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The Determination of Whether a Plan is a "Closed Plan"

Under Ontario's new funding regime for single employer defined benefit pension plans, whether a plan is closed or not impacts the calculation of a provision for adverse deviations (PfAD) and thus the level of funding required by participating employers.

A "closed plan" is defined in section 11.2(1) of Regulation 909 under the Pension Benefits Act (PBA) as follows:

"closed plan" means a pension plan **at least one portion of which, according to the terms of the plan, does not permit new members to join and accrue defined benefits;** *[emphasis added]*

Determining if a plan is "closed", requires analysis of the particular facts of that plan. Ultimately, it is the plan administrator that is responsible for making that determination and directing the actuary in that regard.

The Financial Services Commission of Ontario (FSCO) does not expect pension plan administrators or their advisors to request FSCO's determination of whether a particular plan is a closed plan; administrators are expected to make and document such a determination, and to obtain any advice they may need to do so. If FSCO has reason to question a statement in an actuarial valuation report that a plan is not a closed plan, we may ask the signing actuary to provide the facts and analysis that support the administrator's determination in this regard.

Although the facts of each situation must be considered, the following are some high level observations regarding the determination of whether a plan is "closed" or not in accordance with the definition. **Generally:**

1. amending a plan to provide that a class of members who participate in a plan will no longer accrue benefits and/or that no new members of the class will be allowed to join and accrue benefits is a strong indication that the plan is a "closed plan";
2. absent other activity, amending a benefit formula for a class of members, including new members of that class, will not in and of itself be seen as "closing" a "portion" of a plan;
3. if a plan is not amended, but external factors result in members (or members from a certain class of employees) not joining the plan, this will **not**, on its own, result in a determination that a plan is closed. For example, where an employer ceases to hire employees in a class

- that is eligible to participate in a plan, that in itself will **not** result in the plan being a closed plan according to the definition; and
4. the effect of a section 80 transaction or a section 81 restructuring (under the PBA) may or may not result in a plan being a closed plan; the result depends on the facts of the situation and the language in plan documents, including any amendment(s).

As a reminder, we note that even if FSCO agrees with a determination made by an administrator as to whether a plan is closed or not, that does not mean that the Financial Services Tribunal or a court would necessarily take the same view.