

Demutualization Letter to Pension Plan Administrators

Several Canadian mutual insurance companies have been demutualized or are in the process of demutualizing, which means the conversion of these federally registered mutual life insurance companies into business corporations (stock companies). Currently five companies have begun conversion. They are Mutual of Canada Group, Manulife Financial, Sun Life of Canada, Canada Life and Industrial-Alliance.

The Pension Commission is aware that one of the results of demutualization will be the distribution of a company's worth among entitled persons, generally policyholders. This may result in payments being made in the form of cash or stock shares.

We understand that the demutualization payments will be made pursuant to the requirements of the Insurance Companies Act (Canada). Under federal legislation, the entity entitled to the demutualization payment is the policyholder, which is typically the employer. It appears that the federal legislation does not require the consent of a provincial regulator before a demutualization payment is made to the policyholder, nor require that any demutualization payment is shared with the beneficiaries of a pension annuity insurance contract or present or former company sponsored pension plan.

Since the assets of some pension plans may be invested in one of the companies being demutualized, it is recommended that pension plan administrators check all agreements made with the mutual company and if needed, get the advice of an expert to determine if any conversion proceeds should be allocated to their pension plan. It is further recommended that special attention be paid to contracts made where the employer/plan administrator purchased an annuity contract from an insurance company to guarantee the pension plans refunds and benefits. If this contract was taken out by a policyholder who was acting as a trustee of the pension plan, some of the conversion proceeds may be payable to the pension plan.

In addition to the above, pension plan administrators are advised to examine all relevant documents, including the pension annuity contract, any relevant communications made by the employer/policyholder to the beneficiaries of the pension annuity contract and the terms of any related existing or former pension plan or plans to determine any beneficiaries entitlements. In determining any entitlements, plan administrators should exercise care and diligence, as well as seek any necessary legal, pension and other related advice.

Section 26(2) of The Pension Benefits Act provides that no funds may be paid out of the plan to the employer without the prior consent of the Commission. It is the employer's responsibility to determine whether the demutualization payment constitutes a refund of surplus under section 26(2) of the Act. To make this determination it is advisable to review the relevant legislation, all related documents and consult with pension, legal and other advisors on this issue. Following this review if it is decided that the demutualization payment qualifies as a refund under section 26(2) of the Act, an application, which includes an analysis of why this payment requires the

Commission's consent, must be submitted to the Commission according to Section 26(2.1) of the Act. Please refer to Pension Commission Update Number 12 for further information.

To obtain more information on the demutualization of the companies mentioned it is recommended that the insurance company be contacted directly.

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