Temporary Relief 2008 - 2011

A bulletin respecting the temporary solvency relief on actuarial valuation reports filed between December 31, 2008 to January 1, 2011.

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Financial and Consumer Affairs Authority

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TEMPORARY SOLVENCY DEFICIENCY PAYMENT RELIEF

Introduction

In response to the unprecedented decline in the capital markets in 2008, *The Pension Benefits Regulations, 1993* ("the Regulations") were amended effective September 11, 2009, to provide temporary relief from solvency deficiency funding for sponsors of defined benefit plans.

Three Year Moratorium

The Regulations have been amended to allow a pension plan administrator to file an election for a three year moratorium from funding a solvency deficiency established in a valuation of a plan prepared between and including December 31, 2008 and January 1, 2011 ("the relief valuation").

The moratorium provides plan sponsors with time to consider options aimed at ensuring the long term viability of the pension plan. The time should be used to think strategically and act accordingly.

Plans which are Eligible to Elect Relief

Plan administrators for all defined benefit plans which are registered under the *The Pension Benefits Act, 1992* (the Act) are eligible to file an election for relief.

For shared cost plans, where plan members and the employer are both required to make payments into the plan with respect to a solvency deficiency, the relief extends to solvency deficiency payments required by members and the employer.

Plan administrators for plans subject to subsection 40(5) of the Act (plans where the employer's liability is limited pursuant to a collective bargaining agreement with respect to funding a plan) are eligible to elect relief. This relief would be relief from the solvency test in clause 36(3)(c) of the Regulations. By electing relief, the plan sponsor is relieved from the requirement that benefits be reduced to meet the solvency test.

Benefit Improvements

No benefit improvements can be made during the period of the relief, except where established by collective bargaining agreement or other contract before the coming into force of *The Pension Benefits Amendment Regulations, 2009* on September 11, 2009.

Decrease in Current Service Contributions

No amendments which decrease current service contributions can be made during the period of relief, except where established by collective bargaining agreement or other contract before the coming into force of *The Pension Benefits Amendment Regulations, 2009* on September 11, 2009.

Solvency Deficiency Payments during Moratorium

Any solvency deficiency payments for a solvency deficiency established prior to election of the relief must continue to be made during the period of the relief.

Although payments toward a solvency deficiency established in the relief valuation are not required if an election for relief is made, the plan sponsor may make solvency deficiency payments, if permitted under the *Income Tax Regulations*.

If a plan elects relief, and then files a subsequent valuation ("the subsequent valuation") during the relief period, and the subsequent valuation reveals a solvency deficiency, then that new solvency deficiency must be amortized over a period not exceeding five years. In the subsequent valuation, the solvency assets would reflect the present value of unamortized solvency deficiency payments established in a pre-relief valuation, and the present value of up to five years of unamortized unfunded liability payments. As payments are not required on the solvency deficiency established in the relief valuation, solvency assets in the subsequent valuation will not reflect unamortized solvency deficiency payments established in the relief valuation. However, the present value of the notional payments remaining in the three year relief period can be deducted from the solvency deficiency established in the subsequent valuation.

Filing an Election for Relief

To elect relief, the administrator is required to file a written notice of election with the Superintendent of Pensions. A letter from the administrator to the Superintendent is sufficient for this purpose. The election may be, but is not required to be, filed at the same time as the relief valuation is filed. The election can be filed any time after the relief valuation is filed, as long as it is not filed after September 30, 2011.

Where the election is filed at the same time as the relief valuation, the three year period of relief begins at the review date.

Where the election is filed after the relief valuation, the relief begins from the date of the election, and carries on for three years from that date. Solvency deficiency payments as identified in the relief valuation would have to be made for the period between the review date and the election date.

The election can only be made once. The three year moratorium from funding a solvency deficiency can only be applied to the solvency deficiency established in the relief valuation that was submitted with the notice of election. If a subsequent valuation is filed during the relief period, the administrator cannot elect relief for a solvency deficiency established in the subsequent valuation. The new solvency deficiency has to be funded over a period that does not exceed five years.

Disclosure to Members

Within sixty days of providing written notice of election to the Superintendent of Pensions, the administrator must provide written notice of election to plan members and former members.

Normal Cost

Surplus assets identified in the going concern valuation can't be used for employer contributions toward the plan's normal actuarial cost. This does not apply to cost-shared plans, where the plan members are contractually obligated to share in funding the actuarial cost of the plan.

Revised Standards of Practice

On December 12, 2008, the Actuarial Standards Board (ASB) published its Revised Standards of Practice for Pension Commuted Values (Revised Standards). The effective date of the Revised Standards is April 1, 2009. However, the ASB has stated that early implementation is permitted for solvency valuations with a review date on or after December 12, 2008, if appropriate to the circumstances of the plan and if permitted by any applicable pension regulator.

Subsection 24(1) of the Regulations states that the commuted value of benefits must be determined in accordance with the recommendations issued by the Canadian Institute of Actuaries, as amended from time to time. The SFSC is not opposed to a plan using the Revised Standards for solvency valuations prior to April 1, 2009, provided the review date is on or after December 12, 2008.

Withdrawal from Relief

An administrator may withdraw the election by filing a notice of withdrawal with the Superintendent of Pensions. The withdrawal can only have effect from the plan's fiscal year end. An actuarial valuation is required to be prepared as at the effective date of the withdrawal ('the withdrawal valuation"), and filed not later than nine months after the review date.

If a plan elects relief, and then files a withdrawal valuation, and the withdrawal valuation reveals a solvency deficiency, then that new solvency deficiency must be amortized over a period not exceeding five years. In the withdrawal valuation, the solvency assets would reflect the present value of unamortized solvency deficiency payments established in a pre-relief valuation, and the present value of up to five years of unamortized unfunded liability payments. As payments are not required on the solvency deficiency established in the relief valuation, solvency assets in the withdrawal valuation will not reflect unamortized solvency deficiency payments established in the relief valuation. In the case of a withdrawal, the present value of the notional payments remaining in the three year relief period cannot be deducted from the solvency deficiency established in the withdrawal valuation.

End of the Three Year Relief Period

An actuarial valuation is required to be prepared as at the end of the relief period ("end of relief valuation"). This would be the usual triennial valuation.

Any solvency deficiency payments relating to a deficiency established prior to the election of the relief must continue to be amortized in the usual manner. Payments toward a deficiency established in the relief valuation are not required. Any new deficiency established in the end of the relief valuation must be funded over the usual five year period. In the end of relief valuation, the solvency assets would reflect the present value of unamortized solvency deficiency payments established in a pre-relief valuation, and the present value of up to five years of unamortized unfunded liability payments. As payments are not required on the solvency deficiency established in the relief valuation, solvency assets in the end of relief valuation will not reflect unamortized solvency deficiency payments established in the relief valuation.

Termination of Relief

The Superintendent of Pensions may terminate the election for relief if any requirements under the Regulations are breached, and all solvency deficiencies of the plan must then be funded in accordance with section 36 of the Regulations.

Funding on Plan Termination

Where a plan that has elected relief is terminated during the three year relief period (even if there is a withdrawal from relief), and there is a solvency deficiency identified in the plan termination report, the employer must either pay off the solvency deficiency in a lump sum or via payments made at least monthly over a period of not more than five years from the review date. However, there are two exceptions to this requirement:

1. Where the liability of the employer with respect to funding a solvency deficiency is limited pursuant to a collective bargaining agreement (plans subject to subsection 40(5) of the Act), employers are required only to contribute the amount established in the agreement, regardless of whether or not it meets the solvency requirements of the Regulations.

2. Where the plan is a cost shared plan (plans where members and the employer are both required to make payments into the plan with respect to a solvency deficiency), the solvency deficiency does not have to be paid off.

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