



NOTICE OF CONSULTATION

May 10, 2021

Re: Ontario Electronic Stewardship Inc. – Amendment to Steward Rules

Ontario Electronic Stewardship (“OES”) is an Industry Funding Organization established under the Waste Diversion Act, 2002 and continued under the Waste Diversion Transition Act, 2016 (the “WDTA”) to develop and implement a waste diversion program for designated Waste Electrical and Electronic Equipment (“WEEE”).

Pursuant to section 14 of the WDTA, and at the direction of the Minister of the Environment and Climate Change (the “Minister”), OES prepared a plan (the “Wind-Up Plan”) to wind up the WEEE program and OES as a corporate entity in anticipation of a transfer of responsibility to producers in accordance with the Resource Recovery and Circular Economy Act, 2016 (the “RRCEA”). The Wind-Up Plan was approved with conditions by the Resource Productivity and Recovery Authority (“RPRRA”) and OES ceased operations on December 31, 2020.

Deloitte Restructuring Inc. (“Deloitte”) was appointed as liquidator of OES (the “Liquidator”) on April 1, 2021 by resolution of the board of directors of OES (the “Board”) pursuant to s. 230(2) of the Corporations Act, 1990 (the “CA”).

The Liquidator is responsible for identifying and quantifying the financial and operational obligations of OES, realizing on the assets of OES, and distributing residual funds in accordance with the Wind-Up Plan. The Wind-Up Plan states that any residual funds in the possession of OES (“Residual Funds”) will be distributed to RPRRA in order to offset registry-related costs under the RRCEA. At the time of the Liquidator’s appointment, OES had a cash position of approximately \$4.5 million. The amount of the Residual Funds will depend on costs incurred in the liquidation and any additional realizations.

The Liquidator has identified a potential conflict between the Wind-Up Plan and the rules created by OES with respect to the payment of fees by stewards (the “Steward Rules”). Specifically, the Steward Rules state that amounts collected from stewards by OES that exceed the fees prescribed by the Steward Rules in a given fiscal year must be credited against the steward’s account or refunded.

In the Liquidator’s view, there is some ambiguity as to whether all or part of the Residual Funds could be interpreted to constitute excess amounts that should be remitted to the stewards under the Steward Rules. The Liquidator also understands that the complexity of remitter and sub-remitter arrangements underlying the payment of steward fees makes it impractical to refund any excess amounts to stewards.

In light of the above, the Liquidator has concluded that, prior to distributing Residual Funds to RPRRA as required by the Wind-Up Plan, the Steward Rules must be amended to remove any ambiguity and ensure consistency with the approved Wind-Up Plan, and specifically allow for the distribution of the Residual Funds notwithstanding any other provision of the Steward Rules. As required by section 33(3) of the WDTA, the Liquidator is holding consultations with affected stakeholders between May 14 and May 25, 2021, including webinars on May 20, 2021 at 11:00 am EST and on May 21, 2021 at 2:00 pm EST, in order to provide stakeholders with an opportunity to pose questions and raise concerns regarding the addition of the following section 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.

The Liquidator invites interested stakeholders to submit questions or comments in writing in advance of the consultation by email to oeswindup@ontarioes.ca no later than May 14, 2021. 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.