Section 2 of New Brunswick Regulation 91-195 under the Pension Benefits Act is amended

(a) in the definition “solvency assets” by striking out “paragraph 10(2)(b)” and substituting “paragraph 10(2)(b) or (b.1), as the case may be”;

(b) in the definition “solvency deficiency” by striking out “paragraph 10(2)(d)” and substituting “paragraph 10(2)(d) or (d.1), as the case may be”;

(c) in the definition “special payments” by striking out “36(1)(a), (b) and (c)” and substituting “36(1)(a), (b), (b.1) and (c)”;

(d) by adding the following definitions in alphabetical order:

“amount equal to the provision for adverse deviations” means the product obtained by multiplying the provision for adverse deviations by the pension plan’s going concern liabilities as of a particular review date; (montant de la provision pour écarts défavorables)

“going concern excess” means, in respect of a pension plan, the amount, if any, by which the going concern assets exceed the sum of the following:
(a) the going concern liabilities, and

(b) the amount equal to the provision for adverse deviations; (excédent évalué sur une base de permanence)

“going concern ratio” means, in respect of a pension plan, the quotient obtained by dividing the going concern assets by the going concern liabilities, both determined as of the review date of the most recently filed actuarial valuation report; (ratio évalué sur une base de permanence)

“going concern unfunded liability” means, in respect of a pension plan, the amount, if any, by which the sum of the following exceeds the going concern assets:

(a) the going concern liabilities; and

(b) the amount equal to the provision for adverse deviations; (passif évalué sur une base de permanence non provisionné)

“individual pension plan” means an individual pension plan as defined in the Income Tax Regulations under the Income Tax Act (Canada); (régime de retraite individuel)

“non-fixed income assets” means assets other than fixed income assets; (actif à revenu non fixe)

“provision for adverse deviations” means the percentage determined in accordance with sections 2.2 and 8.1 to 8.4 to be the provision for adverse deviations for the going concern liabilities of a pension plan; (provision pour écarts défavorables)

**2 The Regulation is amended by adding before section 3 the following:**
Interpretation

2.2(1) For the purpose of the definition of “amount equal to the provision for adverse deviations”, the going concern liabilities referred to in the definition may exclude liabilities in respect of benefits for which an annuity contract has been purchased from an insurance company.

2.2(2) Despite the definition of “provision for adverse deviations” and sections 8.1 to 8.4, the provision for adverse deviations is deemed to be zero for a pension plan’s liabilities in respect of defined contribution benefits.

3 Section 3.1 of the Regulation is amended

(a) in paragraph (b) by striking out “and” at the end of the paragraph;

(b) in paragraph (c) by striking out the period at the end of the paragraph and substituting a semicolon followed by “and”;

(c) by adding after paragraph (c) the following:

(d) an individual pension plan.

4 The heading “ACTUARIAL VALUATION REPORTS” preceding section 8 of the Regulation is repealed and the following is substituted:

GOING CONCERN VALUATION

5 The Regulation is amended by adding after section 8 the following:
PROVISION FOR ADVERSE DEVIATIONS

Calculation of provision for adverse deviations

8.1(1) The provision for adverse deviations for a pension plan as at a particular review date is the percentage calculated using the following formula:

\[ \frac{A + B}{100} \]

where

\[ A = 0.05 \text{, or the value specified in subsection (2)}; \]

\[ B = \text{the value determined in accordance with section 8.3, based on the pension plan’s combined target asset allocation for non-fixed income assets determined under section 8.2.} \]

8.1(2) The value of “A” in the formula in subsection (1) is zero for a pension plan that is exempt under section 42.1 from containing provisions requiring an employer, or a person required to make contributions on behalf of an employer, to make contributions in respect of a solvency deficiency.

Combined target asset allocation – provision for adverse deviations

8.2(1) A pension plan’s combined target asset allocation for non-fixed income assets shall be determined in accordance with the following formula:

\[ 100\% - C \]

where
C = the combined target asset allocation for fixed income assets, determined in accordance with subsection (2).

8.2(2) The value of “C” in the formula in subsection (1) shall be determined in accordance with the following formula:

\[
\frac{[D + (0.5 \times E) + (F \times G) + (0.5 \times F \times H)]}{(100\% - J)}
\]

where

D = subject to subsections (4) and (5), the sum of the pension plan’s target asset allocations for each of the investment categories listed in paragraphs 8.4(a), (c) to (e), (o) and (p), excluding any portions of the target asset allocations that are allocated to the assets described in “J”, expressed as a percentage;

E = subject to subsection (5), the sum of the pension plan’s target asset allocations for each of the investment categories listed in paragraphs 8.4(f) to (k) and (q);

F = the pension plan’s target asset allocation for the investment category listed in paragraph 8.4(b), expressed as a percentage;

G = subject to subsections (4) and (6), the portion of the value of “F” that is allocated to the investment categories listed in paragraphs 8.4(a), (c) to (e), (o) and (p), expressed as a percentage;

H = subject to subsection (6), the portion of the value of “F” that is allocated to the investment categories listed in paragraphs 8.4(f) to (k) and (q), expressed as a percentage;
J = the portion of the pension plan’s target asset allocation for each investment category listed in paragraphs 8.4(a), (c) to (k) and (o) to (q), expressed as a percentage, that is allocated to annuity contracts that have been purchased from an insurance company in respect of benefits.

8.2(3) The target asset allocation to be used in the calculation in subsection (2) is the target asset allocation in the pension plan’s statement of investment policies and goals that is in effect as of the same review date used for the calculation of the provision for adverse deviations under subsection 8.1(1).

8.2(4) In determining the values of “D” and “G” in subsection (2), any portion of a target asset allocation for an investment category listed in paragraphs 8.4(d), (o) and (p) shall not be included unless the pension plan’s statement of investment policies and goals sets out a minimum rating for target asset allocations of fixed income assets in the investment category, or the portion of the investment category, that is given by a credit rating agency recognized by a competent authority.

8.2(5) Any portion of a target asset allocation excluded under subsection (4) from the value of “D” shall be included in the value of “E” in the formula in subsection (2).

8.2(6) Any portion of a target asset allocation excluded under subsection (4) from the value of “G” shall be included in the value of “H” in the formula in subsection (2).

Value of “B” in formula for provision for adverse deviations

8.3(1) Subject to subsection (2), the value of “B” in the formula for provision for adverse deviations in subsection 8.1(1) is determined in accordance with the following table:
### Table

<table>
<thead>
<tr>
<th>Combined target asset allocation for non-fixed income assets of pension plan</th>
<th>Value of “B”</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>0</td>
</tr>
<tr>
<td>20%</td>
<td>0.01</td>
</tr>
<tr>
<td>40%</td>
<td>0.03</td>
</tr>
<tr>
<td>50%</td>
<td>0.04</td>
</tr>
<tr>
<td>60%</td>
<td>0.05</td>
</tr>
<tr>
<td>70%</td>
<td>0.08</td>
</tr>
<tr>
<td>80%</td>
<td>0.11</td>
</tr>
<tr>
<td>100%</td>
<td>0.17</td>
</tr>
</tbody>
</table>

**8.3(2)** If a pension plan’s combined target asset allocation for non-fixed income assets falls between the percentages set out in the table in subsection (1), the value of “B” shall be interpolated linearly from the values set out for “B” in the table.

**Categories of investment**

**8.4** The following categories of investment are listed for the purposes of section 8.2:

(a) insured contracts;

(b) mutual or pooled funds or segregated funds;

(c) demand deposits and cash on hand;
(d) short-term notes and treasury bills;

(e) term deposits and guaranteed investment certificates;

(f) mortgage loans;

(g) real estate;

(h) real estate debentures;

(i) resource properties;

(j) venture capital;

(k) corporations referred to in subsection 11(2) of Schedule III of the Pension Benefits Standards Regulations, 1985, made under the Pension Benefits Standards Act, 1985 (Canada);

(l) employer-issued securities;

(m) Canadian stocks other than investments referred to in paragraphs (a) to (l);

(n) non-Canadian stocks other than investments referred to in paragraphs (a) to (l);

(o) Canadian bonds and debentures other than investments referred to in paragraphs (a) to (l);

(p) non-Canadian bonds and debentures other than investments referred to in paragraphs (a) to (l);

(q) investments other than investments referred to in paragraphs (a) to (p).
6 Section 9 of the Regulation is amended

(a) in subsection (1) in the portion preceding paragraph (a) by striking out “subsections (3.1) and (5)” and substituting “subsections (3.1), (3.11), (3.111) and (5)”;

(b) in subsection (2) in the portion preceding paragraph (a) by striking out “subsections (3), (3.1) and (5)” and substituting “subsections (3), (3.1), (3.11), (3.111) and (5)”;

(c) in subsection (3.11) by striking out “on or after April 1, 2011,” and substituting “on or after April 1, 2011, but before December 31, 2019,”;

(d) by adding after subsection (3.11) the following:

9(3.11) If an actuarial valuation report with a review date on or after December 31, 2019, indicates that the transfer ratio is less than 0.85, the administrator of the pension plan shall ensure that the plan is reviewed by, and an actuarial valuation report respecting the plan is prepared by, an actuary as of the date that is not more than twelve months after the review date of the previous report.

(e) in subsection (3.2) by striking out “Subsections (3.1) and (3.11)” and substituting “Subsections (3.1), (3.11) and (3.111)”;

(f) in subsection (4)

(i) in paragraph (c) by striking out “and” at the end of the paragraph;

(ii) in paragraph (d) by striking out the period at the end of the paragraph and substituting a semicolon followed by “and”;
(iii) by adding after paragraph (d) the following:

(e) for an actuarial valuation report with a review date on or after December 31, 2019, the provision for adverse deviations.

7 Subsection 10(2) of the Regulation is amended

(a) in paragraph (b) in the portion preceding subparagraph (i) by striking out “the solvency assets” and substituting “for an actuarial valuation report with a review date before December 31, 2019, the solvency assets”;

(b) by adding after paragraph (b) the following:

(b.1) for an actuarial valuation report with a review date on or after December 31, 2019, the solvency assets are the sum of

(i) the market value of investments held by the pension plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of market value over a period of not more than five years, with any cash balances and accrued and receivable income items added on,

(ii) the present value of any special payments that are required to liquidate any going concern unfunded liability and are scheduled to be paid within five years after the review date of the actuarial valuation report,

(iii) the present value of any special payments that are required to liquidate any going concern unfunded liability arising solely from an amendment made to the plan on or after December 31, 2019, and that are scheduled to be paid within five years after the review date of the actuarial valuation report, and
(iv) the total amount of all letters of credit held in trust for the pension plan as of the review date of the actuarial valuation report, excluding the value of any special payments to which the letters of credit relate that are due after that review date,

(c) in paragraph (c) by striking out “subparagraphs (b)(ii), (iii) and (iv)” and substituting “subparagraphs (b)(ii), (iii) and (iv) or (b.1)(ii) and (iii), as the case may be;”;

(d) by repealing paragraph (d) and substituting the following:

(d) for an actuarial valuation report with a review date before December 31, 2019, the solvency deficiency, if any, is the excess of the solvency liabilities over the solvency assets,

(e) by adding after paragraph (d) the following:

(d.1) for an actuarial valuation report with a review date on or after December 31, 2019, the solvency deficiency, if any, is the excess of 85% of the solvency liabilities over the solvency assets, and

(f) in paragraph e) of the French version by striking out “est utilisée” and substituting “soit utilisée”.

8 Paragraph 11b) of the French version of the Regulation is amended in the portion preceding subparagraph (i) by striking out “entente de fiducie” and substituting “convention de fiducie”.

9 Paragraph 15(1)n) of the French version of the Regulation is amended by striking out “entente de fiducie” wherever it appears and substituting “convention de fiducie”.

10 Section 22 of the Regulation is amended
(a) by adding before subsection (1) the following:

22(0.1) The following definition applies in this section.

“RRIF” means a registered retirement income fund established in accordance with the Income Tax Act (Canada).

(b) in subsection (2)

(i) in the portion preceding the formula by striking out “or less than “m”, where “M” and “m” are calculated using the following formulas” and substituting “or less than the minimum amount prescribed for an RRIF under the Income Tax Act (Canada), where “M” is calculated using the following formula:”; 

(ii) by striking out “, and” following the first formula;

(iii) by striking out the second formula;

(iv) in the French version of the portion preceding the description of “C” by striking out “et lorsque” and substituting “et où”;

(v) in the English version of the description of “C” by striking out “day of the fiscal year;” and substituting “day of the fiscal year; and”;

(vi) in the description of “F” by striking out “; and” at the end of the description and substituting a period;

(vii) by striking out the following:
\[ H = \text{the number of years between the first day of January of the year in which the calculation is made and the thirty-first day of December of the year in which the owner attains the age of ninety years, inclusive.} \]

(c) in subsection (3) by striking out ““m” shall be equal to zero” and substituting “the minimum amount prescribed for an RRIF under the Income Tax Act (Canada) shall be deemed to be equal to zero”.

11 Section 35 of the Regulation is amended

(a) subsection (1) is amended by striking out “in respect of the normal cost and of any experience deficiency, initial unfunded liability, actuarial loss and solvency deficiency under the plan” and substituting “in respect of the normal cost and of any going concern unfunded liability and solvency deficiency under the plan”;

(b) in subsection (2)

(i) in paragraph (c) by striking out “an actuarial loss” and substituting “an actuarial loss, a going concern unfunded liability”;

(ii) in paragraph d) of the French version by striking out “tout montant” and substituting “de tout montant”;

(c) in subsection (6) of the French version

(i) in paragraph b) by striking out “entente de fiducie” and substituting “convention de fiducie”;

(ii) in the portion following paragraph b) by striking out “l’entente de fiducie” and substituting “la convention de fiducie”.

12 **Section 36 of the Regulation is amended**

(a) in subsection (1)

(i) by striking out the portion preceding paragraph (a) and substituting the follow-
ing:

36(1) Subject to subsections (2) and (4), section 40 and subsection 41(1), the total amount of special payments made under paragraph 35(2)(c) to amortize an experience deficiency, an initial unfunded liability, an actuarial loss, a going concern unfunded liability or a solvency deficiency shall not be less than the sum of

(ii) in paragraph (a)

(A) in the portion preceding subparagraph (i) by striking out “the amount” and substituting “for an actuarial valuation report with a review date before December 31, 2019, the amount”;

(B) in subparagraph (ii) of the French version by striking out the comma at the end of the subparagraph and substituting a semicolon;

(iii) by repealing paragraph (b) and substituting the following:

(b) for an actuarial valuation report with a review date before December 31, 2019, and subject to subsection (5), the amount of special payments that must be paid in order to liq-uidate any actuarial loss, with interest calculated using the interest rate assumed in the go-
ing concern valuation, in equal monthly installments over a period of not more than fifteen years commencing on the review date of the actuarial valuation report in which the actua-
rial loss is identified,
(iv) by adding after paragraph (b) the following:

(b.1) for an actuarial valuation report with a review date on or after December 31, 2019, and subject to subsection (5), the amount of special payments that must be paid in order to liquidate any going concern unfunded liability, with interest calculated using the interest rate assumed in the going concern valuation, in equal monthly installments over a period of not more than ten years commencing on the review date of the actuarial valuation report in which the going concern unfunded liability is identified, and

(b) in subsection (4) by striking out “paragraphs (1)(a) and (b)” and substituting “paragraphs (1)(a), (b) and (b.1)”;

(c) in subsection (5)

(i) in the portion preceding paragraph (a) by striking out “paragraphs (1)(b) and (c)” and substituting “paragraphs (1)(b), (b.1) and (c)”;

(ii) in paragraph (a) by striking out “actuarial loss or solvency deficiency” and substituting “actuarial loss, going concern unfunded liability or solvency deficiency”;

(d) in subsection (6)

(i) in paragraph (b) by striking out “any actuarial loss and any solvency deficiency” and substituting “any actuarial loss, any going concern unfunded liability and any solvency deficiency”;

(ii) in paragraph (c) by striking out “an actuarial loss” and “the actuarial loss” and substituting “an actuarial loss or a going concern unfunded liability” and “the actuarial loss or going concern unfunded liability” respectively;
(iii) in paragraph (d) by striking out “paragraph (1)(b) or (c), as the case may be” and substituting “paragraph (1)(b), (b.1) or (c), as the case may be”;

(e) in paragraph (7)(a) by striking out “an actuarial loss” and substituting “an actuarial loss or a going concern unfunded liability”;

(f) by repealing subsection (8) and substituting the following:

36(8) For an actuarial valuation report with a review date before December 31, 2019, each actuarial loss and each solvency deficiency shall be funded separately and shall not be combined with any other actuarial loss or solvency deficiency unless the plan is wound up.

13 Section 37 of the French version of the Regulation is amended

(a) in subsection (1)

(i) in paragraph b) by striking out “entente de fiducie” and substituting “convention de fiducie”;

(ii) in the portion following paragraph b) by striking out “l’entente de fiducie” and substituting “la convention de fiducie”;

(b) in paragraph (2)b) by striking out “l’entente de fiducie” and substituting “la convention de fiducie”;

(c) in subsection (4)

(i) in paragraph a) by striking out “entente de fiducie” and substituting “convention de fiducie”;
(ii) in paragraph b) by striking out “entente de fiducie” and substituting “convention de fiducie”.

14 Section 38 of the Regulation is amended

(a) in subsection (3) of the French version in the portion preceding paragraph (a) by striking out “peut reporter le gain actuariel visé à l’alinéa (1)a) pour réduire toutes les cotisations” and substituting “peut affecter le gain actuariel visé à l’alinéa (1)a) à la réduction de toutes les cotisations”;

(b) by adding after subsection (3) the following:

38(3.1) For an actuarial valuation report with a review date on or after December 31, 2019, an administrator of a pension plan may apply a going concern excess to reduce any contributions respecting the normal cost of the pension plan if

(a) there is no going concern unfunded liability and no solvency deficiency,
(b) part or all of the contributions are employer contributions and the plan provides for such application, and
(c) the reduction in contributions would not result in a solvency ratio of less than 105% or a going concern ratio of less than 105%.

38(3.2) An administrator who intends to apply a going concern excess under subsection (3.1) shall provide the members and former members of the pension plan with 60 days’ prior written notice of the administrator’s intention.

(c) by adding after subsection (5) the following:
38(6) Subsections (1), (2), (3), (4) and (5) do not apply to an actuarial valuation report with a review date on or after December 31, 2019.

15 **Section 39 of the Regulation is amended by adding after subsection (2) the following:**

39(3) This section does not apply to an actuarial valuation report with a review date on or after December 31, 2019.

16 **Subsection 41(1) of the Regulation is amended in the portion preceding paragraph (a) by striking out “paragraphs 36(1)(b) and (c)” wherever it appears and substituting “paragraphs 36(1)(b), (b.1) and (c)”**.

17 **The Regulation is amended by adding after section 42 the following:**

**LETTERS OF CREDIT**

**Letters of credit**

42.001(1) The following definitions apply in this section and Schedule A.

“issuer” means an issuer of a letter of credit. (*émetteur*)

“prescribed employer” means an employer required to make contributions under a defined benefit pension plan that is not a multi-employer pension plan, or a person required to make contributions on behalf of an employer under a defined benefit pension plan that is not a multi-employer pension plan. (*employeur visé*)

“prescribed trustee” means a trustee of a pension fund that is administered under a trust described in paragraph 11(b). (*fiduciaire visé*)

42.001(2) This section applies if a prescribed employer is required to make payments into the pension fund with respect to a solvency deficiency.
42.001(3) Despite subsection 35(2), instead of making payments into the pension fund with respect to the solvency deficiency, the prescribed employer may provide a letter of credit to a prescribed trustee if the requirements of this section are satisfied.

42.001(4) A letter of credit shall satisfy the requirements set out in Schedule A.

42.001(5) A prescribed employer is not entitled to provide a letter of credit if the total amount of all letters of credit provided to the prescribed trustee for the pension plan would exceed 15% of the solvency liabilities of the plan.

42.001(6) The prescribed employer shall provide the letter of credit to the prescribed trustee at least 15 days before the date on which the first installment of the special payments to which the letter of credit relates is due.

42.001(7) If a letter of credit is being amended, the prescribed employer shall provide the amended letter of credit to the prescribed trustee at least 15 days before the date on which any amendment takes effect.

42.001(8) Subject to subsection (9), if a letter of credit is being renewed, the prescribed employer shall provide the renewed letter of credit to the prescribed trustee at least 15 days before the date on which the letter of credit would have expired.

42.001(9) If a letter of credit is being renewed, the prescribed employer may provide notice of the renewal to the prescribed trustee, and a copy of the notice to the issuer, at least 15 days before the date on which the letter would have expired instead of providing the renewed letter of credit in accordance with subsection (8).
42.001(10) If a letter of credit is being replaced by another letter of credit, the prescribed employer shall provide the replacement letter of credit to the prescribed trustee at least 15 days before the date on which the original letter of credit expires.

42.001(11) Subject to subsection (12), a prescribed employer who is required to provide a letter of credit, an amended letter of credit, a renewed letter of credit or a replacement letter of credit under subsection (6), (7), (8) or (10), as the case may be, within the period specified in that subsection shall give a copy of it to the administrator within the same period.

42.001(12) A prescribed employer who provides a notice of renewal in accordance with subsection (9) instead of complying with subsection (8) shall provide a copy of the notice of renewal to the administrator within the period referred to in subsection (9).

42.001(13) Within five days after receiving a copy of the letter of credit, the amended letter of credit, the replacement letter of credit, the renewed letter of credit or the notice of the renewal of the letter of credit, the administrator shall give notice to the Superintendent by filing the following documents with the Superintendent:

(a) a certified copy of the letter of credit, the amended letter of credit, the replacement letter of credit, the renewed letter of credit or the notice of the renewal, and

(b) a certificate indicating whether the letter of credit satisfies the requirements of this Regulation and the requirements of the Income Tax Act (Canada).

42.001(14) The prescribed trustee holds the letter of credit in trust for the pension plan.

42.001(15) A prescribed trustee who holds a letter of credit in trust for a pension plan is required to demand payment of the amount of the letter of credit into the pension fund by the issuer if any of the following circumstances exist:
(a) if the letter of credit does not satisfy the requirements of this Regulation or the *Income Tax Act* (Canada);

(b) if the administrator gives written notice to the prescribed trustee that the prescribed employer intends to wind up the pension plan under subsection 60(1) of the Act;

(c) if the Superintendent issues an order under subsection 61(1) of the Act requiring the wind-up of the pension plan;

(d) if the prescribed employer is subject to bankruptcy proceedings under the *Bankruptcy and Insolvency Act* (Canada);

(e) if an application or petition has been filed under the *Winding-up and Restructuring Act* (Canada) by the prescribed employer or against the prescribed employer;

(f) if, under the terms of an agreement under section 93.3 of the Act between the Minister and an authorized representative of a designated jurisdiction whose pension benefits legislation applies to the pension plan, the prescribed trustee is otherwise required to demand payment of the amount of the letter of credit;

(g) if, under the terms of the trust agreement related to the letter of credit, the prescribed trustee is otherwise required to demand payment of the amount of the letter of credit.

42.001(16) If the issuer does not pay the amount of the letter of credit on the prescribed trustee’s demand,

(a) the prescribed employer shall immediately pay that amount into the pension fund, and

(b) the prescribed employer shall give written notice to the Superintendent that the issuer has not paid the amount of the letter of credit.
42.001(17) If a prescribed trustee demands payment of the amount of a letter of credit, the prescribed trustee shall promptly notify the administrator, the prescribed employer and the Superintendent.

42.001(18) If the issuer does not pay the amount of the letter of credit on the prescribed trustee’s demand, the prescribed trustee shall promptly notify the administrator, the prescribed employer and the Superintendent.

42.001(19) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund.

42.001(20) Subject to section 19 of the Act, the fees and expenses associated with enforcement measures in respect of a letter of credit are payable from the pension fund.

18 Subsection 51(3) of the Regulation is amended in the portion preceding paragraph (a) by striking out “subparagraph 10(2)(b)(iii)” and substituting “subparagraph 10(2)(b)(iii) or (b.1)(iii)”.

19 The Regulation is amended by adding after section 55 the following:

GOVERNANCE OF PENSION PLANS

Governance policy of pension plan

55.1(1) The administrator of a pension plan shall establish, adopt and follow a written governance policy for the plan, which shall, unless the Superintendent authorizes otherwise,

(a) set out the structures and processes for overseeing, managing and administering the plan;

(b) explain what those structures and processes are intended to achieve;
(c) identify all participants who have authority to make decisions in respect of those structures and processes, and describe the roles, responsibilities and accountabilities of those participants;

(d) set performance measures and establish a process for monitoring, against those performance measures, the performance of each of the participants identified in paragraph (c);

(e) establish procedures to ensure that the administrator and, if applicable, any other participants in those structures and processes have access to relevant, timely and accurate information;

(f) establish a code of conduct for the administrator and a procedure to disclose and address conflicts of interest of the administrator;

(g) establish an ongoing process to identify the educational requirements and skills necessary for the administrator to perform the administrator’s duties in relation to the plan;

(h) identify the material risks that apply to the plan and establish internal controls to manage those risks; and

(i) establish a process for the resolution of disputes involving members of the plan or other persons who are entitled to benefits under the plan.

55.1(2) The administrator shall ensure that the plan is administered in accordance with the governance policy established under subsection (1).

55.1(3) On request, the administrator shall submit the governance policy to the Superintendent.

20 The Regulation is amended by adding the attached Schedule A.
Commencement

21 Paragraph 11(a) of this Regulation comes into force on December 31, 2020.
SCHEDULE A

LETTERS OF CREDIT

LETTER OF CREDIT

Letters of credit – criteria

1 A letter of credit provided under section 42.001 of this Regulation must be an irrevocable and unconditional standby letter of credit made in accordance with the rules set out in International Standby Practices ISP98, International Chamber of Commerce Publication No. 590, and must meet the following requirements:

(a) it must be made payable to the prescribed trustee, in trust for the pension plan;

(b) it must be payable in Canadian currency;

(c) it must make the issuer contractually liable to pay out money under its terms if payment is demanded under it by the prescribed trustee;

(d) it must be subject to a trust agreement described in section 4 of this Schedule between the issuer, the administrator and the prescribed trustee.

ISSUERS

Issuers

2(1) An issuer must be a member of the Canadian Payments Association and must be one of the following:

(a) a bank as defined in section 2 of the Bank Act (Canada);

(b) a credit union as defined in the Credit Unions Act;
(c) an extra-provincial credit union as defined in the *Credit Unions Act*;

(d) a cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies.

2(2) The issuer cannot be the prescribed employer or an affiliate, as defined in the *Business Corporations Act*, of the prescribed employer.

2(3) When the letter of credit is issued or renewed, the issuer must have a credit rating, given by a credit rating agency, that is at least equal to one of the following ratings:

(a) A, from Dominion Bond Rating Service Limited;

(b) A, from Fitch Ratings;

(c) A2, from Moody’s Investors Service;

(d) A, from Standard & Poor’s Ratings Services.

TERMS

Matters that must be included in a letter of credit

3 The letter of credit shall provide for the following matters:

(a) Effective date: The date on which the letter of credit becomes effective shall be specified, and it cannot be later than the date on which the first installment of the special payments to which the letter of credit relates is due.

(b) Expiry date: The date on which the letter of credit expires shall be specified, and it cannot be later than the first anniversary of the date on which the letter of credit takes effect.
(c) Demand for payment: When the prescribed trustee demands payment under the letter of credit, the issuer is required to promptly pay the face amount of the letter of credit without further inquiry.

(d) Assignment: The letter of credit cannot be assigned except by the issuer to another issuer.

(e) Effect of assignment: If the issuer assigns the letter of credit without the consent of the prescribed employer, the issuer who assigned it remains obligated to pay, on demand, an amount demanded under the letter of credit by the prescribed trustee.

(f) Amendment: The letter of credit cannot be amended except as follows:

(i) to reflect a change in the name of the pension plan, the name of the prescribed employer or the name of the administrator;

(ii) to reflect a change in the prescribed trustee;

(iii) to reflect the assignment of the letter of credit to another issuer;

(iv) to decrease the amount of the letter of credit in the circumstances permitted under this Regulation;

(v) to increase the amount of the letter of credit when it is renewed.

(g) Notice of amendment: The issuer is required to give written notice of any amendment to the prescribed employer within five days after the amendment is made.

(h) Effect of change in issuer’s status: If the issuer ceases to satisfy any of the requirements set out in section 2 of this Schedule while the letter of credit is in effect, the issuer
remains obligated to pay, on demand, an amount demanded under the letter of credit by the prescribed trustee.

(i) Effect of prescribed employer’s insolvency, liquidation or bankruptcy: The insolvency, liquidation or bankruptcy of the prescribed employer has no effect on the rights or obligations of the issuer or the rights or obligations of the prescribed trustee.

(j) Notice of non-renewal: If the issuer does not intend to renew the letter of credit, the issuer is required to notify the prescribed trustee and the prescribed employer at least 60 days before the letter of credit expires.

**TRUST AGREEMENT**

**Matters that must be included in trust agreement**

4(1) The trust agreement to which a letter of credit is subject shall provide for the following matters:

(a) that the prescribed trustee holds the letter of credit in trust for the pension plan;

(b) that the prescribed trustee is required to demand payment of the amount of the letter of credit if the administrator notifies the prescribed trustee with reasonable notice that the letter of credit does not satisfy the requirements of this Regulation or the requirements of the *Income Tax Act* (Canada);

(c) that the prescribed trustee is required to demand payment of the amount of the letter of credit if the administrator or the prescribed employer notifies the prescribed trustee of any of the following:

(i) that the prescribed employer intends to wind up the pension plan under subsection 60(1) of the Act;
(ii) that the Superintendent has issued an order under subsection 61(1) of the Act re-
quiring the wind-up of the pension plan;

(iii) that the prescribed employer is subject to bankruptcy proceedings under the Bank-
ruptcy and Insolvency Act (Canada);

(iv) that an application or petition has been filed under the Winding-up and Restruc-
turing Act (Canada) by or against the prescribed employer;

(d) that, if the prescribed trustee receives notice from a person or entity other than the
administrator or the prescribed employer that a circumstance described in paragraph (c)
exists, the prescribed trustee is required to notify the administrator, the prescribed em-
ployer and the Superintendent;

(e) that 31 days after giving the notice referred to in paragraph (d), the prescribed trustee
is required to demand payment of the amount of the letter of credit unless the administra-
tor has notified the prescribed trustee that the circumstance described in paragraph (c) does
not exist;

(f) that 14 days before the letter of credit expires, the prescribed trustee is required to
demand payment of the amount of the letter of credit unless one or more of the following
events has occurred:

   (i) the prescribed employer has paid into the pension fund an amount equal to the
       amount of the letter of credit;

   (ii) the letter of credit has been renewed in an amount at least equal to the original
       letter of credit, and the prescribed trustee has received the renewed letter of credit or no-
       tice of the renewal;
(iii) the letter of credit is being replaced in an amount at least equal to the original letter of credit, and the prescribed trustee has received the replacement letter of credit;

(iv) the administrator has notified the prescribed trustee that the amount of the letter of credit is reduced and the prescribed trustee has received the following documents:

(A) a replacement letter of credit in the reduced amount or notice of the renewal of the current letter of credit in the reduced amount;

(B) notice that the prescribed employer has paid into the pension fund the amount by which the letter of credit is reduced or notice that no such payment is required because the conditions described in subsection (2) are satisfied;

(g) that, if the prescribed trustee demands payment of the amount of the letter of credit, the prescribed trustee is required to promptly notify the administrator, the prescribed employer and the Superintendent;

(h) that, if the issuer does not pay the amount of the letter of credit on the prescribed trustee’s demand, the prescribed trustee is required to promptly notify the administrator, the prescribed employer and the Superintendent;

(i) that the administrator is required to give a copy of the trust agreement to the prescribed employer and the Superintendent within ten days after it is entered into or is amended, as the case may be.

4(2) The conditions referred to in clause (1)(f)(iv)(B) are satisfied if the following is true on the date of the most recently filed or submitted actuarial valuation report:

\[ C > (A - B) \]
where

\[ A = \text{for an actuarial valuation report with a review date} \]

(a) before December 31, 2019, the solvency liabilities of the pension plan, or

(b) on or after December 31, 2019, 85% of the solvency liabilities of the pension plan;

\[ B = \text{the sum of the solvency assets and the amount, which may be positive or negative, by which the value of the solvency assets is adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the pension plan assets, calculated over a period of no longer than five years;} \]

\[ C = \text{the present value of the total amount of all letters of credit held in trust for the pension plan, after the reduction in the amount of the letter of credit.} \]

4(3) The value of “C” in the formula in subsection (2) shall be determined using the same interest rates as those used to determine the amount of the solvency liabilities set out in the actuarial valuation report.