

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 by the Superintendent of Financial Services, under section 70 of the *PBA*, to Refuse to Approve the partial wind up report dated April 25, 1997, and entitled A Report of a Partial Wind-Up Actuarial Valuation as of January 1, 1987, for the Revised Pension Plan (1972) of Fuller-Traylor Limited and Associated and Affiliated Companies - GATX Equipment Leasing Division.

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services under section 88 of the *PBA*, to require a new report, relating to **The Pension Plan For Employees of FLSmidth Minerals Ltd., Registration Number 0211243.**

TO: **FLSmidth Minerals Ltd.**
174 West Street South
Orillia ON L3V 6L4

Attention: Lisa Law
Finance Manager

NOTICE OF PROPOSAL

I PROPOSE TO:

1. **REFUSE TO APPROVE** the report dated April 25, 1997, and entitled A Report of a Partial Wind-Up Actuarial Valuation as of January 1, 1987, for the Revised Pension Plan (1972) of Fuller-Traylor Limited and Associated and Affiliated Companies - GATX Equipment Leasing Division (the “Report”); and
2. **TO MAKE AN ORDER** requiring the preparation and filing of a new report within sixty (60) days from the date of the Order proposed in this Notice of Proposal, which report would include a financial update and a proposal for the distribution of surplus related to the partial wind up of The Pension Plan for Employees of FLSmidth Mineral Ltd. (the “Plan”) effective January 1, 1987, pursuant to section 88 of the *PBA*.

REASONS FOR THE PROPOSED ORDER:

1. The Plan is a defined benefit pension plan. Up until January 1, 1987, the Plan provided benefits for employees of three participating employers. At all relevant times, FLSmith Minerals Ltd. and its predecessors (the "Company") were, and continued to be, the administrator of the Plan.
2. The Plan was partially wound up effective January 1, 1987, because one of the employers, GATX Equipment Leasing Limited ("GATX"), ceased participation in the Plan.
3. The Report was prepared in respect of the partial wind up by Canada Life and filed with the Superintendent. The Report indicated that there was a funding excess of \$52,934 related to the wound -up portion of the Plan. The Report states, at page 7, that "the issue of the funding excess (Plan surplus), will not be addressed in this report. However, it is the employer's intention to share any surplus with the plan members."
4. On March 5, 1999, the Superintendent approved the distribution of basic benefits pursuant to section 70(3) of the *PBA*. The Superintendent also advised that any proposals with respect to the distribution of surplus would be dealt with separately and that once such proposals were "found to be acceptable" the Superintendent would "proceed with the approval of the" Report.
5. In a letter dated August 20, 2004, FSCO staff advised the Company that the

Supreme Court of Canada decision in *Monsanto* confirmed that the distribution of surplus on a partial wind up was required. FSCO staff requested that the Company provide an update of the funding position of the wound- up portion of the Plan and, if surplus assets remain, a proposal concerning the distribution of the surplus assets.

6. FSCO staff repeated the request for a funding update in a letter dated November 4, 2004. FSCO staff requested that the update be provided by December 6, 2004, (later extended to February 28, 2005) upon the request of the company.

7. By letter dated March 2, 2005, the actuary retained by the Company advised FSCO that the Company was of the view that the Company “had no obligations with respect to the January 1, 1987, partial wind up” and did not, therefore, provide the requested financial update. The basis for this view was that the assets associated with the GATX members were transferred to a separate holding account maintained by GATX and the Company had no dealings with GATX and its successors.

8. FSCO staff responded in a letter dated May 9, 2005, which indicated that the Company, in its capacity as administrator of the Plan, remained responsible for providing the requested financial update notwithstanding the fact that the partial wind up assets were held in a separate holding account.

9. By letter dated June 25, 2008, FSCO again requested that the Company submit an update of the funding position of the wound up portion of the Plan and gave the

Company a deadline of July 25, 2008.

10. In a letter dated July 2, 2008, the actuary for the plan again reiterated the position that the Company was not responsible for the partial wind up assets given the fact that there was no longer any ownership relationship as between the Company and GATX and the establishment of a separate account for the GATX assets.

11. FSCO staff again responded, in a letter dated January 13, 2009, that the Company remained responsible for the partial wind up assets because the assets remained part of the Plan (despite the separate holding account) and the Company remained the administrator of the Plan. FSCO staff again requested that a funding update as well as a proposal and timetable for the distribution of surplus assets be provided by March 31, 2009 (later extended to June 30, 2009, and November 30, 2009, upon request of the Company).

12. To date, the Company has not submitted the funding update nor a proposal and timetable for the distribution of surplus despite an additional request from FSCO staff to do so dated January 14, 2010.

13. Section 1 of the *PBA* defines “partial wind up” as “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”.

14. Section 1 of the *PBA* defines “surplus” as “the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner”.

15. Section 70(6) of the *PBA* states that on a partial wind up, “members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.”

16. Section 70(1)(c) of the *PBA* states that the administrator shall file a partial wind up report that sets out “the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits”.

17. The Supreme Court of Canada confirmed, in *Monsanto Canada Inc. et al. v. Superintendent of Financial Services* (2004 SCC 54), that members affected by a partial wind up are entitled to have surplus assets distributed on the date of the partial wind up.

18. Therefore, the Report does not comply with the *PBA* because it does not provide for the distribution of surplus on partial wind up.

19. Section 70(5) of the *PBA* states that the “Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension

plan.” For the reasons set out above the Report does not meet the requirements of the *PBA* and the Superintendent therefore proposes to refuse to approve the Report.

20. Sections 88(2)(c) and 88(3) of the *PBA* states that the Superintendent may make an order “requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report”, if the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the “requirements and qualifications” of the *PBA*, regulations, or the pension plan.

21. For the reasons set out above, the Report does not meet the “requirements and qualifications” of the *PBA*. The Superintendent, therefore, proposes to make an order requiring the preparation and filing of a new report within sixty (60) days from the date of the Order proposed in this Notice of Proposal, which report shall provide a financial update and a proposal for the distribution of surplus related to the partial wind up portion of the Plan.

22. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (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 REQUEST 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, or 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
ISSUE THE ORDERS PROPOSED IN THIS NOTICE OF PROPOSAL.**

DATED at Toronto, Ontario, this **18th** day of **June, 2010**.

K. David Gordon
Deputy Superintendent, Pensions

¹ **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 first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

CC: Robertson Eadie & Associates
481 Morden Road
Suite 210
Oakville ON L6K 2W6

Attention: John Deinum