Treatment of Excess Contributions

Since the release of the new Ontario funding rules for pension plans which came into effect on May 1, 2018, the Financial Services Commission of Ontario (FSCO) has been examining numerous issues related to pension plan funding. One issue we have reviewed is the treatment of contributions that have been made by an employer in excess of the required minimum contribution amount set out in the latest filed actuarial valuation report. "Excess contributions" herein refers to any amount paid in excess of the minimum contribution requirements set out in the last filed valuation report or contributions remitted in accordance with the minimum contribution requirement of an expired valuation report until a new valuation report is filed as required by section 4(5) of Regulation 909 (Regulation) that are in excess of the minimum contribution requirements for that period under the new report when filed. In the past, excess contributions have been treated in one of (or some combination of) the following ways:

1. They formed part of the assets of the fund that get reflected the next time fund assets are measured for actuarial filings, such as valuation reports or cost certificates;
2. They were used to establish a prior year credit balance (PYCB), or increase PYCB if it was previously in place, in the next full valuation report;
3. They were used to reduce any contributions otherwise required during the remaining months of the fiscal year in which the new valuation report is filed; or
4. They were returned to the employer pursuant to an application for a refund of an overpayment pursuant to section 62.1(1)(b) of the Pension Benefits Act (PBA), provided that the Superintendent of Financial Services (Superintendent) consented.

FSCO's current positions with respect to "excess contributions" are set out below:

Options	FSCO's Position	Rationale
1) Excess contributions form part of the assets of the fund that get reflected the next time fund assets are measured for actuarial filings, such as valuation reports or cost certificates.	• **This option continues to be available**	• Any excess contributions not applied via 2) and 3) below remain in the plan fund and then form part of the fund's assets.

2) Excess contributions are used to establish a PYCB, or increase PYCB if it was previously in place, in the next required actuarial filings.	• **This option continues to be available**. • A PYCB can be used to offset or reduce contributions for special payments only. The normal cost (NC) and provision for adverse deviations (PfAD) on NC contributions can only be reduced through the application of available actuarial surplus (AAS). • PYCB can be established in a full valuation report under section 14 of the Regulation, a cost certificate as per section 7.1 of the Regulation or a report required under section 3 of the Regulation. • A cost certificate cannot be filed for the sole purpose of establishing or updating a PYCB.	• Section 4(3) of the Regulation permits the employer to apply a PYCB to reduce contributions for NC, PfAD in respect of NC and special payments. However, section 55.1 of the PBA only permits a reduction in the contributions for NC and PfAD in respect of NC from AAS.
3) Excess contributions are used to reduce any contributions otherwise required during the remaining months of the fiscal year.	• **This option continues to be available**. • Credits cannot be applied beyond the fiscal year.	• Applying such credits beyond the first fiscal year is analogous to taking a contribution holiday as set out in the Regulation. Sections 7.03(3) and 7.03(4) of the Regulation requires the filing of an actuarial cost certificate within the first 90 days of the fiscal year in order to demonstrate the continued existence of AAS before a contribution holiday can be taken for the fiscal year.
4) Excess contributions are returned to the employer	• **This option *will not* be available**.	• Section 62.1(1)(b) of the PBA addresses the ability to obtain

pursuant to an application for a refund of an overpayment pursuant to section 62.1(1)(b) of the PBA provided that the Superintendent consents.	• *We note that when FSCO Policy R350-103 was last revised (July 2011), the example of getting a refund in the situation we are describing was specifically removed from the policy. In its next iteration the policy will clearly state that such a situation does not qualify for obtaining a refund under that section.*	a refund of an "overpayment", but the term overpayment is not defined in the PBA or the Regulation. • Any so-called "excess contributions" that arise retroactively when a new valuation report is filed, were not actually "excess" at the time they were made, as section 4(5) of the Regulation specifically required those contribution amounts to be made in accordance with the then most recently filed report. As a result, they are not considered an "overpayment" under section 62.1. • Section 62.1(1)(b) is meant to address errors and not the contributions required by section 4(5) of the Regulation nor resulting from an employer's deliberate decision.