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August 20, 2003

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M5H 3S8

Attention: John Stevenson, Secretary

Dear Sir:

**Re: Request for Comments
Notice of Amendments to Rule 13-502 Fees**

We are writing in response to the request of the Ontario Securities Commission for comments regarding the proposed amendments (the "Amendments") to Rule 13-502 Fees (the "Rule") and the related forms and appendices.

In general, we support the Amendments as they will operate to clarify a number of provisions in the Rule which have caused confusion or uncertainty among our lawyers and clients. We have, however, identified a few areas in which the Amendments could, in our view, be further clarified or improved.

Amendments to Rule 13-502 Fees

1. With respect to the proposed amendments to Section 2.5 of the Rule contained in Section 1.1(4) of the Amendments, we suggest that clarity would be served by changing the words "a reporting issuer's equity securities" in the first line of the amended Subsection 2.5(a) to "the reporting issuer's equity securities".
2. We have no objection to the proposed addition of new Section 2.9 to the Rule provided that a mechanism is added to permit a corresponding *pro rata* refund of participation fees to an issuer which ceases to be reporting issuer *after* it has paid its annual participation fee. New Section 2.9 of the Rule as currently proposed in the Amendments would operate unfairly insofar as it would effectively treat issuers in comparable circumstances differently depending upon the timing of their financial year end and the date of termination of their reporting issuer status. The proposed amendment as presently drafted is also problematic

because it would not relieve an issuer of the obligation to pay the full amount of the participation fee in circumstances where the issuer had made application to the OSC for an order under s. 83 of the *Securities Act* (Ontario) deeming it to have ceased to be a reporting issuer, but had not yet received the order by the date on which its participation fee was required to be paid. This problem would be effectively resolved if provision was made for the partial refund of participation fees paid in such circumstances.

Appendix C

1. We submit that the proposed note (v) to Item A(1) of Appendix C set forth in 1.2(4)(b) of the Amendments is unnecessary and potentially confusing, inasmuch as it only appears to suggest, and does not mandate, a proportionate sharing of fees among multiple issuers. In our experience, multiple issuers making a joint prospectus filing generally choose to allocate the filing fee amongst themselves in the manner they deem most appropriate in the context of their transaction.
2. We have two comments with respect to the new fee language proposed for renumbered Item H(1).
 - (a) First, the term "applicant" does not accurately describe the filer of a takeover bid circular; we would suggest the term "offeror" in its stead.
 - (b) Second, we submit that the imposition of an additional \$2,000 fee upon an offeror which is not subject to, and is not reasonably expected to become subject to, a participation fee, does not accommodate the structure of takeover bids made by acquisition companies established by offeror-issuers which do pay participation fees. Accordingly, we would propose the substitution of the following language under the heading "Fee": "\$5,500 (plus \$2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, and is not reasonably expected to become subject to, a participation fee under this Rule)."
3. We have three comments with respect to the proposed amendment to Item M(2) (renumbered as item N(2)) of Appendix C regarding late fees for the filing of insider reports.
 - (a) First, we submit that the imposition of a late fee for each calendar day, rather than each business day, during which an insider report is late is inappropriate. Although we understand that the filing of insider reports via SEDI is currently possible on non-business days, we can advise that the insiders of many of our clients will be filing their insider reports with the assistance of agents, who will generally not be in a position to assist them with filings on non-business days. Moreover, the imposition of late fees on a calendar day basis in the context of insider reports is incongruous because it effectively imposes a more onerous penalty for such filings than that imposed with respect to other late filings, such as those set forth in amended Item N(1), which are calculated on a business day basis.

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- (b) Second, we suggest that some guidance be given, in the Rule or elsewhere, as to how the late fees imposed by this Item are to be paid. Although it is our understanding that the late fees payable in respect of insider reports are to be paid by insiders themselves, we are not aware of any procedure, either within SEDI, SEDAR or elsewhere, for the payment of these fees. As of the date of writing, in fact, the SEDI website refers only to the obligation to pay fees for late insider reports imposed by the British Columbia Securities Commission, and makes no mention at all of the Ontario late fee. We suggest that such a procedure be established and publicized.
- (c) Finally, we do not understand the rationale for the establishment of the April 1 – March 31 fiscal period proposed for the determination of the maximum late fees for insider reports. This period is inconsistent with the period established for other late fees in amended Item N(1), which makes reference to the issuer's financial year, and is likely to lead to confusion on the part of insiders. We suggest that the calendar year would be a more appropriate period upon which to base this calculation.

Thank you for offering us the opportunity to respond to the proposed Amendments. If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

BENNETT JONES LLP

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