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The Pension Plan for Executives of Shoppers Drug Mart - March 9, 2009.

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 Refuse to Consent to a suspension of funding under sections 55(2) and 89(4) of the *PBA*, relating to the **Pension Plan for Executives of Shoppers Drug Mart**, Registration Number **1066083**

TO:

Shoppers Drug Mart Inc.

243 Consumers Road
North York, Ontario
M2J 4W8

Attention:

John Caplice
SVP Treasurer & Investor Relations

Employer & Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT, in respect of the Pension Plan for Executives of Shoppers Drug Mart, Registration Number 1066083, (the "Plan") to a suspension of funding in relation to the ongoing portion of the Plan, under sections 55(2) and 89(4) of the *PBA*.

REASONS:

1. The Plan is a contributory, defined benefit pension plan that was established as at February 4, 2000.
2. Shoppers Drug Mart Inc. ("SDM") is the employer and administrator of the Plan.
3. The Plan was partially wound up effective April 22, 2005, in relation to certain members and former members who ceased to be employed as a result of the reorganization of Shoppers' business.
4. The partial wind up valuation report dated August 2007 filed by SDM states that as at April 22, 2005, there was an unfunded wind up liability related to the partial wind up in the amount of \$1,476,309. The partial wind up valuation report also states that there is an unfunded wind up liability related to the ongoing plan in the amount of \$2,801,979.
5. The actuarial valuation and partial wind up financial update report as at December 31, 2006 (dated February 2008) states that there is an unfunded actuarial liability for the continuing

Plan in the amount of \$1,938,014 and an unfunded windup liability related to the partial wind up in the amount of \$788,466. This report also states that the continuing Plan has 51 active and disabled members, 14 retired members and beneficiaries, and 11 terminated vested members; the portion of the Plan that is wound up has 12 terminated vested members, 7 deferred members, and 23 retired members and other beneficiaries.

6. The Plan is a "designated plan" within the meaning of Regulation 8515 under the *Income Tax Act*.
7. Section 55(2) of the *PBA* states that an employer who is required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding. Section 5(1)(b) of Regulation 909 states that the special payments required to be made with respect to any going concern unfunded liability shall be paid by equal monthly instalments over a period of 15 years beginning on the valuation date of the report that identified the unfunded liability.
8. Section 75(1)(a) of the *PBA* states that where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund an amount equal to the total of all payments that are due or that have accrued and that have not been paid into the pension fund. Section 31 of Regulation 909 states that the liability to be funded under section 75 of the *PBA* shall be funded by annual special payments commencing at the effective date of the wind up over not more than 5 years.
9. The designated funding limits prescribed by Regulation 8515 under the *Income Tax Act* are not high enough to allow SDM to immediately fully fund the partial wind up deficiency as well as making the special payments required to fund the going concern unfunded liability related to the ongoing plan.
10. Because SDM would like to finalize the partial wind up and make certain payments that section 28 of Regulation 909 prohibits until the partial wind up has been fully funded, SDM has applied to the Superintendent of Financial Services (the "Superintendent") for authorization to allocate its funding so that the partial wind up is immediately fully funded. To do this and at the same time to comply with the *Income Tax Act* rules for contributions to designated plans, SDM would be required to suspend or reduce contributions to the going concern unfunded liability related to the ongoing plan, such that its funding of the ongoing plan would not comply with the section 55(2) of the *PBA* and section 5(1)(b) of Regulation 909.
11. Nothing in the *PBA* or Regulation 909 gives the Superintendent the authority to consent to a suspension of funding for the ongoing portion of a plan pending full funding of the partially wound up portion of the plan.
12. While the Superintendent is sympathetic to SDM's wish to immediately fully fund the unfunded wind up liability related to the partial wind up, the Superintendent cannot consent to a funding allocation that falls short of the requirements under the *PBA* and Regulation 909 for the funding of the ongoing portion of the Plan.
13. Section 89(4) of the *PBA* states that where the Superintendent proposes to refuse to give an approval or consent under the *PBA* or regulations, the Superintendent shall serve notice of the proposal, together with written reasons therefore, on the applicant for the approval or consent.

14. 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 Proposal is served on you.***

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 PROPOSAL AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this 9th day of March, 2009.

K. David Gordon
Deputy Superintendent, Pensions

cc: Rachna de Koning, Towers Perrin
David Vincent & Alan Merskey, Ogilvy Renault LLP

*** 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.