

**Letter from Member Representatives  
of the Commercial Union Pension Surplus Group**

September 12, 2008

Dear Pension Plan Member:

As your representatives, we are pleased to advise you that we have reached an agreement with Aviva Canada Inc. to share the surplus relating to the 1999 partial wind up of the Commercial Union Assurance Company of Canada Pension Plan (now the Aviva Canada Inc. Pension Plan) with eligible plan members. The details of this proposed agreement are described in this package. We hope you will take the time to review the enclosed material carefully.

The following report was drafted by our committee and the lawyers we hired to represent the members' interests. The report is detailed because we want you to be fully informed about the terms of the agreement we have reached on your behalf, and the reasons why our committee and our lawyers believe this agreement is reasonable, fair and in your best interests.

The proposal cannot be implemented unless at least 70% of the members support it by voting YES on the **green** Authorization and Retainer Form enclosed. This form should be returned to us in the **green** envelope included in this package by **Wednesday, October 15, 2008**.

This surplus distribution will be in addition to any pension benefits you have already received or will receive from our pension plan. The proposal, if implemented, will not diminish your pension benefits which are completely safe and secured by pension assets held in trust.

As your representatives, we fully support the proposal and recommend that you vote YES on your **green** form. If you do not send in your response you may not be eligible for a share of the partial wind-up surplus.

If you have any questions regarding the proposal, please contact us or our legal counsel at Koskie Minsky LLP, at the numbers provided in this package. Any discussions you may have with the lawyers or staff at Koskie Minsky LLP will be treated as confidential and will not be shared with the company or its advisors without your permission.

We look forward to hearing from you.

Yours truly,

*Alan Caufield-Browne  
Beverly Gajadhar  
Thelma Harriott  
Charmaine Lewin  
Bramwell Mather  
Louis Oran*

Member Representatives of Commercial Union Pension Surplus Group

## Commercial Union (1999) Pension Surplus Group

### SURPLUS SHARING REPORT

This is a report from the member representatives of the Commercial Union (1999) Pension Surplus Group (the "Member Representatives") about discussions with representatives of Aviva Canada Inc. ("Aviva") to share the surplus assets assigned to the 1999 partial wind-up of the Commercial Union Assurance Company of Canada Pension Plan (the "Plan").

We are pleased to announce that we have concluded negotiations with Aviva and have reached an agreement. This agreement is conditional on several things, including obtaining sufficient support from eligible Plan members, spouses and beneficiaries. This conditional agreement forms the proposal which is described in detail in this information package (referred to in this report as the "Proposal"). To confirm that this Proposal applies to you, please see section 4(a) of this Report.

**We, along with our legal counsel, support the Proposal and recommend that you support it. Please read this report carefully, as you will be asked to vote on the Proposal by returning the enclosed green Authorization and Retainer Form to Koskie Minsky LLP by October 15, 2008.** The Authorization and Retainer Form will authorize our lawyers to act on your behalf regarding the implementation of the Proposal, including the execution of a formal surplus sharing agreement on your behalf.

#### 1. BACKGROUND

As you know, our portion of the Plan was subject to a partial wind-up effective December 31, 1999 due to the merger of the General Accident Group (Canada) Ltd. and the Commercial Union Assurance Company of Canada (the "Partial Wind-Up"). When there is a partial wind-up of a registered pension plan that affects members under Ontario's jurisdiction, all assets attributable to the Ontario portion of the wound-up part of the plan (including any surplus) must be paid out.

When we wrote to you in September 2006, we explained that Aviva had put forward a proposal to share a portion of the surplus attributable to the Partial Wind-Up with the members of our group. We volunteered to act as Plan member representatives at subsequent surplus sharing negotiations with Aviva that took place in July 2006 and we have continued to review and discuss the details of a surplus sharing agreement with Aviva since that time. Everyone has worked diligently and cooperatively to reach an agreement and we are pleased to have developed a Proposal that we believe is fair and equitable for everyone involved.

In September 2006, you were invited to sign an "Authorization and Membership Form" which allowed you to join the Commercial Union (1999) Pension Surplus Group and indicate your support for continuing negotiations to reach a preliminary agreement to share the surplus attributable to the Partial Wind-Up with Aviva. We are pleased to report that approximately 66% of eligible recipients returned their signed forms, demonstrating a high level of support among eligible members to reach an agreement.

The purpose of this information package is to explain the details of the Proposal to distribute surplus in the Plan, and to ask for your formal approval. This document was prepared by the Committee's legal counsel, Koskie Minsky LLP, and has been approved by the Member Representatives as well as Aviva.

It is important for you to know that this Proposal is conditional and will not be implemented unless it is supported by a majority of eligible members (at least 70%). Another condition of implementing the Proposal is that it must also obtain all required court and government pension regulatory approvals.

When we receive sufficient support from eligible members, the Member Representatives will proceed with the necessary legal steps to have the Proposal approved and implemented. We cannot predict how long this process will take, but we will make every effort to obtain the necessary approvals as soon as possible. Due to the complex nature of the process, however, it is unlikely you will receive any surplus payment before 2009.

## **2. SUMMARY OF THE PROPOSAL**

- There are 97 individuals who would be eligible under the Proposal to receive a share of surplus from the Plan, apart from Aviva. From this point on, we will refer to this group of individuals as the Surplus Sharing Group.
- According to the most recent actuarial update, as of December 31, 2007 there was a surplus of approximately \$3.3 million attributable to the Partial Wind-Up. This amount will continue to fluctuate in accordance with investment returns and other factors. A portion of this surplus will be required to pay for the expenses of administering the Partial Wind-Up.
- In line with the conditions of the Proposal, each member of the Surplus Sharing Group who is in receipt of a pension and all deferred vested members will receive a one-time, 5% increase to his or her pension beginning once regulatory approval to the Proposal is obtained. Members who are already paid-out, including Members who converted their entitlements to an initial account balance under the defined contribution component of the Plan, will receive a lump sum payment that is equal to 5% of the value of his or her liabilities as at December 31, 1999.
- The amount of surplus attributable to the Partial Wind-Up that remains after paying for the pension benefits of the Surplus Sharing Group, the 5% ad hoc increase and the Partial Wind-Up expenses described above, will be approximately \$3.1 million and will be referred to in this report as the "Surplus". According to the conditions of the Proposal, Aviva and the Surplus Sharing Group would share the Surplus in the Plan equally, with 50% being distributed to the Surplus Sharing Group and 50% being distributed to Aviva.
- A minimum Surplus payment of \$500 will be guaranteed to each individual in the Surplus Sharing Group. This means that no eligible recipient will receive less than this \$500 amount, should this Proposal move forward.
- The pension benefits you have earned under the Plan are completely safe and secured by pension assets already held in trust or guaranteed by an insurance company. You will continue to be entitled to those pension benefits, and your right to receive them will not be diminished no matter what decision is ultimately made regarding the Proposal or the future of the Plan.

### **3. LEGAL ENTITLEMENT TO PLAN SURPLUS**

Before entering formal negotiations with Aviva, our lawyers at Koskie Minsky LLP provided us with a legal opinion about the members' legal entitlement to the Plan's surplus. The reason for obtaining this opinion was to help us decide whether it would be advisable to press for 100% of the surplus in the Plan by seeking a court order confirming entitlement, and to appreciate the strength of our bargaining position should we enter negotiations directly with Aviva instead.

After reviewing historical Plan documents, current legislation and case law, our lawyers concluded that the case was not clear, however, if the matter were to be litigated, there would be a decent argument upon which the court could find that the members, not Aviva, are entitled to the surplus. However, they also stressed that legal entitlement to surplus is rarely straightforward and they could certainly never guarantee the members would be successful in court. Meanwhile, Aviva has made it clear that in its view, Aviva owns the entire surplus, not the members. Any dispute over surplus ownership between Aviva and the members would no doubt require lengthy, complex and expensive litigation.

With this in mind, our legal counsel concluded, and we agree, that the surest and most cost-effective route for Plan members to receive a payout of Surplus from the Plan is to confirm a deal with Aviva to share the Surplus, rather than litigate these issues.

### **4. HIGHLIGHTS OF THE PROPOSAL**

#### **(a) Surplus Sharing Group**

There are 97 Plan members who were affected by the Partial Wind Up and who are eligible to share in the distribution of Surplus (the "Surplus Sharing Group" or the "Members"). This does not include a group of five Quebec members who were affected by the Partial Wind-Up but who are not eligible to receive surplus payments pursuant to Quebec laws. The Surplus Sharing Group will comprise these 97 Members or individuals who would be claiming through the Members as a surviving spouse, beneficiary or estate representative. The entitlement of those Members of the Surplus Sharing Group who passed away since December 31, 1999 (the Partial Wind-Up date), will pass to the person who is entitled to receive that Member's pension benefits. Generally, this will be a spouse in respect of a survivor pension, or if there is no spouse, it will be the Member's beneficiaries under the Plan. If there are no designated beneficiaries, the Member's share will be paid to his or her estate.

#### **(b) Determination of the Surplus**

First, the Partial Wind-Up assets, which consist of all of the assets remaining in the Plan relating to the Partial Wind Up, were transferred into a segregated account effective June 30, 2006, and have been separately invested since that time. Second, pension benefits payable to, or in respect of, members of the Surplus Sharing Group will be deducted from this segregated account, as will the expenses associated with administering the Partial Wind-Up. Third, the 5% ad hoc increase referred to in (c) below will be funded by the Partial Wind Up assets that were transferred to the segregated account.

The amount left over after the first three steps occur is the "Surplus" that would be shared between Aviva and the Surplus Sharing Group, pursuant to the Proposal. As at December 31, 2007, the Surplus is estimated by the Plan actuary to be approximately \$3.1 million. This amount will continue to fluctuate in accordance with investment returns and other factors.

**(c) Benefit Enhancement/Division of Surplus**

Based on our thorough consideration of the legal factors described above, we have agreed that an acceptable compromise is for Aviva to share the Surplus with the Surplus Sharing Group on a 50/50 basis. We are pleased, however, to have successfully negotiated additional incentives for Plan members in the form of benefit enhancements.

The Plan will be amended to provide a one-time increase of 5% to all pensions-in-pay and to all deferred pensions of members of the Surplus Sharing Group, beginning at the time of the Surplus distribution. Those members of the Surplus Sharing Group who are already paid-out, including Members who converted their entitlements to an initial account balance under the defined contribution component of the Plan, will receive a lump sum payment instead that is equal to 5% of the value of his/her liabilities on December 31, 1999. A more detailed explanation of the calculation of this increase is set out in Question 4 of the Questions and Answers sheet included in this package (the orange document).

These increases/payments will be funded by the Partial Wind-Up assets in the segregated account and then the remaining Surplus will be divided equally, with 50% being paid to the Sharing Group and 50% being paid to Aviva.

**(d) No direct costs to be borne by Plan members**

Aviva and the Surplus Sharing Group have incurred, and will continue to incur, certain expenses that are directly associated with the sharing of Surplus. These expenses would include, for example, our lawyers' fees and the legal and actuarial costs associated with obtaining the necessary regulatory approvals for the distribution of the Surplus.

Surplus-related expenses incurred by Aviva will be paid from its share of Surplus and Surplus-related expenses incurred by the Member Representatives will be paid from the Surplus Sharing Group's share of Surplus, before individual Surplus allocations are paid. Since Aviva has primary responsibility for the surplus withdrawal application, it will bear a larger share of these expenses.

It is important for you to know that you will not have any obligation to pay any of the legal or other expenses that we incur during this process directly. As described earlier, these expenses will be paid out of the Surplus.

**(e) Individual distributions**

Each member of the Surplus Sharing Group will receive a pro rata share of the Surplus Sharing Group's portion of the Surplus, based on the actuarial value of each Member's pension entitlement under the Plan on the date of the Partial Wind-Up (December 31, 1999). The Plan Actuary will make these calculations.

We have decided to build into these calculations a minimum distribution for Plan members. As such, under this Proposal, all members are guaranteed to receive at least \$500.

In this Information Package, you have received a blue Personal Information Sheet from Aviva that includes an estimate of your surplus share. This amount is approximate and we cannot guarantee this will be the amount you receive. Please complete and return a copy of your Personal Information Statement to ensure the actuaries have the correct information about you to perform their final calculations.

Surplus Sharing Group members may, depending on their individual situation and available information, be able to choose how to receive their surplus share from the following options:

- i) a cash payment, less applicable withholding tax;
- ii) a transfer to a non-locked-in RRSP, provided the member has sufficient contribution room to allow it; or
- iii) a combination of the above.

We have decided that other tax-deferral payment options may be explored, however, we will not pursue options that would be unreasonably expensive or time-consuming.

## **5. THE COMMITTEE UNANIMOUSLY RECOMMENDS THE PROPOSAL**

We strongly recommend this Proposal to the Surplus Sharing Group. As indicated above, without this agreement, the only way to force the surplus distribution is to file a lawsuit claiming the members are entitled to all the surplus, which would entail a long and very expensive process, with no guarantee of success in the end. The Member Representatives have had the benefit of legal counsel and some independent actuarial advice throughout their discussions with Aviva. Our lawyers recommend this Proposal. We believe that the Proposal is reasonable, fair and is the best possible deal in the circumstances for the members. We do not believe that further negotiations would lead to a better deal.

We unanimously recommend that you consent to the Proposal by checking the "YES" box on the green Authorization and Retainer Form that is included with this package, sign the form and return it to Koskie Minsky LLP in the enclosed green envelope by Wednesday, October 15, 2008. Please note - for your vote to be included, you must have your signature witnessed. Please ensure that your witness is an adult (he or she can be a friend or relative). Please also note that you must still return the Authorization and Retainer Form even if you previously returned the membership form you received in 2006.

You must also complete and return one copy of the blue Personal Information Statement in the blue envelope provided before your Surplus share can be formally calculated.

**Your vote – and every vote – counts. We must obtain the agreement of at least 70% of the eligible members in order to proceed with this Proposal. If you do not respond, you may not be eligible for a Surplus share.**

If this Proposal proceeds, due to all the required steps involved (including attending court and regulatory proceedings), it is unlikely the surplus will be distributed before 2009.

## 6. FURTHER INFORMATION

If you have any questions, please call any one of the Member Representatives, or our representatives at Koskie Minsky LLP at their toll-free number, 1-866-545-9920. You can also email Koskie Minsky LLP at [avivapension@kmlaw.ca](mailto:avivapension@kmlaw.ca) or visit their website to obtain updates and information about our progress. Go to [www.kmlaw.ca](http://www.kmlaw.ca), click on the "pension surplus" link, and then the "Aviva – Commercial Union" link.

Thank you for your anticipated support. If you have any further questions, please do not hesitate to contact any one of us below:

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