



REQUEST FOR COMMENTS

Notice and Request for Comment: Publication of proposed Superintendent of Pensions guidelines respecting a transfer of assets involving a shared risk plan (the “guidelines”) under the *Pension Benefits Act*.

Introduction

The Superintendent of Pensions is releasing proposed guidelines respecting a transfer of assets involving a shared risk plan to accompany the *Pension Benefits Act* for consultation.

Purpose of Proposed Guidelines

These guidelines would apply to any transfer of assets from a pension plan to a shared risk plan. Their purpose would be to set out the general expectations and requirements of the Superintendent of Pensions regarding the transfer of assets and the application seeking the Superintendent of Pensions’ consent for the transfer of assets.

How to Provide Your Comments

All submissions should refer to “**Guidelines respecting a transfer of assets involving a shared risk plan**”. This reference should be included in the subject line if the submission is sent by email. Comments are to be provided, in writing, by no later than August 12, 2024, to:

Pensions
Financial and Consumer Services Commission
225 King Street, suite 200
Fredericton, NB E3B 1E1
Toll-Free: 1-866-933-2222
Email: consultation@fcnb.ca

We cannot keep submissions confidential. A summary of the comments received during the comment period may be published.



FINANCIAL AND CONSUMER SERVICES COMMISSION

PROPOSED GUIDELINES RESPECTING A TRANSFER OF ASSETS INVOLVING A SHARED RISK PLAN

PART 1 PRELIMINARY MATTERS

Purpose and Application

1. These guidelines are issued pursuant to section 100.8(1) of the *Pension Benefits Act* and apply to any transfer of assets from a pension plan to a shared risk plan. Their purpose is to set out the general expectations and requirements of the Superintendent of Pensions regarding the transfer of assets and the application seeking the Superintendent of Pensions' consent for the transfer of assets.

Definitions

2. (1) In these guidelines:

“actuarial excess” means, in the case where a receiving plan is assuming the responsibility for all benefits and payments of the transferring plan, the excess assets resulting from the conversion of pension benefits under the transferring plan to base benefits under the receiving plan due to the difference in actuarial assumptions used in the going concern valuation of the transferring plan and the funding policy valuation of the receiving plan;

“application for consent” means an application for the Superintendent’s consent to a transfer of assets involving a shared risk plan;

“asset transfer ratio” means the value obtained by dividing the total of the market value of investments held by the transferring plan, any cash balances and any accrued receivable income items by the sum of the residual liabilities and the transfer liabilities;

“asset transfer value” means the value obtained by multiplying the transfer liabilities by the lesser of the asset transfer ratio and one;

“*General Regulations*” means NB Reg 91-195;

“members” means those members, former members, and other persons entitled to a benefit or payment under a pension plan;

“*Pension Benefits Act*” means the *Pension Benefits Act*, SNB 1987, c P-5.1;

“receiving plan” means the shared risk plan that is accepting some or all of the assets from another pension plan;

“remaining members” means members as defined under these guidelines, who are not included in the transfer of assets and remain in the transferring plan following the transfer of assets;

“residual asset value” means the value obtained by multiplying the residual liabilities by the lesser of the asset transfer ratio and one;

“residual liabilities” means:

- (a) in the context of a defined benefit plan, the greater of the going concern liabilities and the solvency liabilities related to the remaining members;
- (b) in the context of a shared risk plan, the funding policy liabilities related to the remaining members;

“*Shared Risk Regulations*” means NB Reg 2012-17;

“transfer liabilities” means:

- (a) in the context of a defined benefit plan, the greater of the going concern liabilities and the solvency liabilities related to the transferred members;
- (b) in the context of a shared risk plan, the funding policy liabilities related to the transferred members;

“transferred members” means members as defined under these guidelines, who are affected by the transfer of assets and for whom benefits or payments the receiving plan has assumed responsibility;

“transferring plan” means the pension plan transferring some or all of its assets to a shared risk plan.

- (2)** The definitions contained in the *Pension Benefits Act* and regulations apply to these guidelines, unless the terms in question are defined in these guidelines.

PART 2
CONSENT AND NOTICE

Requirements for an application for consent

3. Before a transfer of assets can occur, the administrator of either pension plan involved in the transfer of assets must apply for consent. The application for consent must include the following:
- (a) the agreement for the transfer of assets and any amendments to such agreement;
 - (b) the effective date of the transfer of assets, if not stated in the agreement for the transfer of assets;
 - (c) copies of any notice provided to members in accordance with section 5, section 6 or section 7 of these guidelines, together with a statement indicating the date the notice was sent;
 - (d) any amendments to the transferring plan or to the receiving plan relating to the transfer of assets, including amendments to any document that creates and supports the pension plan or pension fund and applicable fees;
 - (e) a restated plan text for the receiving plan and, if the transferring plan continues in existence, a restated plan text for the transferring plan;
 - (f) if the transferring plan is a defined benefit plan, an actuarial valuation report of the transferring plan, prepared in accordance with section 9(4) and section 10 of the *General Regulations*, demonstrating the status of the transferring plan, as of the transfer date, before the transfer of assets, including the following information:
 - (i) the going concern liabilities, solvency liabilities and asset transfer value of the benefits and payments for which the receiving plan is assuming responsibility;
 - (ii) the amount of and the method of calculating the assets to be transferred to the receiving plan;
 - (iii) the amount of any lump sum payment required to satisfy the requirement of section 4(a) of these guidelines as of the transfer date;
 - (iv) if there is a surplus in the pension fund, a description of the proposed treatment and method of payment and the basis for any allocation of the surplus;
 - (v) as applicable, the amount of actuarial excess included in the transfer of assets relating to the transferred members;

if the receiving plan is not assuming responsibility for all benefits and payments of the transferring plan, the actuarial valuation report under this paragraph will also demonstrate the status of the transferring plan, as of the transfer date, after the transfer of assets, including the following information:

- (vi) the method used to split the assets and liabilities between the transferred members and the remaining members;
 - (vii) the going concern liabilities, solvency liabilities and the residual asset value of the benefits and payments for which the transferring plan is still responsible;
- (g) if the transferring plan is a shared risk plan, a funding policy valuation of the transferring plan prepared in accordance with section 14 of the *Shared Risk Regulations*, demonstrating the status of the transferring plan, as of the transfer date, before the transfer of assets, including the following information:
- (i) the funding policy liabilities and asset transfer value of the benefits and payments for which the receiving plan is assuming responsibility;
 - (ii) the amount of and the method of calculating the assets to be transferred to the receiving plan;
 - (iii) the amount of any lump sum payment required to satisfy the requirement of section 4(a) of these guidelines as of the transfer date;

if the receiving plan is not assuming responsibility for all the benefits and payments of the transferring plan, the funding policy valuation under this paragraph will also demonstrate the status of the transferring plan, as of the transfer date, after the transfer of assets, including the following information:

- (iv) the method used to split the assets and liabilities between the transferred members and the remaining members;
 - (v) the funding policy liabilities and the residual asset value of the benefits and payments for which the transferring plan is still responsible;
- (h) a funding policy valuation of the receiving plan prepared in accordance with section 14 of the *Shared Risk Regulations*, demonstrating the status of the receiving plan, as of the transfer date, before and after the transfer of assets, including the following information:
- (i) as applicable, a demonstration of how the benefits of the transferred members are converted to base benefits under the receiving plan;
 - (ii) a description of the base benefits and ancillary benefits of the

transferred members, including, as applicable, any benefit improvements granted to the transferred members on the date they become members of the receiving plan;

- (iii) the level of temporary contributions required to satisfy the requirement of section 4(b) of these guidelines after the transfer date from the participating employers of the transferring plan and the transferred members;
 - (iv) how any actuarial excess related to the transferred members will be allocated to the transferred members;
- (i) a going concern valuation of the receiving plan and, as applicable, of the transferring plan if such plan is a shared risk plan, would only be needed if required for purposes of the *Income Tax Act* (Canada);
 - (j) fees for the transfer of assets in accordance with section 29 of the *Shared Risk Regulations*. The Superintendent of Pensions should be made aware of any agreement between the receiving plan and the transferring plan regarding fee payment if this is not addressed in the agreement for the transfer of assets.

Requirements for Superintendent of Pensions' consent

- 4. Prior to granting approval for the transfer of assets, the Superintendent of Pensions requires a demonstration of the following:
 - (a) the termination value funded ratio ("TVFR") of the receiving plan must not be less, as of the transfer date, after the transfer of assets, than what it was before the transfer of assets. An amortization period of special contributions to bring the TVFR to the required level following the transfer date is not permitted;
 - (b) the open group funded ratio ("OGFR") of the receiving plan must not be less, as of the transfer date, after the transfer of assets, than what it was before the transfer of assets. The transferring plan participating employers and, as applicable, the transferred members may remit temporary contributions representing a fixed dollar amount over a period not exceeding 15 years to bring the OGFR to the required level, but in no event may a lesser amount than the present value of the temporary contributions required as of the transfer date be remitted to the receiving plan;
 - (c) the position of the receiving plan relative to the primary risk management goal, both before and after the transfer of assets, must be at a level of at least 97.5%;
 - (d) if the transferring plan is a defined benefit plan and the existence and amount of surplus is established in the actuarial valuation report of the transferring plan, there is adequate provision for dealing with such surplus;

- (e) if an actuarial excess is included in the transfer of assets, such actuarial excess must be allocated to the benefit of the transferred members in the following ways:
 - (i) the receiving plan could provide for benefit improvements for the transferred members, including escalated adjustments, as of the transfer date;
 - (ii) the receiving plan could establish a reserve for escalated adjustments for the transferred members after the transfer date;
 - (iii) or other options that the administrator of the receiving plan may suggest for the Superintendent of Pensions' consideration and approval, so long as this actuarial excess is allocated for the benefit of the transferred members.

Requirements for notices to members of the receiving plan

- 5. If, due to the transfer of assets, any amendment is required to the receiving plan or to any document that creates and supports the pension plan or pension fund:
 - (a) the administrator of the receiving plan must provide a written notice to all members of the receiving plan about such amendment in accordance with section 24(3) of the *Pension Benefits Act* and section 14 of the *General Regulations*. The notice must include an explanation of the amendment and an explanation of any impact of such amendment on the receiving plan;
 - (b) if the administrator determines that the amendment may adversely affect the pension benefits, rights or obligations of the members of the receiving plan, the administrator of the receiving plan must provide a written notice to all members of the receiving plan about such amendment in accordance with section 24(1) of the *Pension Benefits Act*. The notice must satisfy the requirements of that section and include an explanation of the impact of the amendment on the receiving plan.

Requirements for notices to members of the transferring plan

- 6. Before a transfer of assets can occur, the administrator of the transferring plan must notify the transferred members in writing about the transfer of assets. This must occur no more than ten days after receiving notice that the Superintendent consents to the transfer. The notice must include:
 - (a) the name and registration number of the transferring plan;
 - (b) the name and registration number of the receiving plan;
 - (c) the effective date of the transfer of assets;

- (d) all information required under section 20(2) of the *Shared Risk Regulations* and, where the transferring plan is a defined benefit plan, all information required under section 20(3) of the *Shared Risk Regulations*.

7. If the transferring plan continues to exist and the transfer of assets caused any amendment to be made to the transferring plan or to any document that creates and supports the pension plan or pension fund:
- (a) the administrator of the transferring plan must provide a written notice to the remaining members about such amendment in accordance with section 24(3) of the *Pension Benefits Act* and section 14 of the *General Regulations*. The notice must include an explanation of the amendment and an explanation of any impact of such amendment on the transferring plan;
 - (b) if the administrator determines that the amendment may adversely affect the pension benefits, rights or obligations of the remaining members, the administrator of the transferring plan must provide a written notice to the remaining members about such amendment in accordance with section 24(1) of the *Pension Benefits Act*. The notice must satisfy the requirements of that section and include an explanation of any impact of the amendment on the transferring plan.

Notice upon completion of transfer of assets

8. After the transfer of assets is complete, the administrator of the transferring plan or the administrator of the receiving plan must file a confirmation with the Superintendent of Pensions that the transfer of assets has been made in accordance with the Superintendent's consent and the requirements of the *Pension Benefits Act* and regulations.

Registration of the transferring plan

9. If the receiving plan has assumed responsibility for all benefits and payments of the transferring plan, the administrator of the transferring plan must file a confirmation with the Superintendent of Pensions that the transferring plan no longer has any assets or liabilities. Upon receipt of such confirmation, the Superintendent will cancel the registration of the transferring plan.

PART 3 GENERAL

Effective Date

10. These guidelines come into force on [insert date].