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May 17, 2005

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Dear Sir/Madame:

**Re: Canadian Commercial Workers Industry Pension Plan  
Registration Number 580431**

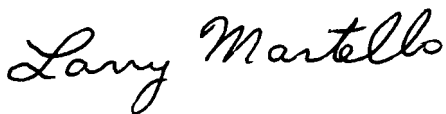
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Enclosed is the "Financial Services Commission of Ontario Pension Examination Report of the Canadian Commercial Workers Industry Pension Plan."

We note that you have already provided material in response to the issues raised in the report. We will be reviewing the material and providing a subsequent follow up letter taking into account the material provided.

If you have any questions or concerns, you may contact me directly at 416 226-7809.

Yours truly,



*for* Lynda Ellis  
Manager, Technical Consulting

Copy: Mark Zigler  
Koskie Minsky

**FINANCIAL SERVICES COMMISSION OF  
ONTARIO**

**PENSION EXAMINATION REPORT**

**of the**

**CANADIAN COMMERCIAL WORKERS INDUSTRY**

**PENSION PLAN**

**Registration Number 580431**

**March 2005**

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## Introduction

The Superintendent of the Financial Services Commission of Ontario (the "Superintendent") is responsible for the administration and enforcement of the Ontario *Pension Benefits Act, R.S.O. 1990*, as amended (the "Act") and *Regulation 909, R.R.O. 1990*, as amended (the "Regulation").

The Act and Regulation set out the minimum legislative standards applicable to a pension plan as defined in the Act. The Canadian Commercial Workers Industry Pension Plan ("CCWIPP" and the "Plan") is a pension plan which is subject to the Act and Regulation, and a certificate of registration has been issued. The registration number of the pension plan is 580431.

CCWIPP is a multi-jurisdictional pension plan. In the administration and enforcement of a multi-jurisdictional pension plan, the Superintendent, as the major authority under a Memorandum of Reciprocal Agreement between the Superintendent and other provincial pension plan regulators, is required to administer the pension benefits legislation of those other provincial jurisdictions as it relates to the members of the pension plan who may be affected by the legislation of the province in which the members may have earned pension benefits. In the examination by the Financial Services Commission of Ontario ("FSCO") of CCWIPP consideration was taken of the requirements of the pension legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland & Labrador.

During 2002, allegations were made to FSCO to the effect that CCWIPP was not complying with the Act and Regulation. Specifically these allegations related to the following:

- there were irregularities involved in the investment of assets of the pension fund in respect of certain real estate investments being managed by the Board of Trustees;
- the assets of the pension plan were not being held in the name of CCWIPP;
- related-party transactions were taking place contrary to the Act;
- conflict of interest situations existed contrary to the Act;
- some members of the Board of Trustees were receiving payments other than those contemplated by the Act; and
- the Board of Trustees was not meeting their fiduciary obligations under the Act.

After reviewing the allegations and the plan documents, the Superintendent determined that an internal examination focussing on the real estate investments of CCWIPP would be undertaken for the purpose of ascertaining compliance with the Act and the Regulation.

In a letter dated February 5, 2003, pursuant to section 98 of the Act, FSCO advised the CCWIPP administrator about the allegations and requested documents and information related to certain identified investments. In a letter dated March 3, 2003, to the CCWIPP administrator, FSCO provided further particulars, and requested further documents and information related to the investments of CCWIPP.

Following the receipt and review of a substantial number of documents from the administrator, FSCO undertook an onsite examination at the offices of CCWIPP in Campbellville, Ontario, Canada in February 2004. Visits to the offices of the Prudent Benefits Administration Services Inc., the administrator of the Plan, BDO Dunwoody LLP, the auditor of the Plan and Sissu Onni Inc., an outside advisor in regards to loans and real estate investment, were also made. These onsite examinations were carried out pursuant to the authority of subsection 106 of the Act.

The Plan is a multi-employer pension plan which provides defined benefits. Contributions by members are not required nor permitted. There are approximately 443 participating employers in the Plan and approximately 240,000 members. The pension fund has assets of approximately \$1.2 billion. At the time of the examination it was determined based on information available to FSCO examiners that approximately 55% of the assets as at December 31, 2002 were invested by outside professional investment advisors ("Outside Invested Assets"). Although FSCO did not do an in-depth review of the investments representing the Outside Invested Assets, FSCO did note that there are due diligence processes in place to select such investment advisors and strong reporting and monitoring requirements to ensure proper oversight of the advisors and proper tracking of the assets for purposes of the Plan.

As a multi-employer pension plan, CCWIPP is administered by a Board of Trustees. As provided for under Section 22(7) of the Act, the Board may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund. One of these acts is the ongoing day-to-day administration of the pension plan. The Board of Trustees has entered into an administration agreement with the Prudent Benefits Administration Services Inc. ("PBAS") to provide these day-to-day services.

Although FSCO did not do an in-depth review of the day-to-day administration systems in place at PBAS as such a detailed review was done by the Employment Pensions, Alberta Finance in 1999, FSCO did note that there are processes in place to ensure proper tracking of contributions and employee data. FSCO was also satisfied that there are processes in place to properly determine the members' entitlements in accordance with the plan terms, to provide members with the information as required by the Act and

to make payments as required by the Act and the terms of the Plan. PBAS is 30% owned by CCWIPP. FSCO was also satisfied that the investment in PBAS and the membership on the Board of Directors of PBAS by CCWIPP representatives does not contravene the requirements of the Act, Regulation and the Federal Regulation.

The main focus of FSCO's review was the approximately 45% (which was reduced to 31% as at December 31, 2003) of pension assets which include the real estate investments and the "I.F.Propco" investment corporations. FSCO has further been advised that as a result of the sale of a number of properties in 2004, the percentage of assets under the direct authority of the Investment Committee has decreased even further.

This report sets out the findings and the basis of those findings of the staff of FSCO as they relate to the identified investments and other findings and the basis of those findings which were made during the examination. It is to be noted that FSCO's findings reflected the documentation and information available to the examiners at the time the review was undertaken. Subsequently, additional material has been made available which may impact on some of the findings of this report.

It should be noted that the administrator has rightly pointed out that "The FSCO Draft Report failed to take note and acknowledge that in 2001 the Board of Trustees actively began focusing their efforts on rebalancing the CCWIPP investment portfolio so that a greater percentage of the Fund's assets would be under the management of professional Investment Managers. In this regard considerable work has been undertaken by the Board through the divestiture of Trustee Directed Investments and Propco Corporations resulting in over \$200,000,000 being returned to the CCWIPP to date."

It is acknowledged that the Board of Trustees did take steps in April 2001 to focus on the active rebalancing of CCWIPP. It is further acknowledged that the Board continues to take steps to move a greater percentage of the assets to professional Investment Managers. As a result of these steps, the amount of assets in Trustee Directed Investments and Propcos was at 31% of the assets as at December 2003 and declined further in 2004. In addition, the administrator has taken steps to establish new procedures for the oversight of these investments. The Board has provided additional material to address all of the concerns raised by FSCO in this report. This information is under review by FSCO.

It should be noted that the findings of this report, in part, reflect the historical record of activities related to the handling of certain of the investments of the pension fund. FSCO's examiners documented their findings and made their conclusions based on the material available in the files at the time the examination was undertaken.

## **Next Steps**

The new submissions are being reviewed by FSCO to determine if the matters identified in this report have been or are being addressed and whether all compliance issues have been resolved.

Concurrently, FSCO will take steps to determine whether the activities surrounding the investment of certain of the real estate assets warrant further action under the Act.

## Purpose and Scope of the Examination

- The purpose of the examination was to assess compliance of the CCWIPP with the Act and the Regulation. The examination consisted of a limited review of certain real estate investments and investment corporations as identified in Attachment A .
- Effective January 1, 2001, an amendment to the Regulation requires that the pension plan assets must be invested as per Schedule III of the *Pension Benefits Standards Regulations, 1985 SOR/87-19* (as of December 31, 1999) (the Federal Regulation). Pension plans were given until December 31, 2004 to bring certain investments into line with the Federal Regulation.
- The examination undertaken by FSCO consisted of a review of certain identified real estate investments and investment corporations held by the pension fund.
- The onsite examination was conducted under the authority of Section 106 of the Act and commenced on February 16, 2004 at the Campbellville, Ontario, Canada location of CCWIPP. Subsequent visits were made to the Sissu Onni Inc., the Prudent Benefits Administration Services Inc. offices and to the offices of BDO Dunwoody LLP.
- CCWIPP was provided with a copy of the draft examination report and given an opportunity to provide comments on the facts of the report. A meeting took place at the offices of CCWIPP in Campbellville, Ontario on February 24, 2005 to discuss additional information provided by CCWIPP in respect of these facts. Where applicable, the responses of CCWIPP have been incorporated in the body of this report.
- Subsequent to the meeting of February 24, 2005, CCWIPP has made submissions which address some of the issues raised in this report. These submissions are under review.

## Legislative Framework

CCWIPP has members in provinces throughout Canada. As a result, pension legislation of a number of provinces applies to the Plan. However, for purposes of investments, each provincial legislation, with the exception of Quebec, has adopted the Federal Regulation. The *Quebec Supplemental Pension Plans Act* provides that the investment rules of the province of registration shall apply. Therefore, in conducting the examination as it relates to the investments, FSCO relied on the provisions of the Act, the Regulation and the federal Pension Benefits Standards Regulations, 1985, SOR/87-19 (as of December 31, 1999) (the "Federal Regulation").

For purposes of consideration of Conflicts of Interest, FSCO relied on the conflicts of interest sections of the applicable pension legislation.

Set out below are relevant provisions of the Act, Regulation and Federal Regulation.

### **Section 22 of the Act:**

#### Care, diligence and skill

(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

#### Special knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

#### Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

#### Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

#### Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

#### Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund.

#### Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

#### Employee or agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

#### Benefit by administrator

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

#### Member of pension committee, etc.

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

#### Payment to agent

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

### **Section 62 of the Act:**

Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations.

### **Section 49. of the Regulation:**

(1) Subsection 22 (4) of the Act does not apply to an administrator of a multi-

employer pension plan who enters into a transaction with a trade union, council of trade unions, employer, employers' association or an employee benefit trust fund in which a member of the board of trustees or committee holds any office or position, where the transaction is,

- (a) only for purchase or lease of office space, for legal, accounting or other services, materials or equipment necessary for the administration and operation of the pension plan, provided that the compensation paid therefor is reasonable in the circumstances; and
- (b) permitted under the documents that create and support the pension plan or any amendments thereto.

(2) Subsection 22 (4) of the Act does not apply to an administrator of a multi-employer pension plan or, where the administrator is a pension committee or a board of trustees, to a member of the committee or board who enters into a transaction, other than a transaction referred to in subsection (1), related to the administration of the pension plan or pension fund that,

- (a) is in the interest of the members and former members of the pension plan;
- (b) is protective of the rights of the members and former members of the pension plan;
- (c) is permitted under the documents that create and support the pension plan;
- (d) is disclosed to members and former members of the plan prior to entering into the transaction; and
- (e) confers no direct or indirect personal benefit upon the administrator or member of the pension committee or board of trustees.

### **Section 79 of the Regulation:**

Beginning on January 1, 2001, the assets of every pension plan shall be invested in accordance with the federal investment regulations, despite the provisions of the plan or an instrument governing the plan.

Section 79 of the Regulation requires that the pension plan assets must be invested as per Schedule III of the *Pension Benefits Standards Regulations, 1985 SOR/87-19* (as of December 31, 1999).

### **Section 9(1) of Schedule III of the Federal Regulation:**

The administrator of a plan shall not directly or indirectly lend moneys of the plan equal to more than 10 per cent of the total book value of the plan's assets to, or invest moneys equal to more than 10 per cent of the total book value of the plan's assets in,

- (a) any one person;

- (b) two or more associated persons; or
- (c) two or more affiliated corporations.

**Section 10(1)(c) of Schedule III of the Federal Regulation:**

- (1) The administrator of a plan shall not, directly or indirectly, invest moneys of the plan in real property or Canadian resource properties if, at time the investment is made,  
...
  - (c) the aggregate book value of all investments in real property and Canadian resource properties exceeds 25 per cent of the book value of the plan's assets.

**Section 12(1) of Schedule III of the Federal Regulation in part:**

- (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will
  - (a) file with the Superintendent, at such intervals or times the Superintendent directs,
    - (i) copies of its annual financial statements,

**Section 14 of Schedule III of the Federal Regulation in part:**

- (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of an investment corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will
  - (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
    - (i) copies of its annual financial statements,

## Plan Information

**Plan Name:** Canadian Commercial Workers Industry Pension Plan

**FSCO Registration No:** 580431

### Multi-Employer Pension Plan

CCWIPP is a Multi-Employer Pension Plan (MEPP) defined under Section 1. of the Act as follows:

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*.

As a MEPP the Plan is exempted from coverage by the Pension Benefits Guarantee Fund.

### Pension Benefits

CCWIPP provides defined benefits to the members of the Plan. Member contributions to the Plan are neither required nor permitted. The level of benefits is set out in the collective agreement. The defined benefits of a MEPP (except for those in respect of Quebec employment) may be reduced if the contributions are not sufficient to support the benefits while the plan is ongoing or on termination of all or a portion of the pension plan if there are insufficient assets to provide the benefits and assuming the plan terms permit such a reduction.

### Membership

As at December 31, 2003 the plan membership figures are as follows:

Active Members	159,878
Disabled Members	440
Terminated Vested Members	64,756
Pensioners	14,043
Other Beneficiaries	<u>1,107</u>
Total Membership	240,224

## **Participating Employers**

There are 443 participating employers in the Plan.

## **Administrator**

Clause 8(1)(e) of the Act sets out the requirements for an administrator of a MEPP as follows:

(e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants.

## **Members of Board of Trustees**

Pursuant to Section 8(1)(e) of the Act, CCWIPP is administered by a Board of Trustees comprised of Employer and Union representatives. The members of the Board of Trustees are as follows:

### **Employer**

Gordy K. Cannady  
Canada Safeway Limited

Lucy Paglione  
George Weston Limited

Tom Zakrzewski  
The Great Atlantic & Pacific Company  
Of Canada Limited

Alain Picard  
Metro Richelieu Inc.

### **Union**

Bernard Christophe  
UFCW Local 832

Michael Fraser  
UFCW International Union

Wayne Hanley  
UFCW Local 175

Clifford Evans  
Former Canadian Director UFCW

Antonio Filato  
UFCW Local 500R

## **Day to Day Administration**

The Board of Trustees has entered into an administration agreement with Prudent Benefits Administration Services Inc. (PBAS) to provide the day to day administration functions of the Plan. These functions include, but are not limited to, the calculation and payment of the pension benefits including the payments of retirement, death and termination payments, communication with the members, the reconciliation of employee data and contributions to the pension plan. Thirty percent of the shares of PBAS are owned by CCWIPP.

## **Auditor**

The Board has retained BDO Dunwoody LLP as the auditor of CCWIPP. BDO Dunwoody prepares annual audited financial statements of the pension fund.

## **Actuary**

The actuarial firm retained by the Board of Trustees during the course of the examination was Anthony F. Cooper Actuarial Services Ltd. In February 2005, the Board of Trustees appointed Melon Human Resources and Investor Solutions to provide actuarial services for CCWIPP.

## **Fiscal Year End**

The fiscal year end of the pension plan is December 31. Actuarial valuation reports are required within 9 months of the fiscal year end of the Plan. Member statements are required to be issued within 6 months of the fiscal year end of the Plan.

## **Market Value of Assets**

The market value of the assets of the pension fund are \$1,204,490,336 as at December 31, 2003.

## **Funding**

The pension plan is funded by contributions made pursuant to collective bargaining agreements by the participating employers on behalf of the members. Such contributions are as a result of approximately 700 separate collective bargaining agreements. Annual valuations are required for CCWIPP at the current time. While the Plan is ongoing, the actuarial valuation must demonstrate that the contributions are sufficient to support the benefits. If such a demonstration is not possible, the actuary must provide options to the Board of Trustees which will have the effect of demonstrating that the contributions are sufficient to support the benefits. The options may include an increase in contributions, a reduction in benefits or a combination of

both. The Board of Trustees must select and implement one of the options and file the appropriate documentation with the Superintendent.

If the Plan is terminated and there are insufficient assets to provide the benefits, the benefits may be reduced to the level funded.

### **Transfer Ratio**

The Plan has a transfer ratio of .62 as at December 31, 2003. On termination of employment, except for certain small amounts, the administrator may only pay the commuted value up to the transfer ratio. The remainder of the commuted value is a residual obligation of the Plan to be paid out within five years.

## Summary of Key Findings

FSCO has broken their findings into two parts; Investment Findings and Plan Governance Findings.

### Investment Findings

- 1.1 Non compliance with the Federal Regulation which provides that no more than 10% of the book value of the Plan's assets be invested directly or indirectly in any one person; or two or more associated persons; or two or more affiliated corporations.**
- 1.2 Non compliance with the Federal Regulation which provides that the administrator of pension plan shall not directly or indirectly invest more than 5% of the book value of the plan's assets in any one parcel of real property.**
- 1.3 Non compliance with the Federal Regulation which provides that investments in real property and in Canadian resource properties must not exceed 25% of the book value of the pension plan assets.**
- 1.4 Non compliance with Schedule III Sections 12 and 14 of the Federal Regulation.**

Non compliance with the Federal Regulation that provides the administrator of a pension plan shall not invest in the securities of a real estate corporation (as defined in the Federal Regulation) to which are attached more than 30% of the votes to elect the directors of the corporation unless the administrator obtains and deposits with the Superintendent certain undertakings by the real estate corporation.

Non compliance with the Federal Regulation which requires the administrator to provide an undertaking if the administrator of a pension plan invests the assets of the plan in securities to which are attached more than 30% of the votes to elect the directors of an investment corporation (as defined in the Federal Regulation).

### **1.5 Non Compliance with Conflict of Interest Provisions.**

A number of apparent conflict of interest provisions were identified. Conflicts of interest were not disclosed. There did not appear to be comprehensive policies or procedures for identifying and addressing conflicts of interest.

**1.6 Non Compliance with Section 106.**

Financial statements and management letters not produced when requested under Section 106.

**1.7 Non Compliance with Section 22.**

Significant lack of processes dealing with due diligence, reporting, follow-up for filings and monitoring which lead to the questions about the administrator meeting its fiduciary obligations under Section 22 of the Act.

## **Plan Governance Findings**

### **2.1 Contraventions of the Statement of Investment Policies and Procedures. (SIP&P dated January 1, 1996 and revised April, 2001, approved July 30, 2001).**

A number of contraventions of the SIP&P were noted during the examination.

### **2.2 Due Diligence Reports Not in Files.**

Due diligence documentation or a waiver of same by the Board were not included in the files.

### **2.3 Files Lacking Evidence of Approvals.**

Changes were made to agreements yet documentation supporting the approval of the change by the Board were not available.

### **2.4 Required Information Not Being Requested.**

There were a number of examples of files where information was required to be filed as a part of an agreement. The information was not in the files nor did there appear to be a follow-up process to ensure the information was provided.

### **2.5 Appraisals Not Addressed to Lender and/or Investor.**

A number of appraisals were addressed to third parties. These appraisals should not be relied upon by lenders and/or investors unless the lenders and/or investors have contacted the person who completed the appraisals and have received, in writing, confirmation that the appraisal can be relied upon for lending and/or investing. No documentation indicating that such contact was made existed in the files.

### **2.6 Signed Documents Not on File.**

In FSCO's review, it was noted in several cases that the file contained only draft documents.

### **2.7 No Established Policies Related to Lending as a Percentage of the Value of the Underlying Asset.**

It was noted that cases existed where the amount of the financing when combined with prior encumbrances exceeded 100% of the value of the properties. There were no established procedures dealing with the lending as a

percentage of the underlying asset.

## **2.8 No Documentation Related to Parties Involved in Investments.**

It is unclear if these individuals are related parties for purposes of the Federal Regulation nor is there any indication of their relationship to CCWIPP. There is no documentation to indicate that the related party issue or any potential conflicts of interest have been identified or addressed.

## Discussion of Findings

- 1.1 **Non compliance with the Federal Regulation which provides that no more than 10% of the book value of the Plan's assets be invested, directly or indirectly, in any one person; or two or more associated persons; or two or more affiliated corporations.**
- 1.2 **Non compliance with the Federal Regulation which provides that the administrator of pension plan shall not directly or indirectly invest more than 5% of the book value of the plan's assets in any one parcel of real property.**

### Comment

As at December 31, 2003, the Investment Committee of the Board of Trustees (the "Investment Committee") had approved loans totalling \$166,988,863 to a number of corporations which are wholly owned by CCWIPP.

Those corporations are I.F. Propco Holdings (Ontario) 34 Ltd., I.F. Propco Holdings (Ontario) 39 Ltd., I.F. Propco Holdings (Ontario) 41 Ltd., I.F. Propco Holdings (Ontario) 44 Ltd., I.F. Propco Holdings (Ontario) 46 Ltd. (the "Propcos") and 1328434 Ontario Ltd. (a joint venture between two other pension plans and CCWIPP).

The Propcos and 1328434 Ontario Ltd. in turn then lent the funds to RHK Capital Inc. ("RHK"). RHK in turn, purchased hotels and land in Jamaica and the Bahamas ("Caribbean Development").

The total assets of the Plan as at December 31, 2003, at book value, were \$1,065,316,033. Thus, the amounts loaned to the Propcos and 1328434 Ontario Ltd. in respect of the Caribbean Development represent 15.68% of the book value of the assets of CCWIPP as at December 31, 2003.

This would appear to be an ongoing contravention as can be seen from the following calculations of the amount of CCWIPP's investment in the Caribbean Development expressed as a percentage of total pension plan assets for the years 1998 to 2003. The following figures were taken from the audited financial statements for the years which were prepared by BDO Dunwoody LLP, the external auditors.

<b>Year End</b>	<b>Book Value of Assets</b>	<b>10% limit</b>	<b>4 Hotels &amp; Land in Caribbean</b>	<b>Percentage of Book Value</b>
12/2003	\$1,065,316,233	\$106,531,603	\$166,988,863	15.68%
12/2002	\$1,046,476,180	\$ 104,647,618	\$163,062,671	15.58%
12/2001	\$1,014,788,167	\$ 101,478,817	\$150,066,000	14.79%
12/2000	\$ 975,450,962	\$ 97,545,096	\$142,623,000	14.62%
12/1999	\$ 761,483,968	\$ 76,148,397	\$127,194,000	16.70%
12/1998	\$ 719,174,838	\$ 71,917,484	\$ 97,581,000	13.57%

Moreover, we understand that the Investment Committee has continued to approve further funding in respect of the Caribbean Development in 2004.

In 2000, the loans made in respect of the Caribbean Development were restructured in such a way as to convert the debt amount into preference shares in a company called PRK Holdings Ltd. To the best of our knowledge the common shares of PRK are owned by RHK. Our understanding is that Mr. Ronald Kelly and Mr. Tobias Rowe together own the common shares of RHK. As part of the re-structure of CCWIPP's loans in respect of the Caribbean Development, RHK entered into a Voting Trust Agreement ("VTA") with Propcos 34, 39, 41, 44 and 46. Under Point 8 of the VTA, Propco 34 maintains the voting rights of all the common shares on behalf of the five Propcos. FSCO was advised at the meeting of February 24, 2005 that Propco 34 has not exercised its rights under the VTA.

The amounts listed above relate strictly to the hotels and land in the Caribbean Development. FSCO has not included any other loans or investments that the Plan has in RHK or any other entity related to Ronald Kelly. Please see the flow chart attached as Appendix "A-1" for FSCO's understanding of the structure of Caribbean Development.

Given the size of the Plan's investment in the Caribbean Development, FSCO is concerned that the quantitative limits set out in sections 9 and 10 of the Federal Regulation have been violated.

In addition, FSCO understands that the Caribbean Development has not been profitable but that the Trustees continue to invest additional amounts in the venture. To date, FSCO has not been provided with documentation demonstrating that the Board of Trustees has taken adequate steps in respect of the Caribbean Development to meet the fiduciary obligations as set out in section 22 of the Act.

## Response By CCWIPP

Subsequent to FSCO's examination, the external auditor BDO Dunwoody LLP in a letter dated February 18, 2005 to Mark Zigler of Koskie Minsky provided a recalculation of the above percentages. In this recalculation, the book value of the assets remains the same but the funds advanced to the "Hotels & Land" has changed there by lowering the percentages.

The totals for the "4 Hotels & Land" and the percentages as proposed by BDO Dunwoody are as follows:

Year End	Hotels & Land	Percentage of Book Value
12/2003	\$ 142,401	13.37%
12/2002	128,498	12.28
12/2001	117,666	11.60
12/2000	109,637	11.24
12/1999	108,032	14.19
12/1998	84,327	11.72

The reason given for the difference in percentages by D. Pang of BDO Dunwoody was that the audited financial statements did not include the accrued interest.

As mentioned above, FSCO's figures were taken from the Audited Financial Statements for the various years under the cost column which included accrued interest. The auditor is now proposing to subtract the accrued interest from the outstanding balances. This would seem to imply that the assets were overstated in the prior financial statements. Furthermore, the March 7, 2005 e-mail from D. Pang to B. McKay states that the accrued interest was included in the calculation of the ROA. Again, this would seem to imply that the income in the prior financial statements was overstated. For purposes of consistency, if the auditor intended to include accrued interest as part of the income, it should be excluded as part of the assets. The statements by the auditor raise concerns about the audited financial statements from 1997 - 2003 and whether they need to be restated in their entirety.

Although there may be a discussion about the percentage of the pension fund invested in these properties, it is clear that the maximum limit as set out in the Federal Regulation has been exceeded.

The examination revealed that, historically, there was no clearly assigned responsibility to ensure that the investments of the Plan complied with the legislative requirements of the Act and Regulation.

**1.3 Non compliance with the Federal Regulation which provides that investments in real property and in Canadian resource properties must not exceed 25% of the book value of the pension plan assets.**

**Comment**

Schedule III Section 10. (1) (c) of the Federal Regulation.

10. (1) The administrator of a plan shall not, directly or indirectly, invest moneys of the plan in real property or Canadian resource properties if, at the time the investment is made,
- (c) the aggregate book value of all investments in real property and Canadian resource properties exceeds 25 per cent of the book value of the plan's assets.

(CCWIPP does not appear to have any resource property and, therefore, the maximum allowable real property investments is 25%.)

A review of the December 2001 financial statements investment section indicates that there may be real estate related transactions for a total book market of \$403,576,500. The book market assets of the Plan in 2001 were \$1,014,788,167. As a percentage, the real estate investments represented 39.77% of the plan assets. This exceeds the limit of 25% as stipulated in the Federal Regulation.

In a letter dated February 18, 2005, the auditor redetermined the percentage of assets by the deletion of the Caribbean properties. The reason for this was that the investments are in an investment corporation, not real estate investments. It is FSCO's opinion that FSCO's initial determination of the percentage of assets properly reflects the holdings in respect of these properties.

A review of the December 2002 financial statements investment section indicates that there may be real estate related transactions for a total book value of \$278,874,162. The assets of the Plan as at December 31, 2002 at book value were \$1,046,476,180. As a percentage, the real estate investments represent 26.64% of the Plan assets. This exceeds the limit of 25% as stipulated in the Federal Regulation.

During FSCO's examination, no documentation was uncovered which would indicate that there was regular tracking of the real estate investments to determine compliance with the Federal Regulation.

**CCWIPP's Response**

Subsequent to FSCO's examination, the external auditor BDO Dunwoody LLP in a

letter dated February 18, 2005 to Mark Zigler recalculated the real estate transactions for 2001 at 14.22 % and for 2002 at 10.40%. According to BDO Dunwoody LLP, the main difference is the deletion of the Caribbean properties. Under the re-structure of these properties, CCWIPP now holds shares or securities in PRK Holdings.

FSCO's prior position remains unchanged. These investments were originally mortgages and/or debentures and should be included in the total real estate holdings. Furthermore, there is no indication that these mortgages and/or debentures have not been released. Therefore, FSCO takes the position that the real estate holdings for December 31, 2004 should include the Caribbean properties.

#### **1.4 Non compliance with Schedule III Sections 12 and 14 of the Federal Regulation.**

##### **Comment**

CCWIPP has a number of single purpose corporations called "Propcos". There was insufficient documentation in the files and, at the time of the examination, the administrator was unable to produce such documentation in order for FSCO to determine if the Propcos under review were intended to be structured as real estate corporations or investment corporations or some other entity for purposes of the Act and Regulation at the time they were established and under the Federal Regulation currently.

If the Propcos are structured as real estate corporations or investment corporations as contemplated by the Act, sections 12 and 14 would apply to the Propcos owned by CCWIPP. Certain Propcos indicate that CCWIPP holds more than 30% of the voting shares. The appropriate undertakings as specified in Sections 12 and 14 have not been filed with the Superintendent and these investments would be contrary to the requirements of the Federal Regulation which provides as follows:

Section 12. (1) provides:

The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

- (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
  - (i) copies of its annual financial statements,
  - (ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
  - (iii) a list clearly identifying the assets of the corporation and the market value of each asset,
  - (iv) a list of the names of its officers, directors and shareholders, and
  - (v) a certificate stating that the corporation is complying with its undertaking;

Section 14 of the Federal Regulation provides:

The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of an investment corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation, unless the administrator first obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

- (a) file with the Superintendent, at such intervals or times as the Superintendent directs,
  - (i) copies of its annual financial statements,
  - (ii) copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
  - (iii) a list clearly identifying the assets of the corporation and the market value of each asset,
  - (iv) a list of the names of its officers, directors and shareholders, and
  - (v) a certificate stating that the corporation is complying with its undertaking;
- (b) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
- (c) hold at least 98 per cent of its assets in cash, investments and loans;
- (d) not issue debt obligations;
- (e) obtain at least 98 per cent of its income from investments and loans;
- (f) not lend any of its assets to, or invest any of its moneys in, a related party of the plan; and
- (g) not invest, or hold an investment, in securities of any other investment corporation if there are attached to those securities more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other investment corporation not to invest, or hold an investment, in the securities of any other investment corporation.

## **Examples**

One such example would appear to be PRK Holdings Ltd. There was no documentation to demonstrate compliance as either a real estate corporation or an investment corporation. CCWIPP through its various Propcos owns 100% of the Class A, B, C, & D preference shares along with 100% of the voting rights of the common shares that were assigned to it by the principals for a period of five years. This occurred at the time of the restructuring in 2000. No undertakings have been filed with FSCO.

Another example may be that of Purely Supreme Foods. According to the financial statements of Purely Supreme Foods, as at December 2002, Propco 42 owns 35% of Purely Supreme Foods. BDO Dunwoody LLP, the external auditors for CCWIPP, state in their Schedule of Direct Investments for 2002 that CCWIPP owns 35% of the common shares plus loans of approximately \$31M. This company filed for Chapter 11 bankruptcy protection on March 25, 2004. No undertakings were filed with FSCO.

Likewise, CCWIPP owns 32.02% of the common shares of Blend Inc. plus 11% of the cumulative preference shares as at December 31, 2002. FSCO has been informed that some time in 2003 the company filed an assignment into bankruptcy. CCWIPP had invested approximately \$4.5 M. No undertakings have been filed with FSCO.

In a subsequent submission, FSCO was advised that it was the Propco lending to World Blend that petitioned the court to approve the appointment of a Receiver to take possession and control of the business operations of Blend Inc. The Receiver operated the business for a period of time and ultimately wound up the operations of the business, and liquidated the assets of the company, which were pledged as security for indebtedness to the Propco. A Stipulation for Judgement was issued by the court in favour of Propco against the company. The Receiver disbursed to Propco all of the cash proceeds of the receivership estate, less administrative expenses.

CCWIPP owns 100% of the common shares of Indian Bay Frozen Foods. No undertakings have been filed with FSCO.

If such companies are not investment corporations or real estate corporations then such investments would exceed the limitation as specified in Sections 11 of the Federal Regulation. Subsequently, documentation was provided to support the position that the investments are investment corporations. This material is still under review.

Subsequently undertakings were filed for the Propcos.

## 1.5 Non-Compliance with Conflict of Interest Provisions.

### Comments

FSCO's initial review identified a number of situations where there appears to be a conflict of interest contrary to the requirements of the Act. These conflicts are set out below. At the time of the review, there was no evidence available to FSCO that the Board had established clear conflict of interest policies and procedures for dealing with these matters. There was no documentation to indicate that such conflicts had been declared or otherwise addressed by the Board.

Subsequently, CCWIPP provided FSCO with a draft of a comprehensive Conflict of Interest Policy. FSCO was advised that it was adopted.

According to Section 22(4) of the Act "An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."

Section 49 of the Regulation does specify some situations whereby Section 22(4) does not apply. These situations are set out below:

(1) Subsection 22 (4) of the Act does not apply to an administrator of a multi-employer pension plan who enters into a transaction with a trade union, council of trade unions, employer, employers' association or an employee benefit trust fund in which a member of the board of trustees or committee holds any office or position, where the transaction is,

a) only for purchase or lease of office space, for legal, accounting or other services, materials or equipment necessary for the administration and operation of the pension plan, provided that the compensation paid therefor is reasonable in the circumstances; and

(b) permitted under the documents that create and support the pension plan or any amendments thereto.

Subsection 49. (2) of the Regulation indicates:

Subsection 22 (4) of the Act does not apply to an administrator of a multi-employer pension plan or, where the administrator is a pension committee or a board of trustees, to a member of the committee or board who enters into a transaction, other than a transaction referred to in subsection (1), related to the administration of the pension plan or pension fund that,

(a) is in the interest of the members and former members of the pension

- plan;
- (b) is protective of the rights of the members and former members of the pension plan;
- (c) is permitted under the documents that create and support the pension plan;
- (d) is disclosed to members and former members of the plan prior to entering into the transaction; and
- (e) confers no direct or indirect personal benefit upon the administrator or member of the pension committee or board of trustees.

The preceding provisions are the accepted provisions found in most other pension legislation across Canada. It should also be noted that there are conflicts of interest standards for five other provinces as follows:

1. Alberta - Section 54(1) of the *Employment Pension Plans Regulation* states "An officer or employee of an employer, a trustee or administrator of a plan or a trade union or other association of employees any of whose members are members of a plan or any of its officers or employees shall not accept or be the beneficiary of, whether directly or indirectly, any fee, brokerage, commission, gift or other consideration for or on account of any investment, purchase, sale, payment or exchange made by or on behalf of the plan."
2. Newfoundland and Labrador – Section 17 (1) states "A person shall not be appointed to a body referred to in paragraph 12(1)(b), (c), or (e) [12(1)(b) refers to a pension committee comprised of representatives from the employer and plan members, 12(1)(c) refers to a pension committee comprised of only representatives of the members, and 12(1)(e) refers to a board, agency, commission or other body responsible for the administration of the plan] or subsections 13(1) and (2) [13(1) refers to a board of trustees for a multi-employer pension plan and 13(2) refers to a pension committee for a multi-employer pension plan other than those covered by 13(1)] if there is a conflict of interest between the person's role as a member of the body and the person's role in any other capacity."
3. Québec – Section 158 of the *Quebec Supplemental Pension Plans Act* states "No member of a pension committee may exercise his powers in his own interest or in the interest of a third party nor may he place himself in a situation of conflict between his personal interest and the duties of his office. If the committee member is himself a member or beneficiary of the plan he shall exercise his powers in the common interest, considering his own interest to be the same as that of the other members or beneficiaries of the plan."

4. Federal – Section 8 of the *Pension Benefits Standards Act* states “A person shall not accept an appointment to a body referred to in paragraph 7(1)(a) or (b) or subparagraph 7(1)(c)(ii) if there would be a material conflict of interest between that person’s role as a member of that body and that person’s role in any other capacity.” [7(1)(a) refers to a board of trustees for a multi-employer pension plan, 7(1)(b) refers to a pension committee for a multi-employer pension plan not covered by 7(1)(a), and 7(1)(c)(ii) refers to the board of trustees for a multi-employer pension plan covered by more than one collective agreement.]
5. Section 16(1) of the Federal Regulation provides:

Subject to sections 17 and 18, the administrator of a plan shall not, directly or indirectly,

- (a) lend the moneys of the plan to a related party or invest the moneys in the securities of a related party; or
- (b) enter into a transaction with a related party on behalf of the plan.

Section 17 of the Federal Regulation provides:

- (1) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if
  - (a) the transaction is required for the operation or administration of the plan; and
  - (b) the terms and conditions of the transaction are not less favourable to the plan than market terms and conditions.
- (2) The administrator of a plan may invest the moneys of the plan in the securities of a related party if those securities are acquired at a public exchange.
- (3) The administrator of a plan may enter into a transaction with a related party on behalf of the plan if the value of the transaction is nominal or the transaction is immaterial to the plan.
- (4) For the purposes of subsection (3), in assessing whether the value of a transaction is nominal or whether a transaction is immaterial, two or more transactions with the same related party shall be considered as a single transaction.

As defined in the Federal Regulation a related party is a person who is

- (a) the administrator of the plan or who is the member of a pension

committee, board of trustees or other body that is the administrator of the plan;

(b) an officer, director or employee of the administrator of the plan;

(c) a person responsible for holding or investing the assets of the plan, or any officer, director or employee thereof;

....

(e) an employer who participates in the plan, or an employee, officer or director thereof;

....

(j) a corporation that is directly or indirectly controlled by a person referred to in any of paragraphs (a) to (h);

According to subsection 22(8) of the Act:

An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Professional investment advisors are also held to the professional standards found in Standard IV (B.7) of The Standards of Practice Handbook (1999) for the Association of Investment Management and Research which states,

Members shall disclose to their clients and prospects all matters, including beneficial ownership of securities or other investments, that reasonably could be expected to impair the member's ability to make unbiased and objective recommendations.

### **Conflict of Interest**

The expectation is that if the Board of Trustees is undertaking to self-direct investments in relation to a portion of the assets of CCWIPP, then the Board would be held to the same standard as any outside investment advisor. However, there is no evidence that this was the case in the past nor is it clear that it is the case currently.

### **Potential Conflicts Identified**

During the examinations of the investments within CCWIPP there were four items identified as conflicts of interest. These items are listed below.

1. According to the Form 10-KSB filed with the United States Securities and Exchange Commission by Case Financial Inc.(CFI), Bernard Christophe is a director of Case Financial Inc. The form states that, "On April 8, 2003, the Board of Directors of CFI authorized a grant of 50,000 shares to Bernard Christophe for compensation as a director. The options best over 12 months, expire six years from the date of grant and are exercisable at \$0.45 per share."

Mr. Christophe was also granted options respecting an additional 100,000 shares of CFI for compensation as a director up to May 31, 2004.

Mr. Christophe is also a trustee of CCWIPP and sits on the Investment Committee for the Plan. CCWIPP is a beneficial owner in Case Financial Inc. and appears to control 21.06% of the company.

Given these relationships between CCWIPP, Case Financial Inc. and Mr. Christophe there is a potential for a conflict of interest contrary to subsections 22(9) and (10) of the Act. There was no indication in the documentation that this apparent conflict of interest was disclosed to the Board of Trustees.

When the issue was raised with Mr. Christophe in 2004, it was indicated that he did not have any intent to exercise the option and provided an excerpt from the minutes of the Board of Trustees meeting conducted October 7, 2004 which indicated that the Board of Trustees had voted that the stock options granted to Mr. Christophe are "void ab initio". Mr. Christophe filed a Statutory Declaration in June 2004 in which he made it clear he understands the policy of CCWIPP and the CCWIPP Trust Agreement precluded him from obtaining any fee or payment on account of his office and he had, accordingly declined to exercise the stock option. It was further indicated that the pension trustees serve as directors of "investee" corporations in order to protect the interests of the pension fund. As such they may be subject to compensation practices for corporate directors which are the norm in the corporation. The Act and Regulation and Federal Regulation do not change those corporation practices. It was indicated that the Board will take appropriate action so as the directors would not profit from such compensation or require such compensation to be turned over to the pension fund.

A policy entitled the "CCWIPP Trustees Investment-Related Conflicts of Interest Policy" was drafted to address these issues.

The drafted policy will ensure that there are proper processes in place to monitor these situations in future. However, the findings of FSCO in this regard are that there was no such policy or Statutory Declarations in place at the time that the investments were undertaken leading to the a potential conflict of interest.

In addition, as a member of the Board of Trustees and the administrator of the pension plan sitting on the Board of Directors of an investee corporation with a corporate compensation package appears to

contravene the requirements of Sections 16 and 17 of the Federal Regulation.

2. According to the AFM Hospitality Corporation website, Eugene Fraser and Wayne Hanley are members of its Board of Directors. Fraser is an employee of CCWIPP indirectly through I.F. Propco 100 (ON) Ltd. Mr. Hanley is a member of the Board of Trustees for CCWIPP. CCWIPP's assets are partly comprised of holdings in the AFM Hospitality Corporation.

The Annual Report for 2002 for the AFM Hospitality Corporation states that, "The Company has a stock option plan for officers, directors, and employees of the Company."

Given these relationships between CCWIPP, AFM Hospitality Corporation, Mr. Fraser and Mr. Hanley there is a potential for a conflict of interest contrary to Subsections 22 (9) and (10) of the Act and Sections 16 and 17 of the Federal Regulation. There was no indication in the documentation that this apparent conflict of interest was disclosed to the Board of Trustees.

Subsequently, FSCO was advised that Mr. Fraser and Mr. Hanley had resigned as directors and that AFM has been petitioned into receivership by CCWIPP.

3. As part of the investment review, it was disclosed to the review team that Eugene Fraser's employment contract explicitly states that any compensation that he receives as sitting as a director for various companies that CCWIPP invests in, will be deemed part of his compensation from CCWIPP.

Mr. Fraser is an employee of CCWIPP through I.F. Propco 100 (ON) Ltd. I.F. Propco 100 (ON) Ltd. administers a large segment of CCWIPP self-directed investments. Given these relationships between CCWIPP, I.F. Propco 100 (ON) Ltd., and Mr. Fraser, there is a potential for a conflict of interest contrary to Subsections 22 (9) and (10) of the Act. There was no indication in the documentation that this apparent conflict of interest was addressed by the Board of Trustees.

This may also be a contravention of the related party transactions of Section 16 and 17 of the Federal Regulation.

4. In reviewing a credit request for BC Belting, it was learned that Mr. Peter Martini, is involved in the company as an owner. Mr. Martini is an investment advisor for Propco 15 (CIBO), as well as being an officer of

CIBO's subsidiary, Fresco Holdings Inc. In turn, Fresco Holding Inc. owns both preferred and common shares of BC Belting.

In a meeting held on February 24, 2005, FSCO examiners were provided with additional information to the effect that:

- a) Mr. Martini has a personal interest in Drummond Equipment Inc. (Drummond is a privately held company as stated at the company's web page).
- b) Mr. Martini had provided both verbal and written disclosure of his holdings.
- c) FSCO examiners were aware at the time of the examination that Mr. Polley provided an overview of the financing proposal in 1998. However, FSCO examiners were not aware that Mr. Polley also holds a minority interest in B.C. Belting.
- d) Mr. Martini holds, directly or indirectly, approximately 43% of the common shares and approximately 47% of the preferred shares of BC Belting.

In a memo dated March 24, 2003, Mr. Polley, provided Mr. Martini, with Fresco's fair market valuation of investments held as at December 31, 2002. The memo indicated fair market value of \$3,135,613. Of this sum, only \$171,575 was not related to companies held by Mr. Martini.

In the response provided to the examiners on February 24, 2005 (point 8), Mr. Evans and Mr. Preston are indicated as both Investment Committee members as well as directors of Fresco. Yet, records at the Ministry of Consumer and Corporate Relations branch revealed that Mr. Evan, Mr. Fraser and Mr. Martini as directors or officers of the company. Additionally, a corporate search of CIBO, indicated that Mr. Martini was an officer of CIBO since its incorporation, April 9, 1997.

It was pointed out by CCWIPP in its response that Propco 15 (CIBO) has an agreement with CERTO Capital Management Corporation and that Mr. Martini acts on behalf of CERTO.

It was stated in note nine of CIBO's non-consolidated audited financial statement for the period ending December 31, 2002 that the firm paid CERTO a base management fee of \$25,000 as well as indicating that CERTO is an unrelated company.

We note that CERTO has only two directors, one being Sandra Kosec. Ms. Kosec is also listed as director of Tanto Holdings Inc. The company owes approximately 29% of both common and preferred shares of B.C. Belting. Mr. Martini is also listed as a director of Tanto Holdings Inc.

The corporate addresses for CIBO, FRESCO and CERTO are listed as 19 Connie Street, North York, Ontario. The address indicated for Mr. Martini as an officer of CIBO and FRESCO is 19 Connie Street. Given the relationships of Mr. Martini with CIBO and Fresco Holdings Inc., there is a potential for conflict of interest contrary to subsections 22(9) and (10) of the Act. There was no indication in the documentation that this apparent conflict of interest was disclosed to the Board of Trustees or addressed by the Board.

Subsequent information provided by CCWIPP has not resolved the issue. CCWIPP has not provided abstracts of respective minutes wherein Mr. Martini's potential conflicts were recorded. In addition, we are not aware why Mr. Martini, an advisor, as indicated by CCWIPP, is an officer for both CIBO and Fresco.

## **1.6 Non-Compliance with Section 106.**

Section 106 (4) of the Act states:

A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund.

At the time of the examination, FSCO requested the financial statements for PRK Holding Inc. and RHK and were told they were not available.

PRK is a Bahamian holding company with Eugene Fraser as its president. Mr. Fraser is also the Vice President of Propco 100 which has responsibility for the in-house management of the investments. The financial statements were required in relation to the investment provided to the company.

With respect to the request for financial statements for RHK, an Ontario company, FSCO was advised that the Company "had gone bankrupt". However, a bankruptcy search failed to find an assignment into bankruptcy as at March 30, 2004. Certain inconsistencies arose in the process of the examination and the financial statements of RHK were being requested in order to clarify the matters. These inconsistencies involve the apparent unaccounted for sums related to two transactions whereby CCWIPP advanced funds for certain investments through RHK Capital Inc.

CCWIPP advanced funds to Propco 46 which in turn advanced to RHK the amount of \$4,690,000. However, the financial statements for Crane Ridge Limited (the end recipient) only show \$4,145,734 in shareholder loans for an unaccounted for amount of \$544,266.

CCWIPP auditors submitted an indication that they had received verbal confirmation and reviewed ledger accounts and have indicated "It appears from information we have to date that the loan is fully accounted for in Crane Ridge Limited books and RHK Capital Inc's books."

Likewise, during the course of the examination, FSCO requested copies of the last two management letters of CCWIPP and they were not provided. CCWIPP provided copies of these letters on February 24, 2005.

The expectation is that if the Board of Trustees is undertaking to self-direct investments of a portion of the assets of CCWIPP, then the Board would be held to the same standard as any outside investment advisor. The inability to produce management letters and financial statements for two of the investments of the pension fund is not up to the standard established for the outside investment advisors and would lead to a question of the Board's actions being considered to be prudent as

required by Section 22 of the Act.

In addition, not producing the documents as requested is contrary to the requirements of Section 106 of the Act.

## 1.7 Non-Compliance with Section 22 of the Act.

### Section 22 (1) of the Act

Section 22 of the Act which sets out the obligations of the administrator in the administration of the pension plan and the investment of the pension fund states: "The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person."

The SIP&P dated "Effective January 1, 1996 revised April, 2001 and approved by the Trustees July 30, 2001" states the following in Section G - Investment Guidelines Number 4:

Each Investment Counsellor and others having authority or control over the investments of the assets of the Pension Fund shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person and shall use all relevant knowledge and skill that he or she possesses or, by reason of his or her profession or business, ought to possess, in the administration and management of the investments of the Pension Fund, and this duty includes, but is not restricted to:

- (a) complying with the requirements of the *Income Tax Act* (Canada) and the rules and regulations thereunder with respect to registered pension plans,
- (b) complying with the requirements of the applicable pension regulatory authority, and,
- (c) observing the investment policies and guidelines set out in this Policy Statement as amended from time to time.

There are established methods for assessing whether one is acting in a prudent manner.

- A) The prudent person rule is behaviourally-oriented rather than outcome-focussed. Thus, the prudent person rule focuses on how diligently a trustee or fiduciary performs his or her obligations with respect to the pension plan, including how investment decisions are made. That is to say, fiduciaries are judged not by a retrospective assessment of whether their investment decisions were successful, but whether they followed a reasonable process in reaching their decisions.
- B) The key aspect of the prudent person rule in the context of investments is the obligation imposed on administrators and trustees to *undertake a thorough, complete and independent*

*investigation prior to making any particular investment decision.* Failure to conduct an appropriate investigation could result in a plan administrator or trustee falling astray of the prudence standard, particularly where it is determined that an adequate and thorough investigation would have revealed the investment was objectively imprudent.

From "Employee Benefits in Canada" editors and Principal Contributors Raymond Koskie, Mark Zigler, Murray Gold and Roberto Tomassini.

### **Due Diligence Process**

One of the factors reviewed to determine whether or not the Board acted in a prudent manner is the actions which it has taken. One of those actions is the due diligence review process undertaken by the Board or its designates. In large financial corporations the Boards of Directors have certain responsibilities. CCWIPP, with assets of \$1.2 billion, would be considered a large financial corporation and the expectation would be that the Board of Trustees would have similar responsibilities as well as those imposed by the Act and Regulation. The following is a short list of some items that would comprise the due diligence process and which one would expect to see in place in CCWIPP:

- (i) Policies and procedures that reflect a prudent approach to lending and investing, to avoid undue risk of loss and obtain a reasonable rate of return.
- (ii) Regular reviews of the Statement of Policies and Procedures and adherence to those procedures as required by the Federal Regulations.
- (iii) Monitoring of the state of the loan portfolio and an ongoing analysis of its impact on the pension plan. Continuous review of the loan portfolio to ensure that it continues to be a prudent investment for the pension fund.
- (iv) Reports which reflect the size of the pension plan and the complexities of its operations. A pension plan which lends directly to companies and/or Propcos would be expected to have an additional set of reports specific to that investment. These reports would be monitored on a regular basis in order to determine what action, if any, may be necessary.
- (v) The type of reports one would expect would include the following: 1) new loan report, 2) interest rate of return report, 3) allowance report, 4) delinquency report, and 5) maturing loan report, etc.

In 2003, the Board of Trustees recognized the need for a due diligence process. FSCO noted in the Investment Committee minutes a memo dated June 11, 2003 from the Chairman of CCWIPP's Investment Committee to two other Trustees "Re: CCWIPP

Investments Due Diligence Process”, that requests the help of the two Trustees to sit on a sub-committee to develop a due diligence check list for investments.

FSCO was provided with a copy of an August 25, 2003 five-page report from the sub-committee of the Investment Committee entitled, “ Re Due Diligence Procedures”. On pages 4 & 5 of the report, twelve points are listed to be covered in a due diligence report. These points include:

- 1) Principals - Who are the principals involved? What is their investment experience and performance history? Are they related to the fund? Has the fund had any previous investment experience with any of them and, if so, what were the investment outcomes? What are the capital resources and are they at risk in the investment?
- 2) Nature of the Investment - What is the nature of the investment? Is it a domestic investment or foreign investment? Ensure that the investment is logical and understood by the Investment Committee.
- 3) Capital Structure - What is the capital structure of the investment? What other capital is invested and by whom?
- 4) Term - What is the term of the investment? Is the term reasonable given the nature of the investment? What is the exit strategy?
- 5) Risk Factors - List and define the risk factors inherent in the investment.
- 6) Legal Opinions - Obtain a legal opinion on the legality of the investment for the Fund, the investment contracts and any other legally binding documents.
- 7) Financial Analysis - Obtain and review the business plan, historical financial statements, if applicable, and pro-forma financial statements. Engage an independent financial professional to analyze the investment.
- 8) Management Compensation - Is there compensation to the parties for managing the investment? Is there a management contract? What are the terms and conditions? Can it be terminated on a reasonable basis?
- 9) Cash Flow Commitments - What are the anticipated cash flows to and from the investment? Will there be a commitment on behalf of the Fund for future cash flows? If so, when and in what amount? How will funds be distributed from the investment? Are there any withholding or other tax issues for the Fund?
- 10) Control of the Investment - Who controls decisions regarding the investment once the Fund has invested? Is there a Board of Directors? Is there a

specific group of investors that control the Board? Does the Fund have the right to appoint Directors?

- 11) Reporting - What reporting will be provided for the investment? Who will compile the reports and when? Will the financial statements be audited?
- 12) Valuation - Since investments held by the Fund must be reported annually at market value, how will this be determined? Will the administrator be able to value the investment independently or will the services of a third party professional be required?

At the time of the examination, the pension plan did not have an "Operational Procedures Manual" to deal with operational matters related to the pension fund investments including a due diligence process. The Vice President of Propco 100 was in the process of formulating new reports and procedures but, at the time of the examination, they had not been completed.

During FSCO's examination, it was noted that there were due diligence processes in place for the selection of the professional advisors. In addition, standards for the professional investment advisors required the submission of signed agreements, the setting of targets to be met, the requirement to provide quarterly reports and to attend regular reporting meetings.

However, there was no documentation to indicate similar standards and requirements for the internal Investment Committee related to the assets which they oversee.

In the majority of the investments reviewed, FSCO found that the due diligence in the selection of investments was not available. In some cases, Turnbull and Turnbull (a former pension consulting firm) had provided their opinion on investment proposals. However, in the last several years there was no evidence that the due diligence process was being done.

FSCO noted in several commitment letters "due diligence" was one condition along with the filing of audited financial statements within 120 days of year end. When these conditions were imposed, the corresponding due diligence and the audited financial statements were not available and there was no indication that either document had been requested or provided.

Furthermore, there was no process for regular (annual) reviews of the existing investments to determine if the investments warranted continued support by CCWIPP.

At the meeting of February 24, 2005, FSCO clarified that the expectation is that a full and detailed annual review would be done as opposed to the brief summaries included in the annual Investment Committee minutes.

FSCO's examination of the records of the Propcos revealed that a significant number of the Propcos did not have any of the information that would be available in a due diligence process whereas some of the Propcos had a full range of reports. There was no consistency in the reporting across the Propcos and therefore, there was insufficient information to permit a proper assessment of the investments.

### **RHK Capital Inc - PRK Holding and the Caribbean Development**

FSCO had a special concern about the investment in the Caribbean Development. The flow chart attached as Appendix "A-1" setting out our understanding of the structure of Caribbean Development, shows how complicated and intertwined this structure is.

For those investments reviewed by FSCO, a significant number lacked up-to-date appraisals of the underlying property in the file. Those appraisals that were available had all been addressed to the borrower. A lender cannot rely on such appraisals unless they obtain a letter from the person who prepared the appraisals indicating such reliance. Without such letters, the value of the appraisals may be questioned. There was no evidence of such letters on file nor that such letters had been requested.

Subsequently FSCO was provided with the latest copies of appraisal reports which are under review.

Part of the due diligence review for this group of companies would be expected to include a full review of the audited financial statements for each company. FSCO's examination indicated, in many cases, that financial statements were not available. The documentation in support of the investment clearly indicated that the financial statements should have been available.

There is no indication that the financial statements have been received. There was also no indication of a follow up process to obtain the financial statements. Finally, there was no indication of any review of the implications for the pension fund as a result of the financial statements not being provided.

The normal practice for commercial lenders is to insist on audited financial statements. RHK is a guarantor for the mortgage on the British Colonial Hotel and as such they would have had to produce such statements at the time the loan was granted and continue to provide these statements on an ongoing basis. When FSCO asked for these statements, they were told that RHK Capital Inc. had gone bankrupt. A check of bankruptcy records over the past few years did not reveal any such bankruptcy. The restructuring agreements clearly indicated that PRK Holdings would produce financial statements and the shareholders (the 5 Propcos) would have access to these statements. These financial statements have not been provided.

Since the 2000 restructuring agreement, CCWIPP has advanced \$32,284,859.20 in

respect of the Caribbean Development. These advances have been made by CCWIPP to lawyers in Ontario. On the basis of various letters, some from Propco 100, some from PRK Holdings and some from the various Propcos, the lawyer has made several advances. However, there is no documentation to indicate to whom these advances were made. It does not appear that these advances have been made to PRK Holdings. We were advised that these advances were considered as shareholders advances but again proper documentation is not available.

The five lending Propcos only hold shares in PRK Holdings and not in the local subsidiaries. There were no signed debt agreements covering these advances indicating the lender, borrower, interest rate and repayment schedule. There was no documentation to indicate whether an analysis of the pension fund's security in respect of these advances, has been performed, or alternately, remains in place and continues to secure obligations under the guarantees

Subsequently, FSCO examiners were advised of the following:

The original mortgage/debenture security obtained by Propcos 34,39,41, 44 and 46 remains in place and continues to secure obligations under the guarantees referred to in those mortgages/debentures.

With respect to subsequent advances by the Propco companies to PRK, these advances were made by way of shareholder loans, secured by promissory notes and to be repaid in priority to any other distribution to shareholders of PRK. The shareholder advances are due on demand.

This additional information was not in the files or made available to FSCO's examiners and copies of the promissory notes should be included with the examination reply.

In addition, there are indications that some of the Caribbean Development properties have been closed. There is nothing on file to indicate that the Board has given consideration to the exposure of the pension fund in respect of these investments nor taken steps to secure the assets for the pension fund.

Given the complexity of the relationship between the Caribbean Development, RHK Holdings and PRK Holdings and the various issues surrounding the underlying security of the investments, FSCO would have expected to see a detailed due diligence review of the total investment structure.

The expectation would be that such a review would include the following:

1. Full appraisals performed by arm's length qualified appraisers addressed to CCWIPP or the Propcos. The appraisals should clearly state the property being evaluated. Estimates of the amount that can be expected from forced sales, either as going

concern operations or as closed entities.

2. Full audited financial statements of the borrower including RHK, the Bahamian Holding Company, PRK Holding and each of the subsidiary companies. The review would clearly state the share structure of each company.
3. Searches to confirm what claims have been registered against the assets of the companies.
4. Full disclosure of how all funds advanced by CCWIPP since the original loans first originated have been applied.
5. Confirmation that CCWIPP and/or the Propcos (See Appendix A-1) are in a legal position to sell these properties.
6. Legal opinions to confirm there is proper documentation in place to recover all funds advanced since the restructure in December 2000. (FSCO noted that since December 2000, funds were not advanced to the original borrower but directly to the hotels as shareholders advances.)

No such in-depth due diligence review was available and there is no indication that one has been done.

## **Management**

Commercial lending is complex and certainly has the capability for both loan losses and higher returns. It is important to have a thorough understanding of the purpose of the loan, the borrower and the borrower's business. The following list outlines some of the criteria that Management of a pension fund would need to assess, understand and have if they are going to undertake such commercial lending. Although this information has been obtained from guidelines provided to the Ontario Credit Union system it does apply to anyone undertaking commercial lending.

**Character** - an assessment of the borrower's moral commitment to honour obligations, to provide willingly accurate information on a continuing basis and an evaluation of the borrower's repayment record with other creditors and with the pension plan.

**Conditions** - an understanding of the economic environment the business operates under, the type of industry, the markets and the competition.

**Capacity** - a consideration of the borrower's ability to meet the terms of the loan while servicing all other monthly commitments, as expressed in terms of cash flow and

profits.

**Capital** – an assessment of the capitalization of the business to provide protection from creditors, ensure adequate funds in reserve, and cover short term financial risks which could potentially cause financial instability and insolvency.

**Collateral** - a determination of the borrower's confidence in the undertaking, as well as the pension plan's secondary source of repayment or hedge against unforeseen developments.

**Communication** - the development and maintenance of a clear and concise mutual understanding and co-operation with the borrower when obtaining all the relevant information.

**Control** - the implementation of a proper daily monitoring package to minimize risk by staying informed through planned follow-ups.

There is no documentation to indicate that these criteria or any similar criteria had been applied in assessing the current loans made by the pension fund.

### **The Application Process**

In general, the commercial loan application process involves four stages:

- compilation
- analysis and review
- client interviews
- documentation

**Compilation** is the collecting of all the necessary financial information required to complete a thorough analysis of the borrowers' financial condition, such as financial statements of the company and the borrower's own net worth statement.

**Analysis and Review** is often a challenge to lenders. A tendency to either over or under analyse a credit request is common. Studying and assessing the information on hand helps to determine the borrower's financial strengths, weakness and future viability.

**Client Interviews** are necessary and important part of the analysis review process.

**Documentation** is the recording of the actual credit review in which the background, historical analysis, the risk analysis and the lender's recommendation are part of the credit review.

## **The Approval Process**

The whole approval process is to protect the Plan and the assets of the Plan. Again there is little or no documentation to indicate that this type of due diligence process was followed in selecting the investments for the pension fund.

Given the requirements of Section 22(1) and the obligations of the pension fund to meet the pension benefit promises made to the members at the minimum risk for a reasonable price, the Plan would be expected to operate as a prudent lender. One aspect of prudent lending is establishing an approval process which clearly documents the additional scrutiny required to assess the amount and nature of the loan. The creditor or Investment Committee or individual lender must have significant lending experience to effectively analyze the risk in the loan request, and to take the required steps to mitigate the risk.

The following is a partial list of items that we would have expected to see in the files once the credit facility has been finalized.

**Credit File****Security File**

<ul style="list-style-type: none"><li>a) Loan check list</li><li>b) Approved commercial loan application</li><li>c) Borrower's financial statement</li><li>d) Supporting financial summaries ( budgets, receivables, payables etc.)</li><li>e) Credit Investigation</li><li>f) Member Correspondence</li><li>g) Record of telephone conversations and/or on site visits to the business</li></ul>	<ul style="list-style-type: none"><li>a) Loan agreement and/or loan commitment letter</li><li>b) Promissory Note / mortgage document(s)</li><li>c) Property Appraisals(s)</li><li>d) General Security Agreement and/or other security documents ie: share certificates</li><li>e) PPSA Search</li><li>f) PPSA Registration</li><li>g) Assignment of Fire/Life insurance (Key Man)</li><li>h) Independent Legal Advice certificate</li><li>i) Any applicable Guarantees from the Principals in support of the Corporation</li><li>j) Legal opinions</li></ul>
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FSCO's review of a limited number of loan files indicated that the Due Diligence process currently in place is lacking and needs to be reviewed. In most of the files reviewed, no report had been prepared by staff or an outside consultant that indicated there had been a review of a business plan, cash flow statements, the financial statements or other documents to determine if the loan request was feasible. None of the above expected material was provided or appeared to be available.

As a part of its examination, FSCO reviewed the Audited Financial Statements from 1997 to 2002, to see if the lack of a due diligence process had any measurable effect on the rate of return on the assets (ROA) of the Plan. The ROA for the period was an average of 3.78%.

Year	Investment Portfolio Managed by Investment Committee	Revenue from the Propcos	Percentage ROA
2002	\$446,820,121	\$(5,597,812)***	-1.20%
2001	\$443,370,000	\$(3,210,906)	-0.07%
2000	\$440,157,000	\$30,980,987	7.03%
1999	\$377,823,000	\$17,073,882	4.51%
1998	\$312,642,000	\$16,882,088	5.39%
1997	\$254,971,000	\$17,849,329	7.00%
2002-1997		\$73,977,568	3.78%

(\*\*\*From 1997 to 2001 the external Auditor showed income from the Investment Corporations in 2002 it was listed as Equity Earnings.)

The following capitalized interest figures were taken from the notes to the audited financial statements for the same period.

Year	Capitalized Interest
2002	\$ 7,000,000
2001	\$29,000,000
2000	\$29,900,000
1999	\$20,440,000
1998	\$14,579,000
1997	\$14,200,000

For the years 2000, 2001 and 2002 the size of the investment portfolio has been relatively stable while the income for the same period has been sporadic. It would appear that capitalized interest contributes significantly to the Income from 1997 to 2002.

The Capitalized Interest distorts the true rate of return on the investments. An example of capitalized interest is as follows: The Investment Committee funded a project for \$12 million. Ten million was given directly to the project while two million was put into a secured account in a bank. As the interest accrued on the loan, money was taken from the secured account to pay the interest on the loan. Therefore, the project did not make any payments from the day to day cash flow of the business for the first two

years of operation.

Subsequent to our examination, the external auditor BDO Dunwoody LLP in a letter dated February 18, 2005 to Mark Zigler has recalculated the ROA for the investment portfolio managed by the Investment Committee. The difference between our calculations and BDO's calculations is the revenue from the Propcos. BDO's calculations are as follows:

Year end	Revenue	ROA
2002	\$ 9,944,718	2.23%
2001	2,046,322	0.46
2000	30,830,441	7.00
1999	18,551,044	4.91
1998	21,531,719	6.89
1997	17,849,329	7.00

As mentioned previously in another section of this report, an e-mail (March 7, 2005) from D. Pang of BDO Dunwoody LLP stated the ROA included accrued interest. For the years 2000, 2001 and 2002, the investment portfolio has been relatively stable while the income has been erratic. It would appear the accrued or capitalized interest has contributed significantly since 1997. Therefore, it begs the question what is the real rate of return on the investments made by the Investment Committee if the accrued or capitalized interest was factored out?

The investments overseen by the Investment Committee have decreased in value as reported in the audited financial statements. In 2002 the cumulative value decreased by \$56,474,797 [ \$446,820,121 (the cost), minus \$390,345,324 (market value)]. In 2003, the cumulative deficit decreased to \$26,658,852. [\$391,642,619 (the cost), minus \$364,983,767 (market value)].

There does not appear to be any explanation or assessment of these losses. There does not appear to be any steps taken by the Board to require a review of these investments and to take steps to secure the pension fund. There is no indication that the Board has questioned the rate of return on the investments made by the Investment Committee net of the capitalized interest.

At present, the Investment Committee invests approximately 31% of the Plan's assets. Some of these investments appear to be high risk ventures.

Some examples of these high risk ventures are as follows:

- 1) Hotel financing in Ontario and in the Caribbean.
- 2) Continuing to fund a company (Purely Supreme Foods) that had filed for Chapter 11

protection on March 25, 2004. CCWIPP purchased assets of the company at the bankruptcy sale for approximately \$2.5 million.

3) The financing of litigation cases in California on a non-recourse basis through Case Financial Inc.

4) Three parcels of undeveloped land held for development for more than 10 years.

Currently, there are no processes in place (similar to those for the external investment advisors) to track the performance of the Investment Committee and report back to the Board of Trustees.

There also does not appear to have been any steps taken by the Board of Trustees to ensure that the Investment Committee had the prerequisite expertise to invest these pension assets in these investments.

Finally, there does not appear to be any tracking of the rate of return of the investments made by the Investment Committee nor a process whereby such rates of return are reported to the Board of Trustees on a regular basis.

## Plan Governance Findings

### 2.1 Contraventions of the Statement of Investment Policies and Procedures. (SIP&P) dated January 01, 1996, revised April, 2001 and approved July 30, 2001.

The Federal Regulation requires the establishment of a SIP &P and an annual review of the SIP& P. The Board of Trustees of CCWIPP has delegated to the Investment Committee the authority to invest and the responsibility to safeguard the assets of CCWIPP, to comply with the SIP& P of CCWIPP and as well as all government regulations relating to pension plans.

#### Real Estate

##### 1) Quantitative Limits for Real Estate

- Properties and Development Projects 10%
- Land 5%

In FSCO's review of the Minutes of the Board of Trustees and Investment Committee there did not appear to be any tracking of the real estate portfolio to ensure compliance with the SIP&P despite the fact that the SIP&P at section 1(c) contains a quantitative limit of 10% of the value of the Plan assets for Property and Development Projects and 5% for Land. The audited financial statements for CCWIPP in 1990 indicated investment in Real Estate as approximately 18% and reaching a high of approximately 46% in 1999 in contravention of the Act and Section 1(c) of the SIP&P.

##### 2) Real estate is to be valued annually.

The current practice is to value the real estate every three years. Some real estate has not been valued within the 1 year period as required by the Plan's SIP & P.

##### 3) Section D(c)(ii) of the SIP&P states:

relative real estate investments are tied to Canadian Consumer Price Index, plus 4% per year

However, real estate investments such as the Caribbean Connection, Bloor and Solina and the Darlington properties have not realized any meaningful return. In fact, the land held for development ( Bloor and Solina and the Darlington) has decreased in value over the past ten years which would appear to be contrary to this section of the SIP&P.

##### 4) There are limitations on the investment in the shares of a publicly traded company to 10% of the capital stock of the company set out in the SIP&P.

There is no indication on file as to how compliance with this requirement is ensured at the time of approving a funding request in instances where Propcos are purchasing stock of a company.

5) The Investment Committee is limited to investing in equities to 30% ownership of any one corporation in the SIP&P.

The notes to the 2002 financial statement for Purely Supreme Foods stated that Propco 42 was a 35% owner of the shares of Purely Supreme Foods.

6) Investments shall not be made in food processing, food distribution or food retailing business in the SIP&P.

The Investment Committee has been investing in companies contrary to the SIP&P, ie. Purely Supreme Foods, and Sea King Fisheries.

7) Exit Strategy - The SIP&P, General Procedures Section (v) requires that predetermined exit strategies should be developed for investments. Our review did not reveal that overall exit strategies exist nor were considered for each of the investments which we reviewed.

8) Security - SIP&P Specific Procedures section (c) provides that borrowers are required to seek permission in placing subsequent mortgages or security against other assets without the permission of the Propco. We have instances where security held on behalf of the Propco or CCWIPP is subordinated to other lenders. In some instances, the Propco's debenture may be deferred to a second or third position without supporting evidence as to why funding is required, nor up to date financial statements from the borrower or corresponding increase in interest rates as the security position for the Propco's debt is weakened.

The Board has the ultimate obligation to oversee the operation of the various committees it appoints.

9) On September 21, 1998, Propco 100 forwarded a commitment letter to provide financing to RHK in the amount of \$750,000. The amount loaned was towards investment in Sea King Fisheries through its subsidiary Cabot Ventures Inc. One of the conditions stated in the commitment letter was that RHK Capital Inc. and Cabot were to forward on an annual basis, copies of audited financial statements within 120 days of the respective companies' year ends. The commitment letter was signed by both Mr. R. Kelly and Clifford Evans. The required statements were not on file.

There do not appear to be any steps taken by the Board to ensure the investments comply with the SIP&P.

There is no documentation to indicate that investments outside of those identified in the SIP&P have been approved by the Board before such investment is undertaken.

FSCO reminds the Board of Trustees that the overall investment strategy is prescribed in the Plan's SIP&P. In order to attain the goals for the Plan, all participants in investment decisions must abide by the terms and conditions imposed on them by the SIP&P. With respect to the Investment Committee, it is obliged to adhere to the same standards as applied to the outside professional investment counsellors.

## **2.2 Files Did Not Contain Due Diligence Reports Nor Evidence of Waiver Approved by the Board of Trustees.**

In FSCO's review of commercial investments, it was noted that several of the commitment letters and documentation required the lender (CCWIPP) to be satisfied with the due diligence reviews. In many cases, the review was to cover environmental, engineering, legal and financial matters as the lender may require. There was also a provision that such due diligence review could be waived by the lender. Although not available at the time, the details of this waiver was provided in separate correspondence dated March 9, 2005.

A due diligence review would be expected to set out in a report the complete history of the proposed investments, showing full financial, legal, costs, purchase price, funding and other details. The persons reviewing such a due diligence report would then be able to make an informed decision on whether or not the investment should be completed. In normal cases, the due diligence review is done before any commitment letter is issued. During the examination, FSCO asked for the due diligence reports and reviews. On one occasion, FSCO was advised (by Mr. Ray Kurki) that the commitment letter was the due diligence review. This was not supported by the commitment letter since this letter referred to the due diligence reviews being completed.

If these due diligence reviews were completed by CCWIPP, such reviews were not a part of the file nor were they made available to FSCO during or after the examination. This would lead the examiners to the conclusion that either the proper due diligence reviews were not undertaken or such documentation has been misplaced.

If the lender chooses to waive a due diligence review on an exception basis, there is an expectation that some formal documentation would be in place, outlining the reasons for such a waiver.

There was no evidence of waivers of due diligence requirements by the Investment Committee nor approval of any waivers by the Board of Trustees in those cases where due diligence reviews were absent.

### **2.3 Files did not contain evidence of all approvals of changes to the agreements.**

In FSCO's review, it was noted that there were instances when a change such as a change to the shareholder structure or in the level of mortgage was made to the terms of the particular investment. Such a change required the approval of the lender/investor (CCWIPP). There was no documentation to indicate that CCWIPP had agreed to the change in the shareholder structure or the mortgage level.

For example, the shareholder structures of The British Colonial Development Company and Ocean Bay Properties I & II were modified to accommodate 1328434 Ontario Limited. While CCWIPP, through a Propco, is a part owner of 1328434 Ontario, the files did not contain any documentation to indicate that CCWIPP had approved the revision.

CCWIPP has subsequently advised the following:

The change in the shareholder structure of PRK was initiated by CCWIPP to better secure its Caribbean investment. Propco was a party to all corporate resolution and documentation in respect of the shareholder restructuring. The Propco companies initiated the share restructuring of PRK which had the result of cross-collateralizing the Caribbean investments which enhanced the security position of CCWIPP while leaving all of CCWIPP's mortgage/debenture security in place on each of the individual Caribbean properties.

Despite the above statement, the files made available to FSCO's examiners did not contain any evidence that CCWIPP's Board of Trustees or Investment Committee had formally approved this change in shareholder structure.

The second mortgage on the British Colonial Development Company was increased. The file contained no documentation to indicate that CCWIPP agreed to the change in the level of the mortgage.

FSCO has subsequently been advised that the Propcos initiated the proceedings that resulted in changes occurring in the shareholder structure and/or level of mortgage. Mortgage/Debenture amending documentation has not been provided. As noted above, the files provided to the FSCO's examiners did not contain any evidence that CCWIPP's Board of Trustees or Investment Committee had formally approved the increase in the mortgage.

## **2.4 Required Information Not Being Requested.**

FSCO's review of the signed documentation related to several loans and/or investments indicated that various documents were to be received, such as financial statements and due diligence reviews. These documents were not in the file and there was no indication that anyone was following up to obtain these documents.

When and if these documents are received, there is no process to indicate that they are reviewed to determine if the risk for the investment and/or loan has deteriorated.

In addition, when there is mortgage or debenture security on fixed assets, there is no documentation to indicate ongoing monitoring to ensure that the property is covered by adequate fire insurance assigned to the pension plan. Nor is there documentation to indicate ongoing monitoring to ensure that all property taxes are paid annually. Such a process would be expected to protect the pension fund as the fire insurance coverage provides protection of the underlying fixed asset and non-payment of property taxes may be a sign that cash flow problems exist.

FSCO was subsequently advised that individual Property Managers have the responsibility to ensure that the property is covered by adequate fire insurance, and such policies are assigned to the pension plan. The Property Managers provide annual confirmation that these requirements have been satisfied, and such documentation is on file with the related operating companies. However, copies of such documentation is not contained in CCWIPP's nor the Propco's files.

One of the investments is in the Jamaican Hilton hotel. There were copies of notational letters in the file indicating that CIBC Securities were going to enforce their security against the property which may lead to foreclosure on the property. There was no documentation to indicate that the Board or the Investment Committee had taken any steps to identify what needed to be done to protect the pension fund's investment.

Subsequent to FSCO's examination, CCWIPP advised that in August 2002, Propco requested that RHK confirm in writing, that CIBC will not move to enforce their security without the prior written approval of Mr. Tom Desson, Sr. VP for CIBC International Banking. Additional documentation provided on February 24, 2005, indicates that CIBC agreed to postpone action; however, said documentation was not signed by CIBC.

On August 21, 2002, Capital Options Ltd. confirmed that four lenders (three from Canada) were interested in refinancing the property.

In January 2003, C. Evans sent a memo to R. Kelly informing him that prior to Propco 41 agreeing to execute a Forbearance Agreement, RHK must assign a \$1.9 million Promissory Note to CCWIPP.

To date, funds totalling \$1,000,000 have been received against the Promissory Note and the remaining \$900,000 owing under the promissory note are scheduled for payment in December 2005.

Evidence of the above was not in the files made available to FSCO at the time of the examination.

## **2.5 Appraisals Not Addressed to Lender and/or Investor.**

In FSCO's review, several cases were noted where the files contained appraisals addressed to the borrowers.

Appraisals addressed to third parties should not be relied upon by lenders and/or investors unless the lenders and/or investors have contacted the person who completed the appraisals and have received, in writing, confirmation that the appraisal can be relied upon for lending and/or investing. Without such confirmation, there is no recourse to the appraisers for any faults with the original appraisals. There was no documentation to indicate the person who completed the appraisal had been contacted for such confirmation.

Appraisals should also be updated on a periodic basis depending on various external factors, such as inflation, industry, etc. There was no documentation to indicate that appraisals were requested on a periodic basis.

Finally, there was no indication that the Investment Committee had asked for an independent arms length appraisal to be provided on any of the properties.

CCWIPP has subsequently advised that their auditor BDO Dunwoody LLP, requires CCWIPP to appraise properties on a three year cycle, a practice which CCWIPP is currently following. This practice contravenes the SIP&P provided to FSCO's examiners that required annual valuations.

## **2.6 Signed Copies of All Documents Not on File.**

In FSCO's review, it was noted in several cases that the file contained draft documents. FSCO was unable to determine if this was the final adopted version. As a lender or investor, it is expected that there would be signed copies of all documentation in the file. In addition, there was no documentation to indicate that such signed documents had been requested.

It is also expected that the documents would be kept in a locked fire proof area. There was no indication that this is the case with these documents.

## **2.7 No Established Policies Related to Lending as a Percentage of the Value of the Underlying Asset**

Commercial lending is normally limited to a maximum of 60% of the value of the property being offered as security. Until May 2000, Section 74 of the Regulation established a maximum lending amount at 75% of the property value. During FSCO's review it was noted that cases existed where the amount of the financing when combined with prior encumbrances exceeded 75% of the value of the properties. In some cases, the financing exceeded 100% of the value of the properties.

There were no established policies which addressed the issue of investments in commercial entities or mortgages as a percentage of the underlying assets to ensure there is sufficient equity to provide a reasonable cushion in the event of a forced sale (when values may be greatly reduced) or additional expenses are incurred for legal matters, taxes and interest.

## **2.8 No Documentation Related to Parties Involved in Investments**

During FSCO's review of various files, it was noted that William Polley, Peter Martini and John Irvine were involved in more than one company.

Some of these companies were World Blend (now defunct), Purely Supreme Foods, CIBO, Case Financial, Fresco and BC Belting.

Mr. Martini is the president of CIBO which is providing a loan to BC Belting and Mr. Martini is providing a personal guarantee for the loan. Mr. Martini has now requested authority to invest approximately \$3 million at his discretion. It would appear that Mr. Martini may be in a conflict of interest.

On February 24, 2005, information was provided to the examiners indicating that Mr. Martini is not the president of CIBO. It was also confirmed that Mr. Martini provides advice to CIBO and does not receive compensation from CIBO.

It is unclear if these individuals are related parties for purposes of the Federal Regulation nor is there any indication of their relationship to CCWIPP. There is no documentation to indicate that the related party issue or any potential conflicts of interest have been identified or addressed.

In addition, there is no indication that the Board or Investment Committee has considered Mr. Martini's request or come to a decision on the matter.













































