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Attention: Nova Scotia Pension Review Panel
c/a Nova Scotia Labour and Workforce Development - Policy Division
via e-mail: *lwdpolicy@gov.ns.ca*

Re: Pension Review Panel Position Paper, October 17, 2009

Imperial Oil welcomes the opportunity to provide input on selected sections of the Nova Scotia pension review panel's interim position paper, which was issued on October 17, 2008. We focus mainly on aspects of the proposals of greater interest to a multi - jurisdiction plan sponsor with some members in Nova Scotia but a plurality of members (and plan registration) elsewhere. Under the current memorandum of reciprocal agreement respecting multi - jurisdictional pension plans (MJPP), as well as the expanded replacement agreement which has recently been drafted and issued for comment by CAPSA, Nova Scotia would not be the 'major authority' for any of our plans. However, regulatory actions taken by the province in response to the panel's recommendations will impact us -- directly for 'non - Schedule B matters' and indirectly as precedents for other jurisdictions insofar as 'Schedule B matters' are concerned.

Background

Imperial Oil is Canada's largest manufacturer and marketer of petroleum products and a major producer of oil and natural gas. ExxonMobil Canada is also a major producer of oil and gas, including operating and ownership interests in the Sable Gas and Hibernia joint ventures. Imperial Oil operates four DB pension plans in Canada - one for itself and three for affiliated companies that are wholly-owned subsidiaries of Exxon Mobil Corporation - covering a total of over 7000 employees. Two of these plans are registered in Ontario, one in Alberta and one in New Brunswick. The ExxonMobil Canada plan (Alberta) and Imperial Oil plan (Ontario) have between them approximately 370 members who work in Nova Scotia. Although our Nova Scotia membership is not large, we have a long history as a private sector plan sponsor in the province, having operated a series of pension arrangements on an uninterrupted basis in this jurisdiction since 1919.

We also operate three DC plans for the ExxonMobil affiliates, although these are now closed to new members, and savings plans for all four companies that include a group RRSP component. Our current retirement savings design, which has been harmonized across all four companies, involves a mandatory, 100% company - funded DB (final average earnings type) with three optional multipliers - 1.0%, 1.5% and 2.0%, in which each member has an opportunity to change option every 5 years. Depending on what DB multiplier the member chooses, the company contribution to the savings plan is adjusted up or down. In essence we are operating a DB/DC hybrid, although the DC component is delivered through a savings plan rather than a registered DC.

Overall Assessment

Within the context of a Canadian regulatory framework that is fractured and not supportive of defined benefit pension plans, the panel is to be congratulated for a thoughtful and reasonably well balanced report, recognizing the complexity of the issues and the different stakeholder perspectives that are at play in the arena of pension reform. In particular we welcome the panel's recognition that the focus of pension regulation needs to be broader than just benefit security, if the erosion in pension coverage, particularly in the private sector, is to be slowed or reversed.

Imperial is one of the very few private sector corporations that has decided to maintain a significant DB component in our benefits design during various management reviews over the past two decades. This conclusion has been reached because we believe this type of pension best meets the needs of both employees and the company within our 'career employment offer' and workforce planning model. However in all candor, this position has been taken in spite of a regulatory climate that has been perceived as quite burdensome and not particularly 'enabling'. In this regard, we particularly applaud the panel's recommendation to eliminate the concept of partial plan windup, which in our view is as much a disincentive to the establishment and maintenance of DB pension plans as the so-called 'asymmetry' issue.

Following are short paraphrases of selected panel recommendations followed by some commentary for your consideration. These are in no particular order but do reference section and page numbers from the panel's report. Please feel free to contact the undersigned if you wish further clarification.

Thank you for the opportunity to provide input in this important initiative.

Sincerely,

Ken M. Smith
Manager, Pension, Savings & Benefit Plans
Imperial Oil Limited and Exxon Mobil affiliates in Canada

IOL Commentary on Specific Issues

2.1 (p.6) /3.7.1 (p.19). The panel encourages full transparency of information for plan members and active involvement of employee representatives, through such mechanisms as joint trusteeship or active employee advisory committees. Advisory Committees should remain optional (at employee, not sponsor, election in plans with over 50 members), but their Influence is to be increased by requiring that they be copied on all non-private materials filed with Superintendent, provided with access to actuaries, etc. at plan sponsor cost, and empowered to act as the conduit for communication to plan members.
Imperial supports the concepts of transparency and providing opportunities for input to key stakeholders in a pension plan, and we feel that we have put these concepts into practice for many decades through the operation of our employee communications and representation systems--although we have not had a more narrowly - focused 'pension committee' per se. For example, Dartmouth Refinery has had a series of non-union elected employee representation bodies since 1919, which have been empowered to have a dialogue with the company not only on pension matters, but on any matters of mutual interest arising from the employment relationship. We are concerned that the creation of an employee advisory committee solely for pension purposes would inappropriately disrupt the current dynamic of employee / employer relations, particularly in cases where the pension plan is 100% funded by the employer. Among other things such a committee could create an expectation among employees that it is somehow a vehicle for negotiating the level of benefit provided through the plan. In our case such an expectation could be difficult to reconcile with the fact that less than 5% of the plan's membership is in Nova Scotia, and with the fact that we have pre-existing employee communication systems that are already capable of dealing with employee concerns or questions on pension matters, among other things. We do not feel that an additional body is necessary. In addition, we caution that any regulation arising from the panel's recommendations in this area needs to thoughtfully approach the practical issues, particularly those arising in a multi - site plan within the province or, as in our case, multi - jurisdiction plans with numerous sites. We presume that under the current and proposed inter-provincial agreement on multi - jurisdiction plans, this would be regarded as a 'Schedule B topic', and therefore a company like Imperial could deal with a single pension committee if required, and as prescribed by, the 'major authority' in the home jurisdiction where our plans are registered. If, on the other hand, it is the panel's intent to require a separate committee just for Nova Scotia members, even in cases where the province is not the 'major authority', this would produce extremely unwieldy and burdensome results. If other jurisdictions imposed similar requirements we could find ourselves with literally dozens of such committees from coast to coast and it is likely that the views and information needs of these various bodies will not be 100% convergent. We recommend that the panel clarify, for greater certainty, that any requirements associated with pension advisory committees are 'Schedule B topics' that will only apply where Nova Scotia is the 'major authority' for a given plan. Furthermore we suggest that even where a plan is registered in the province, clarification be provided on how to handle multi - site operations. Any such clarifications should avoid saddling plan sponsors with requirements that are inconsistent with the panel's basic principles of avoiding over-regulation and being permissive rather than prescriptive. We also recommend caution about positioning advisory committees as the sole conduit for communications to plan members, particularly in non-union operations, as this would seem to be an unjustified constraint on direct employer - employee communications. Further, we are concerned that permitting an employee committee with access to actuaries and consultants at plan sponsor cost could result in excessive company expenses. Any such access should be subject to company approval and cost control.

3.1.1 (p.11) / 3.7 (p. 18) Sponsors should document the rationale for the investment selections offered to members and file this with the Superintendent of Pensions. Sponsors should be required to file with the Superintendent a copy of their governance plan, after circulation to the advisory committee, and a statement certifying compliance with same; failure to follow deemed to be evidence of lack of prudence.
Imperial is fully supportive of good governance in pension matters and strives to keep in alignment with the CAPSA and CAP guidelines, We are not clear what added value there would be in the above recommendations and do not believe such requirements are consistent with the panel's principles of avoiding over-regulation and being permissive rather than prescriptive. Presumably these requirements would also be 'Schedule B topics', applicable only where Nova Scotia is the major authority for a given plan. If not, and if other jurisdictions were to impose similar requirements, we would again be looking at a burdensome regime of multiple filings and could get 'caught in the crossfire' between provincial superintendents with different views about the appropriateness of investment options or aspects of the governance plan. Even in plans for which Nova Scotia is the major authority, we suggest some recognition should be given to the size and stability of the plan, and the number of sites it has, in framing the details of any such filing requirements. Imperial is currently running 4 DB plans and 3 DC plans with a combined asset value approaching 5 billion dollars, and has been in the pension governance business for 89 years. With all due respect, we do not see what added value our company or our plan members will obtain from such filings and Superintendent reviews.

3.3 (p. 13). No benefit improvements should be allowed if the plan is in deficit.
We do not agree with this recommendation. Even though our plans would presumably not be subject to it as long as our 'major authority' is another province, the precedent it troubling and is inconsistent with the panel's expressed desire to avoid over-regulation and unnecessary disincentives to the establishment and maintenance of plans. DB pensions by their very nature tend to fluctuate from having an accounting surplus to an accounting deficit; indeed they are almost never in exact balance. So why preclude a plan sponsor from making a benefit improvement for policy reasons based on an accident of timing? Under the current regulatory regime in Canada there are plenty of good reasons for a DB plan sponsor to fund only to the regulatory minimum, even where its financial capabilities would allow full funding. These reasons have been amply described in previous submissions by numerous parties to the Nova Scotia, Ontario, and Alberta / BC pension reform consultations. Our plans are often in a 'technical deficit' but as a practical matter this deficit means little or nothing to the benefit security of our plan members, given that the company backing the plan is the only industrial firm in the country with a AAA credit rating and has been paying pensions on an uninterrupted basis for 89 years. Therefore we do not believe it is appropriate have a provision that would seem to automatically disallow a plan improvement we might wish to make for policy reasons, simply because the last valuation happened to show a solvency deficit. There may be intuitive logic that suggests improvements should not be allowed in a plan that is already 'under-funded', however this argument does not hold up well under closer scrutiny, and at the very least, is too narrow to be applied categorically. If the recommendation is kept, the panel should clarify that this rule would trigger only after the deficit exceeds the recommended 5% 'collar' (or perhaps another threshold), and not in the case of a deficit of less than 5%. Furthermore, it is essential that any such regulation not prevent a sponsor with a deficit from providing a one time 'ad hoc' adjustment to pensions in pay.

3.3.2 (p. 16) Surplus can be used to fund improved benefits only if this does not bring the surplus below the proposed 5% 'collar'.
We disagree with this recommendation as per the above points. In a 100% company - funded plan, if the plan sponsor can demonstrate that it can comfortably absorb the incremental funding requirements associated with a plan improvement, it should not be precluded from accessing the entire surplus.

3.3.2 (p. .15-16) Surplus ownership upon full windup can be left to the plan text; however regulations should stipulate that the sponsor can access no more than 50% of it.
We agree that the matter of surplus ownership should be left to the plan text, but disagree with the 50% boundary condition. The logic seems to be that plan members have shared in risk through the possibility of plan sponsor insolvency resulting in a plan windup when there is a deficit. This logic assumes there is roughly equal probability between that event and the possibility of a surplus upon windup, but we do not think that is necessarily the case. The panel's recommendation for a 50/50 split does not fully address the effect that asymmetry has on the willingness of sponsors, particularly in the private sector, to continue with DB designs.

3.4 (p. 17) Current mandatory grow – in upon windup should be eliminated; regulation should permit but not require grow-ins.
We heartily endorse this recommendation. The current requirement is grossly inequitable between individuals who leave the plan under a windup order and those who are not under a windup order but whose circumstances are otherwise the same. We agree with the panel that this type of provision acts as a disincentive to the establishment and maintenance of DB plans.

3.5 (p. 17) The notion of partial wind-ups should be eliminated from the legislation." Instead plan must allow CV transfers out at time of termination, and if plan is in deficit at that time, sponsor must top-up the share of the deficit attributable to the departing members.
We strongly endorse this recommendation, having had considerable experience with partial windup orders in Ontario and Nova Scotia which have resulted in high expense, enormous administrative effort, and protracted disputes and litigation with the regulator and former plan members. Aside from the extra expense and bureaucratic burden imposed on the plan sponsor, It seems to us nearly impossible for a regulator to prescribe a fair and even - handed set of triggering conditions for a partial windup order that will fit all conceivable situations. The results, in our view, have been quite arbitrary and have resulted in a good deal of inequity between plan members who get included in a group subject to a partial windup order versus other individuals or smaller groups of similar age and service who terminate before reaching the early retirement condition. Ridding the Nova Scotia pension regime of this concept will be a major step forward in removing the current disincentives to the DB type of pension arrangement. We would prefer that the CV transfer option not trigger immediate additional funding requirements, over and above the established contribution schedule, where a deficit exists, at least in cases where the number of departing employees is a relatively insignificant portion of plan membership. It is one thing to have such a requirement where some type of event is causing a large number of members to leave the plan, and there is a consequent possibility of a material deterioration in funded status. However, it is an unjustified regulatory burden to require, as some provinces do, that CV pay-outs for routine departures of small numbers of members require funding top-ups in respect of solvency deficiencies. We would also recommend a clarification that in cases where the member has already reached the early retirement eligibility condition (e.g. age 55), the legislation should not force a CV option in cases where the plan text requires in the base case (as ours does) that the member take a monthly pension and not a CV transfer.

3.12 (p. 22) Vesting should always be immediate.
We do not support this proposal. Although the costs of providing termination annuities or CV transfers to employees who terminate with short service are not that significant in our case, the administrative burden associated with calculation and disbursement or tracking of these small entitlements is disproportionate relative to the amount of the CV. Immediate vesting is also out of line with most other provinces.

3.14 (p. 23) Where advisory committees do not exist, complete information on plan funding & operations should be made available to all members in both paper and electronic formats.
We support the general principle of transparency; however the practical problems with this recommendation are formidable in a multi - jurisdiction, multi - site plan. An additional consideration is that merely making more accessible the various types of documents that are required to be provided to the Superintendent will not necessarily result in the desired improvement in plan member awareness and understanding. Formal actuarial reports, plan financial statements and information returns that were designed for regulatory purposes are not well suited for member education. We do not understand why prescriptive regulation is necessary in this area; it would be better to simply require plan sponsors to offer summary documentation that addresses certain specific topic areas -- something that sponsors who are following the CAPSA and CAP guidelines are already doing.

3.11 (p.22) Phased retirement – NS regulations should permit but not mandate the type of phased retirement arrangement contemplated by the federal Income Tax Act changes.
We agree and would request clarification that plan sponsors be allowed to offer this selectively to particular employees or groups of employees with skills that need to be retained, versus making it into an entitlement for all members who meet the CRA requirements,

3.3.1.(p. 15) If a valuation shows a larger deficit, the previous schedule should continue and a new schedule should be added (tends to front-end amortization); however sponsors should have up to 1 year to start making additional contributions.
This proposal appears to be adding a layer of complexity in defining contribution requirements; our preference would be for a simpler, all - encompassing new schedule.