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| SECTION:        | Wind Up                                                                                                                                            |
| INDEX NO.:      | W100-303                                                                                                                                           |
| TITLE:          | Guideline for Notice of Full or Partial Wind Up of Pension Plan<br>- PBA ss. 68(2) and (3), 78(2)(a), 112(1) and (3)<br>- Regulation 909, s. 28(1) |
| APPROVED BY:    | Superintendent of Financial Services                                                                                                               |
| PUBLISHED:      | FSCO website (December 2011)                                                                                                                       |
| EFFECTIVE DATE: | December 15, 2011 [no longer applicable – replaced by W100-304 – October 2013]                                                                     |
| REPLACES:       | W100-300, W100-301 and W100-302                                                                                                                    |

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This policy replaces W100-300 (Guideline for Notice of Wind Up of Pension Plan), W100-301 (Notice of Proposal of Partial Wind Up) and W100-302 (Notice and Consent Requirements on Partial Wind Up) 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.*

This policy identifies the notice requirements and procedure to be followed on the full or partial wind up of a pension plan. The considerations and procedures for the partial or full wind up of a defined benefit pension plan are substantially similar. Unless specifically noted otherwise, the use of the term “wind up” refers to either the full or the partial wind up of a pension plan.

### **Written Notice of Intention to Wind Up of a Pension Plan**

Section 68(2) of the PBA requires that written Notice of Intention to Wind up a Pension Plan must be provided to specified persons or bodies who have an interest in the pension plan. In accordance with section 68(3), in the case of an intention to wind up only a portion of a pension plan, the administrator is required to give notice only to the members, former members or other persons who are affected by the partial wind up. The administrator is not required to give written notice to those who are not affected by the partial wind up.

The administrator shall give written Notice of Intention to Wind up a Pension Plan to:

- a) the Superintendent;
- b) each member of the pension plan entitled to receive payment from the pension plan as a result of the wind up, including where the wind up results from an event affecting members' employment, such as in the case of a plant closure. The Superintendent may require that all members employed in the affected location, who participate in the plan on or after the date notice of the event is released and who lose employment as a result of the event, must be included as persons entitled to receive payment from the pension plan on wind up.
- c) each former member of the pension plan who, as a result of the wind up,
  - is entitled to a deferred pension payable from the pension fund;
  - is in receipt of a pension payable from the pension fund;
  - is entitled to commence receiving payments from the pension fund within one year after termination of employment or membership; or
  - is entitled to receive any other payment from the pension plan, such as a refund of contributions, including voluntary contributions, from the pension fund.
- d) each trade union that represents affected members of the pension plan;
- e) the advisory committee of the pension plan; and
- f) any other person entitled to receive payment from the pension fund as a result of the wind up, such as:
  - the spouse of a deceased former member who is entitled to survivor benefits;
  - any designated beneficiary named by a deceased former member;
  - any personal representative of a member or former member; such as an attorney under a power of attorney for the member/former member; and
  - any dependent children of a deceased member/former member who is entitled to benefits.

In accordance with section 28(1) of the Regulations under the PBA, the notice of intention to wind up all or part of the pension plan, as required under section 68 of the PBA, shall include,

- a) the name of the plan and its provincial registration number;
- b) the proposed wind up date;
- c) notice that each member, former member or any other person who will be entitled to receive payment from the pension fund as a result of the wind up will be provided with an individual statement setting out entitlements and options under the plan and the PBA; and
- d) where a plan requires member contributions and the employment of the members will cease as a result of the wind up, notice of the member's right to make contributions in respect of the period of notice of termination of employment required under Part XV of the *Employment Standards Act, 2000*.

### **Surplus Application - Notice Respecting Distribution of Surplus Following the Wind Up**

Where, after all benefits have been provided for, the pension plan has a surplus, that surplus will have to be distributed to complete the wind up of the plan. The procedures to be followed, including any notice requirements, will depend on whether the employer is applying to the Superintendent for consent to the payment of surplus under section 78 of the PBA. The procedures to be followed, including the notice requirement, are set out in Policy S900-512 -Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan.

**Individual Written Notice Served by Personal Delivery or Regular Mail**

In accordance with section 112(1) of the PBA, service of the notice by personal delivery or regular mail to those listed above is required. However, under section 112(3), where appropriate, the Superintendent may authorize an alternative form of notice or service of notice, such as newspaper advertisements or electronic communications, such as web postings. Before such authorization, the Superintendent will require:

- i) the reasons why individual notice is impractical;
- ii) the proposed wording of such a notice, and
- iii) details of the intended circulation of such a notice.