

Comments on the Proposed Regulatory Framework:

Conversion of Single-Employer Pension Plans to Jointly-Sponsored Pension Plans

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The OPSEU Pension Trust (OPTrust) is pleased that the Ministry of Finance has requested comments on the proposed regulatory framework for the conversion of single-employer pension plan (SEPPs) to jointly-sponsored pension plans (JSPPs). We would like to address some issues raised in the proposed framework for conversions implemented as a merger of a SEPP with an existing JSPP.

The OPSEU Pension Plan is a contributory defined-benefit (DB) pension plan with approximately 84,000 members and pensioners and \$16 billion in assets. It is a jointly-sponsored pension plan (JSPP) sponsored by the Ontario Public Service Employees' Union and the Government of Ontario.

OPTrust supports helping SEPPs become more sustainable by permitting their conversion/merger into JSPPs. OPTrust is generally pleased with the proposed regulatory framework for mergers as it proposes the use of a single methodology for determining the transfer amount and also liberates a transferring SEPP employer from solvency funding obligations, making mergers more attractive to SEPP employers. However, we do have some suggestions that we hope will enable a smooth process for effecting SEPP/JSPP mergers.

Notice of Proposed Merger or Conversion to Plan Beneficiaries and Trade Unions

We note that both pension plan beneficiaries and the union or unions that represent the active members are to receive notices and that those notices appear to be intended to be simultaneous. However, if the union or unions consent on behalf of their members, there would appear to be no need for consent forms to be provided to the active members. It is OPTrust's view that the process would be simplified if unions have absolute authority to consent on behalf of their members.

There is also a question as to what happens if the members or trade unions consent to a merger but more than one-third of the former members and other beneficiaries object. Would this prevent the proposed merger? OPTrust suggests that the SEPP employer be permitted to annuitize those individuals and to proceed with the merger for the active members and possibly even those former members and other beneficiaries who do not object.

Effective Date of the Conversion

The proposed regulatory framework notes that,

...one of the challenges with regard to disclosure, especially in plan mergers, is that plan members will be required to consent to the changes based on estimated information because, by the effective date, some variables, such as interest rates may have changed.

This is a greater challenge than the proposed regulatory framework seems to anticipate. The notices to members, former members, other beneficiaries and trade unions are required to show the effective date of the merger. It is proposed that the regulations will stipulate that the effective date of the merger must be after the date the Superintendent has consented to the merger. But, there does not appear to any prescribed date by which the Superintendent must consent. This obviously creates a "Catch-22" scenario: the notices must contain the effective date of the merger; the effective date cannot be fixed until the Superintendent has consented to the merger but the Superintendent will not give consent until after receipt

of certified copies of the notices containing all of the required information, including the effective date of the merger. A possible solution would be to permit, in the case of mergers, the effective date to be a date that is on or after the proposed 270-day deadline for a completed application to be filed with the Superintendent in accordance with the regulations.

In the context of an existing JSPP, it should be noted that the timing of when an employer and its employees begin participation in the existing JSPP is a design issue. There is nothing that prohibits an employer, its employee groups and the JSPP agreeing on when an employer would begin participation in the JSPP – this is something that needs no regulatory oversight. Where regulatory oversight is needed is in connection with the transfer of assets and liabilities from the SEPP to the JSPP – the actual calculation of which can only be done after the date on which participation in the JSPP began. This is no different from a transfer date on a sale of business – participation in the new plan begins on the effective date of the sale, while the transfer of assets and liabilities from the vendor’s pension plan happens following this date upon receipt of the Superintendent’s approval, but with effect back to the date of the sale.

Requirements for the Superintendent’s Consent to Proposed Merger

One of the requirements is that, as of the effective date of the merger, every member of the SEPP is entitled to credit in the JSPP for the period of his or her membership in the SEPP. This does not appear to take into account the fact that a member’s period of membership may exceed his or her pensionable service credit for the same period because of periods of uncredited membership, such as leaves of absence for which the member did not pay contributions. OPTrust suggests that members should be entitled to credit in the JSPP for his or her credit in the SEPP with an opportunity to pay for any uncredited period of membership in the SEPP.

Wind Up of a JSPP after Plan Merger

We are concerned about the requirement that a SEPP employer be on the hook for any wind-up deficiency relating to the accrued benefits on the date of merger in the event of a wind-up of the JSPP. While the probability of a wind-up of the existing JSPPs is likely low, the prospect of having such a contingent liability on its books forever may prevent employers from taking advantage of an opportunity to convert their plan. This requirement seems particularly unfair in light of the requirement that any assets remaining in the SEPP after the transfer of assets to the JSPP are to be treated as “surplus” and presumably distributed out of the SEPP, most likely to the members.

First, OPTrust notes that the “surplus” in this circumstance is being defined in terms of a going concern valuation, which has never been done previously, and further, that going concern surplus is often ephemeral. Second, we do not agree that the requirement is no more onerous than the funding obligation the SEPP employer would face if the SEPP were wound up because the SEPP employer has no control over the amount of the liability or the timing of the wind-up. This is a very different scenario from a typical SEPP wind up, which is normally declared by the employer at a time convenient to the employer. OPTrust would suggest that the responsibility of the SEPP employer to fund a solvency deficit should expire after a certain time period, possibly similar to the proposed 10-year period starting on the effective date of a conversion of a SEPP to a JSPP.

Take the example of a plan having a total going concern liability of \$15 million, assets of \$16 million and a solvency liability of \$20 million. The proposed regulation would suggest that a surplus of \$1 million (assets of \$16 million less the \$15 million going concern liability) would be distributed (mostly to members) should the transfer occur, even though the SEPP has a solvency deficit of \$4 million. The SEPP sponsor after the transfer would essentially be responsible for a potential deficit of \$5 million in the unlikely event of windup of the JSPP. This, in OPTrust's view, would reduce members' benefit security and also be unfair to the SEPP sponsor.

Asset Transfer Amount

We understand the need of the regulator and the Ministry of Finance to reduce actuarial discretion in negotiating asset transfer values. However, we do not believe that the maximum transfer amount is sufficient, or appropriate, in doing so. No assumptions in a going concern valuation can be prescribed by regulations (nor should they be) since the assumptions used will by necessity depend on the characteristics of the benefits and overall risk tolerance of the Plan (the JSPP or the SEPP) and its sponsors which may change from time to time.

We recommend that the maximum transfer amount be specified to equal the windup liability of the SEPP regardless of the fact that the transfer amount is based on a going concern valuation using the benefit accrual method. This would allow the regulator to continue considering surplus in terms of a windup basis, as they have done historically, rather than on a going concern basis.

Expenses Incurred by Trade Unions

OPTrust concurs that, where a trade union representing SEPP members is entitled to vote on the proposed merger, the union should be reimbursed for reasonable fees and expenses. We would like it to be clarified that it is the SEPP employer or the SEPP itself that would be responsible for this reimbursement. Fees incurred should be disclosed to plan members and should be limited to a reasonable amount.

In conclusion, OPTrust applauds the work done by the Ministry on the proposed regulatory framework and we look forward to an opportunity to review and comment on draft regulations – as we all know: the devil is in the details. Thank you for allowing us to provide input; we hope the Ministry of Finance will find our comments to be helpful.