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Reference:

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VIA E-MAIL

Mr. John Stevenson
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
P.O. Box 55
Toronto, ON M5H 3S8

Dear Mr. Stevenson:

Re: Request for Comments
Re: Proposed Amendments to Rule 13-502

I have no comments on the recently proposed amendments to Rule 13-502 (the "Rule"). However, while the Commission is considering those amendments to the Rule, I would like to take this opportunity to suggest a further change, which I respectfully submit is not material overall.

I am making this suggestion personally; this does not necessarily represent our firm's position on this matter.

Currently Clause 2.7(a)(iii) of the Rule requires Class 3 reporting issuers to determine their corporate finance participation fees in part based upon the percentage of the class or series registered in the name of, **or held beneficially by,** an Ontario person.

In explaining these requirements to some of our foreign clients who would qualify as Class 3 reporting issuers, I have come to learn that this provision is causing them significant difficulty in practice.

The requirement to base the fee upon beneficial ownership, rather than registered ownership alone, means that issuers are called upon to penetrate numerous level of intermediaries in an attempt to determine whether the ultimate beneficial owner is an Ontario person.

It is a relatively simple matter to break down jurisdictions of registered security-holders based upon their registered address. Depositaries can, upon request, provide participant lists, further breaking down the intermediaries who hold on behalf of beneficial owners. However, in order to determine whether beneficial owners are Ontario persons, the issuer or its transfer agent needs to get each individual participant intermediary to report the jurisdiction of their particular clients. Intermediaries are under no obligation to provide this information. My experience has been that the response to such requests for jurisdiction breakdown is often incomplete.

While in Canada ADP Investor Communications offers some geographic survey services, this only covers intermediaries who are ADP clients. Other intermediaries would have to be surveyed individually. If accounts are held through DTC, ADP in the US cannot break-down Canadian owners by province.

These requests are also impossible to determine retroactively, if issuers are trying to determine fees when payment is due based upon information that was current as at the end of its last completed financial year. They would have had to have the foresight to schedule a beneficial ownership search at the year end.

The Ontario portion for Class 3 reporting issuers is likely to be only a relatively small portion of their world-wide capitalization. However, the issuer is forced to go through this world-wide jurisdiction determination exercise in order to identify any Ontario beneficial owners.

For example, I have one client which is a significant world- class company with capitalization in excess of $80 billion. The Ontario portion of its capitalization is so small that the annual fee will likely only be $1,000. However, the exercise of having to determine beneficial ownership would give rise to direct and indirect expenses significantly exceeding the ultimate fee owing.

I suspect that many foreign companies will simply be forced to make a reasonable guess.

While reference to beneficial ownership may have the attraction of greater accuracy, this basis for calculating a participation fee for foreign issuers is only intended to roughly approximate how significant access to the Ontario market is to that issuer. Another approximation that was easier to calculate might serve this purpose equally as well.

Amendment Suggested

I therefore suggest that the reference to beneficial ownership be deleted from clause 2.7(a)(iii) of the Rule and the clause be rephrased as "the percentage of the class or series

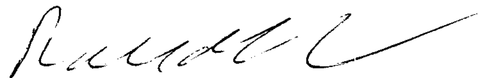
registered in the name of holders whose last address as shown on the books of the issuer is in Ontario".

Precedents for this treatment that are used elsewhere in the *Securities Act* are sections 93(1)(e), 93(3)(h) and 95(1). These are sections in Part XX of the *Securities Act* where they are similarly used to approximate what portion of an issuer's securities are held by Ontario holders.

It is respectfully submitted that such a change would allow issuers to rely upon the registered addresses as a more practical compromise for determining the Ontario portion of an issuer's market capitalization for purposes of determining a fee.

Thank you for your consideration of this request.

Yours very truly,



Ross McKee

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