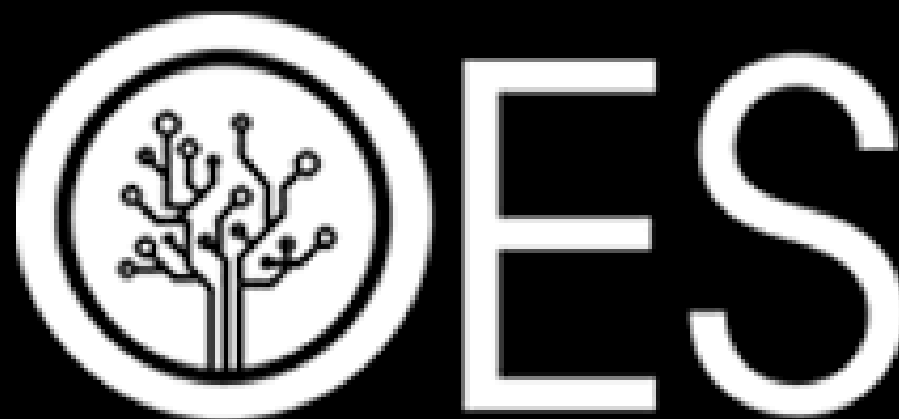


Deloitte.



Ontario Electronic Stewardship

Consultation on Amendment
to Steward Rules

Background

- In February 2018, Ontario Electronic Stewardship (“OES”) was directed by the Minister of Environment and Climate Change (the “Minister”) to wind up the waste electrical and electronic equipment (“WEEE”) program. As required by the Waste Diversion Transition Act (“WDTA”), OES prepared a wind-up plan (the “Wind-Up Plan”), which was approved with conditions by the Resource Productivity and Recovery Authority (“RPRA”). The Wind-Up Plan contemplates that remaining residual funds of OES will be transferred to RPRA. OES ceased operations on December 31, 2020.
- Deloitte Restructuring Inc. (“Deloitte”) was appointed as liquidator (the “Liquidator”) of OES pursuant to a resolution of the board of directors of OES effective April 1, 2021. The Liquidator’s role is to realize on the assets of OES, settle its financial obligations, implement the Wind-Up Plan and take other steps as set out under the Wind-Up Plan to wind up OES as a corporate entity.
- The Liquidator has identified a potential conflict between the terms of the Wind-Up Plan and rules created by OES pursuant to the WDTA that deal with the payment of fees by stewards (the “Steward Rules”). In order to carry out its obligations under the Wind-Up Plan, the Liquidator is proposing a change to the Steward Rules, and is conducting this consultation as required by the WDTA.

Consultation Process and Next Steps

- On May 7, 2021, the Liquidator distributed a notice of consultation to stewards and posted this slide deck to its case website at <https://www.insolvencies.deloitte.ca/en-ca/Pages/OntarioElectronicStewardship.aspx?searchpage=Search-Insolvencies.aspx>
- Interested stakeholders are invited to submit questions or comments in writing by May 18, 2021. Submissions should be made via email to oeswindup@ontarioes.ca
- Questions and comments will be addressed at webinars to be held on May 20, 2021 at 11:00 am EST and on May 21, 2021 at 2:00 pm EST.
- Following the consultation, stakeholders will have an opportunity to make written submissions, which must be received at the email address above no later than 5:00 pm EST on May 25, 2021.
- The Liquidator intends to seek an order (the “Appointment Order”) from the Ontario Superior Court of Justice on June 11, 2021 to, among other things, authorize the Liquidator, in the name and on behalf of OES, to amend the Steward Rules.
- RPRA will consider the amendment for approval at a meeting of its board of directors on June 22, 2021.
- Assuming the Appointment Order is made and the amendment is approved, the Liquidator intends to make an interim distribution to RPRA on or about July 12, 2021.

The Wind-Up Plan

- The Wind-Up Plan was prepared by OES in December 2018. Following a number of revisions, as well as extensive stakeholder consultations, a final draft of the Wind-Up Plan was approved with conditions by RPRA in July 2019. The Wind-Up Plan includes the following provisions:
 - The elimination of steward fees for the period from February 1, 2019 to December 31, 2020 in accordance with Ministerial direction that OES' operating surplus be eliminated in a manner that benefits Ontario consumers; and
 - The transfer to RPRA of any residual funds remaining after the resolution of OES' financial obligations and the completion of wind-up activities.
- The Wind-Up Plan estimated that approximately \$3.1 million would be transferred to RPRA following the completion of wind-up activities, which RPRA would use to offset RRCEA Registry-related expenses.

The Wind-Up Plan (continued)

- OES had cash on hand of approximately \$4.5 million at the time of the Liquidator's appointment. The exact amount transferred to RPRA will depend on the quantum of OES' financial obligations, the proceeds of realization of OES' assets and the costs of the liquidation.
- The Liquidator intends to run a Court-approved claims process in order to identify any remaining financial obligations of OES. OES management has advised the Liquidator that substantially all the claims of service providers were settled by OES prior to the Liquidator's appointment.
- In addition to cash on hand, the Liquidator is investigating a potential recovery of HST remitted by OES during the period in which steward fees were eliminated. While the exact dollar amount has not been determined, the Liquidator believes the recovery could exceed \$4 million.
- The costs of liquidation will depend on several factors, including the number and quantum of claims identified pursuant to the claims process and the costs of pursuing the HST recovery. As such, it is not possible at this time to provide a reliable estimate of costs or a final transfer to RPRA.

The Steward Rules

- Section 33 of the WDTA permits OES to make and amend rules governing the payment of fees by stewards. Section 4(3) of the Steward Rules currently in effect states that, where a steward has paid more fees than is required by the Steward Rules, any excess amount must be either credited against fees payable or refunded to the steward.
- Steward fees are remitted to OES directly by stewards, and indirectly by wholesalers and retailers who are party to remitter and sub-remitter agreements with stewards and OES.
 - OES' records reflect amounts remitted directly to OES by retailers, wholesalers and other parties.
 - OES' records do not contain an allocation of these amounts by steward.
- As such, and as the program is no longer operational, there is no practical way for the Liquidator to return excess amounts to individual stewards.

Proposed Amendment to Steward Rules

- Given the provision in the Wind-Up Plan that residual funds be transferred to RPRA, the requirement in the Steward Rules that OES refund or credit stewards for excess amounts, and the practical difficulties associated with a return of excess amounts directly to stewards, the Liquidator has concluded that an amendment to Steward Rules is required to carry out its obligations under the Wind-Up Plan.
- The Liquidator proposes the following amendment to the Steward Rules:

4 (7) Nothing in these Rules shall prevent the distribution of residual funds, whether or not comprised of any amounts determined under section 4(3) above, to the Resource Productivity and Recovery Authority consistent with a Wind-Up Plan approved under section 14 of the Waste Diversion Transition Act, 2016.

Proposed Amendment to Steward Rules

The Liquidator believes that the proposed amendment is appropriate in the circumstances, as:

1. It will allow the completion of the OES wind-up;
2. It will remove any ambiguity and ensure consistency with the approved Wind-Up Plan;
3. The mechanism contemplated in the Steward Rules with respect to steward refunds or credits is not capable of being implemented at this point;
4. The approved Wind-Up Plan describes that remaining OES residual funds transferred to RPRA will be used to offset RRCEA Registry-related expenses; and
5. RPRA has expressed its intention to consult further on the use of OES residual funds for RRCEA Registry-related expenses.

Questions and Comments



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