



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

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Refuse to Consent under section 79(3) of
the *PBA* to a Payment of Money that is Surplus from the Pension Plan for
Employees of Mechanics Choice of Canada Limited, Registration Number
0567925

TO: **Avnet International (Canada) Ltd.**
6950 Creditview Road, Unit 2
Mississauga ON L5N 0A6

Attention: Ray Sadowski

Administrator of the Plan

COPIED TO: **Fraser Milner Casgrain LLP**
77 King Street West, Suite 400
Toronto ON M5K 0A1

Attention: Paul Baston

Counsel

COPIED TO: **Fasken Martineau DuMoulin LLP**
333 Bay Street, Suite 2400
Toronto ON M5H 2T6

Attention: Peggy McCallum

Counsel

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO CONSENT to a payment of money that is surplus from
the Pension Plan for Employees of Mechanics Choice of Canada Limited, Registration Number
0567925 (the “Plan”) under section 79(3) of the *PBA*.

REASONS:

- 1) Avnet International (Canada) Ltd. (“Avnet”) is the employer and administrator for the Plan.
- 2) The Plan is a defined benefit single employer pension plan registered with the Superintendent of Financial Services (the “Superintendent”).
- 3) The Plan was established on October 1, 1971. The original Plan sponsor was Valley Forge Automotive of Canada Limited (“Valley Forge”).
- 4) On April 1, 1988, Valley Forge sold part of its assets to Automotive Manufacturing and Supply Company Inc., which changed its name to Mechanics Choice of Canada Limited (“Mechanics Choice”). Substantially all of the employees of Valley Forge had their employment terminated in conjunction with the sale.
- 5) Mechanics Choice declared a partial wind up of the Plan effective April 1, 1988. The partial wind up report was approved by the Superintendent on September 19, 1990 subject to issues concerning the surplus related to the partial wind up. The partial wind up report stated that the partial wind up affected 28 members and that the Plan was being terminated for all but 2 members.
- 6) Avnet has fully wound up the Plan effective April 30, 1992.
- 7) Avnet has filed applications for payment of surplus with the Superintendent relating to the April 1, 1988 partial wind up and the April 30, 1992 full wind up. Avnet has obtained the consent of 27 members with respect to the partial wind up surplus payment application, and has therefore complied with section 77.11(7) 3.ii of the *PBA* in obtaining the consent of at least two-thirds of the members of the pension plan affected by the partial wind up.
- 8) However, the application for payment of surplus relating to the partial wind up does not include the distribution of surplus to 3 members whose membership in the Plan was suspended due to disability as at April 1, 1988 (the “3 Suspended Members”). The respective dates of disability are: October 24, 1987; February 19, 1988; and March 18, 1988.
- 9) Avnet has not provided any evidence to substantiate its claim that the 3 Suspended Members were terminated from employment prior to April 1, 1988.
- 10) Therefore, the 3 Suspended Members ceased to be employed as a result of the sale from Valley Forge to Mechanics Choice. As a result, the 3 Suspended Members should have been included in the partial wind up.
- 11) Section 77.11(7) 3.iii of the *PBA* states that a written agreement for the payment of surplus may provide for payment of surplus to the employer in the circumstances and date specified in the agreement if the surplus is to be paid to the employer on the partial wind up of the pension plan if the following persons have agreed to the payment:

. . . the number which is considered appropriate in the circumstances by the Superintendent of former members and other persons who are affected by the partial wind up and who are entitled to payments under the pension plan as of the date of the partial wind up.

12) The 3 Suspended Members are affected by the partial wind up. However, Avnet has not included them in the surplus distribution and has not obtained their consent to the application for payment of surplus to Avnet. The Superintendent therefore considers it appropriate that the 3 Suspended Members provide their consent to the payment of surplus to Avnet.

13) Section 79(3.1)(b) of the *PBA* states that the Superintendent shall not consent to payment of surplus out of a pension plan that is being wound up in part unless the payment of surplus to the employer on the partial wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up in part.

14) The requirements of section 77.11(7) 3.iii of the *PBA* have not been satisfied, because Avnet has not included the 3 Suspended Members in the surplus distribution or obtained their consent to the payment of surplus to Avnet.

15) 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

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 fifth day after the date of mailing.

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 1st day of September, 2011.

K. David Gordon
Deputy Superintendent, Pensions