



Unclassified

Our File: P5100-S81-20-0

April 7, 2006

VIA - EMAIL
(Original will follow by mail)

Mr. Mayo Schmidt
President and Chief Executive Officer
Saskatchewan Wheat Pool
2625 Victoria Avenue
Regina, SK
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Mr. Michael Raine
President
Grain Services Union
2334 McIntyre Street
Regina, Saskatchewan
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Dear Mr. Schmidt and Mr. Raine:

**Subject: Saskatchewan Wheat Pool/Grain Services Union Pension Plan
(I.L.W.U.) Pension Plan
Registration Number 55971
Pension Benefits Standards Act, 1985 (PBSA or Act)
Pension Benefits Standards Regulations, 1985 (Regulations)**

On March 20, 2006, OSFI received a letter from Mr. David Reinboth, Vice-President, Human Resources, setting out Saskatchewan Wheat Pool's (SWP) view on the status of discussions with the Grain Services Union (the union) related to the future funding of the SWP/Grain Services Union (I.L.W.U.) Pension Plan (the Plan). Prior to that date, OSFI had been sent or copied on various correspondence from SWP, the union, management trustees and union trustees. In its letter of March 20th, SWP expressed the view that due to the lack of progress in this matter, it was of the opinion that the immediate wind-up of the Plan is warranted.

As SWP indicated in its letter of March 20th, the Plan's actuary has advised that the Plan is not solvent. As a result, in accordance with the terms of the Plan, the Board of Trustees that administers the Plan and fund notified both the union and SWP. The Plan text provides that SWP and the union have 90 days within which to enter into an agreement to restore the solvency of the Plan. This 90-day period will expire on May 1st. However, in its March 20th letter, SWP indicates it does not believe that an agreement with the union can be reached by the expiration date and asks OSFI to terminate the Plan immediately.

Given the seriousness of this situation, it is important that all parties understand OSFI's expectations of both the employer and the union in resolving the funding of and the return to solvency of the Plan. We also wish you to be aware of our view on pension plan termination in general.



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Let me first address the issue of Plan termination. The power of the Superintendent to terminate a plan is discretionary and has never been exercised by the Superintendent when a plan sponsor is ongoing. It is our view that the tools to remedy the current situation rest with the company and the union. Therefore, it would be highly premature for any party to trigger termination at this time, unless an agreement to terminate could be reached between SWP and the union under their authority, as set out in the Plan provisions.

Both SWP and the union have agreed to and have established the Plan structure, which has a fixed contribution rate but includes no explicit authority for the trustees, who are appointed by the union and SWP, to reduce accrued benefits to deal with funding and insolvency issues. According to the trustees, the only power that exists for them to address matters of solvency is through the reduction of future benefits.

As SWP acknowledged, given the size of the anticipated deficit of some \$43 million that is expected to emerge with the filing of the December 31, 2005, actuarial valuation report, the invoking of this power will be ineffective in dealing with the required solvency payments. As a result, whether the invoking of such a reduction by the trustees accords with the purpose of this provision, i.e., to deal with the Plan's insolvency when the union and SWP fail to do so, is questionable and should be reviewed. In addition, it appears that an amendment, as described by SWP, that reduces all future accruals to zero may result in the cessation of crediting of benefits to plan members and cause the Plan to meet the definition of "termination" of a plan, as contained in subsection 2(1) of the *Pension Benefits Standards Act, 1985* (PBSA). Since the Plan text provides that the Plan can be terminated by agreement between SWP and the union and not by the trustees, there clearly is an issue as to whether the trustees have the authority to pass such an amendment.

Section 12.02 of the Plan text clearly intends that the union and SWP will have the authority to enter into an agreement in order to restore the solvency of the Plan.

The Plan provisions also provide the company and union, through agreement, with the authority to reduce accrued benefits as follows:

S.4.10 "The plan may , at any time be amended by the Company and the Union to reduce the benefits provided under section 4 where such action is required to avoid the revocation of registration of the Plan under the Income Tax Act, subject to the approval of the Superintendent of Financial Institutions under the Pension Benefits Standards Act, 1985"

It is OSFI's view that section 4.10 and section 12.02 of the Plan provide SWP and the union with sufficient tools to restore the solvency of the Plan. In addition, provisions of the Plan and part of the promise made to the members and former members of the Plan require SWP and the union to act in good faith in order to restore the solvency of the Plan. Both SWP and the union have a duty to the Plan's beneficiaries. In addition, if, as SWP argues, the benefits under the Plan are limited to the funded status of the Plan (something that is not supported by the terms of the Plan), section 4.10 and 12.02 give SWP and the union a responsibility normally reserved for the administrator of a plan. As such, both parties have

a duty to all members, including retired and deferred members, to ensure that the Plan is viable, continues to meet minimum funding requirements and is administered in accordance with the PBSA.

It is OSFI's position that the responsibilities and duties of both SWP and the union are fiduciary or at least fiduciary-like in nature and require that you act in the best interests of plan members and former members, independent of your interests as either employer or the union, especially where your interests conflict with those of the Plan beneficiaries. Both parties jointly bear this responsibility and must act in good faith to achieve this end.

Within the coming weeks, there are a number of critical dates, namely the filing of the action plan by the trustees (April 30th) and the expiration of the 90-day notification period (May 1st) as set out in 12.02 of the Plan text. These dates have important consequences for all Plan members. We are aware that discussions to resolve this matter have been ongoing for some time and that, to this point in time, you have been unable to reach a satisfactory solution. However we are not satisfied that the discussions have been carried out with both parties being fully mindful of their respective roles and duties to the Plan beneficiaries, their employees, former employees and their members and the obligations that this creates.

As a result, we are requesting that the union and SWP provide a joint status report to OSFI on their discussions by April 20th. Included with the report should be an explanation as to how the actions of the union and SWP have been consistent with their duties and obligations to all of the Plan members, including active, deferred and retirees.

We ask that a copy of this letter be provided to each of your respective executive boards. OSFI is posting this letter to our external Web site so plan members may have access to OSFI's position in this matter.

Yours truly,



Julie Dickson
Assistant Superintendent
Regulation Sector

cc. Board of trustees