



Council of Unions Communication #1

Thursday, May 30, 2019

This message is being distributed on behalf of The Council of Unions. The Council of Unions was established to represent the interests of the unionized employees of Air Canada during a turbulent time that included pension insolvency. Leaders from each of Air Canada's unions – the Air Canada Pilots Association (ACPA); Canadian Airline Dispatchers Association (CALDA); Canadian Union of Public Employees (CUPE) – Air Canada Component; the International Association of Machinists and Aerospace workers (IAMAW); and Unifor – meet to discuss issues of common concern. Together, our Unions represent nearly 29,000 unionized employees of Air Canada.

2009 Air Canada Share Trust Agreement Background and Update

Highlights:

- What Is the Share Trust
- Current Market Value and Share Allocation
- Conditions and Limitations
- Amendment/Unlocking Process
- Extensive Council of Unions Efforts to Unlock the Share Trust
- Bottom Line

What Is the Share Trust

The 2009 Share Trust Agreement is a multiparty agreement created during the pension moratorium between Air Canada and its five Unions that governs a block of shares held in a restricted use, single joint trust account.

On October 26, 2009, under terms of the agreement, Air Canada issued 15% of their Class B common voting shares (i.e. 17,647,059 shares) to a joint Share Trust with the Air Canada Unions (the Unitholders) as sole beneficiaries. As a result of subsequent public offerings, these shares have been diluted and now represent approximately 6% of all outstanding Air Canada stock.

The shares were granted to the Unions, at that time, as collateral to offset part of the unfunded solvency liability that the pension plan members assumed through the solvency funding deficit in lieu of Air Canada having to make the full amount of their required solvency funding payments between 2009 and 2014.

Both the Pension Benefits Standards Act (PBSA) and the Income Tax Regulations (ITR) were amended in 2009 to allow for the creation of the 2009 Air Canada Pension Plan Funding Regulations and the 2009 Air Canada Share Trust Agreement. This afforded the Share Trust favourable tax treatment for any capital appreciation of these shares, essentially sheltering them from tax as if they were contained within a registered pension plan.

Current Market Value and Share Allocation

While the market value of Air Canada shares fluctuates, at the May 23, 2019 market closing, the total value of all shares being held in the Share Trust was worth upwards of \$696 million.

Under Section 17 of the 2009 Share Trust Agreement, any shares that are sold from within the Share Trust must be deposited into **every** Union's pension plan based upon the pro-rata solvency funding ratio of each pension plan as at the date of the sale. This process applies regardless of which Unitholder, or Union, sells the shares.

Section 2.4 of the second amended 2009 Share Trust Agreement (signed June 1, 2010) specifies the pro-rata share allotments of each participating Union.

Conditions and Limitations

The Share Trust, as created, is expressly a limited use trust. As such, there are **very specific limitations** – including complex income tax and legal considerations – that govern how Unitholders (the Unions) can benefit from the Trust.

In general terms, as constructed, the Share Trust only provides three specific uses or benefits to the Unions as Unitholders:

1. As long as the outstanding Voting shares represent at least 2% of the issued and outstanding Air Canada Shares, the Unions may designate one candidate for election to the board of directors of Air Canada;
2. The Unions may exercise the voting rights they have commensurate with the shares; and
3. The Unions may redeem or sell all or part of their shares.

Under the ITR, the Share Trust funds can **only** be used for deposit into one or more of pension plans to help pay any outstanding solvency deficit and are considered as employer contributions to the pension plans; **the 2009 Share Trust Agreement does not contemplate the share sale proceeds being used to provide any pension benefit improvements or any other purpose.**

Specifically, the Share Trust Agreement and the ITR stipulate that proceeds of any such sale are **first** allocated among any DB pension up to its solvency deficit (and the proceeds go to ANY plan, not just the plan of whichever Union may have redeemed the shares), or, if there are no plans in deficit, the proceeds are to be held by the Trust to be used in the event of any such deficit.

As at January 1, 2019, the Air Canada Master Trust Fund is funded at 114.8% on a solvency basis and 146% on a going concern basis. Because of the overfunded position of Air Canada's Direct Benefit (DB) pension plans, the Company is currently not permitted to make contributions to any of its DB plans under the Income Tax Act (ITA).

Any other use beyond the three set out above, including an attempt to achieve a specific benefit for members would require an amendment to the Share Trust.

Amendment/Unlocking Process

Unlocking the joint Share Trust is a very complex undertaking.

According to its terms the Share Trust can only be amended upon reaching full agreement between:

- All of the Unions, as Unitholders;
- The Settler (Air Canada); and
- The Trustee (currently BMO Trust Company)

Neither party can force the other into unlocking the 2009 Share Trust Agreement. It must be mutually agreed to.

Importantly, to ensure that each Union can benefit from their own allocated shares and not have to split them with the other Unions, all the Unions must agree on a process.

Ensuring agreement among the Unions means we avoid a worst-case scenario. That would be for one Union to sell its shares under the current terms of the Trust; if the other Unions were in a deficit position while the Union desiring to sell its shares was not, then this Union would receive none of the proceeds from the sale of its own block of shares. **All of the Unions face this undesirable prospect**, so until every Union is guaranteed it will benefit from the sale of their respective shares, no Union has any compelling reason to sell any of its shares.

Given that legal framework, there is a three-stage process which must be adhered to in order to unlock the value of the 2009 Share Trust Agreement:

1. **Joint agreement to dissolve the 2009 Share Trust Agreement** – This means the Unions and Air Canada must first jointly agree to dissolve the 2009 Share Trust Agreement and create new separate “trust accounts” for each Union to hold the shares until the shares can ultimately be sold.
2. **Satisfactory agreement with Air Canada for the proposed use of sale proceeds** – After the 2009 Share Trust Agreement has been dissolved and each Union has control of their own separate share trust account, they must then reach satisfactory agreements with Air Canada for the proposed use of their share sale proceeds within their respective pension funds.
3. **Approval from relevant government/regulatory bodies** – The final necessary step of the process, after the Unions and Air Canada come to an agreement of the dissolution of the Share Trust and the repurposing of the proceeds, is to obtain the approval of the Office of the Superintendent of Financial Institutions (OSFI), the Canada Revenue Agency (CRA) and the Minister of Finance on how the agreement must be structured and how the proceeds of the funds may be used to enhance pension benefits for our members. This process will likely require amendments to one or both of the Pension Benefits Standards Act (PBSA) and/or the Income Tax Regulations (ITR).

According to the Trust's express terms no amendment to the Trust Agreement is permitted if it would adversely affect the tax treatment of the Trust. This is an important limitation as **the Trust was created, and remains, subject to the benefits attributable to the defined benefit pension plans.**

Extensive Council of Unions Efforts to Unlock the Share Trust

Since 2015, there have been many discussions among the representatives on the Council of Unions about the best way forward to unlocking the value of the Share Trust. Of critical importance has been to ensure all Union groups are aligned on the path forward, and on the best strategy.

On November 5, 2018, all members of the Council of Unions signed a protocol agreement on how they will proceed as a unified group to negotiate the repurposing of the proceeds of the Share Trust for the benefit of their respective members. This protocol agreement underlines the important involvement and consideration of each of the members of the Council of Unions. The consensus of the Union groups reflects an important milestone in the process. It also establishes that all communications on the Share Trust issue will be agreed upon and issued by individual unions to their members on behalf of the Council of Unions.

Discussions have also been held with Air Canada to try and negotiate a Memorandum of Agreement (MOA) that would allow the 2009 Share Trust Agreement to be split into the required separate trusts.

With the complete alignment of all the Unions, Council of Unions representatives met with Air Canada senior management in February 2019. At that meeting, the Council of Unions briefed the Company on its approach.

Unfortunately, and after follow-up, at the time of writing, the Company has yet to provide a response back to the Council of Unions on whether it will support this initiative.

All of the Unions are mindful of the current Air Canada share price profile and are working hard to try and achieve an agreement as soon as possible that will be acceptable to all the Unions as well as to Air Canada.

Collectively, we are disappointed that there has been no response from the Company, especially given the significant effort that has been invested by the members of the Council of Unions to date.

We hope to provide further updates to our membership as we have further information to report. The Council of Unions will jointly advise our membership when and if an agreement is reached on the 2009 Share Trust Agreement dissolution and repurposing.

There is no anticipated timeline for the completion of this process as at the date of writing.

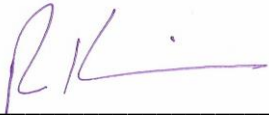
Bottom Line

- Currently the value of the shares held by the Share Trust is very restricted.
- Unlocking a joint share trust is a very complex undertaking. Neither Air Canada nor any (some or all) of the Unions can force the other to unlock the 2009 Share Trust Agreement. It requires mutual agreement of all parties.
- Until a satisfactory agreement can be reached between the Unions and Air Canada concerning the dissolution of the 2009 Share Trust Agreement and the usage of the share sale proceeds within their pension plans, **the status quo prevails.**
- Even in the event an amendment can be achieved for the benefit of members, the result will likely be restricted by the underlying purpose of the Share Trust.
- There is currently no anticipated timeline for the completion of this process as at the date of writing.

In solidarity,



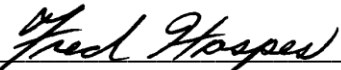
Air Canada Pilots Association



Canadian Airline Dispatchers Association



Canadian Union of Public Employees, Air Canada Component



International Association of Machinists & Aerospace Workers



Unifor