Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Wind Up
INDEX NO.:	W100-441
TITLE:	Restrictions on Payments in Deficit Situations - Regulation 909 ss. 29(7) and (8)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (November 2011)
EFFECTIVE DATE:	November 1, 2011 [no longer applicable – replaced by W100-442 – March 2014]
REPLACES:	W100-440

This policy replaces W100-440 (Restrictions on Payments in Deficit Situations) 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*. All pension policies can be accessed from the* **Pensions** *section of the website through the* **Pension Policies** *link.*

The purpose of this policy is to address a question as to whether an administrator of a pension plan may transfer the commuted value or purchase a life annuity for members, former members, and other beneficiaries when a plan is being wound up in whole or in part with a deficit that requires additional funding under section 75 of the PBA.

The answer depends on whether all the pensions and other benefits being funded under section 75 would be guaranteed by the Pension Benefits Guarantee Fund (PBGF) under section 84 of the PBA.

Where a plan is winding up in whole or in part, sections 70(2) and (3) of the PBA impose restrictions on payments that can be made out of the pension fund as follows:

s.70(2) If the administrator has given notice under section 68 or 69 of the intended wind up of the pension plan, no payment shall be made out of the pension fund until the Superintendent has approved the wind up report.

s.70(3) However, subsection (2) does not prevent the continued payment of a pension or other benefit if the payment commenced before the administrator gave notice of the intended wind up and it does not prevent any other payment that is prescribed or that is approved by the Superintendent.

Sections 29(7) and (8) of the Regulation contain the following provisions that deal with the timing of certain payments that may be made when plans are being wound up:

s.29(7) Subject to the requirements of subsection (8), the administrator of a pension plan,
(a) that is terminated;
(b) that provides defined benefits; and
(c) with respect to which no order has been made under subsection 83(1) of the Act,

may, after the wind up report required under subsection (1) has been approved by the Superintendent, pay prior to the completion of any additional funding required under section 75 of the Act,

(d) the accumulated value of any additional voluntary contributions;
(e) the accumulated value of required contributions made by a member or former member; and
(f) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of the wind up with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with clause (e).

s.29(8) Where an employer is required to make payments into a pension plan under section 75 of the Act and all pensions and other benefits being funded under section 75 of the Act would not be guaranteed under section 84 of the Act,

(a) no funds of the pension plan shall be used to purchase a life annuity for any person entitled thereto; and
(b) where an election is made under clause 42(1)(a) or (b) of the Act, the maximum portion of the commuted value of the deferred pension that may be transferred is the amount, if any, of the contributions the employee was required to make under the plan plus any additional voluntary contributions made by the employee,

until a report is filed under section 32 certifying that there is no further amount to be funded or an order is made under subsection 83(1) of the Act with respect to the plan.

FSCO's position is that the combined effect of sections 29(7) and (8) of the Regulation is:

- If all of the pensions and other benefits being funded under section 75 of the PBA would be guaranteed by the PBGF, the provisions in section 29(8) do not apply, and the administrator of a pension plan can make the payments described in section 29(7).

- If any of the pensions and other benefits being funded under section 75 of the PBA would not be guaranteed by the PBGF, the provisions in section 29(8) apply to restrict the payments that can be made out of the pension fund.

Note that section 29(9) of the Regulation contains provisions that address reductions to pensions and benefits when a plan is wound up in whole or in part with a deficit.