FTR Now

Pension Solvency Funding Relief Is Here…Again

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INTRODUCTION

On November 1, 2012, important amendments were made to the *Pension Benefits Act* Regulation 909 (the "Regulation"). The amendments extend the temporary solvency relief measures for eligible defined benefit pension plans and make housekeeping changes to the sections requiring defined benefit pension plans to file annual, rather than triennial, actuarial valuations. This *FTR Now* discusses these measures in greater detail.

TEMPORARY SOLVENCY FUNDING RELIEF

In its 2012 Budget, the Ontario government announced its intention to extend the 2009 solvency funding relief measures (the "2009 Relief"). Please see our *FTR Now*, entitled "Solvency Funding Relief is Here," for more information on the 2009 Relief, which was intended to soften the impact of the higher special payments needed to eliminate growing deficits in defined benefit pension plans. According to the Financial Services Commission of Ontario's 2011 Report *on the Funding of Defined Benefit Pension Plans in Ontario*, 29% of eligible plans elected to use one or more of the three options available under the 2009 Relief. Of these plans, approximately 16.5% elected the ten-year amortization option that requires member "consent." The amendments to the Regulation to extend those measures (the "2012 Relief") result in solvency funding relief that is largely similar to the 2009 Relief.

Under the 2012 Relief, a pension plan administrator of an eligible defined benefit pension plan may elect to include one or both of two funding options in the first filed valuation report with a valuation date on or after September 30, 2011 and before September 30, 2014. The two options are:

- consolidate existing solvency payments from previous valuations into a new five-year payment schedule ("Option 4"); and/or
- amortize any new solvency deficiency over a period of up to ten years instead of the usual five years, as long as not more than one-third of eligible active, former and retired members object (jointly-governed pension plans, as defined in the Regulation, are not subject to this "consent" requirement) ("Option 5").

The 2012 Relief is not available to plans not registered before September 30, 2011, specified multi-employer plans, certain specified plans, and certain public sector plans. The relief under the 2012 measures is available as a one-time election. If a plan administrator does not elect a relief option when the valuation report is filed, the administrator will not be permitted to make a relief election at a later valuation date.

The government also amended the Regulation by extending the filing deadline for valuation reports with a valuation date on or after September 30, 2011 and before May 31, 2012. These reports can be filed up to February 28, 2013. Normally, valuation reports are required to be filed within nine months of the valuation date. While the revised deadline applies to all pension plans, its main purpose is to provide eligible plan administrators with time to consider whether they wish to elect to take advantage of the 2012 Relief and reflect the selected option(s) in the report to be filed.

WHAT’S DIFFERENT FROM THE 2009 SOLVENCY RELIEF MEASURES?

As announced in the 2012 Budget, the Regulation was amended to permanently provide defined benefit pension plan administrators with the ability to defer for up to one year the start of special payments required to liquidate any new going concern or new solvency deficiency. Previously, this option was part of the temporary 2009 Relief.

Plans which took advantage of the 2009 Relief can take advantage of the 2012 Relief, subject to some restrictions. Option 4, the consolidation of existing solvency special payments into a new five-year schedule, can include those payments consolidated under Option 2 (the five-year schedule) under the 2009 Relief. However, excluded from this consolidation are:

- special payments which were extended to a maximum of ten years under Option 3 under the 2009 measures; and
- special payments owing following a plan wind up to eliminate a wind up deficit.

Option 5 permits the plan administrator to elect to extend the five-year period to make solvency special payments of any new solvency deficiency to a maximum of ten years, regardless of whether the plan administrator made a similar election under the 2009 Relief. However, the 2012 election will only apply to new solvency deficiencies revealed in a new valuation report. In other words, if a plan administrator elects to extend the amortization period under both the 2009 Relief and the 2012 Relief, each solvency deficiency would be paid over a different, but overlapping, ten-year period.

Other than the above differences, the 2012 Relief is largely identical to the 2009 Relief, including the member notice and “consent” requirements. For example, to use Option 5, the ten-year amortization period, the plan administrator must not receive objections from more than one-third of the total number of eligible members, former members and retired members. Where a bargaining agent represents some or all of the eligible members, the bargaining agent chooses whether to object or not on their behalf.

The 2012 Relief is only available for the first valuation report with an effective date on or after September 30, 2011. Administrators with the typical December 31 valuation date have until February 28, 2013 to decide whether to use either or both of the relief options and to file the necessary valuation report reflecting the option(s) chosen. Various member notices and communications are required within specified timeframes in order for the Relief to apply.

TRIGGER FOR ANNUAL ACTUARIAL VALUATIONS

In 2011, amendments were made to the thresholds in the Regulation which require defined benefit pension plans to file annual actuarial valuations for solvency concerns.

Prior to 2011, a pension plan administrator was required to file an actuarial valuation at least once every three years, unless the pension plan had “solvency concerns”, in which case an annual actuarial valuation was required. In 2011, the Regulation was amended to change this solvency concern threshold. A transitional rule was implemented under the 2011 amendments and annual actuarial valuations were required where:

1. the employer excludes plant closure benefits or permanent layoff benefits from liabilities in the actuarial valuation;
2. the ratio of solvency assets to solvency liabilities is less than 0.8% if the valuation date is before December 31, 2012 and 0.85% for valuation dates on or after December 31, 2012; or
3. solvency liabilities exceed the solvency assets by more than $5 million and the ratio of solvency assets to solvency liabilities is:

A. less than 0.9%, if the valuation date is before December 31, 2010, or

B. less than 0.85%, if the valuation date is on or after December 31, 2010 and before December 31, 2012.

Under the 2011 measures, on December 31, 2012, the third trigger was to be revoked and the second trigger was to be amended to refer only to the 0.85% threshold. While the recent amendments delay those changes to December 31, 2013, this change to the effective date is a technical one that will not affect how the trigger is applied in practice. For reports with an effective date on or after December 31, 2012, annual valuations will continue to be required if the report: (1) excludes plant closure benefits or permanent layoff benefits from liabilities; or (2) shows a solvency concern based on the 0.85% threshold.

The amendment also delays the removal of the exemption from annual filing for certain public sector plans.

CONCLUSION

If you are considering taking advantage of any of the 2012 Relief options or have questions about the application of the solvency concerns triggers for an annual valuation report, any member of Hicks Morley's Pension & Benefits Practice Group would be pleased to assist.
