

**SCOTIABANK PENSION PLAN FOR FORMER EMPLOYEES OF
NATIONAL TRUST COMPANY (THE "PLAN")
REGISTRATION NO. 0315952**

NOTICE OF SURPLUS WITHDRAWAL APPLICATION

TO: Certain Members and Former Members of the Plan

FROM: National Trust Company ("National Trust")

DATE: February 26, 2010

A. Purpose of Notice

1. As you may know, the Plan was terminated effective April 30, 2009, (the "Wind-up Date"), and a proposal has been made to share the Plan's surplus assets between members of the "Sharing Group" (as described below in paragraph 5) and National Trust.
2. The purpose of this Notice is to advise you of the application of National Trust to the Superintendent of Financial Services of Ontario (the "Superintendent") pursuant to section 78 of the *Pension Benefits Act* (Ontario) (the "OPBA") for consent to a refund to National Trust of the assets remaining in the Plan's fund after provision for distribution of a portion of the surplus assets in the Plan's fund, net of expenses and other adjustments, to the Sharing Group, as set out in paragraph 20 of this Notice (the "Proposal").
3. This Notice is given in compliance with section 78(2) of the OPBA and section 28(5) of Regulation 909 under the OPBA in respect of members of the Sharing Group who last reported to work for National Trust in the province of Ontario and in compliance with the following legislative requirements in respect of other members of the Sharing Group, as applicable:
 - Alberta: *Employment Pension Plans Act*, section 83; Employment Pension Plans Regulation, section 67;
 - British Columbia: *Pension Benefits Standards Act*, section 61; Pension Benefits Standards Regulation, section 42;
 - Manitoba: *Pension Benefits Act*, section 2.1;
 - New Brunswick: *Pension Benefits Act*, section 59; Pension Benefits Regulations, section 48;
 - Newfoundland and Labrador: *Pension Benefits Act*, section 57; Pension Benefits Regulations, section 22;
 - Nova Scotia: *Pension Benefits Act*, s. 83(2); Pension Benefits Regulations, s. 35(12);

- Saskatchewan: *Pension Benefits Act, 1992*, section 62; Pension Benefits Regulations, 1993, section 41.
4. As explained further below, Sharing Group members who last reported to work for National Trust in the province of Québec have received a separate notice that complies with Québec legislation.

B. Composition of the Sharing Group

5. The proposed Sharing Group is comprised of:
- (a) all members and former members of the Plan who were entitled to benefits or other payments under the Plan on or after June 24, 1997;
 - (b) the surviving spouse of any deceased member or former member of the Plan who was in receipt of a survivor pension from the Plan on or after June 24, 1997, or an individual entitled to a deferred vested benefit or other death benefit on or after June 24, 1997 upon the death of a member or former member of the Plan;
 - (c) all persons who were members of the Plan on or after June 24, 1997 and who ceased membership on or after that date with no payment owing to them from the Plan; and
 - (d) where individuals identified in subparagraphs (a), (b) or (c) above have died or die after June 24, 1997 and prior to the Wind-up Date, the person entitled to a survivor pension or death benefit on the Wind-up Date as a result of the death, or where there is no such person, the beneficiary of the deceased individual named under the Plan, or if there is no named beneficiary, the estate of the deceased individual.

A more detailed breakdown of the members of the Sharing Group is found in Section 3 of the Surplus Sharing Agreement (as described below in paragraph 8).

6. Should a member of the Sharing Group die after the Wind-up Date, the surplus that would have been payable to such member shall instead be payable (a) to their surviving spouse, if the surviving spouse is entitled to a survivor pension as a result of the death, or (b) if there is no surviving spouse, to the beneficiary of the member named under the Plan, if the beneficiary is entitled to death benefits following the death of such member, or (c) if there is no such surviving spouse and no such beneficiary, to the estate of the member.

C. Surplus Sharing Agreement

7. Following the mailing of a detailed information package to eligible members and former members of the Plan in November 2006, extensive information sessions were held across Canada to explain the details of the Proposal and provide members with the opportunity to ask questions. Representatives from National Trust and its legal counsel, as well as representatives from The National Trust Pension Surplus Member Group Committee (the "Committee") and its legal counsel (Mark Zigler and Ari Kaplan of Koskie Minsky LLP

("Koskie Minsky") attended those sessions. A significant number of members of the Sharing Group have now retained Koskie Minsky to negotiate and implement on their behalf the terms of a surplus sharing agreement with National Trust.

8. The proposed withdrawal and distribution of the surplus in the Plan will be implemented in accordance with the terms of the surplus sharing agreement (the "Surplus Sharing Agreement") which has been reached between National Trust, Koskie Minsky (on behalf of those members of the Sharing Group who have retained them) and the Committee, pursuant to the requirements of applicable legislation, provided that the requisite regulatory consents are obtained. A copy of the Surplus Sharing Agreement is attached as **Exhibit "A"** to this Notice.
9. Following the transmission of this Notice, Koskie Minsky will provide National Trust with updated information regarding the individuals who have retained Koskie Minsky to sign the Surplus Sharing Agreement on their behalf, so that National Trust can confirm that the requisite number of consents, as required by applicable legislation and regulatory policy (as further explained below), have been obtained.
10. This Notice is being provided to Koskie Minsky in respect of all members of the Sharing Group outside of Québec who have retained them to receive it on their behalf. A copy of this Notice is being sent to the last-known address for all other individuals in the Sharing Group outside of Québec. Members of the Sharing Group in Québec have received separate notices in accordance with Québec legislation.

D. Court Application

11. On June 21, 2007, National Trust issued a Notice of Application in the Ontario Superior Court of Justice (the "Court"), commencing a legal proceeding to initiate a class proceeding related to (among other things) the distribution of surplus from the Plan.
12. By order dated October 5, 2007, the Court certified the application as a class proceeding under the Ontario *Class Proceedings Act, 1992*, and approved the definition of the class proposed by National Trust. The class as approved by the Court is the same as the Sharing Group (the "Class").
13. Following certification of the proceedings as a class proceeding, notices of that certification were transmitted to members of the Class, other than those who had already retained Koskie Minsky, where last-known addresses were available. Copies of the notice of certification were also published on October 27, 2007, in *The Globe and Mail* (in English) and in *La Presse* (in French). This notice informed members of the Class of the certification, and also informed them of their right to opt out of the Class within 30 days of the notice. Two members of the Sharing Group proposed to opt out of the settlement by the deadline, but both members subsequently rescinded their requests to opt out and have retained Koskie Minsky.
14. Following expiry of the notice period referred to above, by order dated December 13, 2007, the Court (among other things) approved the settlement of the application on the terms set out in the Surplus Sharing Agreement. The parties subsequently brought a motion on consent to vary the order obtained on December 13, 2007. On July 11, 2008,

the Court issued an order that varied and superseded the December 13, 2007 order (the "Court Order"). The Court Order ordered that the Surplus Sharing Agreement is binding on the Class, and declared (among other things) that the Plan provides for payment of surplus to National Trust within the meaning of section 79(3)(b) of the OPBA and that National Trust is entitled to receive a payment of surplus from the Plan in the manner and on the terms of the Surplus Sharing Agreement. The Court further ordered that the Plan amendment which provides for the distribution of surplus pursuant to the Surplus Sharing Agreement, after applicable regulatory filings, shall be considered valid and binding on the Class, and that National Trust was authorized to make such amendment. A copy of the Court Order is attached as **Exhibit "B"** to this Notice.

E. Asset Transfer

15. The Surplus Sharing Agreement contemplates that in conjunction with the termination of the Plan certain assets would be transferred from the Plan to the Scotiabank Pension Plan (Canada Revenue Agency registration number 0222646 - the "Bank Plan"), subject to receipt of regulatory approval. The assets proposed to be transferred consist of: (a) assets representing the pension benefits earned by active members between the date they became employees of The Bank of Nova Scotia ("the Bank") (that date is referred to as their "Integration Date") and the day they became members of the Bank Plan (that date is the Wind-up Date) as well as pension benefits earned after their Integration Date by suspended members and by certain inactive members employed by Scotia Capital Inc. (the "Post-Integration Benefits"); and (b) a portion of the surplus representing the estimated employer cost of the benefits to be earned by the transferred active Plan members under the Bank Plan in the future (the "Future Pension Cost"), all as more particularly described in the Surplus Sharing Agreement.
16. An application for regulatory approval of the proposed asset transfer will be prepared and submitted to the Superintendent for approval. If the transfer of the assets related to the Post-Integration Benefits is not approved or not approved on terms acceptable to National Trust, the Surplus Sharing Agreement contemplates that the Post-Integration Benefits will remain in the Plan. If required regulatory approval of the transfer of the Future Pension Cost is not obtained or if limits are imposed on the amount of the Future Pension Cost that can be transferred because of applicable limitations under the *Income Tax Act* (Canada), the Future Pension Cost (or the portion that cannot be transferred) will be paid to National Trust directly and added to the Company Share (as defined in paragraph 18 below) or shall be paid as otherwise directed by National Trust.

F. Termination of the Plan

17. As noted above, the Plan has been terminated effective as at April 30, 2009 (the Wind-up Date). An actuarial report called a Wind-up Report has been prepared as at that date by the actuary retained by National Trust (the "Plan Actuary") and submitted to the Superintendent for approval. The Wind-up Report has been prepared on the assumption that the transfer of assets representing the Post-Integration Benefits and the Future Pension Cost referred to in paragraphs 15 and 16 will be approved. If regulatory approval is not obtained to the transfer of either or both of the Post-Integration Benefits and Future Pension Cost to the Bank Plan, the Wind-up Report will be amended accordingly. All benefits to which members of the Plan and other individuals are entitled

pursuant to the provisions of the Plan will be paid or distributed from the Plan in accordance with the terms of the Plan and applicable legislation.

18. The Wind-up Report estimates that the amount of surplus available to be shared is \$84,255,000. This amount is net of the following amounts: (i) National Trust's and the Committee's reasonable legal, actuarial, and other fees, expenses, and disbursements as contemplated in Section 4 of the Surplus Sharing Agreement; (ii) an amount representing an estimate of the present value of the current service cost for disabled members as contemplated in Section 13(b) of the Surplus Sharing Agreement; (iii) the Future Pension Cost; and (iv) such other amounts as are contemplated in the Surplus Sharing Agreement. If all required regulatory approvals are obtained, the net surplus will be split 50/50, with 50% allocated to the Sharing Group (the "Sharing Group Share") and 50% allocated to National Trust (the "Company Share"), as more particularly described in the Surplus Sharing Agreement.
19. The precise amounts of the Company Share and the Sharing Group Share cannot be determined until the ultimate date of distribution. The amount of surplus available for distribution will depend on several factors, including interest payable on basic benefits paid to members and annuity purchase rates in effect at the time basic benefits under the Plan are settled. Also, the Company Share and the Sharing Group Share will be adjusted for any income or losses on the investment of Plan assets and for actual expenses charged against the Plan, through to the ultimate date of surplus distribution.

G. Surplus Sharing Proposal

20. National Trust's formal surplus distribution proposal is contained in the Surplus Sharing Agreement. Subject to the approval of the Superintendent and any other conditions specified in the Surplus Sharing Agreement, surplus shall be allocated to individual members of the Sharing Group in accordance with the terms of the Surplus Sharing Agreement.
21. It is important to note that the Proposal will **not** be implemented unless the Superintendent consents to the refund of surplus to National Trust in accordance with the terms of the Surplus Sharing Agreement.

H. National Trust's Entitlement to Surplus

22. Under the OPBA and applicable policies in Ontario, in order to be entitled to receive a portion of the surplus under the Plan, National Trust must (among other requirements):
 - (a) obtain the **consent** of a certain percentage of members and former members of the Plan. Consistent with the legislative and regulatory requirements of the OPBA, as part of the Proposal, National Trust expects to obtain the necessary levels of consent in order to establish, to the satisfaction of the Superintendent, entitlement to the withdrawal of surplus, based on the number of members of the Sharing Group who have already retained Koskie Minsky to consent to the Proposal on their behalf (see paragraph 7 above – many members retained Koskie Minsky following the information sessions described in that paragraph). As more fully explained below, members of the Sharing Group who have not already done so

can consent to the Proposal by retaining Koskie Minsky to sign the Surplus Sharing Agreement on their behalf, or by signing the Surplus Sharing Agreement themselves. If you are a Sharing Group member who has already retained Koskie Minsky, you need not take any further action in order to consent to the Proposal, as Koskie Minsky will do so on your behalf; and

- (b) National Trust must (among other requirements) demonstrate to the regulator that it is **entitled** to withdraw its share of surplus based on the historical terms of the Plan. In the case of the Proposal, National Trust's entitlement has been confirmed by the Court Order as discussed above, declaring that the Plan provides for payment of surplus to National Trust, within the meaning of section 79(3)(b) of the OPBA and may be validly amended to provide National Trust the right to receive a portion of the surplus on termination of the Plan. As indicated above, a copy of the Court Order is attached hereto as **Exhibit "B"**.

I. Plan Contributions & Surplus Attribution

23. The Plan is a contributory defined benefit pension plan, with a non-contributory option.
24. As required by the OPBA, this Notice must set out "the surplus attributable to employee and employer contributions". Subject to the paragraph below, the Plan Actuary has determined that approximately 80% of the surplus is attributable to contributions made by members and former members of the Plan, including former members not included in the Sharing Group, and approximately 20% of the surplus is attributable to contributions made by National Trust.
25. There is no generally accepted interpretation of "surplus attributable to employee and employer contributions". In fact, interpretations other than that employed by the Plan Actuary for this purpose are possible, and could lead to different results. Also, there is no one method generally accepted within the actuarial profession of calculating the amount of surplus attributable to employee and employer contributions. Actuarial staff at the Financial Services Commission of Ontario have advised that they have no objection to the approach taken by the Plan Actuary in determining the surplus attribution.

J. Plan Provisions Relating to Surplus Entitlement

26. The current Plan language relating to entitlement to surplus on termination is contained in section 18.07 of the Plan which provides as follows:

18.07 Distribution of assets upon termination

Notwithstanding any other provision of the Plan, surplus assets remaining after the payment of all benefits owed to Members, Spouses, Beneficiaries, and estates hereunder, after taking into account all fees and expenses payable from the fund, and after taking into account the transfer of assets described in the next paragraph, shall be distributed in accordance with the Surplus Sharing Agreement dated June 21, 2007 between National Trust Company, the Represented Participants and the Non-Represented Participants (as defined therein), and The National Trust Pension Surplus Member Group Committee, with (i) a portion of the surplus being payable to National Trust Company as set out in the

Surplus Sharing Agreement, and (ii) a portion of the surplus being transferred to the Scotiabank Pension Plan (Canada Revenue Agency registration number 0222646) as set out in the Surplus Sharing Agreement.

In addition to the surplus to be transferred to the Scotiabank Pension Plan as described in the preceding paragraph, in conjunction with the transfer of "Post-Integration Benefits" (as defined in the Surplus Sharing Agreement) from the Plan to the Scotiabank Pension Plan, the "Post-Integration Assets" (as also defined in the Surplus Sharing Agreement) shall also be transferred to the Scotiabank Pension Plan, as set out in the Surplus Sharing Agreement.

The distributions of surplus and transfer of assets contemplated in this Section 18.07 shall occur as soon as practicable following the date on which National Trust Company obtains all necessary regulatory approvals therefor.

27. As noted above, by an order dated July 11, 2008, the Court ordered that this Plan amendment, after applicable regulatory filings, shall be considered valid and binding on the Class, and that National Trust was authorized to make such amendment. (As also noted above, the Court also declared (among other things) that the Plan provides for payment of surplus to National Trust within the meaning of section 79(3)(b) of the OPBA and that National Trust is entitled to receive a payment of surplus from the Plan in the manner and on the terms of the Surplus Sharing Agreement.)
28. A summary of the relevant historical Plan language relating to the issue of surplus entitlement has been prepared by National Trust's legal counsel (Osler, Hoskin & Harcourt LLP) on behalf of National Trust and, as required by the OPBA, a legal analysis of that historical Plan language, also prepared by National Trust's legal counsel, is attached hereto as **Exhibit "C"**.

K. Superintendent Review

29. Pursuant to Section 78 of the OPBA, an application will be made to the Superintendent for his consent to withdraw and distribute the surplus to National Trust and the Sharing Group in accordance with the Surplus Sharing Agreement and the provisions of clause 8(1)(b) of the regulations under the OPBA (the "Application"). The date on which the Application will be submitted to the Superintendent may be obtained by contacting the Plan Actuary at the number shown in paragraph 30 below.
30. Copies of the Wind-up Report and related certificates filed with the Superintendent in support of the Application, together with any other information to which Plan members are by law entitled in relation to the Plan, are available for review at the offices of the Plan Actuary. To arrange an appropriate time to view these documents, you should contact the Plan Actuary through the Pension Services Call Centre for Former National Trust Employees (call toll-free 1-888-895-9933). Copies of the Wind-up Report are also available on request by calling this number.

31. Submissions in respect of this Application may be made in writing to the Superintendent of Financial Services within 30 days after you receive this Notice. Such submissions should be made to the Superintendent of Financial Services, 5160 Yonge Street, 4th Floor, Toronto, Ontario M2N 6L9. The Superintendent will provide copies of all submissions to National Trust.
32. If you have any questions relating to your benefits under the Plan or the wind-up process, you are advised to contact the Pension Services Call Centre for Former National Trust Employees (call toll-free 1-888-895-9933). If you have questions regarding the Surplus Sharing Agreement or the surplus sharing process, please contact counsel for the Committee, Koskie Minsky, at 1-800-451-3225 (toll free), or contact them by email at nationaltrustpension@kmlaw.ca.

L. How to Register Your Consent – Two Methods

33. Any Sharing Group member receiving this Notice who wishes to consent to the distribution of surplus from the Plan, and who has not yet retained Koskie Minsky to consent on their behalf, may do so in one of two ways, as described below. Please note that this Notice, including the history and analysis referred to in paragraph 28 above, have been prepared by National Trust, and you may wish to obtain independent legal advice with respect to the Application and proposed Surplus Sharing Agreement before providing your consent. **(As noted above, if you have already retained Koskie Minsky by filling out and returning an Authorization and Retainer Form, you need not take any further action.)**

Method #1

34. **You may consent to the distribution of surplus by retaining Koskie Minsky, who will consent on your behalf.** Koskie Minsky's representation will be at no cost to you, as the Surplus Sharing Agreement provides for their representation to be paid for from the surplus in the Plan. A retainer form (the **orange** sheet) has been included with this Notice for this purpose (see **Exhibit "D"**). Should you wish to retain Koskie Minsky to consent on your behalf, please sign and return the retainer form to Koskie Minsky in the pre-paid envelope provided.

Method #2

35. **Alternatively, if you agree with the Proposal but do not wish to retain Koskie Minsky, you may consent to the Proposal by signing the Surplus Sharing Agreement.** An additional signature page from the Surplus Sharing Agreement (the **blue** sheet) has been provided with this package for this purpose. You may sign and return this page to the Plan Actuary in the pre-paid envelope provided. It is recommended that if you wish to consent in this fashion that you seek independent legal counsel, at your own expense, with respect to the Proposal.

M. Specific Information for Alberta Members

36. Members of the Sharing Group who last reported to work for National Trust in the province of Alberta are hereby notified that, pending all required regulatory and court approvals, assets of the Plan will be distributed no earlier than 90 days from the date of this Notice.

N. Specific Information for British Columbia Members

37. Members of the Sharing Group who last reported to work for National Trust in the province of British Columbia are hereby notified that, pending all required regulatory and court approvals, assets of the Plan will be distributed no earlier than 60 days from the date of this Notice.
38. Notice of any dispute respecting the allocation, payment or transfer of surplus assets must be provided to National Trust within 60 days from the date of this Notice. Any dispute respecting the payment or transfer of surplus assets will be resolved in accordance with section 62 of the *Pension Benefits Standards Act* (British Columbia).

O. Specific Information for Saskatchewan Members

39. Members of the Sharing Group who last reported to work for National Trust in the province of Saskatchewan are hereby notified that, pending all required regulatory and court approvals, assets of the Plan will be distributed no earlier than 30 days from the date of this Notice.
40. As discussed above, the Court has declared that National Trust is entitled to receive the surplus remaining in the Plan after the payment of all accrued benefits under the terms governing the Plan, in the manner and on the terms of the Surplus Sharing Agreement. The Court has further ordered that the Plan amendment which provides for the payment of surplus to the parties (including National Trust) pursuant to the Surplus Sharing Agreement, subject to applicable regulatory filings, is valid and binding on the Class, and that National Trust was authorized to make such amendment. Through your consent to the Proposal (either individually or through Koskie Minsky), you will be consenting both to the withdrawal of surplus and also to this amendment to the Plan, as contemplated under the *Pension Benefits Act, 1992* (Saskatchewan).

EXHIBIT "A"

SURPLUS SHARING AGREEMENT

SCOTIABANK PENSION PLAN FOR FORMER EMPLOYEES OF NATIONAL TRUST COMPANY

FINANCIAL SERVICES COMMISSION OF ONTARIO AND CANADA REVENUE AGENCY
REGISTRATION NO. 0315952

SURPLUS SHARING AGREEMENT

THIS AGREEMENT made as of the 21st day of June, 2007.

BETWEEN:

National Trust Company, a trust company incorporated under the laws of Ontario (hereinafter called "**National Trust**") (by its counsel, Osler, Hoskin & Harcourt LLP, hereinafter "**Osler**")

- and -

Those individuals in the Sharing Group (as defined herein) who have retained Koskie Minsky LLP to execute this Agreement on their behalf (hereinafter called the "**Represented Participants**") (by their counsel, Koskie Minsky LLP, hereinafter "**Koskie Minsky**")

- and -

Those individuals in the Sharing Group who have not retained Koskie Minsky to execute this Agreement but who have provided their individual consents to this Agreement, as undersigned (hereinafter called the "**Non-Represented Participants**")

- and -

THE NATIONAL TRUST PENSION SURPLUS MEMBER GROUP COMMITTEE (the "**Committee**") (by their counsel, Koskie Minsky)

(collectively, the "**Parties**")

This Agreement has been entered into in the context of the following facts and circumstances.

- A.** The Scotiabank Pension Plan for Former Employees of National Trust Company (the "**Plan**"), as amended, is a defined benefit pension plan.
- B.** Following the acquisition of National Trust by The Bank of Nova Scotia (the "**Bank**") on August 14, 1997, which acquisition had been publicly announced on June 24, 1997, a majority of the active members of the Plan became employees of the Bank and the Bank became a participating employer under the Plan. The date of a member's transfer to

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Bank employment is referred to herein as the **"Integration Date"**, which was not the same date for all members. The Integration Date for most members was August 2, 1999. For members transferred to Bank employment, the Plan was substantially redesigned to mirror the benefits provided under the Scotiabank Pension Plan (Canada Revenue Agency registration number 0222646 – the **"Bank Plan"**) for future service after the Integration Date. The provisions of the Plan in effect prior to the Integration Date continue to apply for service up to such date.

- C. In 1999 a group of members and former members of the Plan affected by the June 30, 1999 partial wind-up of the Plan (the **"Partial Wind-Up"**) formed the Association For The Equitable Recovery of the National Trust Pension Surplus (**"AFTER"**), to initiate discussions with National Trust regarding a possible surplus sharing arrangement under the Plan related to the Partial Wind-Up. AFTER subsequently formed the Committee to pursue a global solution to surplus issues. The current members of the Committee are the following (the first six are "negotiating committee members", the remaining members are "advisory committee members"):

- (i) Stuart Galbraith
- (ii) Dexter Halsall
- (iii) John Jamieson
- (iv) Danny Murphy
- (v) Edward O'Brien
- (vi) Robert Smallhorn
- (vii) Herman Arbour
- (viii) Wayne Barnard
- (ix) Sheila Barr
- (x) Al Bond
- (xi) Mike Carson
- (xii) Bob Darling
- (xiii) Mae Edgar
- (xiv) Ron Fisher
- (xv) Eugene Fuoco
- (xvi) Don Gill
- (xvii) Jim Godey
- (xviii) John Hardon
- (xix) Tony Hedge
- (xx) Greg Jackson
- (xxi) Jim Jones
- (xxii) Paul Ladano
- (xxiii) Deb Milimaka
- (xxiv) David Norman
- (xxv) Tim O'Shea
- (xxvi) John Payzant
- (xxvii) John Plaskett
- (xxviii) Bob Puffer
- (xxix) Ray Rutherford
- (xxx) Carl Stief

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- (xxxix) Simon Sweeney
- (xxxii) Darleane Timbers
- (xxxiii) Peter Waller.

- D. The Committee retained legal counsel, Mark Zigler and Ari Kaplan of Koskie Minsky, and an independent actuary, Stephen Eadie of Robertson, Eadie & Associates, to assist its members in discussions with National Trust. On March 4, 2003, counsel for National Trust wrote to Koskie Minsky, to arrange a meeting to begin exploring possible legal frameworks for potential surplus discussions.
- E. On March 4, 2005, after extensive discussions, National Trust and the Committee entered into a Memorandum of Understanding reflecting an agreement to commence and continue negotiations to share and distribute the Plan surplus (the "MOU").
- F. In early August 2005, National Trust and the Committee co-operated to prepare a mailing to all members of the Sharing Group, as defined herein, for whom last-known addresses were available, to report on the progress made to date and to outline in broad terms the details of the proposed surplus sharing agreement. The package included a report from National Trust, a report from the Committee, and an Authorization and Membership Form which individuals could return to Koskie Minsky to authorize the Committee and Koskie Minsky to represent them in further discussions with National Trust on a possible surplus sharing agreement.
- G. In January 2006, a reminder notice was sent by the Committee to those members of the Sharing Group for whom addresses were available who had not yet returned the Authorization and Membership Form.
- H. On January 11, 2006, representatives of Osler on behalf of National Trust, and representatives of Koskie Minsky on behalf of the Committee and the Represented Participants, met with staff of the Financial Services Commission of Ontario ("FSCO") to discuss the details of the proposal to wind up the Plan and share the surplus thereunder between National Trust and certain members and former members of the Plan, and to obtain information from FSCO regarding how the applications for regulatory approval contemplated under this Agreement will be dealt with.
- I. At that meeting, FSCO staff confirmed that they would retain carriage of the file in respect of the Plan, and would oversee the proposed Plan wind-up and surplus distribution as contemplated hereunder. By letter dated January 31, 2006, FSCO staff confirmed that the proposed transfer of assets from the Plan to the Bank Plan would be considered by FSCO, but on the basis that federal pension legislation, and the policies of the Office of the Superintendent of Financial Institutions, would apply to the transfer application.
- J. On February 24, 2006, Hewitt Associates, actuaries for the Plan, on behalf of National Trust, made a formal presentation to the Committee, describing the proposal to wind up the Plan and share the surplus thereunder between National Trust and certain members

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and former members of the Plan. Following the presentation, discussions were held between National Trust and the Committee regarding certain aspects of the proposal.

- K. In October 2006, following discussions between National Trust and the Committee regarding investment of the Plan fund, National Trust advised the Committee regarding the proposed timing and content of an "immunization" investment strategy, and the Committee did not oppose the implementation of that strategy. The immunization strategy was implemented by National Trust during November and December of 2006.
- L. In November 2006, for those members of the Sharing Group, as defined herein, for whom National Trust had mailing addresses, an information package was sent containing detailed information regarding the proposal to wind up the Plan and share the surplus thereunder (the Proposal, as defined herein). The package included a report from the Committee, a detailed description of the surplus sharing proposal, a form to permit members to retain Koskie Minsky, and also a personal information statement containing an estimate of the amount of surplus which the recipient might expect to receive should the Proposal proceed.
- M. The information package described above also contained an invitation to attend information sessions which were hosted by National Trust and the Committee in 2006 in Toronto (November 27 (two sessions) and December 12 (one session)), Vancouver (November 28), Calgary (November 29), Oakville (November 30), Stratford (December 4), Montreal (December 7 (two sessions, with one conducted in French)), and Kingston (December 11), where the Proposal was explained in more detail.
- N. On January 5, 2007, a reminder e-mail was sent by Koskie Minsky on behalf of the Committee to those eligible members who had not returned a retainer form to Koskie Minsky. The Committee sent another reminder to eligible members who had not yet returned their retainer form, by letter dated February 7, 2007 (that letter was mailed on behalf of the Committee by Hewitt Associates).
- O. As of May 31, 2007, 3,710 of 4,977 eligible members have returned forms retaining Koskie Minsky to act on their behalf in negotiating, settling, and implementing this Agreement, including the signing of this Agreement on their behalf.
- P. National Trust and the Committee have now agreed to formalize the terms set out in the Proposal. The purpose of this Agreement is to document the formal terms that will govern the wind-up and distribution of surplus from the Plan, pursuant to the settlement of any court proceedings and regulatory approvals contemplated herein. For greater certainty, this Agreement supersedes the MOU.

The Parties agree to the following.

The Represented Participants, the Non-Represented Participants and the Committee

1. The Represented Participants, the Non-Represented Participants, and the Committee hereby confirm that they will (i) support the proposal to wind up the Plan and share the surplus thereunder in accordance with the terms of this Agreement (the "Proposal"), and

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(ii) provide their consent or take appropriate action in order to obtain any necessary order of the court as contemplated in paragraph 24 below and any necessary regulatory approvals as contemplated in paragraph 2 and paragraphs 14(b) and 14(c) below.

Surplus Withdrawal Application

2. The Parties are satisfied that there is sufficient support for the Proposal among the members of the Sharing Group (as defined below). Subject to receipt of a court order in a form satisfactory to the Parties as contemplated in paragraph 24 below, National Trust agrees to wind up the Plan and take the necessary steps pursuant to applicable legislation to enable it to withdraw and distribute the surplus from the Plan based on this Agreement. For greater certainty, the distribution of surplus pursuant to the Proposal as described in this Agreement is subject to (i) applicable legislation; (ii) receipt by National Trust of any necessary approvals from regulatory authorities having jurisdiction over the Plan; (iii) receipt of any court order or authorization which the Parties deem necessary or appropriate pursuant to paragraph 24 below, if applicable; and (iv) compliance with the provisions of the *Supplemental Pension Plans Act* (Québec) (the "SPPA") which allow a surplus sharing proposal to bind all members and beneficiaries of a pension plan in Québec if less than 30% of them oppose it.

Sharing Group: Death of Sharing Group Member

3. Subject to paragraphs 20 and 21, the "Sharing Group" shall be composed of all members and former members of the Plan who were entitled to a benefit or other payment under the Plan on or after June 24, 1997, or who were members of the Plan on or after that date and ceased membership with no payment owing to them from the Plan. The Sharing Group is composed of the following categories:
 - (a) "Active" members, being those individuals who are accruing credited service under the Plan immediately prior to their transfer out of the Plan as contemplated in paragraph 14 below, including individuals who are absent from work due to long-term disability who were employed by the Bank at the time they became disabled, but excluding the Disabled members;
 - (b) "Disabled" members, being those individuals who are accruing credited service under the Plan on the effective date of the full wind-up of the Plan (the "Wind-Up Date") but who are absent from work due to long-term disability, and who were employed by National Trust at the time they became disabled;
 - (c) "Suspended" members, being those individuals who as at the Wind-Up Date have benefits under the Plan but who have elected to suspend participation in the Plan (but not including PWU Members);
 - (d) "Inactive" members, being those individuals with frozen benefits under the Plan who are employed by a successor employer on the Wind-Up Date, including members with frozen benefits as a result of the sale of part of National Trust's or the Bank's business, whose service with such successor employer is taken into

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account for purposes of benefit eligibility and vesting under the Plan (but not including PWU Members);

- (e) **"Deferred Vested"** members, being those individuals with a deferred vested entitlement under the Plan on the Wind-Up Date (but not including PWU Members);
- (f) **"Pensioners"**, being those individuals who retired under the Plan and who are in receipt of a pension from the Plan on the Wind-Up Date (but not including PWU Members);
- (g) **"Survivors"**, being individuals in receipt of a survivor pension from the Plan on the Wind-Up Date (but not including individuals receiving a survivor pension as a result of the death of a PWU Member);
- (h) **"Cash-Outs"**, being those individuals, other than PWU Members, who were members of the Plan and terminated employment with National Trust or the Bank or any of the Bank's affiliates on or after June 24, 1997 and

- (1) were entitled to benefits under the Plan at the time of such termination, or were deferred vested members or otherwise entitled to a payment from the Plan on or after that date, whose benefits have been settled and who are therefore not entitled to benefits or any other payments under the Plan on the Wind-Up Date;

- (2) were entitled to no payments under the Plan at the time of such termination, or were entitled to a refund of contributions only which has been made, and who are therefore not entitled to benefits or any other payments under the Plan on the Wind-Up Date; or

- (3) are entitled to a refund of contributions on the Wind-Up Date;

as well as individuals, other than PWU Members, who were members of the Plan and terminated employment with National Trust before June 24, 1997 and who received payment of their benefits after that date;

- (i) **"PWU Members"**, being those former Plan members alive on the Wind-Up Date who were included in the Partial Wind-Up; and

- (j) **"Beneficiaries"**, being:

- (1) where an individual who was included in the Partial Wind-Up has died on or prior to the Wind-Up Date, the surviving spouse entitled to a survivor pension from the Plan on the Wind-Up Date as a result of the death, or if there is no such surviving spouse, the beneficiary of the PWU Member named under the Plan, or if there is no named beneficiary, the estate of the PWU Member;

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- (2) the beneficiary named under the Plan, or if there is no named beneficiary, the estate of an individual who would have been included in one of the above-listed categories had the Plan been wound up on June 24, 1997 and had the Sharing Group membership been determined at that time (excluding PWU Members), where that individual dies on or after June 24, 1997 but on or prior to the Wind-Up Date and there is no survivor pension or deferred vested entitlement payable from the Plan on the Wind-Up Date as a result of the death; or
- (3) the beneficiary named under the Plan, or if there is no named beneficiary, the estate of an individual (excluding PWU Members) who joined the Plan after June 24, 1997, where that individual dies on or prior to the Wind-Up Date and there is no survivor pension or deferred vested entitlement payable from the Plan on the Wind-Up Date as a result of the death.

Should a member of the Sharing Group die after the Wind-Up Date, the surplus that would have been payable to such member shall instead be payable (i) to their surviving spouse, if the surviving spouse is entitled to a survivor pension as a result of the death, or (ii) if there is no such surviving spouse, to the beneficiary of the member named under the Plan, if the beneficiary is entitled to death benefits following the death of such member, or (iii) if there is no such surviving spouse and no such beneficiary, to the estate of the member.

Parties' Costs – Generally

4. Subject to the details set out in paragraphs 6 through 11 below, both National Trust's and the Committee's reasonable legal, actuarial, and other fees, expenses, and disbursements (for purposes of paragraphs 4 through 11, "costs") incurred in connection with the negotiation and implementation of the Proposal, will be paid "off the top" out of the Plan surplus prior to the splitting of the remaining surplus between National Trust and the Sharing Group. After such costs and after the payments and adjustments described in paragraphs 13 and 14 below, the amount of surplus to be split 50/50 (subject to adjustments) as described in paragraph 15 below is referred to herein as the "Net Surplus". Such costs of National Trust and the Committee shall initially be paid directly by National Trust, which shall be entitled to be reimbursed from the Plan surplus in accordance with the preceding sentence, until such time as National Trust is satisfied that such costs may be paid out of the Plan surplus, at which point all such costs shall be paid from the Plan surplus (subject to the details set out below). Should implementation of the Proposal not proceed, any amounts already paid by National Trust or the Plan on behalf of the Committee in accordance with the foregoing need not be repaid by the Committee, the Committee's legal counsel, or the Committee's actuary.

Parties' Costs – Prior to March 4, 2003; *Monsanto*-Related Expenses

5. Fees and expenses incurred prior to March 4, 2003 by any party, and fees and expenses incurred by AFTER or its representatives in the Monsanto litigation regardless of when such fees and expenses were incurred ("Monsanto Expenses"), shall be paid out of Net

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Surplus, out of the surplus share of the applicable party, in accordance with the terms of this Agreement and subject to receipt of necessary regulatory and court approval. Subject to the foregoing, neither National Trust nor the Bank will oppose the payment of pre-March 4, 2003 expenses or Monsanto Expenses incurred by AFTER or the Committee from the Net Surplus. No expenses of either party which relate to the cost of that party's participation in the *Monsanto* litigation shall be paid out of the Plan surplus, except as explicitly contemplated herein.

Parties' Costs – On and After March 4, 2003

6. The Committee's and National Trust's reasonable costs incurred on and after March 4, 2003 in implementing the Proposal will be paid "off the top" out of Plan surplus as described in paragraph 4.
7. All reasonable fees and expenses of the Parties relating to the negotiation and implementation of this Agreement, including legal and actuarial expenses, shall be paid on a monthly basis within forty-five days of invoicing. Invoices for such fees and expenses shall show billing rates and actual docket time for each timekeeper as well as a general description of the work performed. Upon request, National Trust will disclose to the Committee a quarterly summary of National Trust's ongoing costs as they are incurred.
8. On request, National Trust and the Committee will exchange quarterly and annual fee and expense budget summaries, showing billing rates and expected docketed time for each timekeeper as well as a general description of the work expected to be performed in the budget period.
9. For greater certainty, normal Plan and fund administration and design costs which would be charged to the Plan in the normal course will continue to be paid from the Plan in the normal course, and will not be part of the above disclosure format.
10. It is agreed that both National Trust's and the Committee's review of fees and expenses submitted to the Parties under this Agreement will be on a confidential basis.
11. It is recognized that the exact timing of the payment of any fees and expenses under the above format may be affected by questions raised by either party. The Parties will proceed reasonably to respond to such questions in a timely manner.

Replacement Benefits – Past Service

12. The Plan will be amended by National Trust immediately prior to the Wind-Up Date to provide pre-retirement indexation of pre-Integration Date accrued benefits at a rate of 2.25% per year from the Wind-Up Date until the pension commencement date, for all Active members (except for any Active member who is absent from work due to long-term disability), all Suspended members, and all Inactive members except those who have historically not received *ad hoc* increases under the Plan, subject to the maximum pension limit prescribed under the Plan rules and provided that no such increase shall exceed the cumulative increase in the Average Industrial Wage over the same period in

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