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Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc.
- December 19, 2008.

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 Make Orders under sections 87 and 88 of the *PBA* relating to the **Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc.**, Registration Number **0344002**

TO:

IMPERIAL OIL LIMITED

111 St. Clair Avenue West
Toronto, Ontario
M5W 1K3

Attention:

J.B. MacIntyre,
Manager, Plans, Payrolls and
Administration Human Resources

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 034402 (the "Plan") requiring the administrator, pursuant to section 87 of the *PBA*, to purchase annuities for all former members of the Plan and their spouses who were included in the partial wind up relating to the Partial Wind Up Order issued by the Ontario Superintendent Pensions issued September 4, 1997 (the "Partial Wind Up") and referred to in the Revised Actuarial Report on the Partial Wind-UP of the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. (the "Partial Wind Up Report") prepared July 29, 2005 by Buck Consultants Limited, and who: did not elect to transfer their respective pension entitlements out of the Plan pursuant to section 42 of the *PBA*; were employed in Ontario as of the date their employment was terminated; and continue to have pension entitlements under the Plan. **I ALSO PROPOSE TO MAKE AN ORDER** pursuant to section 88(2)(c) of the *PBA*, requiring the administrator to amend and resubmit the Partial Wind Up Report to provide that all former members of the Partial Wind Up who were employed in Ontario at the date of termination of their employment and who have not selected any of the options that were available under section 42 of the *PBA* will have their pension entitlements as described in the Partial Wind Up Report distributed by way of purchase of annuities.

REASONS:

1. By Order dated September 4, 1997, the Ontario Superintendent of Pensions ordered the Partial Wind Up of the Plan.
2. As required by section 70 of the PBA, the Partial Wind Up Report (being the second report that was submitted in respect of the Partial Wind Up) was submitted to the Superintendent of Financial Services on July 29, 2005.
3. Section 1(1) of the PBA defines the term "partial wind up" as "the termination of part of a pension plan and the distribution of the assets of the pension plan related to that part of the pension plan". Section 70(1)(c) of the PBA provides that the administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out, "the methods of allocating and the distributing the assets of the pension plan and determining the priorities for payment of the benefits;"
4. The Partial Wind Up Report sets out the benefits that are payable to the members included in the Partial Wind Up, and in section 14 "Option Forms to be Provided" and section 16 "Description of Treatment of Benefits under the Partial Wind-Up Order" sets out various options where by members of the partial up group can elect to transfer the commuted value of described benefits out of the Plan. These options correspond to the "transfer options" that are made available to members who terminate their employment or cease to be a member of a pension plan under section 42(1) of the PBA and are available to members included in a partial wind up by virtue of section 73(2) of the PBA.
5. The Partial Wind Up Report does not describe how the assets associated with the pension entitlements that are not settled by the selection of a commuted value transfer by the member are to be distributed. The only other way these assets can be distributed is by the purchase of annuities. In absence of the purchase of annuities, the requirements of the PBA have not been satisfied because there has not been a termination of the Plan or a distribution of the assets of the Plan associated with that portion of the plan, as required by the definition of partial wind up in section 1(1) and section 70(1)(c). Therefore the Partial Wind Up Report submitted does not meet the requirements of the PBA, and the Administrator of the Plan is failing to comply with the provisions of the PBA.
6. The failure of the administrator to purchase annuities is also contrary to FSCO Policy W-100-231 which requires: "All immediate and deferred pensions in the wound up portion of the pension plan must be provided through the purchase of life annuities from an insurance company licensed in Canada to provide such annuities." [p.2 paragraph 4]

Policy W-100-231 was promulgated following the Supreme Court of Canada decision in *Monsanto Canada Inc. v. Superintendent of Financial Services* [2004] 3 S.C.R. 54 ("Monsanto"). In *Monsanto* the Supreme Court ruled that section 70(6) of the PBA requires an immediate distribution of surplus assets when a partial wind up of a pension plan takes place. The Supreme Court states in paragraphs 31 to 33 of the judgment:

31 In sum, the provision indicates that *the assessment of rights and benefits is to be*

conducted as if the Plan was winding up in full on the effective date of partial wind-up. The realization of rights **and benefits**, including the distribution of surplus assets, then occurs for the part of the Plan actually being wound up. Therefore, the Affected Members, if entitled, may receive their pro rata share of the surplus existing in the fund on a partial wind-up, as if the Plan was being fully wound up on that day.

C. Scheme of the Act

32 The *statutory scheme further supports this conclusion*. First, the definitions of “wind up” and “partial wind up” in s. 1 of the Act closely parallel one another, both *requiring a distribution of assets*:

“partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund;

7. It then follows that s. 70(1)(c) requires the administrator to file as part of its full or partial wind-up report, “the methods of allocating and distributing the assets of the pension plan”. Similarly, s. 28.1(2) of Reg. 909 requires that the administrator of the Plan give to each person entitled to a pension a statement setting out, among other things: “[t]he method of distributing the surplus assets”, “[t]he formula for allocating the surplus among the plan beneficiaries” and “[a]n estimate of the amount allocated to the person.” Thus, delaying the distribution would not be consonant with these provisions that make distribution of surplus assets an intended part of the wind-up process, whether the wind-up is in whole or in part. Second, the statutory scheme makes an important distinction between continuing plans and winding-up plans. The partial wind-up falls, for all purposes, in the latter group, even though there is a remaining part of the Plan that continues to exist. Under the scheme, in evaluating rights and procedural requirements, partial wind-up is treated the same as a full wind-up, which coincides with the purpose and effect of s. 70(6)... The interpretation of s. 70(6) herein proposed is consistent with the logic of this aspect of the statutory scheme and the legislature’s choice to treat partial wind-ups in the same manner as full wind-ups. As a result, a partial wind-up requires a full wind-up to notionally occur for the purposes of evaluating the pro rata share of the assets and liabilities related to the partial wind-up, followed by the continuation of the remainder of the Plan. (emphasis added)
8. The Supreme Court therefore viewed the requirement to distribute surplus concomitantly with the partial wind up as an intrinsic aspect the partial wind up process. The Superintendent is bound by the Supreme Court’s decision in *Monsanto* as effectively requiring the purchase of annuities in a partial wind up situation when other transfer options are not available or not chosen.
9. 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 19th day of December, 2008.

K. David Gordon
Deputy Superintendent, Pensions

copy:

Ian McSweeney
Osler Hoskin & Harcourt LPP

***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.