UWOFA
# The Faculty Association
The University of Western Ontario
1201 Western Road, Elborn College, Room 2120, London, Ontario, Canada N6G 1H1
Tel: (519) 661-3016
Fax: (519) 661-3946
e-mail: uwofa@uwo.ca
www.uwofa.ca

September 15, 2009

Martin Belanger
Associate Director, Retirement Plans
Human Resources
Room 5100, SSB

Dear Mr. Belanger:

This is our feedback in response to the July 20, 2009 proposal by the Joint Pension Board to move the restructured notes received as a result of the restructuring plan for non-bank Asset Backed Commercial Paper (ABCP) from the Affected Investment Accounts into a separate fund called the Liquidating Trust.

We agree that moving these notes to a Liquidating Trust will provide a benefit to pension plan members by making it more convenient to make investment decisions with regard to the 5 funds that have been affected by the collapse of the market for non-bank ABCP in August of 2007. **This plan does not go far enough to redress the losses of our current and former members as a result of the collapse of the market for non-bank ABCP.**

UWOFA argues that the University of Western Ontario should offer to purchase these notes from all affected Pension Plan and RRIF members at a price equal to par value prior to the collapse of the market, plus accrued interest from August, 2007. The following points support our argument:

1) **It is extremely unlikely that investors in the 3 Northwater Funds that included ABCP made the investment with full knowledge of the risk associated with the ABCP investment.**

   a. The three Northwater Funds were a component of 5 of the investment choices available to members of the pension plan: the Diversified Equity Fund, the Balanced Growth Fund, the Balanced Income Fund, the US Equity Hedged Fund and the US Equity Unhedged Fund. These funds also contain other investment funds managed by Investment specialists other than Northwater. The employer has acknowledged that the majority of pension plan members invest in the Diversified Equity and Diversified Bond Funds and therefore, the majority of pension plan members are affected by the market collapse.

   b. Typically ABCP products involved liquidity support from a major bank, which would buy back the ABCP in the event of a market disruption. Non-bank ABCP had no such financial backing or guarantee and was an inappropriate investment choice for a Defined Contribution Pension Plan.

   c. Northwater was the only one out of 8 Investment managers employed by the University which chose to invest in non-bank ABCP.

   d. Non-bank ABCP was only rated by one rating agency, DBRS as R-1. Other rating agencies, such as Moodys and Standard & Poor would not rate these investments because of their risky nature.

   e. The information provided by the Employer to the members did not disclose, or did not adequately disclose, the risks of the investments in non-bank ABCP. None of the materials provided to Plan members enabled the members to have made an informed decision as to the quantum of risk associated with the funds affected by the non-bank ABCP problem.

2) **Even if an investor made the choice to invest in these funds fully aware of the risk associated with the ABCP investments, they would have expected that the investments would mature in a maximum of one year. These investments were created to be short term in nature.**

   a. It is now over 24 months since the market for non-bank ABCP collapsed. The proposed solution put forward by the Pension Board states that it is unlikely that a market will develop for the now restructured notes in the near term, and in fact, the restructured notes will not mature until January 2017.

   b. It is unreasonable to expect that pension plan members would have to continue to make decisions about something that was expected to be a short term investment for over 7 more years.

   c. Members have already had to deal with "temporary" restrictions in obtaining full access to their pension funds since September, 2007. Clearly, 2 years later, these restrictions are no longer temporary.

3) **Non-bank ABCP was a risky and inappropriate investment for a defined contribution plan.**

   a. It is uncommon to offer hedge fund products in a defined contribution plan such as the Academic Staff Plan. These plans are different from defined benefit plans where the employer is responsible for producing a pension of a specified amount, regardless of the financial performance of the pension fund. Furthermore, in a defined benefit plan other portions of the fund can be used for liquidity needs.

   b. In a defined contribution plan, the ability to produce a pension is exclusively dependent upon the amount in a member's account at retirement. Consequently, significant care is needed in the selection of the investment options to offer for defined contribution members. The Employer breached its common law and statutory duties by permitting investments in these instruments.

   c. The investment policy for the Plan (the "SIPP"), which forms part of the official Plan documents, specifically acknowledges that Plan investments must be sufficiently liquid to meet the entitlements of the members to change the investment of their contributions and to ensure the availability of funds to pay benefits in accordance with the terms of the Plan.

   d. Further, because there was no conventional market for the investment, it always presented the risk of illiquidity which was inconsistent with the requirement in the SIPP that investments be sufficiently liquid. The mandate given to Northwater was imprudent and unreasonable, because it failed to prohibit this type of investment or because it was ambiguous.

4) **The employer never had the authority to impose redemption restrictions, and has in fact imposed these restrictions commencing in September of 2007.**

   a. In addition, in other situations where a non-bank ABCP problem has arisen member redemptions were not frozen. Such a step has immediate and ongoing financial consequences for members. Not only do members receive no value for affected units but into the future members receive no interest on the portion of their frozen units. Nevertheless, in the case of the University of Western pension plans, a decision was made to foist the financial burden of this product on the members themselves. The documentation for the Academic Staff Plan contains no authority for imposing redemption restrictions.

b. The Employer has fiduciary obligations in respect of its pension plans, both as plan sponsor and as administrator of the plan. The Board of Governors of the Employer has purported to delegate administrative authority to its subcommittee, the Pension Board. However, the Board of Governors remains ultimately responsible for administrative actions taken. At both common law and under s. 22 of the Pension Benefits Act, fiduciary obligations arise requiring the fiduciary generally to act with due care and in particular to select investment agents carefully. Once investment agents have been chosen, the fiduciary has an ongoing obligation to supervise such agents carefully.

c. While employers with Defined Contribution pension plans are distanced from the direct risk associated with poor performance of the invested pension funds, this does not absolve the employer from ensuring that members have appropriate information to allow them to make good investment decisions for themselves. As appropriate information about the risk associated with non-bank ABCP was not provided to members, the Employer is obliged to cover the losses of the pension plan members.

d. A January 30, 2009 news story on CBC.ca reports that Canaccord Capital has bought back the ABCP investments of approximately 98% of their investors. This includes 1,440 investors who each held less than $1 million in ABCP. In this article, Mark Maybank, the Chief Operating Officer of the company indicates that it has "worked to protect our clients' best interests through a very difficult situation". (http://www.cbc.ca/canada/story/2009/01/30/canaccord-buyback-abcp.html, retrieved September 12, 2009)

e. A March 31, 2008 article in the Financial Post indicates that other investment dealers have also bailed out clients who invested in these products. (http://www.financialpost.com/story.html?id=412808, retrieved September 12, 2009)

The past and current employees who are members of the UWO pension plans deserve no less than full reimbursement of their losses by the University.

Sincerely,

Regna Darnell

Regna Darnell
President, UWOFA