



March 20, 2003

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street NW
Washington, DC
29549-0609

Dear Sir:

**Re: Submission of the Canadian Bar Association on the Proposed Rule: Implementation of Standards of Professional Conduct for Attorneys
File Number: S7-45-02**

In my capacity as President of the Canadian Bar Association (“CBA”), I submit this response to the SEC’s request for comment on the Proposed Rule: Implementation of Standards of Professional Conduct for Attorneys, 17 CFR Parts 205 and 249 (“alternative proposal”).

The alternative “reporting out” proposal, while an improvement in its details over the original “noisy withdrawal” proposal, is not substantively different in its effects and continues to invade the special relationship of trust which must prevail between an attorney and his or her client.

In either case, a conclusion by an attorney concerning a material violation would dictate the attorney’s withdrawal from the client and an obligation to report to the SEC, whether on the part of the attorney or of the issuer. In either case, the threat of triggering the reporting obligation will inhibit candour in the solicitor-client relationship and will thus undermine the traditional role of lawyers as a motor towards compliance with the law.

Further, the alternative proposal is equally offensive of the principles of a client’s right to counsel of choice and of solicitor-client confidentiality, by forcing the attorney’s withdrawal and requiring the client-issuer to report the withdrawal to the SEC.

In addition, the CBA affirms its earlier position that it is unacceptable for any government agency to dictate when a lawyer must abandon his or her client. This is a matter for the lawyer and his or her Bar, which must remain independent from the dictates of a government agency.

It is also unacceptable for a government agency of the United States to seek to set the ethical standards of Canadian lawyers, who are ably and properly regulated by their Canadian law societies. The SEC has purported to exempt, in a certain measure, lawyers from outside the United States from the SEC's new requirements. It is undeniable, however, that a Canadian lawyer working in concert with American counsel will have to consider the ramifications for the client of the American counsel's being forced to withdraw from the file if he or she formed a view that there had been a material violation, and it is undeniable that the client's candour even with the Canadian counsel will thereby be affected.

We recognize that the alternative "reporting out" proposal may not implicate the attorney's ethical duty of confidentiality in that section 205.6(d) of the Final Rules provides that attorneys practicing outside the United States are not required to comply with the Rules to the extent that such compliance is prohibited by applicable foreign law (though we question whether "foreign law" is broad enough to include ethical rules of Canadian law societies). In any case, this is not enough of an improvement to guarantee that clients will be able to be as candid with their Canadian counsel as they should be.

All this said, we support the SEC's intent to raise the evidentiary standard in the alternative proposal, by requiring the attorney to "reasonably conclude" that there is "substantial evidence" of a material violation, rather than simply to "reasonably believe" as was required in the original "noisy withdrawal" proposal. Indeed, the CBA would encourage the SEC to adopt this standard if it decides to retain any requirement that an attorney abandon his or her client.

Finally, the CBA supports the modification in the alternative proposal that the issuer may be permitted not to disclose the attorney's withdrawal if a committee of independent directors of the issuer determines, after receiving independent legal advice, that the withdrawing attorney acted unreasonably or that the issuer has implemented an appropriate response after receiving the attorney's withdrawal notice.

We thank you for your invitation to express our views.

Please feel free to contact me should you have any questions in connection with this submission.

Yours truly,

A handwritten signature in black ink that reads "Simon V. Potter". The signature is written in a cursive, flowing style.

Simon V. Potter
President
Canadian Bar Association