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Superintendent of
Financial
Services



Surintendant des
services
financiers

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 Notice of Intended Decision of the Superintendent of Financial Services to Make an Order under section 69 of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065.

NOTICE OF INTENDED DECISION

TO:

Morneau Shepell Ltd.
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention:

Al Kiel
Managing Partner

Administrator

AND TO:

Sears Canada Inc.
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention:

Bev Church
Senior Director, Treasury

Employer

I INTEND TO MAKE AN ORDER in respect of the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065, (the “Plan”) under section 69 of the *PBA*.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of**

Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.¹ A copy of that form is included with this Notice of Intended Decision. Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:

1. The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
2. That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

A COMPLETED REQUEST FOR HEARING form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

THE HEARING BEFORE THE TRIBUNAL will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those 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 ext. 7294.

REASONS FOR DECISION

I INTEND TO MAKE THE ORDER for the following reasons:

1. Sears Canada Inc. and its affiliated companies ("Sears") is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.
2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit ("DB") pension plan.

4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution (“DC”) component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the “2015 Actuarial Report”) indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company “raise significant doubt as to the Company’s ability to continue as a going concern.” This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies’ Creditors Arrangement Act* (“CCAA”).
9. On July 13, 2017, Justice Hainey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the “Special Payment Suspension Order”).
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hainey issued an order approving a liquidation sale in respect of Sears (the “Liquidation Sale Approval Order”).
13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

Special Payments

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the “Regulation”) to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.

19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

Wind Up Date

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

Contributions to the DC Component

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

THE ADMINISTRATOR IS REQUIRED pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

1. The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hailey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
2. Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
3. Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

DATED at Toronto, Ontario, this 10th day of November, 2017.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1NOTE - 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 fifth day after the date of mailing.

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