January 26, 2021

The Secretary

Ontario Securities Commission

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<u>Re: Proposed Amendments to OSC Rule 13-502 Fees, OSC Rule 13-503 (Commodity Futures Act) Fees and Proposed Changes to their Companion Policies</u>

Let me acknowledge in advance that this submission would be more aptly described as a query rather than a commentary, but I do believe that it raises an important issue in the context of this fee proposal. Before posing my question, I would like to acknowledge two considerations that are fundamental in the setting of fees by the OSC. The first, and one that I regularly witnessed when I was previously involved in the fee setting process, is that the OSC adheres closely to its four guiding principles when it develops its fee proposals. Furthermore, these principles - recovery of regulatory costs, ease of administration, fair and proportionate fees, and fee predictability – offer a transparent and measurable means to assess the 'appropriateness' of the proposed fees.

The second consideration, and one that my experience suggests receives less attention, is that all the fees levied by the OSC are ultimately borne by investors. Notwithstanding that the actual fees are levied on reporting issuers, registrant firms and certain unregistered capital market participants, specified regulated entities and designated rating organizations, they are a cost of doing business that each of these organizations incorporates in the cost of the service it provides or the products it offers. I am not intending to be critical in highlighting this reality. In fact, to the extent that the activities of the OSC contribute to a more fair and safe environment for investors, it is appropriate that investors shoulder this cost.

Turning to the current fee proposal, I want to begin with the new participation fees for entities engaged in the trading of OTC derivatives. I cannot speak with any knowledge or confidence about whether the magnitude of these proposed new fees is too high, too low or just right. What I can say is that the OSC, adhering to its guiding principles, has proposed a new fee designed to recover the costs it will need to incur in order to grow and mature its derivatives regulatory oversight program. Also, while these new fees, like all others, will be passed through to investors, to the extent that these investors will be able to operate in a more fair and safe derivative marketplace, this cost is not inappropriate.

While I do not have a problem with the proposed new OTC-related fees, I am unclear why the same fee-recovery approach was not adopted in respect the other new responsibilities that the OSC has taken on since the fee rule was last amended. In particular, in response to government directives, the OSC has set up a new Office of Economic Growth and Innovation, has seen its mandate expand to include the fostering of competition and capital accumulation and has committed to making significant governance and structural changes. Independent of their wisdom or merit, meaningful investments in capital and staff will be required to achieve an effective implementation and rollout of these new and challenging initiatives. Disconcertingly, the proposed fee amendments make no allowance for recovering any costs associated with these new responsibilities, and my question is why?

The absence of any new fees earmarked to support these new responsibilities and initiatives implies one of two possible conclusions and neither are satisfactory. Either the OSC is not planning to allocate any resources to these activities, in which case it is not clear why they have taken them on; or alternatively, and more plausibly, the OSC plans to reallocate resources from exiting regulatory activities to support these new initiatives. If the latter is the case, it appears that the OSC has abandoned its guiding principles for setting fees and, more importantly, has lost sight of the fact that investors, who ultimately pay the fees, expect and deserve regulatory fairness and protection in return. To reallocate resources away from regulatory and enforcement activities to create an Office of Economic Growth and Innovation, to foster capital formation and to restructure the OSC does not appear to be a fair trade-off for investors.

At a minimum, I would expect the current fee proposal to quantify the costs associated with the new responsibilities that the OSC has been directed to take on together with an explanation and rationale setting out how they will be funded. More substantively, given the nature of many of the changes it is not obvious why they should be borne exclusively by investors. When it introduced these changes, the government consistently identified them as initiatives designed to promote the growth of the Ontario economy. On this basis, the costs associated with implementing and pursuing them should fall on all Ontarians and not investors alone. Typically, these types of undertakings are supported by government grants or subsidies. In the absence of this type of government support, why has the OSC considered it appropriate to allocate the full cost of these new initiatives on investors?

Sincerely,

Harvey S. Naglie