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SECTION:	Administrative Expenses
INDEX NO.:	A200-803
TITLE:	Fees and Expenses for Wind Ups and Surplus Refund Applications - PBA ss. 10(1)9. and 22.1(4) and (5)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	A200-802

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This policy replaces A200-802 (Costs for Wind Up and Surplus Applications) 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.*

The purpose of this policy is to clarify whether fees and expenses incurred for pension plan wind ups and surplus withdrawal applications may be paid from the pension fund.

Section 10(1)9. of the PBA requires that the documents that create and support a pension plan include the mechanism for payment of the cost of administration of the pension plan and pension fund. Section 22.1(4) of the PBA permits the administrator of the pension plan (administrator) to pay from the pension fund to an agent, employer or other person who provides services relating to the administration of the plan or the administration and investment of the fund, the reasonable fees and expenses of the agent, employer or other person.

In the case of a wind up, the administrator may pay from the pension fund the reasonable fees and expenses of an agent, employer or other person who provides services relating to the wind up of the plan as the fees and expenses relate to the administration of the plan and the fund. The administrator is not allowed to pay these fees and expenses if payment to the agent, employer or other person is prohibited, or otherwise provided for in the plan and funding documents, including any trust agreements. Current plan and funding documents, along with historical plan and funding documents must be reviewed to determine whether the administrator is prohibited from paying those fees and expenses out of the fund.

In the case of a surplus withdrawal application by an employer, the payment of fees and expenses associated with the surplus withdrawal application cannot be paid from the pension fund as they do not relate to the administration of the plan or administration or investment of the fund. If the Superintendent of Financial Services consents to the surplus withdrawal application, the fees and expenses may be paid out of the surplus prior to the distribution of the surplus. Where the employer's application for withdrawal of surplus is based on a written agreement among the employer, members, former members, retired members and other persons entitled to payments under the plan as of the specified date for payment of surplus or on the date of the wind up, the agreement of the parties will be required.