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*This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.*

## **CONSULTATION DRAFT**

### **ONTARIO REGULATION**

To be made under the

### **PENSION BENEFITS ACT**

### **TARGET BENEFITS**

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#### **Application**

1. This Regulation applies with respect to pension plans that provide target benefits.

#### **Interpretation**

2. (1) In this Regulation,

“General Regulation” means Regulation 909 of the Revised Regulations of Ontario, 1990 (General) made under the Act.

(2) Expressions used in this Regulation have the same meaning as in the General Regulation, except where otherwise indicated.

**Prescribed criteria, s. 39.2 (1) of the Act**

3. (1) The following are prescribed as criteria for the purpose of paragraph 10 of subsection 39.2 (1) of the Act:

1. The pension plan is not a jointly sponsored pension plan.
2. At the end of at least one of the last three fiscal years of the pension plan, no more than 95 per cent of the members of the plan were employed by one employer.
3. During at least one of the last three fiscal years of the pension plan, at least 15 employers made contributions to the plan or at least 10 per cent of the members of the plan were employed by two or more employers.

(2) For the purposes of subsection (1), a group of employers that are affiliates within the meaning of the *Business Corporations Act* or the *Not-for-Profit Corporations Act, 2010* is deemed to be one employer.

**Non-application of General Regulation**

4. The following provisions of the General Regulation do not apply with respect to pension plans that provide target benefits:

1. Sections 4 and 5.
2. Sections 6 to 6.0.5.
3. Section 7.0.1.
4. Sections 11.1 and 11.2.
5. Sections 19 and 26.

**Separation of assets**

5. If a pension plan provides both target benefits and defined contribution benefits,

- (a) the total market value of the plan assets in respect of defined contribution benefits held in any part of the pension fund that also holds assets in respect of target benefits shall not exceed 5 per cent of the total market value of all of the plan assets in respect of target benefits; and

- (b) the assets of the pension fund relating to target benefits shall not be used to pay normal cost contributions or expenses for the part of the plan that provides defined contribution benefits.

### **Benefit reductions**

6. The following rules about benefit reductions apply to target benefits:

1. A reduction in the amount or the commuted value of an accrued benefit cannot reduce the going concern liabilities in respect of accrued benefits of all former members by a percentage greater than the reduction in going concern liabilities in respect of accrued benefits of all members.
2. Before the payment of the first instalment is due in respect of a deferred pension or pension, the amount or the commuted value of accrued benefits cannot be reduced solely because of the termination of employment or membership of a member, or the death of a former member or a retired member.

### **Benefit improvement rules**

7. (1) In this section,

“former member specified reduction” means, subject to subsection (3), any reduction described in subsection 14 (1) of the Act to the amount or the commuted value of accrued target benefits provided by the plan for former members made when they were former members and effective on or before the effective date of the amendment to improve benefits, but does not include reductions that have been restored; (“réduction précisée visant les anciens participants”)

“member specified reduction” means, subject to subsection (3), any reduction described in subsection 14 (1) of the Act to the amount or the commuted value of accrued target benefits provided by the plan for members made when they were members and effective on or before the effective date of the amendment to improve benefits, but does not include reductions that have been restored. (“réduction précisée visant les participants”)

(2) For the purposes of this section, references to the restoration of a reduction and similar expressions refer to a benefit improvement that restores the amount or the commuted value of accrued benefits in respect of service before the date of reduction to what the commuted value or amount of benefits would have been on the effective date of the amendment providing the restoration had the reduction not occurred.

(3) For a plan that converted benefits to target benefits, member specified reductions and former member specified reductions do not include any reductions effective before the effective date of the conversion.

(4) For the purposes of clause 14.0.1 (1.1) (b) of the Act, the following are the prescribed circumstances:

1. All of the following apply:

- i. Former member specified reductions would exist after the amendment.
- ii. The amendment would improve benefits for members.
- iii. The amendment would not restore member specified reductions.

2. All of the following apply:

- i. Former member specified reductions would exist after the amendment.
- ii. The amendment would restore a member specified reduction.

iii. Either of the following apply:

- A. The amendment would not restore a former member specified reduction.
- B. The value of “A” divided by “B” is less than “C” divided by “D”, where,

“A” is the increase in liabilities due to the amendment that restores former member specified reductions, determined on the basis of a going concern valuation,

“B” is the liabilities of benefits in respect of former member specified reductions before the amendment that improves benefits, determined on the basis of a going concern valuation,

“C” is the increase in liabilities due to the amendment that restores member specified reductions, determined on the basis of a going concern valuation, and

“D” is the liabilities of benefits in respect of member specified reductions before the amendment that improves benefits, determined on the basis of a going concern valuation.

**Certain multijurisdictional pension plans, s. 39.2 (1) para. 3.1 of the Act**

8. For the purposes of paragraph 3.1 of subsection 39.2 (1) of the Act, a benefit does not need to be determined in part with reference to the value of the assets of the pension fund if the reduction of the benefit is prohibited by the applicable legislation of a designated jurisdiction and the exemption in section 9 applies in respect of the benefit.

**Certain multijurisdictional pension plans, s. 39.2 (1) para. 8 of the Act**

9. For the purposes of paragraph 8 of subsection 39.2 (1) of the Act, the reduction of a benefit provided by a pension plan may be prohibited by the applicable legislation of a designated jurisdiction, but only if, at the end of at least one of the plan's last three fiscal years, no more than 10 per cent of members entitled to target benefits under the pension plan have a benefit whose reduction is prohibited by a designated jurisdiction.

**Providing for funding**

10. Every pension plan shall include a provision for the funding of pension benefits and any other benefits provided under the plan that sets out the obligation of an employer, or any person required to make contributions on behalf of the employer, to contribute in respect of the plan.

**Payments**

11. (1) An employer, or any person required to make contributions on behalf of an employer with respect to a pension plan, shall make payments to the pension fund or an insurance company, as applicable, that are not less than,

- (a) any contributions received from employees, including money withheld from an employee, whether by payroll deduction or otherwise as the employee's contribution to the pension plan; and
- (b) such amounts set out in the applicable collective agreements or other documents that create and support the pension plan as are required to be paid by the employer or the person required to make contributions on behalf of the employer.

(2) The payments referred to in subsection (1) shall be made within the following time limits:

- 1. All sums received by the employer from an employee or deducted from an employee's pay as the employee's contribution to the pension plan, within 30 days after the month in which the sum was received or deducted.
- 2. All amounts, other than those referred to in paragraph 1, within the time limit specified by the applicable collective agreements or other documents that create and support the pension plan but, in any event, within 30 days after the month in which the period of employment giving rise to such payments occurred.

(3) The actuary shall, as part of the report required under subsection 3 (1) or section 13 or 14 of the General Regulation,

- (a) perform such tests as will demonstrate the sufficiency of the contributions required by the applicable collective agreements or other documents that create and support the pension plan to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or
- (b) where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the plan that,
  - (i) subject to subsection (6), are in accordance with the plan's funding and benefits policy,
  - (ii) include an option that would implement the reductions contained in the plan's funding and benefits policy that are to be implemented if no other action is taken to ensure the sufficiency of contributions as required by paragraph 9 of subsection 4 (1) of Ontario Regulation [**O. Reg. # for new written policies regulation**] (Written Policies) made under the Act, and
  - (iii) will have the result that the required contributions will be sufficient to provide the benefits under the plan.

(4) For the purposes of clause (3) (a), the sufficiency of the required contributions is to be determined on the basis of a going concern valuation.

(5) For the purposes of clause (3) (a), the required contributions are sufficient if, for each year of the period covered by the report, they are not less than the amount calculated using the following formula:

$$A - B$$

in which,

“A” is the sum of the following amounts, each determined using a benefit allocation method:

1. The normal cost of the plan.
2. The amount equal to the provision for adverse deviations in respect of the normal cost for the plan.
3. The special payments set out in a previous report, including, in the case of a plan in respect of which benefits were converted to target benefits, reports filed with a

valuation date before the effective date of the conversion, that remain to be paid with respect to any going concern unfunded liability.

4. In the case of a plan in respect of which benefits were converted to target benefits, the special payments set out in a previous report filed with a valuation date before the effective date of the conversion that remain to be paid with respect to any plan amendment that increases the going concern liabilities.
5. The special payments, other than those referred to in paragraph 4, if applicable, set out in a previous report that remain to be paid with respect to,
  - i. any plan amendment that increases the going concern liabilities, and
  - ii. the amount equal to the provision for adverse deviations in respect of the increase in going concern liabilities.
6. The special payments to be paid with respect to any going concern unfunded liability that is determined in the report.
7. The special payments to be paid with respect to,
  - i. any plan amendment that increases going concern liabilities that are determined in the report, and
  - ii. the amount equal to the provision for adverse deviations in respect of the increase in going concern liabilities, and

“B” is determined as follows:

1. If the administrator of the plan so elects for the purposes of the report, the amount is zero.
2. If the administrator does not elect the amount to be zero under paragraph 1, the amount is the lesser of the following amounts, each determined using a benefit allocation method:
  - i. The amount of the market value of the plan assets that exceeds 105 per cent of the plan’s going concern liabilities.
  - ii. The amount of the market value of the plan assets that exceeds the sum of the plan’s going concern liabilities and the amount equal to the provision for adverse deviations in respect of going concern liabilities of the plan.

(6) In the case of a plan in respect of which benefits were converted to target benefits, subclause (3) (b) (i) does not apply in respect of the report filed with a valuation date that is the effective date of the conversion.

(7) If an actuary proposes options in accordance with clause (3) (b),

- (a) the actuary shall submit a copy of the report containing the proposed options to the administrator before the administrator is required to file or submit the report under section 3, 13 or 14 of the General Regulation, as applicable;
- (b) the administrator shall take such action as will result in the plan meeting the funding requirements of this section within 90 days after the administrator files or submits the report under section 3, 13 or 14 of the General Regulation, as applicable; and
- (c) within 120 days after the report is filed or submitted, the administrator shall advise the Chief Executive Officer of the action taken and shall file all relevant documents.

### **Special payments — general**

**12.** (1) Except as provided in section 13, the special payments required to be made in respect of a pension plan shall be not less than the sum of the following:

- 1. In the case of a plan in respect of which benefits were converted to target benefits:
  - i. If subsection 6.0.4 (6) of the General Regulation applied to a plan amendment that increased benefits before the effective date of the conversion, the special payments required to liquidate any increase in the amount determined under clause (a) of the definition of “going concern unfunded liability” in subsection 1 (2) of the General Regulation, as a result of the amendment, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of eight years beginning on the valuation date of the report in which the increase in the going concern unfunded liability was determined.
  - ii. If clause 5 (1.0.0.1) (a) of the General Regulation applied to a report with a valuation date before the effective date of the conversion, any special payments required under that clause remaining to be paid.
  - iii. If clause 5 (1.0.0.1) (b) of the General Regulation applied to a report with a valuation date before the effective date of the conversion, the special payments required to liquidate any amount determined under clause (a) of the definition of “going concern unfunded liability” in subsection 1 (2) of the General Regulation, determined in the last report filed with a valuation date before the effective date of the conversion, other than the special payments described in clauses 5 (1.0.0.1) (c) and (d) of the General Regulation, if applicable, with interest at the going concern valuation interest rate, by equal



monthly instalments over a period of 10 years beginning one year after the valuation date of the report.

- iv. If clause 5 (1.0.0.1) (c) of the General Regulation applied to a past service unfunded actuarial liability, that arose on a valuation date before the effective date of the conversion, the special payments required to liquidate the past service unfunded actuarial liability, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 15 years beginning on the date the past service unfunded actuarial liability arose.
- v. If clause 5 (1.0.0.1) (d) of the General Regulation applied to a past service unfunded actuarial liability, that arose on a valuation date before the effective date of the conversion, the special payments required to liquidate the past service unfunded actuarial liability, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning on the effective date of the plan.
- vi. If clause 5 (1.0.0.1) (e) of the General Regulation applied to a plan amendment that increased the plan's going concern liabilities before the effective date of the conversion, the special payments required to liquidate any increase in the going concern liabilities related to the amendment that exceeds the lump sum benefit improvement contribution in respect of the increase, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of eight years beginning on the effective date of the amendment.

2. In the case of any pension plan:

- i. The special payments required to liquidate any going concern unfunded liability not described in paragraph 1, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 12 years beginning on a date not later than one year after the valuation date of the report in which the going concern unfunded liability was determined.
- ii. If a plan amendment increases the going concern liabilities of the plan in a circumstance other than the one described in subparagraph 1 vi, the special payments required to liquidate any increase in the going concern liabilities related to the amendment and the amount equal to the provision for adverse deviations in respect of the increase in going concern liabilities, with interest at the going concern valuation interest rate, by equal monthly instalments over a period of 10 years beginning on the effective date of the amendment.

(2) Subparagraph 2 i of subsection (1) applies, and subparagraph 2 ii of subsection (1) does not apply, with respect to an increase in the going concern unfunded liability that results from an amendment that is made to confer a benefit improvement that is required by law.

### **Special payments if going concern excess**

**13.** (1) The following rules about special payments apply:

1. If a report discloses a going concern excess under the plan that is greater than or equal to the present value of all special payments identified in previous reports that remain to be paid in respect of any going concern unfunded liability mentioned in subparagraph 1 i, ii, iii, iv or v of subsection 12 (1) or subparagraph 2 i of that subsection or any increase in the going concern liabilities mentioned in subparagraph 1 vi of subsection 12 (1), the special payments determined under those provisions shall be reduced to zero.
2. If all special payments described in paragraph 1 have been reduced to zero under that paragraph or if there are no special payments as described under that paragraph, and if the report discloses a going concern excess under the plan that is greater than the sum of the amounts listed in subsection (2), the following rules apply:
  - i. If the difference between the going concern excess and the sum of the amounts listed in subsection (2) is greater than or equal to the present value of all special payments identified in the report and in previous reports that remain to be paid in respect of increases in going concern liabilities mentioned in subparagraph 2 ii of subsection 12 (1), the special payments determined under that subparagraph shall be reduced to zero.
  - ii. If the difference between the going concern excess and the sum of the amounts listed in subsection (2) is less than the present value of all special payments identified in the report and in previous reports that remain to be paid in respect of increases in going concern liabilities mentioned in subparagraph 2 ii of subsection 12 (1), the monthly rate of special payments under that subparagraph shall not be changed but the amortization period or periods for the special payments shall be reduced so as to reduce the difference to zero.
3. If the report discloses a going concern excess under the plan that is less than the present value of all special payments identified in previous reports that remain to be paid in respect of any going concern unfunded liability mentioned in subparagraph 1 i, ii, iii, iv or v of subsection 12 (1) or subparagraph 2 i of that subsection or any increase in the going concern liabilities in subparagraph 1 vi of that subsection, any going concern unfunded liability or increase in the going concern liabilities may be reduced and reamortized over a period not exceeding the remainder of the original amortization period for the liability so as to reduce the going concern excess to zero.

(2) The amounts referred to in paragraph 2 of subsection (1) are the following:

1. The greater of the following amounts:
  - i. The amount equal to the provision for adverse deviations in respect of going concern liabilities of the plan.
  - ii. Five per cent of the going concern liabilities of the plan.
2. The present value of all special payments described in paragraph 1 of subsection (1) before being reduced to zero under that paragraph.

(3) For the purpose of determining the amount equal to the provision for adverse deviations in respect of going concern liabilities of the plan in subparagraph 1 i of subsection (2), the reference to the “last filed report” in subsection 14 (2) shall be read as a reference to the report mentioned in paragraph 1 of subsection (1).

#### **Provision for adverse deviations — general**

**14.** (1) The amount equal to the provision for adverse deviations in respect of the normal cost for a pension plan is the provision for adverse deviations determined in accordance with section 15 multiplied by the plan’s normal cost.

(2) The amount equal to the provision for adverse deviations in respect of going concern liabilities of a pension plan is the provision for adverse deviations determined in accordance with section 15 multiplied by the plan’s going concern liabilities as of the valuation date of the last filed report.

(3) The amount equal to the provision for adverse deviations in respect of an increase in going concern liabilities of a pension plan is the provision for adverse deviations determined in accordance with section 15 multiplied by the increase in going concern liabilities related to a plan amendment as of the effective date of the plan amendment.

#### **Provision for adverse deviations — determination**

**15.** (1) The provision for adverse deviations on a particular valuation date for a pension plan is the percentage, not less than zero, determined by the administrator of the plan, in accordance with the plan’s funding and benefits policy.

(2) In the case of a plan in respect of which benefits were converted to target benefits, in the report filed with a valuation date that is the effective date of the conversion, the provision for adverse deviations described in subsection (1) need not comply with the plan’s funding and benefits policy.

(3) Despite subsection (1), the provision for adverse deviations is deemed to be zero for a pension plan's liabilities in respect of defined contribution benefits.

### **Request for information, prescribed person**

**16.** The following persons are prescribed as other persons for the purposes of subsection 98.2 (1) of the Act:

1. The actuary who prepared a report required in respect of the plan under section 3, 13 or 14 of the General Regulation.
2. Any agent employed by the administrator of the plan.

### **Commuted value**

**17.** (1) For the purposes of section 42 of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall be the value determined in accordance with section 3500 ("Pension Commuted Values") of the *Standards of Practice* of the Actuarial Standards Board, published by the Canadian Institute of Actuaries, as amended from time to time.

(2) Subsection (1) does not apply if a pension plan is being wound up.

(3) For purposes other than those of section 42 of the Act and subsections 29 (2) and (2.2) of the General Regulation, the commuted value of a pension, deferred pension or ancillary benefit shall be calculated using methods and actuarial assumptions that are consistent with accepted actuarial practice.

(4) The administrator shall not undertake a transfer of the commuted value of a pension, deferred pension or ancillary benefit in accordance with section 43 of the Act, unless the following conditions are satisfied:

1. The transfer ratio of a pension plan is equal to or greater than one.
2. If the administrator of a plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 13 or 14 of the General Regulation, events have taken place that may result in the reduction of the transfer ratio of the plan to a value less than 0.9, the administrator has received the Chief Executive Officer's approval under subsection 42 (8) of the Act to undertake the transfer.

(5) The authority of an administrator under subsection 43 (1) of the Act is subject to the entitlement of any person under the Act or the regulations on the wind up of a pension plan.

(6) The administrator shall not undertake a transfer of the commuted value in accordance with sections 42, 48 or 67.6 of the Act without prior approval of the Chief Executive Officer under subsection 42 (8) of the Act if either of the following circumstances exist:

1. If the market value ratio of a plan is equal to or greater than one and the administrator of a plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 13 or 14 of the General Regulation, events have taken place that may result in the reduction of the market value ratio to a value less than 0.9.
  2. If the market value ratio of a plan is less than one and the administrator of the plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 13 or 14 of the General Regulation, events have taken place that may result in the reduction of the market value ratio by 10 per cent or more of the most recently determined market value ratio.
- (7) Subsection (6) does not apply with respect to the following transfers:
1. Amounts transferred pursuant to a reciprocal transfer agreement that is filed.
  2. Amounts that are paid under subsection 44 (7) of the Act.
  3. Amounts that are paid under subsection 50 (1) of the Act.

#### **Continuing pension plan, determination of surplus**

**18.** For the purposes of determining surplus in a continuing pension plan,

- (a) the value of the assets of the pension plan shall be calculated on the basis of the market value of the investments held by the pension fund plus any cash balances and accrued or receivable items; and
- (b) the value of the liabilities of the pension plan shall be the greater of “A” and “B” or, if a benefit allocation method is not used to set contribution rates, the greatest of “A”, “B” and “C”, where,
  - “A” is the sum of going concern liabilities determined using a benefit allocation method and the amount equal to the provision for adverse deviations in respect of going concern liabilities determined using the benefit allocation method, as disclosed in the last valuation report,
  - “B” is 105 per cent of going concern liabilities determined using a benefit allocation method, as disclosed in the last valuation report, and
  - “C” is the going concern liabilities determined under the actuarial cost method used by the plan.