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ACSYS Hourly-Rate Employees Pension Plan Registration Number: 1040146 and General Motors Canadian Hourly-Rate Employees' Pension Plan Registration Number: 0340968 - March 12, 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 Transfer of Assets under section 80 of the PBA in respect of the following pension plans:

a) ACSYS Hourly-Rate Employees Pension Plan Registration Number: **1040146** (the "ACSYS Plan") and

b) General Motors Canadian Hourly-Rate Employees' Pension Plan Registration Number: **0340968** (the "GM Plan")

**TO:**

**ACSYS Automotive Component Systems of Canada, Inc.**

P.O. Box 26088  
206 King Street E.  
Oshawa ON L1H 7L3

Employer and Administrator of ACSYS Plan

**Attention:**

**Ms. Lucy Was, Mr. William G. Dee, Agent**

400 Galleria Officentre, Suite 400  
Southfield MI 48034  
USA

**AND TO:**

**General Motors Canada Limited**

1908 Colonel Sam Drive  
Oshawa ON L1H 8P7

Employer and Administrator of the GM Plan

**Attention:**

**Mr. David J. Courtney, General Manager**

**NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO CONSENT** to a transfer of assets effective August 31, 2001, from the ACSYS Plan to the GM Plan under section 80 of the *PBA*.

**REASONS:**

1. The ACSYS Automotive Component Systems Canada, Inc. ("ACSYS") is the Employer and Administrator of the ACSYS Plan and General Motors of Canada Limited is the Employer and Administrator of the GM Plan.
2. In a letter dated January 31, 2002, ACSYS (the "Applicant") filed with the Superintendent of Financial Services (the ASuperintendent@) an application for consent to a transfer of assets from the ACSYS Plan (formerly The Peregrine Canadian Hourly-Rate Employees Pension Plan) to the GM Plan. The details of the proposed transfer were set out in an Asset Transfer Report prepared as at August 31, 2001, by Mr. Michael Ternosky and Mr. Nilesh Patel of Towers Perrin Inc., in January 2002.
3. On May 8, 2002, staff from the Financial Services Commission of Ontario ("FSCO") wrote to Mr. Michael Ternosky, Principal at Towers Perrin, identifying a number of issues that needed to be addressed before the Application could be approved. FSCO staff has received partial responses to this letter.
4. On August 26, 2003, Mr. Michael Ternosky wrote a letter to FSCO staff in response to the FSCO letter of May 8, 2002. He enclosed documents which included: a notice to members affected by the asset transfer; relevant letters; an extract from the Asset Purchase Agreement that identified the seller and purchaser; and a duly signed board resolution.
5. On September 10, 2003, FSCO staff spoke with Mr. Michael Ternosky.
6. On November 20, 2003, Mr. Michael Ternosky wrote to FSCO staff to clarify an incomplete description in the Asset Transfer Report.
7. On April 25, 2005, FSCO staff wrote to Mr. Michael Ternosky to follow up on outstanding issues. In this letter, FSCO staff advised Mr. Michael Ternosky of the Ontario Court of Appeal's decision in *Aegon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* [2003] O.J. No. 4755 (*ATransamerica@*). On July 8, 2004, the Supreme Court of Canada dismissed ING Canada Inc.'s application for leave to appeal. Therefore, the Court of Appeal's decision is now final. As part of the letter, FSCO staff outlined four items in addition to the criteria set out in published FSCO policies A700-200, A700-226 and A700-251.
8. *Transamerica* is a case about an asset transfer from a pension plan that was subject to a trust and in a surplus position, to a pension plan that was not subject to a trust and in a deficit position. After the transfer, the actuarial surplus that derived from the trust plan was used to fund the employer's obligations under the non-trusted plan. The Court of Appeal for Ontario held that the terms of the trust were not altered by the transfer of assets and the use of actuarial surplus to fund the non trust plan was Across-subsidization@ that was not permitted by the terms of the trust. The Court ruled that the terms of the trust prevented the use of the assets in the trust for any purpose other than for the benefit of its beneficiaries.
9. On August 29, 2005, FSCO staff wrote to Mr. Michael Ternosky regarding the letter dated April 25, 2005. He was advised that no response had been received by FSCO staff requesting

- additional information. He was requested by FSCO staff to respond by September 30, 2005.
10. On September 30, 2005, Mr. Michael Ternosky wrote to FSCO staff advising that the plan sponsor requested that the processing of the asset transfer application be suspended.
  11. On October 7, 2005, FSCO staff acknowledged Mr. Michael Ternosky's instructions to suspend the review, but advised him that the review process cannot be suspended indefinitely. FSCO staff requested to be advised if the plan sponsor wished to withdraw the application at this time.
  12. On March 2, 2006, FSCO staff wrote to Mr. Michael Ternosky because no response was received from the October 7, 2005, letter. He was requested to respond by March 15, 2006, as to whether the plan sponsor wished to withdraw the application.
  13. On June 28, 2006, FSCO staff wrote to Ms. Lucy Was of ACSYS advising her on the lack of responses as to whether the plan sponsor wished to withdraw the application. She was further advised to respond by August 1, 2006.
  14. On March 8, 2007, FSCO staff wrote to Mr. Stephen Lee of Mercers regarding the transfer of assets (the applicant had changed consultants). He was asked to respond by April 6, 2007, by either providing more information for the application or to withdraw the application.
  15. On November 7, 2007, FSCO staff wrote to Mr. Joe Roffolo, Executive Vice President (HR) of ACSYS, regarding the review of the asset transfer. Mr. Joe Roffolo was advised that FSCO required further information as requested from the April 25, 2005, letter and other information. FSCO staff also advised of the *Transamerica* decision and the Ontario Divisional Court in *Baxter et al. v. National Steel Car Limited et. al.* in December 2004. Attached to this letter was a checklist to assist applicants who wish to receive the Superintendent's consent to transfer assets between pension plans. Furthermore, the letter indicated a deadline of January 31, 2008, if the application needs to be amended or further support needed to be provided for this application.
  16. On November 27, 2007, FSCO staff wrote to Mr. William G. Dee of ACSYS to remind him of the contents from the April 25, 2005. He was asked to respond by January 31, 2008.
  17. The final letter was sent by FSCO staff to Mr. William G. Dee on August 12, 2008, which set out the numerous reminders and extensions for the submission of a response. This letter was the final reminder. The final deadline provided by FSCO staff was September 12, 2008.
  18. FSCO staff has had numerous telephone conversations with the staff of Mercers and the sponsor of the ACSYS Plan, but without any resolution of the outstanding issues.
  19. The Application has now been outstanding for approximately seven years.
  20. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the ATribunal@) pursuant to section 89(6) of the *Act*. **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 ON M2N 6L9

Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at 416- 226-7752, toll free at 1-800-668-0128, ext. 7752, 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 12th day of March, 2009.

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K. David Gordon  
Deputy Superintendent, Pensions

c.c.  
Mercer  
Sun Life Plaza, Suite 2800  
Calgary AB T2P 3N3

Attention: Mr. Stephen Lee

\* **NOTE** - Pursuant to section 112 of the *Act* 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.