

Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator
in relation to the Great Lakes UK
Limited Pension Plan

Background

The **Great Lakes UK Limited Pension Plan** (the 'Plan') is a hybrid occupational pension scheme, incorporating a closed, defined benefit (DB) section and a smaller, open, defined contribution (DC) section. It has approximately 1,270 members.

The Plan has a funding deficit. This can be measured on a number of bases; however the estimate of the deficit as at 30 June 2009 on a 'buy-out' basis (ie the amount it would cost to buy out members' benefits by purchasing annuities) was approximately £95 million.

Chemtura Manufacturing UK Limited (CMUK) is the sole sponsoring employer in relation to the Plan. It is an ongoing, active company and has not experienced an insolvency event.

CMUK is part of the **Chemtura Group**. In March 2009, **Chemtura Corporation** (CMUK's ultimate parent) and a number of other entities in the group filed for Chapter 11 bankruptcy protection in the United States. Those entities subsequently emerged from Chapter 11 in November 2010 following a financial restructuring.

Regulatory action

In June 2009, the trustees of the Plan approached The Pensions Regulator (the 'regulator') to outline their concerns in relation to the financial position of the Plan, given the ongoing Chapter 11 process.

As a result of information provided by the trustees, the regulator began an investigation. The regulator made enquiries of the trustees, **CMUK** and other entities within the **Chemtura Group** to ascertain whether the issuing of a Financial Support Direction (FSD) under section 43 of the Pensions Act 2004 (the Act) may be appropriate. At this time, **CMUK**, **Chemtura Corporation** and the trustees were also in negotiations as to the funding of the plan, but had yet to reach agreement.

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In order to commence formal proceedings in relation to the issuing of an FSD, the regulator was required to consider whether the legal tests set out in the Act were met, including whether the imposition of an FSD would be reasonable. On the basis of its investigations, the regulator considered that formal proceedings should be issued in relation to a number of entities, in a number of jurisdictions, within the **Chemtura Group**, including **Chemtura Corporation** and **CMUK** (together, the target companies).

On 22 December 2010, the regulator issued a warning notice to the target companies. This notice warned that the regulator's Determinations Panel may, in due course, consider whether to issue an FSD to the target companies. The Determinations Panel is a separate committee of the regulator which has exclusive power to exercise certain functions of the regulator.

The target companies and the trustees were invited to make representations in relation to the matters contained within the warning notice.

The trustees, who received independent financial and legal advice throughout the course of the regulator's investigation, confirmed that they were in support of the proposed regulatory action. Representations were also made on behalf of the target companies, who also received their own financial and legal advice, disputing the regulator's assessment of the legal tests. The matter was due to be heard by the Determinations Panel in June 2011.

After further funding negotiations, an improved funding package was offered by **CMUK** and **Chemtura Corporation** and was agreed by the trustees in May 2011. The agreed package provided for:

- **CMUK** to make cash contributions of £60 million over 3 years, starting with an initial contribution of £30 million (which has now been paid). These payments will eradicate the Plan's current 'Part 3' deficit within this period.
- Further contributions to be paid by **CMUK** in respect of possible additional liabilities connected with equalisation, if necessary.
- A guarantee and security agreements, entered into by entities in the **Chemtura Group**, including **Chemtura Corporation**, providing protection to the Plan in relation to any further Plan liabilities.

Outcome

The regulator considered the funding package which had been negotiated by the trustees and target companies. Having done so, the regulator decided that it would no longer be appropriate for the matter to proceed to the Determinations Panel, as it was of the view that the funding package was broadly equivalent to what might have been achievable if an FSD had been issued.

The regulator is pleased that the trustees, **CMUK** and **Chemtura Corporation** have reached agreement, particularly in light of the level of support this provides for the Plan going forward.

General

The regulator will continue to engage with trustees in cases where it believes that the use of its anti-avoidance powers may be appropriate. In addition and as demonstrated in this case, the regulator will not hesitate to use these powers, if appropriate, in order to protect members' benefits.

Further information on the Determinations Panel and how it operates can be found at: www.thepensionsregulator.gov.uk/regulate-and-enforce/determinations.aspx

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