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**BY TELECOPIER**

July 4, 2003

Ontario Securities Commission  
20 Queen Street West  
Suite 1800  
Toronto, Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary

Dear Mr. Stevenson:

**Re: Amendments to OSC Rule 13-502**

This letter represents my personal comments (and not those of the firm) with respect to the OSC's proposed amendments to OSC Rule 13-502.

I wish to express my concerns with a feature of the proposed amendments to OSC Rule 13-502 (Fees). In my view, it may as currently designed substantially impede small and medium-sized private business financing.

The provision in question is item B(2) of Appendix C to Rule 13-502. It would impose a flat "activity fee" of \$500 for each filing of a Form 45-501F1 in respect of the distribution of securities of issuers not subject to participation fees (generally, issuers other than reporting issuers and registrants).

In general, this will apply to non-public companies, including many small and mid-sized businesses.

Let me describe the reasons for my concerns. With the abolition of the \$150,000 prospectus exemption which accompanied the adoption in December, 2001 of OSC Rule 45-501, the OSC was attempting to improve the access to financing by small and medium-sized businesses. Generally, two exemptions are available to them.

First, there is the closely-held issuer exemption, which was in my view not very well thought out and which unfortunately represents a substantial tightening of the old

private company exemption. When it is available, it is welcome, but its use is seriously limited by restrictions on numbers of securityholders (including debt, unlike the old private company exemption), transaction size, security transfers and selling expenses, etc. These limitations have led to its rejection by other Canadian securities regulators, and securities lawyers are very cautious and reticent to use it.

The most important exemption is thus the new accredited investor exemption. Modelled on a U.S. concept, it is widely used and has been or is being substantially followed in other provinces. It is used frequently including by small and medium-sized businesses, and is a flexible and useful exemption.

Today, in using it, issuers can raise small amounts of money as needed. The prior fee (there is no fee at present) was the greater of \$100 and 0.02%, thus representing a fee of \$100 for a small (e.g. \$5,000) fund-raising. Small amounts can be raised from the same or different accredited investors at various times during a year.

Under the proposed amendments to Rule OSC 13-502, the fee would be \$500 each and every time a filing was required. This is a 500% increase on a moderate fund-raising! On a small \$5,000 fund-raising, this would represent fully 10% of the proceeds even before issue expenses, commissions, etc. This would represent a substantial sum, and would discourage both accredited investors and issuers, and thus could severely hamper small and medium-sized private businesses in raising capital, which were among the key constituencies that Rule 45-501 was designed to assist. It is after all harder for a company to generate a good return when it starts off at negative 10%!

Also, this fee appears inconsistent with the OSC's stated purpose of activity fees. This purpose, which has not been proposed for amendment, is, as is set out in section 2.3 of OSC Companion Policy 13-502:

Activity Fees - Activity fees are designed to represent the direct cost of Commission staff resources expended in undertaking certain activities requested of staff by market participants, for example in connection with the review of prospectuses, applications for discretionary relief or the processing of registration documents. Market participants are charged activity fees only for activities undertaken by staff at the request of the market participant. Activity fees are charged for a limited number of activities only and are flat rate fees based on the average cost to the Commission of providing this service.

There are no material Commission staff resources expended in connection with a mandatory OSC Rule 45-501 filing, and no services delivered. These filings are also not undertaken at the "request of the market participant", and seem to bear no relation to any costs of the OSC related thereto.

Similar mandatory filing fees under OSC Rules 45-502 (for dividend reinvestment plans) and 45-503 (for trades to employees) appear to have been removed entirely, rather than replaced with a substantially greater new fee.

In the event that a fee of the nature proposed is desired, then I would suggest two things:

1. It should be a proportionate fee (e.g. 0.02% of proceeds, subject to a minimum of \$100 and a maximum of \$500), so as not to unduly penalize either small or large financings.

2. It should either not be described as an activity fee, or the purpose of an activity fee as set out in the companion policy should be modified.

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Thank you for considering this letter.

Yours truly,

Simon Romano

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