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FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.

Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.

Applications for Transfer of Assets on Sale or Merger

On December 8, 2003, the Ontario Court of Appeal released its decision in *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* On February 6, 2004, ING Canada filed an application for leave to appeal the decision of the Ontario Court of Appeal to the Supreme Court of Canada.

The decision of the Ontario Court of Appeal raises questions about the authority of plan sponsors to transfer assets between pension plans where one or more of the pension plans is subject to a trust, and casts doubt on the authority of the Superintendent of Financial Services to consent to such transfers.

Until the Supreme Court of Canada has finally disposed of this case, the Superintendent will be treating the Court of Appeal's decision as binding. Consequently, the Superintendent has taken the position that consent to a transfer of assets on sale or merger will be considered if:

- the applicant can demonstrate that none of the pension plans involved is subject to a trust; or
- the applicant can demonstrate that all of the pension plans involved are defined contribution plans with no defined benefit liabilities of any kind.

In addition, the Superintendent will consider applications for the transfer of assets if the applicant can demonstrate that the *Aegeon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* decision does not otherwise apply to the application.

Please note that all pension plans must continue to be fully administered in accordance with the *Pension Benefits Act*, R.S.O. 1990 and Regulation 909, R.R.O. 1990, as amended, without consideration of any potential transfer of assets or merger.

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