



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226
www.ag.nd.gov

August 13, 2012

VIA CERTIFIED MAIL

Ms. Kirsten Steiert
Senior Retirement Consultant
Hartford Life Insurance Company
PO Box 1583
Hartford, CT 06144-1583

Dear Ms. Steiert:

Thank you for your letter of June 28, 2012, responding to the May 23, 2012, inquiry of NDPERS. I am the Assistant Attorney General assigned to provide general counsel services to the NDPERS Board and am writing on behalf of that Board in response to your letter of June 28, 2012. The NDPERS Board appreciates Hartford's assurance that nothing has changed between the parties as a result of Hartford's announcement that it intends to sell its retirement business. Hartford's insistence that it will not determine whether the sale terminates the Provider Agreement until the actual time of sale, however, raises a concern about whether Hartford intends to fulfill its obligations under the Provider Agreement.

You indicate that it is the position of Hartford that the impact of the sale on the agreement can "*only be determined at the time of sale*"; you further state that while the agreement will continue without change "*up to the time of the closing of any sale... the nature and terms of the sale will determine whether the Provider Agreement will continue...*" It is the position of the NDPERS Board that delaying this discussion until after the sale may lead to a result contrary to both the governing law and terms of the Provider Agreement.

As acknowledged by your letter, the parties entered into a Provider Administrative Agreement dated January 1, 1999. This agreement is governed by the laws of the State of North Dakota and contains a termination clause. The termination clause indicates the agreement may be terminated upon sixty day written notice; that upon termination the Provider agrees to transfer all participant accounts to another provider upon request of the Retirement Board; and that if the termination is by the Retirement Board for-cause, or by the Provider, the Provider will make the transfer free from all transfer charges and penalties whatsoever, regardless of any provision to the contrary in the investment contract. The sixty-day notice provided for in the agreement allows for the potential transfer of participant accounts to another *provider*, prior to the termination of the agreement, potentially free from charges, while the terminating provider retains control of the accounts.

Ms. Kirsten Steiert
August 13, 2012
Page 2

North Dakota Century Code § 54-52.2-03.2 requires all providers be authorized to do business in North Dakota and all agents of providers to be licensed by the appropriate licensing authorities in North Dakota. North Dakota Administrative Code (N.D.A.C.) § 71-04-01-01(8) defines a provider as "any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 *authorized by the retirement board to provide investment vehicles to employees.*" In addition, N.D.A.C. §§ 71-04-06-01 and 71-04-06-02 require firms desiring to offer investment services for the deferred compensation plan to first notify the board in writing of the firms' willingness to become a provider and enter into the board's administrative agreement. These sections allow the Board to determine if a potential provider is qualified and enter into an agreement with that entity prior to the provider gaining control of participant accounts; further under the terms of the provider agreement participant accounts should always remain in control of an authorized provider.

If upon the sale of Hartford's retirement business and without discussion and consent from the NDPERS Board, Hartford is no longer the provider of NDPERS participant accounts, Hartford will have terminated the provider agreement and transferred the participant accounts to an unauthorized provider contrary to the terms and governing law of the Provider Agreement.

In order for the NDPERS Board to evaluate how Hartford's sale may impact the Provider Agreement between the parties and ensure that participant accounts remain in the control of an authorized provider, the Board requests that Hartford: inform the NDPERS Board whether Hartford intends to provide the Board with a sixty-day notice of the sale; immediately begin discussions with the NDPERS Board regarding how such a sale *could* impact the Provider Agreement between the parties; and in the event the sale results in termination of the Provider Agreement by Hartford, confirm that Hartford will transfer participant accounts free from charges to an authorized provider at the direction of the Board within 60 days prior to the sale. Please have a response to these requests sent to my attention by August 27, 2012. Thank you for your attention to this matter.

Sincerely,



Janilyn K. Murtha
Assistant Attorney General

vkk
cc: Sparb Collins