mix of the male and female rates, and indicate the basis from which the mix is derived, for example, relative to the number of members or liabilities.

For wind ups prior to September 1, 1993, PCO staff will accept the use of unisex rates for pre-1987 benefits. For wind ups on or after September 1, 1993, PCO staff may accept the use of unisex rates for pre-1987 benefits only if the report clearly indicates one of the following:

- unisex commuted values are required under the terms of the plan; or
- the plan document has a provision allowing the administrator to require the actuary to calculate unisex commuted values, and such direction has been provided in writing by the administrator to the actuary.

### **A.2.3 Retirement Age**

The report should explicitly state the retirement age assumption. PCO staff will not accept statements which simply state that there has been compliance with Section 74 of the Act.

Readers are asked to refer to subsection 4.4 of this administrative practice "*Grow in Under Section 74 of the Act*". For the purpose of section 74, members meeting the "rule of 55" should be assumed to retire at the most favourable retirement age (i.e., the retirement age that produces the highest commuted value).

To be consistent with the CIA Recommendations, if a plan provides that a deferred vested former member has the right to elect an earlier commencement date with a subsidized early retirement pension (i.e., a pension that exceeds the amount which is of actuarial equivalent value to the pension payable at normal retirement age), then the assumed retirement age should reflect the full value of the subsidy for all members and deferred vested former members, and not just the "rule of 55" members.

### **A.2.4 Marital Status**

If the plan provides for a subsidized joint and survivor normal form, or optional form, or a subsidized surviving spouse pension on death prior to retirement, an assumption should be made with respect to the members' marital status (i.e., proportion married and age difference between spouses).

If the plan provides a death benefit to a person who is the member's spouse at the date of termination of employment, the actual marital status of the member should be used in the computation. If this information is not available, a proportion of at least 80% married should be assumed. If the plan provides a death benefit to a person who is the member's spouse at the date of death and a change in the member's marital status subsequent to the member's termination is relevant to determining an eligible spouse, it should be assumed that there is at least an 80% probability that the member would have an eligible spouse at the time of death.

Where a sex-distinct mortality table is used, female spouses should be assumed to be at least three years younger than their male counterparts. The exact age of a spouse should be used in cases where the member's actual marital status is used.

Where a unisex mortality table is used, a mirror mortality table should be used for the spouse. For example, if the mortality assumption for the member is based on a combination of 80% male mortality rates and 20% female mortality rates, the mortality for the spouse should be based on 20% male mortality rates and 80% female mortality rates. If husbands are assumed to be three years older than wives on average, the assumed spouse's age would be 1.8 years younger than the member, regardless of the sex of the member (80% times 3 plus 20% times -3).

### **A.2.5 Date of Computation**

Individual commuted values of benefit entitlements normally should be calculated as of the effective date of wind up using a basis in effect on that date. If it is intended to use any other computation date(s), the actuary should confirm with PCO staff by submitting a proposal detailing the dates proposed and the supporting reasons before proceeding with the wind-up calculations.

## **Appendix B**

### **A Summary of Related Wind-up Policies and Administrative Practices with Index Number References and Publication Dates**

#### **A050 ACTUARIAL REPORTS**

-100 compliance with actuarial professional standards . . . . . Mar 1993 Bulletin 3/4



**A200 ADMINISTRATIVE EXPENSES**

- 800 payment on wind-up, PBA 1987 ss. 71(2) ..... May 1990 Bulletin 1/2
- 801 costs for wind up and surplus applications ..... Winter 1995 Bulletin 5/4

**A400 AMENDMENTS**

- 900 surplus withdrawal amendments, PBA 1987 s. 79 ..... Mar 1993 Bulletin 3/4

**A500 ANNUAL INFORMATION RETURN (AIR)**

- 205 late filing fees - how to calculate interest on overdue annual filing fee  
payments ..... Winter 1995 Bulletin 5/4
- 206 late filing fees - updated interest table ..... Fall-Winter 1997 Bulletin 6/4
- 800 which AIRs required at wind up ..... Dec 93-Jan 94 Bulletin 4/2

**B100 BENEFITS**

- 500 settlement of benefits ..... Dec 93-Jan 94 Bulletin 4/2

**P200 PENSION BENEFITS GUARANTEE FUND (PBGF)**

- 160 assessment as an administrative expense (formerly P200-850) ..... February 1992 Bulletin 2/4
- 250 late assessment payments - calculation of interest, 1995 ..... Winter 1995 Bulletin 5/4
- 251 late assessment payments - updated interest table ..... Fall-Winter 1997 Bulletin 6/4

**P520 PROCEDURES - COMMISSION**

- 761 draft consent document for filing Commission consent with the  
court for surplus distribution (replaces S900-253) ..... Fall-Winter 1997 Bulletin 6/4
- 780 pre-hearing conference procedures (formerly XTRB-02 & P300-700) ..... Aug 1993 Bulletin 4/1  
and Fall-Winter 1997 Bulletin 6/4
- 781 role of presiding officer at pre-hearing conference  
(formerly XTRB-03 & P300-705) ..... Spring 1994 Bulletin 5/1  
and Fall-Winter 1997 Bulletin 6/4

**S900 SURPLUS**

- 250 court applications - surplus entitlement in wound-up plans,  
effective Apr 23, 1992 ..... Oct 1992 Bulletin 3/2
- 253 consent form of filing Commission consent to surplus withdrawal  
with court, O. Reg. 909, ss. 8(2)& previous regulation ss. 7a(2)(c). . Summer 1994 Bulletin 5/2  
(replaced by P520-761) ..... and Fall-Winter 1997 Bulletin 6/4
- 300 distribution of surplus to plan beneficiaries on wind up,  
effective Dec 17, 1992 ..... Aug 1993 Bulletin 4/1
- 400 partial wind up: identification and administration of surplus,  
compliance with PBA 1990 ss. 70(6) ..... Summer 1994 Bulletin 5/2
- 501 surplus distribution to an employer, PBA 1990 s. 78 and 79  
and Reg. 909, s. 8 ..... Summer 1994 Bulletin 5/2
- 502 changes to the surplus application review process,  
effective on Sep. 1, 1994 ..... Summer 1994 Bulletin 5/2
- 503 surplus distribution - the role of legal counsel in obtaining  
written consent pursuant to s. 8 of O. Reg. 909 (supplemental to S900-501) .. Summer 1995 Bulletin 6/2
- 550 procedures for applications pursuant to ss. 7a(2) of O. Reg. 708/87  
(grandfathering provision) ..... Oct 1992 Bulletin 3/2
- 600 making applications under ss. 7a(2)(c)  
- O. Reg. 708/87, effective Aug 30, 1991 ..... Nov 1991 Bulletin 2/3
- 750 remaining in a wound-up plan ..... Aug 1993 Bulletin 4/1

- 800 surplus attributable to employer/employee contributions on plan wind up, PBA 1990 ss. 78(2) & O. Reg. 909 ss. 28(5), effective Jun 14, 1993 . . . . . Aug 1993 Bulletin 4/1
- 801 surplus attributable to employer and employee contributions on plan wind up, PBA 1990 ss. 78(2), O. Reg. 909 ss. 28(5) . . . . . Summer 1995 Bulletin 6/2
- 900 allocation of surplus distributed to members and former members on wind up . . . . . Spring 1994 Bulletin 4/3

**W100 WIND UP**

- 105 conditional wind-up application not permitted . . . . . Winter 1995 Bulletin 5/4
- 110 credited service for Employment Standards Act notice period . . . . . Fall 1994 Bulletin 5/3
- 125 employer intention respecting surplus in a wind-up report . . . . . Jul 1991 Bulletin 2/2
- 150 defined benefit plan - Superintendent's checklist for compliance on plan wind up . . . . . effective Jun 6, 1991
- 151 defined contribution plan - Superintendent's checklist for compliance on plan wind up . . . . . effective Jun 6, 1991
- 200 filing deadlines, O. Reg. 629/92, effective Oct 9, 1992 . . . . . Dec 1992 Bulletin 3/3
- 225 vesting, locking in & growing in on wind up, PBA 1990 s. 42, 50, 73, 74 . . . . . Oct 1992 Bulletin 3/2
- 230 individual statement at wind up, O. Reg. 909, ss. 28(2)(t), O. Reg. 629/92 . . . . . Dec 1992 Bulletin 3/3
- 275 plan with no members, PBA 1990 s. 68 . . . . . Jun 1992 Bulletin 3/1
- 300 guideline - notice of wind-up of pension plan, PBA ss. 68(2), formerly Policy Statement I: Notice Requirements (formerly N300-100) . . . . . Dec 93-Jan 94 Bulletin 4/2
- 301 notice of proposal for partial wind up, PBA ss. 68(2) and (3), O. Reg. 909 ss. 28(1), effective Jun 24, 1993 . . . . . Aug 1993 Bulletin 4/1
- 302 notice and consent requirements on partial wind up, PBA 11990 ss. 68(2) & (3), 78(2), 79, 112(3), O. Reg. 909 c. 8(1)(b)(iii) . . . . . Aug 1993 Bulletin 4/1
- 435 payment of immediate pensions . . . . . Feb 1992 Bulletin 2/4
- 450 significant numbers of members, PBA 1987 c. 70(1)(d) . . . . . Sep 1990 Bulletin 1/3
- 460 where employer sells, assigns or transfers the business PBA 1990 c. 69(1)(f) . . . . . Fall 1994 Bulletin 5/3
- 800 successor plan does not preclude wind up of original plan PBA 1990 ss. 81(1) . . . . . Winter 1995 Bulletin 5/4

**XTRB**

- 01 applications before the Commission - decision-making process (formerly P300-100) . . . . . Aug 1993 Bulletin 4/1
- 04 submission deadlines for PCO monthly meetings . . . . . Spring 1995 Bulletin 6/1

**Key to the *PCO Bulletin* - Volumes and Issues**

February 1990	Vol. 1, Issue 1*	August 1993	Vol. 4, Issue 1*
May 1990	Vol. 1, Issue 2*	December 1993	Vol. 4, Issue 2
September 1990	Vol. 1, Issue 3	Spring 1994	Vol. 5, Issue 1
December 1990	Vol. 1, Issue 4	Summer 1994	Vol. 5, Issue 2*
		Fall 1994	Vol. 5, Issue 3*
March 1991	Vol. 2, Issue 1	Winter 1995	Vol. 5, Issue 4
July 1991	Vol. 2, Issue 2		
November 1991	Vol. 2, Issue 3	Spring 1995	Vol. 6, Issue 1
February 1992	Vol. 2, Issue 4*	Summer 1995	Vol. 6, Issue 2*
		Winter-Spring 96	Vol. 6, Issue 3

June 1992	Vol. 3, Issue 1	Fall-Winter 97	Vol 6, Issue 4
October 1992	Vol. 3, Issue 2	<i>January 1998</i>	<i>Vol 6, Issue 5</i>
December 1992	Vol. 3, Issue 3*	<i>December 1998</i>	<i>Vol 7, Issue 1</i>
March 1993	Vol. 3, Issue 4*	* = OUT OF PRINT	

*(The listings have been updated for accuracy. This is a revision of W100-100)*