

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Dear Mr. Katz:

**FILE NUMBER SR-NYSE-2004-62**

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CIBC Mellon Trust Company (CIBC Mellon) appreciates the opportunity to comment on the New York Stock Exchange's (NYSE) proposed changes to Rule 496. CIBC Mellon acts for 36 NYSE listed issuers, as well as approximately 600 other Canadian issuers, including major corporations and financial institutions.

We understand that this week's discussions between the NYSE and representatives of the Security Transfer Association could result in changes to the proposed revisions, which may address some of our concerns. However, we wish to register our issues prior to the comment deadline to ensure they are considered.

Our concern relates to the proposed wording below, with respect to securities mailed by a registered clearing agency:

(3) Securities mailed by a clearing agency registered with the Securities and Exchange Commission under Section 17A of the Exchange Act (a "Clearing Agency") (via U.S. mail or an express mail service) to a transfer agent before the close of business on a record date or any other date involving the rights of a securityholder must be recorded as having been received as of the mailing date so as to establish the transferee's rights as of that date.

We believe this change, as it is worded, will expose transfer agents (particularly those outside New York) and their clients to liability, to the extent that items in the mail may not arrive for some days after the record date. The establishment of record dates often derives from an issuer's incorporating statute and has always been interpreted as meaning that items received after the close of business on that date must not be included. Our clients are currently under pressure to shorten the time between record date and payable date (some timing is now as short as five days). Trying to have our clients comply with the proposed change may put them in breach of applicable Canadian statutes and business practices.

The proposed rule change could also:

- Create a special privilege for one type of holder, which is not available to all holders; exposing our clients to challenges from other holders who are required to meet the specified record date.
- Establish different standards for issuers depending on the stock exchanges where they are listed. This could result in confusion for market participants regarding deadlines for processing transactions.
- Negatively impact time sensitive deliverables - the reference to "other date involving the rights of a security holder" is wide enough to include the expiry of a corporate action. The uncertainty of waiting for securities to arrive from the depository by mail will put an unreasonable burden on the parties involved in corporate actions, such as takeover bids. Theoretically this delay could put transfer agents in the position of having to adjust their records after payable date for an entitlement.

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- Impact operational efficiencies as transfers received from the DTC will usually involve large numbers of shares, and substantial changes to the records will be required in a condensed period of time before the record can be closed.
- Impact a transfer agent's ability to close the books on record date, as delivery of transfers could be days, especially for international mail, and are not guaranteed.

For reasons identified above, we don't believe it is appropriate to create an exception for the depository to improve their position against other shareholders, and we recommend that the proposed change not be adopted.

If it is decided that some dispensation for the depository is acceptable, we believe certain restrictions should be established to protect transfer agents and their clients from uncertainty, at a time when the balancing and finalizing of records is critical. In this situation, we suggest that the rule be revised to:

- Exclude record dates or other dates relating to corporate actions such as take over bids, tender officers, issuer buy backs.
- Require the depository to use an overnight courier and clearly mark the shipment as being a record date shipment.
- Specify that a transfer agent is not required to accept items received after the close of business, on the first business day following the record date.

We appreciate the opportunity to present these concerns, and we are available to discuss them further if required.

Yours very truly



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