

FSRAFinancial Services Regulatory
Authority of Ontario**ARSF**Autorité ontarienne de réglementation
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June 16, 2021

Attn: Brian Lavarney
Brian.Lavarney@thecrosbygroup.com
Chief Accounting Officer / Controller
Crosby Canada Inc.
2801 Dawson Road
Tulsa OK 74110 USA**Re: FKI Industries Canada Limited Group Pension Plan
Registration Number 0561084**

Enclosed, please find the Notice of Intended Decision with respect to the above noted pension plan.

Yours truly,

A handwritten signature in black ink, appearing to read "Mitzi D'Souza".

Mitzi D'Souza
Administrative Assistant, Pensions

Enclosure

C: Terra Klinck, Terra.Klinck@bmkplaw.com BMKP Law LLP
David Pahn, Financial Services Regulatory Authority of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “Act”), in particular sections 78, 79 and 89;

AND IN THE MATTER OF FKI Industries Canada Limited Group Pension Plan, Registration Number 0561084 (the “Plan”).

NOTICE OF INTENDED DECISION

TO: **Crosby Canada Inc.**
2801 Dawson Road
Tulsa OK 74110
USA

Attention: Brian Lavarney
Chief Accounting Officer/Controller

Employer

TAKE NOTICE THAT pursuant to section 79 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Head, Pension Plan Operations and Regulatory Effectiveness (the “Head”) intends to refuse to consent to the payment of surplus in respect of the partial wind up of the Plan as it relates to the Mathews Conveyor division of FKI Industries Canada Limited. Details of this intended decision are described below.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SUBSECTION 89(6) OF THE ACT. A hearing by the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
25 Sheppard Avenue West, 7th Floor
Toronto, ON
M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, an order will be issued as described in this Notice of Intended Decision.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at www.fstontario.ca.

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at (416) 590-7294, or toll free at 1-800-668-0128 extension 7294.

REASONS FOR INTENDED DECISION

1. The Employer is the employer with respect to the Plan.
2. The Pension Plan for Salaried Employees of Mathews Conveyer was established effective May 28, 1987.
3. Effective December 31, 1997, the Pension Plan for Salaried Employees of Mathews Conveyer was merged into the Plan.
4. Effective December 24, 1999, the Plan, as it related to the Mathews Conveyer division of the Employer, was partially wound up (the "Partial Wind Up").
5. As at December 31, 2015, there were no outstanding liabilities related to the Partial Wind Up. As at December 31, 2015, the surplus relating to the Partial Wind Up was estimated at \$288,200 (the "Surplus").
6. The Employer has applied pursuant to section 78 and subsection 79(3.1) of the Act for consent of the Chief Executive Officer to the payment of the Surplus, and any investment earnings thereon to the date of payment, from the Plan to the Employer.
7. The Employer applied to give notice of the full wind up of the Plan via newspaper advertisement in the Globe and Mail, the Toronto Star, and the Toronto Sun, pursuant to subsection 112(3) of the Act. The advertisement in the Globe and Mail (the "Notice") was included in the Employer's application for payment of the Surplus. Although the Partial Wind Up was mentioned in the Notice, the Notice primarily addressed the full wind up of the Plan and did not satisfy subsection 78(2) of the Act.
8. The Employer has not demonstrated that it complied with subsection 78(2) of the Act and section 28.1 of Regulation 909 in any other way.
9. No submissions were received pursuant to subsection 78(3) of the Act.
10. On the basis of the reports provided with the Employer's application, the Head is satisfied that the Plan has a surplus.
11. Provision has been made for the payment of all liabilities of the Plan as calculated for the purposes of the Partial Wind Up.
12. A review of the documents that create and support the Plan and the related pension fund, including relevant predecessor plans and funds, did not confirm that the payment of surplus to the Employer is authorized pursuant to section 77.11 and subsection 79(3.1) of the Act.

13. The trust agreement dated April 1, 1993 between Mathews Conveyer, as a division of the Employer, and National Trust Company (the “1993 Trust Agreement”) does not provide for the payment of surplus to the Employer.
14. Although the Plan text authorizes the payment of surplus to the Employer, the 1993 Trust Agreement does not incorporate the Plan text into the terms of the trust.
15. A new trust agreement dated June 30, 1999 was entered into with CIBC Mellon Trust Company (the “1999 Trust Agreement”). The 1999 Trust Agreement does not provide for the payment of surplus to the Employer and does not incorporate the Plan text into the terms of the trust.
16. Given that neither the 1993 Trust Agreement, nor the 1999 Trust Agreement provide for the payment of surplus to the Employer and do not incorporate the Plan text into the terms of the trust, the trust does not permit the payment of surplus to the Employer.
17. The trust did not include a specific power to revoke the trust.
18. As a result, the documents that create and support the Plan and the related pension fund do not authorize payment of the Surplus to the Employer.
19. Accordingly, the criteria for the payment of the Surplus to the Employer have not been satisfied, and the Head intends to refuse consent to the payment of the Surplus to the Employer.
20. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, June 16, 2021.



Jennifer Rook
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer