

Superintendent of
Financial
Services



Surintendant des
services
financiers

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 Proposal of the Superintendent of Financial Services to Consent, under section 78(1) of the PBA, to a payment out of the **Scotiabank Pension Plan for Former Employees of National Trust Company**, Registration Number 0315952.

TO: National Trust Company
100 Yonge Street, 7th Floor
Toronto ON M5C 2W1

Attention: Ms. Colleen McDonald
Senior Manager, Corporate Pension Operations

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO CONSENT, under section 78(1) of the PBA, to the payment out of the Scotiabank Pension Plan for Former Employees of National Trust Company, Registration Number 0315952 (the “Plan”), to **National Trust Company**, in the amount of \$42,423,500 as at April 30, 2009 and to be further adjusted to the actual date of payment for income and expenses associated with the surplus distribution process.

I PROPOSE TO MAKE THE CONSENT effective only after the Applicant satisfies me that all benefits and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

REASONS:

1. National Trust Company is the employer as defined in the Plan.
2. The Plan was wound up, effective April 30, 2009.
3. As at April 30, 2009 the surplus in the Plan was estimated at \$100,001,000.

4. On July 11, 2008, the Ontario Superior Court of Justice issued an Order in a class proceeding (the “Class Proceeding”) commenced by National Trust Company to have a Surplus Sharing Agreement approved. This Order states in part:
 - A). the National Trust Company is entitled to receive a payment of surplus from the Plan pursuant to section 79(3)(b) of the PBA;
 - B). the application is approved pursuant to subsection 29(3) of the *Class Proceedings Act*;
 - C). the Surplus Sharing Agreement is valid and binding on the respondent class and National Trust Company. The distribution of surplus shall proceed pursuant to the terms of the surplus sharing agreement;
 - D). an amendment to the Plan in the form attached to the Order providing for payments of surplus and expenses pursuant to the Surplus Sharing Agreement is and shall be considered valid and binding on the respondent class and National Trust Company.
5. The Court Order has not been appealed.
6. The Court Order states that the Plan provides for payment of surplus to the Employer on wind up of the Plan.
7. On March 18, 2010, National Trust Company filed an application for the Superintendent's consent to the withdrawal of surplus by the employer.
8. The application discloses that by written agreement made by the Employer, the active members, other members (as defined in the application), and other persons entitled to payments from the fund, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the active members, other members, and other persons entitled to payments from the fund as defined in the Surplus Distribution Agreement.
9. The Employer has applied, pursuant to section 78 of the PBA, and section 8(1)(b) of Regulation 909, R.R.O. 1990 (the “Regulation”), for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after net of certain fees and disbursements related to the wind up of the Plan).

Section 79(3)(a) of the PBA provides: “Subject to section 89, the Superintendent shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in whole unless the pension plan provides for payment of surplus to the employer on the wind up of the pension plan.”

Section 8(1)(b) of the Regulation provides: “No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, the payment is to be made to an employer with the written agreement of,

- (i) the employer,
- (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
- (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Superintendent considers appropriate in the circumstances.”

10. The application appears to comply with sections 78, 79(3)(a), and 79(3.2)(1) and (3) of the PBA and with sections 8(1)(b), 28(5), 28(5.1) and 28(6) of the Regulation.

11. Such further and other reasons as 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 Proposal 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.

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.

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

DATED at Toronto, Ontario, this **3rd** day of **December, 2010**

K. David Gordon
Deputy Superintendent, Pensions

Copy: Douglas Rienzo, Osler, Hoskin & Harcourt LLP
Mark Zigler, Koskie Minsky LLP
Edward G. Harris