FINANCIAL AND CONSUMER SERVICES COMMISSION OF NEW BRUNSWICK
COMMISSION DES SERVICES FINANCIERS ET DES SERVICES AUX CONSOMMATEURS DU NOUVEAU-BRUNSWICK

SUMMARY OF STAKEHOLDER COMMENTS AND RESPONSES

On June13, 2024, the Commission released a notice and request for comments on newly developed Guidelines respecting the transfer of assets involving a shared risk plan (Guidelines). Comments received have been reviewed, considered and, where appropriate, incorporated into the Guidelines. The Commission wishes to thank all who submitted comments.

Below is a summary of the stakeholder comments received during the consultation and the Commission's responses and clarifications with respect to certain comments received.

Subject	Summarized Comment	Commission Response
Temporary contributions related to the Open Group Funded Ratio (OGFR)	Commenters wanted to know if: • the amortization period during which temporary contributions must be remitted to ensure the OGFR is not adversely impacted by the transfer could be lesser than the period provided under section 4(b) of the Guidelines. • the amount of temporary contributions could be greater than the amount required to bring the OGFR to the level in place before the transfer. • temporary contributions required to meet the requirement of section 4(b) of the Guidelines would need to continue regardless of the receiving plan's future experience. They also sought clarification on the expectations when temporary contributions must cease due to	The Guidelines represent minimum requirements for the Superintendent of Pensions' consent and as such, the receiving plan may require an amortization period lesser than the period provided under section 4(b) of the Guidelines but not greater. The receiving plan may also require temporary contributions to bring the OGFR to a greater level than what was in place before the transfer to ensure the primary and secondary risk management goals are not negatively affected by the transfer. Regarding the *Income Tax Act* (Canada) contribution limits, paragraph 100.4(1)(f) of the *Pension Benefits Act* (PBA) and subsection 9(13) of Regulation 2012-75 (SRP Regulations) continue to apply. If temporary contributions must cease due to the *Income Tax Act* (Canada) contribution limits, it is expected that the temporary contributions would resume when allowed under the *Income Tax Act* (Canada). The present value of the temporary contributions determined at the transfer date, using the discount rate in effect at that time, must be fully remitted to the receiving plan. The

	the contribution limits outlined in the *Income Tax Act* (Canada).	Guidelines have been modified to clarify this expectation and to clarify that the requirement of section 4(b) apply regardless of the future experience of the receiving plan.
Risk management goals	Some commenters recommended minimum regulatory requirements mandating plans be tested against the secondary risk management goals. Some inquired if a receiving plan would be prevented from accepting a transfer of assets if it does not meet the primary risk management goal before a transfer of assets.	The secondary risk management goal must be met: • at the date a pension plan is converted to a shared risk plan, and • at the date a permanent benefit change is made, pursuant to subsection 7(4) of the SRP Regulations. This requirement applies where a transfer of assets involving a shared risk plan occurs and the benefits under the transferring plan are converted to base benefits under the receiving plan, or a permanent benefit change takes place under the receiving plan. The same applies regarding the requirement for the primary risk management goal to be met pursuant to subsection 7(2) of the SRP Regulations. Where applicable, a transfer of assets must meet the requirements of subsection 7(2) and subsection 7(4) of the SRP Regulations. In addition to these requirements, the Guidelines provide that, to further safeguard benefits under the receiving plan, the primary risk management goal must be met under the receiving plan before and after a transfer of assets, even though it would not be a requirement under subsection 7(2) of the SRP Regulations. The Superintendent of Pensions would

		not consent to a transfer of assets where a receiving plan does not meet the primary risk management goal before and after a transfer of assets. Note that a receiving plan may require additional protection regarding the primary and secondary risk management goals as indicated in the temporary contributions section above. The Guidelines represent minimum requirements for the Superintendent of Pensions' consent.
Requirements regarding preservation of accrued or vested rights or benefits	Commenters expressed concerns that the draft Guidelines did not contain any provisions requiring the preservation of accrued or vested benefits as a condition of the Superintendent of Pensions' consent.	It is important to note that while a conversion to base benefits under a shared risk plan may affect certain accrued or vested rights or benefits at the conversion date (for example the vested right to escalated adjustments), section 12 of the PBA would still prevent a pension plan from reducing accrued or vested rights or benefits before they are converted to base benefits. The requirement that accrued or vested rights or benefits be preserved before their conversion to base benefits also applies in a transfer of assets. It should also be noted that base benefits may only be reduced under a shared risk plan when the requirements of the SRP Regulations are met. These requirements would also apply in a transfer of assets involving two shared risk plans. The base benefits of the transferred members at the transfer date must not be less than what the base benefits would be for such transferred members at the transfer date using the benefit provisions in the transferring plan before the transfer date. The Superintendent of Pensions may refuse to consent to

		the transfer of assets where the rights or benefits of transferred members are not protected.
Partial transfers of assets	Commenters sought clarifications on the requirements under an actuarial valuation report when a partial transfer of assets takes place and the transferring plan remains a defined benefit plan. Commenters also noted that the Guidelines did not specifically provide protections for members remaining in a shared risk plan after a partial transfer of assets. Some commenters suggested that remaining members of the transferring shared risk plan should receive similar protections as members of the receiving plan.	Regarding the comments about a remaining defined benefit plan, as noted in section 3(f), an actuarial valuation report will need to be prepared in accordance with subsection 9(4) and section 10 of Regulation 91-195 (General Regulations). This includes: • an estimate of the normal cost related to the remaining members. • details on any special payments related to the remaining portion of the transferring plan as required under the transferring plan, the PBA and regulations. • the present value of these payments. • the beginning and ending dates of the amortization period. The Guidelines have been revised to provide greater clarity in this regard. Regarding the protection of members of a remaining shared risk plan, note that subsection 100.61(2) of the PBA states that if an employer intends to significantly increase or reduce the number of members of a shared risk plan, the employer must notify the plan administrator who must assess the financial impact on the plan and make recommendations on any required corrective measures. The plan administrator must also, pursuant to subsection 100.7(3) of the PBA, file

		the results of the application of the risk management procedures and required adjustments with the Superintendent of Pensions. Any impact on the transferring shared risk plan will be assessed by the Superintendent of Pensions in accordance with these provisions. If the Superintendent of Pensions believes the interests of remaining members are not protected, the Superintendent may refuse to consent to a transfer of assets. For example, the Superintendent of Pensions may refuse to consent to a transfer of assets where residual liabilities are only related to former members.
Actuarial excess	Commenters had concerns with the definition of actuarial excess and that it would be inconsistent with the shared risk model to mandate that actuarial excess be utilized to improve the benefits of transferred members. They suggested that assets over the funding policy liabilities in a shared risk plan should be kept unallocated and available to secure based benefits and that all cohorts of members under the shared risk plan should be treated similarly. Some commenters asked whether there is any limit on how improved the receiving plan's funded measures can be after a transfer. For example, if the transferring plan is substantially better funded in comparison to the receiving plan. Some commenters raised concerns about section 4(e)(ii) of the Guidelines which allows the	The Superintendent of Pensions has a mandate to ensure the benefits of members and former members are protected before consenting to a transfer of assets. In a transfer of assets, a balance between the interests of the receiving plan members and the transferred members must be preserved. The receiving plan members should not reap the benefit of excess assets to the detriment of transferred members. The Guidelines have been revised to address these concerns.

	creation of a reserve, to manage an actuarial excess for escalated adjustments for the transferred members after the transfer date, as well as the need to track such reserve separately. Some commenters suggested that the Guidelines do not distinguish between whether the “Open Group Basis” or “Closed Group Basis” should be used for the actuarial valuation method to determine actuarial excess.	
Surplus considerations	Commenters inquired whether the Guidelines suggest that surplus assets could not be transferred to the receiving plan when the transferring plan is a defined benefit plan. Commenters also suggested that the Guidelines clearly state the basis of calculation for the surplus (i.e., ongoing plan or terminated plan). Some commenters inquired why the Guidelines only addressed surplus when a transferring plan is a defined benefit plan and not a shared risk plan.	The concept of surplus, as provided under section 59 of the PBA, does not apply under Part 2 of the PBA, given that sections 47 and 48 of the General Regulations do not apply to a shared risk plan. As such, it would not be relevant to address surplus in the context where the transferring plan is a shared risk plan. That said, the Guidelines have been revised to ensure that when a transferring shared risk plan is substantially better funded than the receiving plan, any excess assets transferred must be allocated in a manner specified under the Guidelines. Whether surplus assets could be transferred to a receiving plan from a transferring defined benefit plan or whether they should or must remain in such plan will vary on a case-by-case basis. That is why a description of the proposed treatment of surplus and the basis for any allocation thereof is required as part of the application for consent to the transfer of assets. The Guidelines have been revised to clarify the basis of calculation of surplus.

Minimum requirements	Commenters asked whether the contents of the Guidelines are minimum requirements and may therefore be exceeded by more advantageous benefits.	As noted under section 4 of the PBA, the requirements of the PBA are not to be construed to prevent more advantageous benefits. Likewise, the Guidelines represent minimum requirements for the consent of the Superintendent of Pensions and therefore may be exceeded.
Member disclosure and notification	Commenters raised concerns about the timelines to provide notice to members in accordance with subsection 24(1) and 24(3) of the PBA, and submitting said notice with the application for the Superintendent of Pensions' consent to a transfer of assets, in accordance with section 3 of the Guidelines. Commenters also inquired whether a transfer of assets into a shared risk plan would, in all cases, require notification to receiving plan members, pursuant to subsection 24(1) of the PBA (adverse amendment notice). Some commenters recommended a positive obligation on plan administrators of the transferring plan, to provide a final pension statement to their members, former members and anyone else who may be in receipt of a pension at the date of the transfer.	Section 3(c) of the Guidelines required that any notice provided to members in accordance with sections 5, 6 or 7 of the Guidelines be provided as part of the application for the Superintendent of Pensions' consent. However, the provision should have reflected section 5(b), section 6 and section 7(b). The Guidelines have been revised accordingly. Notification pursuant to subsection 24(3) of the PBA is not required to be filed with the Commission. With respect to the comment regarding adverse amendment notification in accordance with subsection 24(1) of the PBA, it is important to note that a transfer of assets would not always require an adverse amendment notice. Generally, where benefit provisions are not impacted by a transfer of assets under the receiving plan, or under the transferring plan if such plan continues to exist, then the transaction would not in itself trigger an adverse amendment notification requirement pursuant to subsection 24(1) of the PBA. Ultimately, the impact must be assessed on a case-by-case basis by the plan administrator. With respect to a final pension statement from the transferring plan before the transfer of assets, this is not a requirement for other types of transactions and

		would be beyond the framework of the PBA. There is nothing preventing plan administrators from providing such statement, but it is not something that is mandated. Note that the PBA does require annual statements to be sent to members and former members.
Application to transfers under the *Pension Plan Sustainability and Transfer Act* (PPSTA)	Some commenters inquired as to whether the intention was for these Guidelines to apply for transfers under the *Pension Plan Sustainability and Transfer Act* (PPSTA). Commenters asked about what happens if the Superintendent refuses to consent to a transfer, more specifically in the context of a transaction under the PPSTA. Some commenters asked about the interplay between timelines in the PPSTA and required actions under the Guidelines. Commenters pointed out that while there are no timelines mandated in the Guidelines, some of the requirements may be time consuming.	The Guidelines apply to any transfer of assets involving a shared risk plan. Based on the Commission's interpretation of the current provisions of the PPSTA, the Guidelines would apply to plans transferring pursuant to the PPSTA. The PPSTA does not circumvent the Superintendent of Pensions' authority to consent or not to a transfer of assets between pension plans under the PBA. The PPSTA would only prevail to the extent of any conflict or inconsistency with a provision of the PBA. The Superintendent of Pensions has authority to refuse to consent to a transfer of assets between pension plans where such a transaction would not protect the pension benefits and any other benefits of members and former members. Pursuant to subsection 100.8(1) of the PBA, the Superintendent of Pensions has authority to issue guidelines with respect to any matter not dealt with under Part 2 of the PBA and the regulations. The Guidelines represent minimum requirements to ensure that benefits are protected under a transfer of assets involving a shared risk plan. If a transaction under the PPSTA does not meet the requirements of the Guidelines, the Superintendent of

		Pensions would have authority to refuse consent to such a transaction. Parties to an agreement under the PPSTA should be mindful to comply with the requirements of the Guidelines. The Commission does not believe there are any conflicts between the timelines of the PPSTA and the requirements of the Guidelines. Should the PPSTA be amended in the future, the Commission's interpretation may change.
Timelines	Some commenters recommend adding a 30-day timeframe for the Commission to approve or deny a transfer of assets upon receipt of all required information.	The Commission will make best efforts to review the application in a reasonable timeframe once all required or requested information is provided.
Use of actuarial extrapolations	Some commenters recommended considering approval of a transfer of assets based on actuarial extrapolations from the most recently filed valuation to date.	It is understood that adjustments due to timing of calculations and transactions may be required. It would be acceptable for information from the most recently filed valuation to be extrapolated to the actual transfer date and supplemented with revised data at a later date. The transfer agreement should address what adjustment, if any, would be allowed for consideration, such as data or market value changes between the date transfer metrics were calculated and the transfer date. For market volatility, a reasonable period before and after the transfer date could be considered to address shortfalls but not excesses.

Member input	Some commenters suggested that the Commission canvas the requirements of other jurisdictions that impose greater obligations on the plan administrator of a transferring plan to consult with members when plan transfers are considered.	The PBA does not include a consent or consultation requirement for a transfer of assets. Imposing this requirement in the Guidelines would be at odds with the requirements for other transfers of assets under the PBA. However, these are minimum requirements and there is nothing preventing a plan administrator from consulting with members on their own.
Actuarial valuations	Some commenters pointed out that the Guidelines are silent about which party is responsible for the valuation required to determine the excess or shortfall of plan assets required to be transferred to cover the liabilities being assumed by the receiving plan.	The Commission does not wish to dictate the terms of a transfer agreement between pension plans in this respect.
Application of section 69 of the PBA and sections 51 and 52 of General Regulations	Some commenters asked if, considering the modifications to deal with a shared risk plan as outlined in the Guidelines, the broader requirements for asset transfers outlined in section 69 of the PBA and sections 51 and 52 of the General Regulations apply.	These provisions would apply with the necessary modifications if not otherwise clarified/modified by the requirements of the Guidelines.