

Message

From: Feldman, Michael [mfeldman@torys.com]
Sent: 2017-06-24 2:33:53 PM
To: 'Rehob, James (ENERGY)' [James.Rehob@ontario.ca]; Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]; WONG Leslie - LAWDIV [leslie.wong@opg.com] [leslie.wong@opg.com]; Sebastiano, Rocco [RSebastiano@osler.com]; 'Fullerton, Rick' [RFullerton@osler.com]; 'Milligan, Peter' [PMilligan@osler.com]; Smith, Elliot [ESmith@osler.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; JACKSON, ADAM (ADAM.JACKSON@blakes.com) [ADAM.JACKSON@blakes.com]; Saulnier, Brett [bsaulnier@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: s.9(2) of the Reg is causing problems - can it be removed

James,

Looping in Oslers for their views.

I would be content to leave the manner of how IESO makes remittances to the relevant agreements with the financing entities. However, section 16(4) of the Act specifies that “the IESO shall remit amounts . . . to or for the benefit of the investment interest owners in accordance with the regulations”. If the regulations are silent on this issue how does that affect IESO’s ability to agree to whatever arrangements it wants? If silence on the issue would not preclude IESO from entering into agreements to deal with this issue then I am not concerned with your proposal. However, that assumes that if the Province subsequently passed a regulation that purported to override an existing agreement, then it would have to be addressed in the Provincial Support Agreement. For example, if IESO agreed in its servicing agreement to maintain amounts received by it in a segregated account in trust for the relevant investment interest owner and remit such amounts on the first day of each month, and then the Province subsequently passed a regulation under 16(4) of the Act to the effect that IESO could remit on an annual basis, that would create a problem.

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TORYS
LLP

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Hi, Michael and Les. Sorry to put you both on the spot. We’re having a fair bit of trouble with an unauthorized subdelegation issue relating to s.9(2) of the proposed current draft of the Regulation. The problem is that while s.16(4) of the Act allows us to make regulations related to IESOs remittances, it does not provide the express authority to delegate those requirements further down to other instruments (which are created by other, unknown, entities via commercial agreements).

We would propose that we remove s.9(2) altogether and allow the commercial agreements to simply specify the requirements.

OPG/Tory's please let us know, but without a solution to this subdelegation problem, I think this is the only way forward.

Best,

James

James P. H. Rebob

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