June 9, 2017

Superintendent Powers – Special Orders
Pension Initiatives Unit, Pension Policy Branch
Ministry of Finance
5th Floor, Frost Building South
7 Queen's Park Crescent East
Toronto ON M7A 1Y7

**Re: Proposal Number 17-MOF005**

The OPSEU Pension Trust (OPTrust) is pleased to have the opportunity to provide comments to the Ministry of Finance regarding the proposed amendments to Ontario Regulation 909 that would prescribe the circumstances under which the Superintendent could issue a special order.

With net assets of $19 billion, OPTrust invests and manages one of Ontario's largest pension funds and administers the OPSEU Pension Plan, a jointly-sponsored defined benefit plan with almost 90,000 members and retirees.

OPTrust acknowledges the responsibility placed on the Superintendent and the Financial Services Commission of Ontario (FSCO) to ensure that pension plans are financially secure, and that situations could arise where the provincial regulator may be required to take a more proactive role if there is a risk that the benefits of pension plan members and beneficiaries could be in jeopardy.

This being said, the proposed draft regulations are very general in their application and offer very broad powers to the Superintendent. As written, the Superintendent "may" order a plan administrator to prepare and file a new actuarial valuation report under subsection 87(6) of the *Pension Benefits Act* (PBA) under the following "prescribed circumstances":

- "a decline in the number of members of the pension plan"
- "a decrease in the total amount of contributions…"
- "a decrease in the going concern assets or solvency assets"

Although we can understand that any one of these factors could be a potential cause for concern, we feel it is important to take the size of the pension plan into consideration. For example, a decline in membership of 300 people may have a significant impact on a pension plan that has 900 members, but have no material impact for a plan that has 60,000 members. It is also true that, as written, any of the prescribed circumstances above could occur in any given year for a number of reasons but present no material risk to a pension plan's financial position or to the financial security of its members.

We suggest that the regulations include clear and reasonable parameters for determining when the prescribed circumstances might pose a "substantial risk to the security" of the benefits payable to members or that "there has been a significant change in the circumstances of the pension plan" and thus triggering the need for a special order to be issued by the Superintendent.

Such parameters would ensure reasonability and at the same time provide flexibility for the Superintendent. They would also eliminate ambiguity and thus better protect the Superintendent and pension plan stakeholders from becoming embroiled in appeals to the Financial Services Tribunal and potential litigation regarding the appropriateness of orders under subsection 87(6) of the PBA, once it is proclaimed.

Accordingly, we would encourage the government to include thresholds in section 16.3 of Regulation 909 as follows:

- "a decline in the number of members of the pension plan *by twenty-five or more per cent or 50 members, whichever is greater* "
- "a decrease *of twenty-five or more percent* in the total amount of contributions…"
- "a decrease *of ten or more per cent* in the going concern assets or solvency assets"

It is worth noting that similar ambiguous provisions in the PBA have caused confusion and lead to costly litigation in the past. For example, before the PBA was amended to eliminate partial wind ups on July 1, 2012, subsection 69(1)(d) of the Act permitted the Superintendent to order a partial wind up in the event that "a significant number of members of the pension plan cease to be employed by the employer ". The word "significant" was not clearly defined and left open to interpretation which resulted in a number of court cases either challenging or demanding wind up orders. One example of this would be *Hydro One Inc. v. Ontario (Financial Services Commission), 2010 ONCA 6,* but there are others.

Once again we appreciate the opportunity to provide suggestions through this consultation process and we hope the Ministry of Finance will find our comments helpful.

Sincerely,

Dani Goraichy
Vice President, Actuarial Services & Plan Policy