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Superintendent of Financial Services

Ontario

Surintendant des services financiers

IN THE MATTER OF *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*PBA*")

AND IN THE MATTER OF an Intended Decision of the Superintendent of Financial Services to make an order under section 88 of the *PBA* relating to the Musicians' Pension Fund of Canada, Reg. No. 215145 (the "Plan").

TO:

Board of Trustees
Musicians' Pension Fund of Canada

A110 – 2255 Sheppard Avenue East
North York ON M2J 4Y1

Attention: Ms. Ellen M. Versteeg-Lytwyn
Fund Administrator

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER UNDER SECTION 88 OF THE PBA to:

- Require the Board of Trustees of the Plan to file, within 60 days from the date of this Notice, a revised valuation report as at January 1, 2011 that meets the requirements of the PBA and Regulation 909, R.R.O. 1990 (the "Regulation") and, in particular, that:
  - applies subsection 7(3.1) and 7(3.2) of the Regulation in determining the sufficiency of the contributions; and
  - sets out options available to the administrator of the Plan that will have the result that the required contributions will be sufficient to provide the benefits under the Plan as required by section 6(4) of the Regulation.

REASONS:

1. The Plan is a multi-employer pension plan administered by a Board of Trustees the "Trustees"). The Trustees have filed an election in accordance with section 6.0.3 of the Regulation declaring the Plan to be a Specified Ontario Multi-employer Pension Plan ("SOMEPP").

2. Section 14 of the Regulation requires the administrator of a pension plan, at regular intervals, to cause the plan to be reviewed, a report prepared and certified by an actuary and filed. According to the January 1, 2011 actuarial valuation prepared by The Segal Company, Ltd. (the "2011 Valuation"), dated March 2012, the Plan has a surplus on a going concern basis (using the unit credit cost method) of $97,465,800 and a solvency deficiency of $227,157,171. As the Plan is a SOMEPP, payments to fund this solvency deficiency are not required.

3. The amount of projected employer contributions as set out in the 2011 Valuation is $7.1 million, which is less than Plan's normal cost (including administrative expenses) of $12.4 million. This results in a contribution shortfall of $5.3 million ($12.4 minus $7.1).

4. Subsection 6(4) of the Regulation requires the actuary, in reports filed for multi-employer pension plans, including SOMEPPs, to either: (a) show the sufficiency of contributions to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan (for SOMEPPs, sufficiency is determined in accordance with subsection 6.0.4(3) of the Regulation, as discussed below); or (b) "where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan."

5. Section 6.0.4(3) provides, in part, that the required contributions to a SOMEPP are sufficient if "they are not less than the sum of the following amounts determined using a benefit allocation method:

   1. The normal cost of the plan."….

   "Normal cost" is defined in subsection 1(1) of the Regulation as "the cost of pension benefits and ancillary benefits allocated to a fiscal year of a pension plan, determined on the basis of a going concern valuation".

6. In determining that the contributions were sufficient to meet the contribution sufficiency test in respect of SOMEPPS in section 6.0.4 of the Regulation, the actuaries for the Plan, under the direction of the Board of Trustees, excluded the application of subsections 7(3.1) and 7(3.2) of the Regulation. The actuaries indicate in the 2011 Valuation that "The Trustees of the Plan have consulted with their legal counsel regarding the interpretation and, application of sections 7(3.1) and 7(3.2) of the Regulations, as they apply to the contribution sufficiency test for this Plan, as outlined in Section 6.0.4 of the Regulations. As a result, Trustees of the Plan feel sections 7(3.1) and 7(3.2) are not applicable to this Plan."

7. Section 7 of the Regulation provides, in part, as follows (emphasis added):

   "(3) In any year for which no special payments are required to be made for a pension plan under section 5, an actuarial gain may be applied to reduce contributions for normal costs required to be made by the employer, by a person or entity required to make contributions on behalf of the employer, by the members of the pension plan or by any of them.

(3.1) Subsection (3) does not apply to plans that provide defined benefits, other than designated plans or individual pension plans, for a fiscal year of the plan ending after June 29, 2010 and before January 1, 2013 to reduce contributions for the normal cost required to be made by an employer, by a person or entity required to make contributions on behalf of the employer, by members or by any of them for the year unless,

a. the administrator files with the Superintendent within the first 90 days of the fiscal year an actuarial cost certificate for the fiscal year; and

b. **the amount applied to reduce the contributions for the year does not exceed the maximum amount determined under subsection (3.2).**

(3.2) For the purposes of clause (3.1)(b), the maximum amount of any actuarial gain identified in the last report filed under section 3 or 14 that may be applied to reduce contributions for the normal cost for a fiscal year of the plan ending after June 29, 2010 and before January 1, 2013 **is the lesser of**,

a. the amount, if any, by which the going concern assets reported in the actuarial cost certificate filed for the fiscal year exceed the sum of the estimated going concern liabilities and the prior year credit balance as reported in the certificate; and

b. **the amount, if any, by which the solvency assets reported in the certificate exceed the sum of the estimated solvency liabilities and the prior year credit balance as reported in the certificate**."

8. Subsection 7(3) of the Regulation permits, in any year for which no special payments are required to be made under section 5 of the Regulation, an actuarial gain to be applied to reduce contributions for normal costs. However, the combined effect of subsections 7(3.1) and 7(3.2) of the Regulation (as highlighted in paragraph 7 of this Notice) is that subsection 7(3) does not apply to plans that provide defined benefits unless that plan has both a going concern surplus and a solvency surplus. In such case, the lesser of the going concern surplus and the solvency surplus is the "maximum amount" (as defined in subsection 7(3.2)) that can be applied under subsection 7(3) to reduce contributions for normal costs.

9. As the Plan has a solvency deficiency, the "maximum amount" (as defined in subsection 7(3.2) of the Regulation) that can be applied under subsection 7(3) to reduce contributions for normal cost is zero. Therefore, the contribution shortfall identified in paragraph 3 of this Notice remains at $5.3 million. Consequently, the contributions as set out in the 2011 Valuation Report are insufficient to meet the contribution sufficiency test in subsection 6.0.4(3) of the Regulation. Pursuant to subsection 6(4) of the Regulation, the actuary must "propose options available to the administrator of the plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan."

10. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal**

a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you. [1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416- 590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **22** day of **August, 2012**.

copy: Legal Counsel, Michael Mazzuca, Koskie Minsky LLP
Actuary, Riley St. Jacques, The Segal Company

Original Signed By

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.