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Refuse to Consent to a Transfer of Assets under section 81 of the PBA in respect of the following pension plan 0993121 and pension plan 1066273 - April 3, 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 81 of the *PBA* in respect of the following pension plans:

a) Retirement Income Plan for Executive Employees of CSG Security Inc. Registration Number: **0993121** (the "CSG Plan") and

b) Pension Plan for Salaried Employees of Gunnebo Canada Inc. Registration Number: **1066273** (the "Gunnebo Plan")

**TO:**

**CSG Security Inc.**

5201 Explorer Drive  
Mississauga ON L4W 4H1

**Attention:**

**Ms. Franca Butler**  
**Manager, Benefits and Payroll Services**

**AND TO:**

**Gunnebo Canada Inc.**

9 Van Der Graaf Court  
Brampton ON L7T 5E5

**Attention:**

**Ted Wozniak**  
**Controller**

## **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO CONSENT** to a transfer of assets effective August 25, 2000, from the Retirement Income Plan for Executive Employees of CSG Security Inc. to the Pension Plan for Salaried Employees of Gunnebo Security Inc. under section 81 of the *PBA*.

## **REASONS:**

1. CSG Security Inc. (the "Applicant") is the Employer and Administrator of the CSG Plan and Gunnebo Canada Inc. ("Gunnebo" formerly Chubb Lock & Safe Canada Ltd.) is the Employer

and Administrator of the Gunnebo Plan.

2. On August 26, 2003, Mr. Duncan Richardson from Mercer Human Resource Consulting applied to the Financial Services Commission of Ontario ("FSCO") on behalf of the Applicant to request approval of a transfer of assets from the CSG Plan to the Gunnebo Plan.
3. Between August 26, 2003 and March 5, 2004 there were various exchanges between FSCO and the actuarial consultants regarding further information and requirements that were needed to approve the application. For the purposes of the application, Mercer Human Resource Consulting has been the actuarial consultants acting for the Applicant and Watson Wyatt Canada has been the consulting firm that has been acting for Gunnebo..
4. In a letter dated March 5, 2004, FSCO staff advised Mr. Reginald Ross, Finance Director of Gunnebo Security Inc., 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@* ). FSCO staff further advised that until the Supreme Court of Canada dealt with the case, the Superintendent would treat the Court of Appeal's decision as binding. FSCO staff notified Mr. Reginald Ross that until he provided further direction the application would be placed in abeyance.
5. *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.
6. In a letter dated November 10, 2004, Ms. Tina Cheung of Watson Wyatt Canada wrote to FSCO and stated that the intention of the employer is to maintain only one pension plan and one pension fund covering both the salaried employees and the one executive employee. Despite the March 5, 2004 letter which addressed the *Transamerica* concerns, Ms. Cheung suggested to FSCO staff that certain revisions to the application could be made so that the *Transamerica* decision would not apply. These revisions would provide for maintaining the assets of the two merged plans as separate pools of assets within the same plan. The assets and liabilities of each would be valued and accounted for separately.
7. In a letter dated January 31, 2006, FSCO staff wrote to Ms. Cheung to advise her that the November 10, 2004 proposal was acceptable and all that was required was an amendment to the importing plan documenting the segregation of the assets. FSCO requested Ms. Cheung respond by March 31, 2006.
8. In a letter dated July 21, 2006, FSCO staff wrote to Ms. Cheung regarding the January 31, 2006 letter. FSCO advised Ms. Cheung that no response had been received. FSCO requested Ms. Cheung to respond by September 19, 2006, which would complete the processing of the application and submit it for a decision based on the information on file.
9. The final letter was sent on September 15, 2008 by FSCO staff to Mr. Ross of Gunnebo to notify him of the various communications regarding the transfer of assets. The letter outlined the numerous reminders and the lack of a response from the initial letter. FSCO staff advised

that this was the final reminder and no further extensions would be granted. A deadline of October 15, 2008 was given to provide a complete response to the January 31, 2006 letter from FSCO. In addition, FSCO staff advised Mr. Ross that he could withdraw the application according to Policy A700-301 by October 15, 2008.

10. On November 26, 2008, FSCO staff had a telephone conversation with Ms. Cheung. During this phone call she requested an extension of a week and a half. Ms. Cheung wanted the extension for additional time to provide FSCO staff with the outstanding information. FSCO staff did not receive the outstanding information from Ms. Cheung.
11. There has been no response to the FSCO letters of January 31, and July 21, 2006 or September 15, 2008, and no other steps have been taken by Gunnebo to satisfy the Superintendent's concerns regarding the application.
12. The Application has now been outstanding for approximately five and a half years.
13. 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 3rd day of April, 2009.

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K. David Gordon  
Deputy Superintendent, Pensions

C.C.

Watson Wyatt Canada  
Suite 1100  
One Queen Street East  
Toronto, ON M5C 2Y4

**Attention: Ms. Tina Cheung**

Mercer Human Resource Consulting  
BCE Place, 161 Bay Street, P.O. Box 501  
Toronto, Ontario M5J 2S5

**Attention: Mr. Duncan B. Richardson**

\* **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.