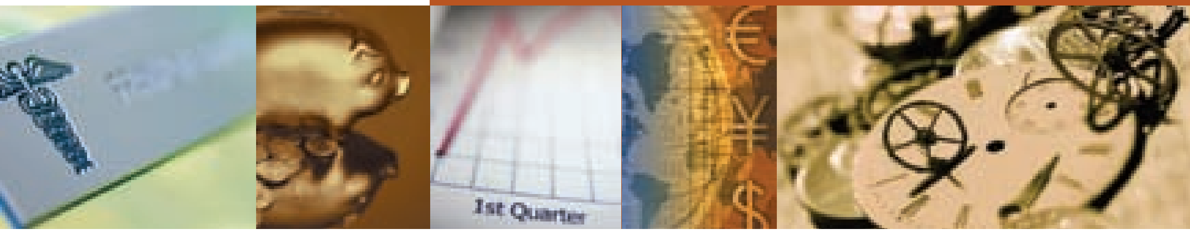
Heenan Blaikie LLP

Pensions & Benefits



PENSIONS & BENEFITS E-BLAST

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Pension *Pulse*

OSFI Intervention Guide for Federally - Regulated Pension Plans

The Office of the Superintendent of Financial Institutions Canada has recently published the *Guide to Intervention for Federally Regulated Private Pension Plans*. The following is a brief summary of the Guide and the reasons behind its publication.

OSFI has discretionary powers under the *Pension Benefits Standards Act, 1985* to intervene in the management of federally-regulated private pension plans. The purpose of such intervention is to respond to problems with a pension plan that could adversely affect the benefits accruing to plan members, former members and other beneficiaries.

The Guide is intended to increase awareness among federally-regulated plan administrators and employers of the circumstances in which OSFI may intervene in a pension plan. In addition, the Guide explains what form such intervention might take.

As its name would suggest, the Guide is merely a guide – OFSI will consider the facts of a specific case when deciding 1) whether or not to intervene, and 2) the degree of intervention (if any). In other words, the Guide provides plan administrators and employers with some useful information, but the Guide is not binding on OSFI.

The Guide identifies five different degrees of intervention known as "stages", which are labeled 0 to 4. The degree of intervention associated with any given stage is commensurate with a plan's level of risk – the greater the risk, the greater the intervention. Stage 0 intervention is generally reserved for low risk plans, whereas stage 4 typically applies to situations involving potential permanent insolvency. OSFI assesses a plan's risk (known as the Composite Risk Rating or "CRR") in accordance with its *Risk Assessment Framework for Federally Regulated Pension Plans*.

Stage 0 applies to plans that are on firm financial footing and that, typically, would have a CRR of "Low" or "Moderate". Where this is the case, OSFI merely monitors. The deficiencies at this stage are within the plan administrator's ability to correct.

A plan with minor deficiencies would typically be subject to Stage 1 intervention. Plans at this stage would generally have a CRR of "Moderate" or "Above Average." If left unchecked these deficiencies could lead to bigger problems down the road. As with Stage 0, the deficiencies will generally be within the plan administrator's ability to resolve. For its part, OSFI will increase its monitoring and will obtain more information about the plan and sponsor.

Stage 2 applies where there is a risk to solvency that threatens the security of plan members' benefits. Prompt intervention is required in order to prevent the situation from worsening. Stage 2 intervention typically applies to plans with a CRR of "Above Average" or "High." At Stage 2, OSFI will intensify its monitoring and may direct the administrator to take certain actions (such as holding a meeting with plan members).

Stage 3 intervention may occur where there are material and immediate threats to members' benefits. At this stage, OSFI works with the plan administrator in order to prevent loss of members' benefits. Plans at this stage generally have a CRR of "Above-Average" or "High".

Stage 4 intervention applies where there is no possibility of the employer fully funding the plan. At this stage, OSFI intervenes in order to assist with the plan's winding-up.

The above is a summary of the Guide. For a stage-by-stage account of the various degrees of OSFI intervention, please refer to the Guide (viewable online at http://www.osfi-bsif.gc.ca). ■

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As a member of our firm's Labour and Employment group, Mark handles all aspects of pensions and benefits law, including governance, regulatory compliance, collective bargaining, litigation, due diligence, mergers and acquisitions, financing agreements, bankruptcy and insolvency, and the tax aspects of compensation, pensions and benefits.

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