

## FTR Now

# Ontario Releases Proposed PBA Regulations for Consultation

**Date:** October 9, 2014

This past Spring, the Ontario government released proposed amendments to Regulation 909 (the “Regulations”) of the *Pension Benefits Act* (“PBA”) in respect of four previously announced pension reform initiatives (“April Proposals”). The April Proposals – which described the content of the proposed changes to the Regulations – are summarized in our *FTR Now* of April 29, 2014, [“Ontario Proposes Significant Pension Regulation Reforms.”](#)

On October 3, 2014, the government released draft amendments to the Regulations (“Draft Regulations”) in respect of two of the topics addressed in the April Proposals: (1) new rules regarding Statements of Investment Policies and Procedures (“SIP&Ps”), and (2) the requirement to provide periodic statements to deferred members and retirees.

This *FTR Now* summarizes the key features of the Draft Regulations that will be relevant to employers who maintain a registered pension plan for Ontario employees.

## NEW SIP&P REQUIREMENTS

In accordance with commitments made in the 2011 Budget, the [Draft Regulations](#) require a plan administrator to file a plan’s SIP&P with the Superintendent of Financial Services (the “Superintendent”). Currently, a plan administrator is required to establish a SIP&P for a plan and review and confirm or amend the terms of the SIP&P at least once each plan year, but there is no filing requirement.

For plans registered before January 1, 2016, the Draft Regulations require that the SIP&P be filed within 60 days of January 1, 2016. [1] This January 1, 2016 deadline gives administrators more lead time than previously contemplated – the [April Proposals](#) contemplated that administrators would be required to file SIP&Ps within 90 days of January 1, 2015. The Draft Regulations require that amendments to a SIP&P be filed within 60 days after the amendment is made.

The Draft Regulations also require that a plan’s SIP&P include information as to *whether* environmental, social or governance factors (“ESG factors”) are incorporated into the SIP&P and if so, how. The Draft Regulations do not specifically require that ESG factors be included in a SIP&P and no definition of ESG factors has been provided. While this new requirement does not necessarily dictate a different approach to investments, it will likely encourage plan administrators to give more specific consideration to ESG factors.

Consistent with the April Proposals, the Draft Regulations add SIP&Ps to the list of documents available for inspection by prescribed persons (e.g. members and their spouses, and trade unions) at the office of the Superintendent and the employer's premises.

The Draft Regulations also require that information about SIP&Ps be included in member annual statements. Annual statements will need to (i) indicate that the administrator has established a SIP&P and whether ESG factors are incorporated into the SIP&P, and if so, how; and (ii) advise that the plan's SIP&P is available for inspection at the employer's premises and at the Superintendent's office.

The release of these Draft Regulations coincides with the release of proposed amendments to the Federal Investment Regulations which are incorporated by reference into the Ontario PBA.[2] The [proposed changes to Schedule III of the Federal Investment Regulations](#) are described in our September 26, 2014 *FTR Now*, and will apply to pension plans registered in Ontario. [3] If adopted, the changes to the Federal Investment Regulations and the Regulations will result in significant changes to the investment rules governing Ontario registered plans. Once these regulatory changes are in force, administrators of Ontario registered plans will be required to revisit their plan investments and governance oversight practices to ensure compliance with the new regime.

## STATEMENTS FOR FORMER MEMBERS AND RETIRED MEMBERS

In May 2010, the [Ontario government passed Bill 236](#), which added section 27(2) to the PBA. New section [27\(2\) of the PBA, when in force](#), will require plan administrators to provide periodic statements to former members (i.e. deferred vested members) and retired members. Section 27(2) provides that the content and frequency of these statements are to be set out in supporting Regulations. The Draft Regulations set out the proposed content of these supporting Regulations.

The Draft Regulations are very similar to the April Proposals, in that the content of the new statements for former members and retirees will be very similar to annual statements which must now be provided to active plan members pursuant to section 27 of the PBA and section 40 of the Regulations. However, the Draft Regulations differ from the April Proposals (and the information required to be provided in member annual statements) in that details relating to the particular former member's or retiree's participation in the plan (e.g. date of termination/retirement, years of credited service) do not need to be included in the statements. Under the Draft Regulations, consistent with the new proposed disclosure requirement in member annual statements, SIP&P information will need to be included in the periodic statements provided to former members and retirees.

In the April Proposals the periodic statements were to be distributed to former members and retired members at least once every three years, or within six months of the filing date of the last valuation report, whichever is sooner. The Draft Regulations set out new periods for the delivery of these statements. Under the Draft Regulations, the first statement for former members and retired

members must be provided no later than July 1, 2017, and subsequent statements must be provided within the two-year period of the day the previous statement was provided, but in any event, within six months after the plan's year end.

The Ontario Ministry of Finance is accepting comments on the Draft Regulations until October 24, 2014.

If you have any questions about the Draft Regulations, or wish to make submissions to the government in respect of the Draft Regulations, please contact any [member of the Pension Benefits & Executive Compensation group](#) at Hicks Morley.

---

**[1]**For plans registered after January 1, 2016, the SIP&P must be filed within 60 days after the plan is registered.

**[2]**Sections 6, 7, 7.1 and 7.2 and Schedule III of the Federal *Pension Benefits Standards Regulations* are incorporated into the PBA.

**[3]**Further changes to the Federal Investment Regulations substituting detailed disclosure for all investment options available for member-directed investments (for example, a DC account), in place of a SIP&P are also pending. Whether or not this change to the Federal Investment Regulations will apply in Ontario will depend upon whether further changes are made to the PBA and the Federal Investment Regulations.

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©