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SECTION:	Surplus
INDEX NO.:	S900-401
TITLE:	Partial Wind Up - Identification and Administration of Surplus - PBA ss. 70(1)(c) and 70(6) - Regulation 909 ss. 8(1) and 28.1
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	S900-400

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This policy replaces S900-400 (Partial Wind Up - Identification and Administration of Surplus, Compliance with PBA, 1990 ss. 70(6)) as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

Section 70(6) of the PBA states:

On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

It is FSCO's position, as confirmed by the Supreme Court of Canada in *Monsanto v. Ontario (Superintendent of Financial Services)*, that the rights and benefits referred to in section 70(6) of the PBA include any right to surplus assets that would exist had a full wind up of the pension plan occurred on the date of the partial wind up.

#### **Assets in the wound up portion of the pension plan**

Section 70(1)(c) of the PBA requires that the administrator of a plan that is to be wound up in whole or in part file a wind up report that sets out "the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits". Furthermore, section 15(1) of the Regulation requires that the report under section 70 of the PBA must be prepared by an actuary. Accordingly, on partial wind up, it is the actuary's responsibility to identify assets related to the wound up portion of the plan. Where, in accordance with section 15(2) of the Regulation, the report is not prepared by an actuary, the party preparing the report must identify the assets related to the wound up portion of the plan.

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 and must comply with the PBA and the Regulation, and have regard for any relevant FSCO policies, procedures and administrative practices. It is not acceptable to identify the assets in the wound up portion of the plan as those equal only to the partial wind up liabilities.

### **Administration of Assets**

The split of the assets of the plan into two distinct pieces, the wound up portion and the on-going portion, may be either actual or notional. Where the plan administrator puts the assets related to the wound up portion of the plan in a separate trust, or segregates the assets within a master trust, an actual split is said to occur. Where the assets remain in a single trust, but separate sub-accounts are set up within the trust or separate tracking of the assets is set up for the wound up and on-going portions of the plan, a notional split is said to occur. Once the actual or notional split is complete, the plan administrator should review the suitability of the investments with regard to the assets of each portion and, where necessary, update the statement of investment policies and procedures to allow for any changes which follow from the review.

Distribution of the assets related to a partial wind up must conform with the proposals set out in the partial wind up report approved by the Superintendent of Financial Services. A supplement to a partial wind up report will be required if the surplus distribution proposals are not reflected in the initial partial wind up report. The partial wind up is complete only when all assets of the wound up portion of the plan have been distributed.