

Re: Submission of the Multi-Employer Benefit Plan Council of Canada regarding the Alberta Finance and Enterprise December 18, 2008 Discussion Paper on Proposed Response Alternatives to Meet the Defined Benefit Pension Plan Funding Issues Arising from the Current Economic Environment

We are pleased to make this submission regarding the above-noted December 18, 2008 Discussion Paper (the “Discussion Paper”). This submission is made on behalf of the Multi-Employer Benefit Plan Council of Canada (“MEBCO”).

MEBCO was established in 1992 as a not-for-profit, federal non-share capital corporation, to represent the interests of Canadian multi-employer pension and benefit plans with provincial and federal governments regarding proposed or existing legislation and other policies affecting such plans.

MEBCO’s volunteer Board of Directors is responsible for identifying issues that impact upon multi-employer plans and developing strategies to address those issues. They are elected from all professions and disciplines involved in multi-employer plans, including union and employer trustees, professional third-party administrators, non-profit and in-house administrators, actuaries, benefit consultants, lawyers, and chartered accountants.

MEBCO’s membership currently includes defined benefit, multi-employer pension plans, many of which have members in the province of Alberta. Multi-employer pension plans belonging to MEBCO have, on average, 400 participating employers each. They have, in total, more than 1.3 Million plan members. MEBCO represents multi-employer pension plans with assets totalling more than 15 Billion.

Prior to providing our comments on the Discussion Paper, we believe it would be valuable briefly to provide some background regarding multi-employer defined benefit pension plans and, in particular, how they differ from single-employer pension plans. While single-employer pension plans are currently the dominant form of pension plan in Canada, the number of plan members covered in multi-employer pension plans is surprisingly close.

For example, according to the recent Report of Ontario's Expert Commission on Pensions, there are just over 6,000 single employer plans registered in that province, compared to just 127 multi-employer pension plans. However, membership overall is "almost evenly balanced between these two types of plans" with 55% of plan members belonging to single-employer pension plans and 45% belonging to multi-employer pension plans.

The Annual Statistics Report, issued by Alberta Finance and Enterprise for the period June 1, 2007 to June 30, 2008, shows that, whereas 3.4% of the plans regulated by Alberta Finance are SMEPPs, they cover almost 30% of plan members. SMEPPs provide benefits to over 122,000 Alberta residents including retired members. The market value of Alberta-regulated SMEPPs is approximately \$4.9 Billion.

Multi-employer pension plans developed out of the collective bargaining process as a response to the problems of providing retirement benefits to unionized workers employed in industries typified by small companies and a mobile work force. Members of multi-employer pension plans work in industries as diverse as construction, manufacturing, food service, retail, hotel, restaurant, graphic communications, healthcare, education, garment manufacturing, security, textiles, transportation, and entertainment. A single, multi-employer pension plan may be national, regional, provincial, or local in coverage. Anywhere from two to more than 1,000 employers may contribute to one of these plans in accordance with the terms of their collective agreements. It is estimated that there are approximately 200 multi-employer pension plans in Canada with more than one million members.

A multi-employer pension plan is typically structured as a pension trust fund for purposes of s. 149(1)(0) of the *Income Tax Act*. The trustees, who may be appointed by both labour and management, or labour only, are appointed pursuant to a trust agreement and are responsible for the administration of the plan and its trust fund. Such plans may handle their administration in-house or hire a third-party administrator.

As noted above, trade unions normally represent members of multi-employer pension plans. In a classic multi-employer defined benefit pension plan, contributions are fixed by collective agreement and an employer's only obligation is to pay the required contributions and provide the information necessary to administer the plan. As employers cannot be forced to make contributions in excess of those required by their collective agreements, a defined benefit multi-employer pension plan is in reality a target benefit plan as accrued benefits may have to be reduced to alleviate a funding shortfall. Such benefit reductions are currently permitted in all provinces but Quebec.

Multi-employer defined benefit pension plans based on union-management negotiations are a cornerstone to the provision of retirement income in Canada. Unlike single employer plans, multi-employer pension plans are not being wound up, converted to (or replaced by) defined contribution plans, or subject to wind-up because of the insolvency of a single employer. They are also not the subject of disputes about contribution holidays or the ownership of any surplus as employers are required to continue to make contributions regardless of the funding level of the plan and all contributions are ultimately used to pay benefits or pay administrative expenses. In his May 2007 comments to a Toronto pension conference, then Bank of Canada Governor David Dodge stated that multi-employer pension plans are an important method of providing retirement plan coverage and that efforts should be made to promote them.

The Alberta/British Columbia Joint Expert Panel on Pension Standards issued its report in late November 2008. That report recommended that solvency funding not be applicable to multi employer pension plans. It is our view that the Panel's conclusions did not go as far as the recommendations of the expert panels in other major pension jurisdictions, such as Ontario, in its recommendation to abolish solvency funding for multi employer pension plans. In particular, MEBCO believes that the recommendation of the Panel will imply some level of solvency funding or mandated actuarial assumptions on pension plans. We disagree with this approach.

It is proposed in the Discussion Paper that multi employer pension plans must adopt certain actuarial assumptions in order to qualify for an extended solvency moratorium. MEBCO is not aware that such standards were imposed on SMEPPs to qualify for the initial moratorium provided for under the Employment Pension Plans Act. MEBCO disagrees that such criteria should be mandated for any pension plan. Setting the appropriate funding assumptions is a decision for the professional judgement of the plan actuary who is, in turn, regulated by the Canadian Institute of Actuaries. Further, mandating actuarial assumptions, for the first time at the time of extreme financial crisis, will do little to provide funding relief to pension plans. The subject of mandated actuarial assumptions should be a matter for greater public debate. Time for that debate was not permitted within the response period given for the Discussion Paper.

MEBCO believes that a role given to pension legislators and regulators is the establishment of a pension system which will provide plan members confidence in the pension benefit they have earned in their pension plan. It is MEBCO's view that the mandating of actuarial assumptions, and the focus on solvency funding, will not achieve that goal. MEBCO believes that the Discussion Paper, while demonstrating leadership in the area of addressing the 2008 funding crisis, will serve to require benefit reductions for thousands of Alberta pension plan members. Since the more than 122,000 residents of Alberta belong to SMEPPs, the prospect of cuts in benefits would have a serious ripple effect on the Alberta economy.

In the pages which remain, we will set out MEBCO's position on the questions posed in the Discussion Paper.

Should the Superintendent permit plans to use the new Canadian Institute of Actuaries (CIA) Guidelines for Determining Commuted Values or valuations effective prior to April 1, 2009?

Yes. Pension plans should be permitted to adopt this basis of calculation of commuted values immediately. This would help to level the inequalities that may be present in the pension system if pension plans are forced to reduce benefits due to the 2008 financial crisis. Further, if the other aspects of the Discussion Paper are accepted, this would doubtless mean benefit reductions for Alberta pension plan members. Those who elect to terminate in the pension plan before such changes are implemented would not be impacted. This would result in further reductions on the shoulders of remaining plan members.

Should the solvency moratorium for SMEPPs be extended for a further three-year period?

The solvency moratorium should be made permanent.

The solvency moratorium was provided, in the first instance, to allow broad discussion and research on the subject of whether solvency funding was appropriate for SMEPPs. It has now been concluded, almost universally by the expert commissions which have reviewed the subject, that solvency testing is not an appropriate measure of the financial health of a SMEPP. By extension, solvency funding is not appropriate for SMEPPs. Therefore MEBCO encourages the Minister of Finance to draft legislation for public consultation to abolish solvency funding requirements for SMEPPs.

As we noted above, MEBCO is concerned that some element of solvency funding will remain in the Employment Pension Plans Act and therefore open public consultation is critical to ensuring a stable outcome for SMEPPs.

With regard to the assumption restrictions set out in the Discussion Paper as it addressed the criteria for extending the solvency moratorium for SMEPPs, there is no credible research to support the imposition of an assumption rate of 6.5%. The setting of an assumption rate is specific to each pension plan. It is set with reference to the liabilities of the plan. Many pension plans obtain independent professional advice in the setting of interest assumptions. The proposal contained in the Discussion Paper would override the professional advice obtained by the administrators of SMEPPs. Further, since it is clear from the Annual Statistics Report that there are some SMEPPs with a current assumption rate above 6.5%, these plans would be required to reduce benefits in order to fall under the extended solvency moratorium. MEBCO believes that this criteria for solvency moratorium approval works against the notion of providing funding relief to SMEPPs.

The Discussion Paper establishes that the actuary certify the current service cost is sufficient to fund the growth in solvency liabilities. MEBCO stresses that solvency funding has been recognized as inappropriate for SMEPPs and therefore we disagree that this current service cost calculation should be part of a funding relief program.

Should there be an extension of the funding provisions for losses related to the market decline (Available to all plans)?

The Discussion Paper dialogue relates only to solvency issues.

Most pension plan sponsors believe that, following the implosion of financial markets in 2008, legislators and pension regulators should be focusing on going concern funding. There may be a reason for exercising solvency rules in a single employer environment.

MEBCO Proposal

MEBCO proposes the following package of regulatory changes to minimize unnecessary disruption to the lives of these who are retired or near retirement:

Extend the shortened period for going concern funding under the solvency funding moratorium to 15 years.

Allow 20 year amortization for special payments related to actuarial investment losses in plan years beginning in 2008. Note that special payments may not all arise at the start of the following plan year, because asset smoothing may result in those losses being reflected over a period of up to five years into the future.

Allow SMEPPs to take necessary corrective action starting in 2012. This will allow SMEPPS to conduct their due diligence on the pension plan's funded position and to carefully examine the corrective actions available.

Have the requirements for annual (rather than triennial) actuarial filings for SMEPPS based on a going concern funded position rather than the solvency-funded position.

Allow amendments that improve benefits, provided that the projected total contributions will be sufficient to cover going concern funding requirements as described above plus a new special payment over 15 years of the added liability due to the amendment. Funding relief is of limited value if it inhibits restoration of cuts made in the past – for example, cuts made to comply with solvency funding. Further, it will be easier to get participant consent to contribution rate increases, if this is the desired approach, if there is some benefit improvement in return.

MEBCO would be pleased to discuss the details of our submission and to assist in the drafting or review of proposed new regulations to assure that they are effective in accomplishing the intended objectives.