



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 Transfers of Assets under
section 81 of the *PBA* in respect of the following pension plans:

- (a) ITW Canada Pension Plan Registration Number 0230136 (“ITW Canada Plan”)
- (b) ITW Plastiglide Pension Plan registration Number 0380469 and (“ITW Plastiglide Plan”)
- (c) Retirement Income Plan for Employees of ITW in Canada Registration Number 0304907 (“ITW Retirement Income Plan”)

TO: ITW Canada
10 Carlow Court, Unit 2
Whitby ON L1N 9T7

Attention: Mr. Mark Ristow

COPY TO: Todd Hellstrom
Hewitt Associates
225 King Street West
Suite 1600
Toronto, Ontario M5V 3M2

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT to a transfer of assets effective January 1, 2004, from the ITW Canada Plan, the ITW Plastiglide Plan to the ITW Retirement Income Plan under section 81 of the *PBA*.

REASONS:

1. The Applicant has not satisfied the Superintendent that the terms of the trusts for ITW Canada Plan and the ITW Plastiglide Plan and their predecessor plans and trusts from which their trust fund originates, authorize or permit the transfer of assets to the ITW Retirement Income Plan.
2. ITW Canada Inc. (the “Applicant”) is the Employer and Administrator of the ITW Canada Plan, the ITW Plastiglide Plan and the ITW Retirement Income Plan.
3. On January 25, 2005, the Applicant filed with the Superintendent of Financial Services (the “Superintendent”) an application for consent to a transfer of assets from the ITW Canada Plan and the ITW Canada Plan to the ITW Retirement Income Plan effective January 1, 2004 (the “Application”).
4. On October 27, 2006 The Financial Service Commission of Ontario (“FSCO) Staff wrote to Hewitt Associates (“Hewitt”) informing it that since the decision in *Aegon Canada Inc. v. ING Canada Inc.* [2003] O.J. No. 4755 (“*Transamerica*”) it has been reviewing the implications of the decision on transfers of assets between pension plans in Ontario. It also informed Hewitt that FSCO has prepared a “Trust Issues on Pension Plan Asset Transfer” Checklist (“Checklist”) to assist applicants in this process and requested that the Applicant complete the Checklist.
5. On September 24, 2008 the FSCO staff wrote Hewitt regarding the letter of October 27, 2006, advising that no response was received in respect of that letter and a previous letter of September 27, 2005 sent by FSCO staff in which the Applicant was asked to address concerns raised by *Transamerica*.
6. By letter dated October 10, 2008 Hewitt submitted the completed Checklist. It checked off “yes” under paragraphs 6 and 7 of the Checklist indicating that the plans contain “exclusive benefit” language that the plan documents or trust agreements also permitted the mergers.
7. By letter to FSCO dated February 3, 2009 the Hewitt provided an analysis of the plan documents and the copies of the sections of the plans and trust agreement referred to in support of the analysis.
8. On May 6, 2009 FSCO staff wrote Hewitt indicating that its letter of February 3, 2009 did not provide a historical analysis of the plan, setting out a chronological list of prior plan text, funding documents and relevant sections. FSCO staff requested that the Applicant provide a

historical analysis of the plan and trust documents and copies of the relevant supporting documentation by June 6, 2009.

9. By letter to FSCO dated July 15, 2009 the Hewitt provided an analysis of the ITW Canada Plan, the ITW Plastiglide Plan and the ITW Retirement Income Plan. In support of its analysis the Applicant provided only copies of the sections of the plan documents that it referred to in its analysis. It did not provide copies of the entire plan texts and trust agreements. Therefore complete plan documents were not included as part of the analysis.

10. *Transamerica* is a case about an asset transfer or merger 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 to the non-trust plan. The Court of Appeal for Ontario held that this was "cross-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 exclusive benefit of its beneficiaries.

11. Following the direction of the Ontario Court of Appeal in *Transamerica*, as part of the process for granting consent to a transfer of assets under section 81 of the PBA the Superintendent considers whether the transfer of assets, and their subsequent use, would result in a breach of any trust regarding the assets of the plan that is or was subject to a trust. As a result the Applicant must demonstrate to the Superintendent that the historic plan and funding documents authorize the transfer.

12. The Superintendent reviews all of the plan and trust documents for the exporting plans, including all of the predecessor plans from which any of the trust assets in the exporting plans are derived, in order to comply with the *Transamerica* directive.

13. In a letter dated January 27, 2010 the Superintendent's staff advised the Hewitt that the Superintendent was unable to do a complete review of the Application since an analysis of the all the relevant plan and funding documents was not provided. Further that the Superintendent could not determine whether the extracted copies of the documents provided by Hewitt were part of the plan texts and trust agreement referred to in the analysis provided and whether there were other provisions of the plan tests and trust agreements referred to that may be relevant.

14. The Superintendent's staff requested that the Applicant submit "copies of the entire plan texts and trust agreements" as opposed of copies of extracts from these documents and indicate the chronological link between the successor plan texts and the trust agreements for the respective plans.

15. The Applicant has not provided complete copies of the plan texts and trust agreements as requested.

16. Since complete copies of plan documents were not provided, it is not possible to do a thorough analysis of all the relevant plan documents in respect of the three pension plans to determine whether a merger of plans would be approved.

17. The Applicant has therefore not satisfied the Superintendent that the terms of the trusts for ITW Canada Plan, the ITW Plastiglide Plan and their predecessor plans and trusts from which their trust fund originates, authorize or permit the transfer of assets to the ITW Retirement Income Plan, as required by the Court of Appeal in *Transamerica*.

18. 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.**¹

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 416-226-7752, 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.

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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.

DATED at Toronto, Ontario, this **30th** day of **April, 2010**

K. David Gordon
Deputy Superintendent, Pensions