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**November 21, 2012**

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8  
E-mail: comments@osc.gov.on.ca

**Dear Sirs / Mesdames,**

**RE: Request for Comments Proposed Amendments to OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees**

We submit the following comments in response to the Notice and Request for Comments published by the Ontario Securities Commission (the "OSC") on August 23, 2012 ((2012) 35 OSCB 7801) with respect to proposed amendments to OSC Rule 13-502 Fees. Thank you for the opportunity to comment on the proposed amendments.

As an overall comment, we strongly encourage the OSC to strive ensure that an increase in fees payable by market participants is commensurate with an increase in the financial benefit obtained by market participants through their activities in Ontario capital markets. Increasing regulatory fees while market participants continue to struggle with a lack of certainty in the financial markets would impose an undue burden on many market participants. We also encourage the OSC to strive to implement a fee structure that is less complicated to interpret and apply. While we understand the significance to the OSC of fees paid by market participants and acknowledge they are a necessary cost of doing business in Ontario capital markets, market participants should not be required to expend an unwarranted amount of time or resources in interpreting and applying these requirements. They should also not have to spend additional time and resources filling out duplicative or unnecessary forms in connection with paying these fees. In our view, part of the OSC's priorities with respect to fees should include implementing a less complicated structure, and providing straight forward and consistent instructions that market participant can easily interpret and apply.

Our specific comments with respect to the proposed amendments are set out below.

**I. Part 1- section 1.1 Definitions**

**1. Subsection (b) ("acting as an investment fund manager") should be removed from the definition of "capital markets activities"**

As there is now a requirement to either register as an investment fund manager in Ontario or to rely on one of the exemptions provided by Multilateral Instrument 32-102, investment fund managers will already be included within the definition of "capital markets activities" at

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subsection (a) (“activities for which registration under the Act or an exemption from registration is required”). Accordingly, the continued inclusion of subsection (b) is unnecessary and leads to confusion.

In the event subsection (b) is not removed from the definition of “capital markets activities”, then for clarity and in order to conform with the definition of “Ontario Percentage”, the wording in subsection (b) should be expanded as follows: “acting as an investment fund manager **in Ontario**” [emphasis added].

## 2. Modify subsection (b) of the definition of “previous fiscal year”

As currently drafted, subsection (b) is confusing. As an example, read subsection (b) assuming an unregistered exempt international firm’s year-end is December 31st

where the participation fee becomes payable by a firm under subsection 3.1(1) on December 31 of a calendar year, the last fiscal year of the participant ending in the calendar year.

As the unregistered exempt international firm’s year ends on December 31, 2012, the “last fiscal year of the participant ending in the calendar year” could be interpreted as being December 31, 2012 (due to the fact that December 31, 2012 coincides with both the ending of the fiscal year and the calendar year).

If in this example, the “previous fiscal year” was meant to be December 31, 2011, then paragraph (b) should be modified to read:

where the participation fee becomes payable by a firm under subsection 3.1(1) on December 31 of a calendar year, the last **completed** fiscal year of the participant ending **prior to December 31** in the calendar year” [emphasis added].

## 3. Fix the disconnect between the definition of “reference fiscal year” in the proposed Rule and the Companion Policy

The proposed Rule defines “reference fiscal year” to mean, in respect of a participant’s participation fee: “...the participant **was a reporting issuer, registrant firm or unregistered capital markets participant** [emphasis added]... However, Part 2 of the CP at section 2.2(1.3)(2) states: “... (a) where the market participant **was not a reporting issuer, registrant firm or unregistered investment fund manager** [emphasis added](at the end of that fiscal year; and...”

## II. Part 3-Capital Market Participation Fees

### 4. Capital market participation fees should remain based on, and reflective of, a firm’s actual participation in Ontario Capital Markets.

While we understand the need for predictability of OSC fee revenues, we have difficulty concluding that a stagnant fee based on a “reference fiscal year”, which may or may not be

indicative of a participant's actual capital markets activity, would be a fair way to achieve this goal. We also note such an approach does not seem to capture the increased capital market participation of a firm that is registered in one category of registration in the "reference fiscal year" and later adds additional categories of registration and engages in additional capital market activities or vice versa. If the concept of a "reference fiscal year" is maintained, the proposed Rule should also have a mechanism for re-calculating the fees payable where the reference fiscal year was significantly more or less successful than subsequent years. We have the same comment under Part 2 of the proposed Rule with respect to use of a "reference fiscal year" for the calculation of corporate finance participation fees.

#### **5. Clarify obligations for multiple participation fees**

We recommend that guidance is provided on the whether a firm relying on more than one exemption (e.g. the international dealer exemption and the unregistered international investment fund manager (UIFM) exemption), is required to file Form 13-502F4 and pay capital market participation fees twice on its total Ontario revenue, e.g. once in reliance on the international dealer and/or international adviser exemption by December 1, and once within 90 days of the UIFM's year end. If a firm relying on more than one exemption is required to file twice, we recommend clarification that in such cases the Ontario percentage should be calculated as a function of the specific revenues attributable to the exemption being relied upon (e.g., when paying as an international dealer, based on revenues generated from dealer activities in Ontario; when paying as an UIFM, based on revenues generated from IFM activities in Ontario). This is not currently the case as the definition of "capital markets activities" captures all streams of revenues in the same definition.

### **III. Part 4-Activity Fees**

#### **6. Forms 45-501F1 and 45-106F1**

We do not support the elimination of the exemption for payment of the \$500 fee that applies in connection with the filing of Forms 45-501F1 and 45-106F1 for issuers that are subject to participation fees and for investment funds if their investment fund managers are subject to participation fees. These issuers and investment funds already contribute annual participation fees and other activity fees, when applicable, and should not be subject to additional fees when raising capital in the exempt market. If this exemption is not eliminated, the fee schedule should still clarify whether a late filing penalty applies to the filing of these forms, including for issuers or investment funds that are exempt from the initial \$500 payment.

#### **7. Application to cease to be a reporting issuer under subclause 1(10)(a)(ii)**

We do not support the application of a \$1,000 fee for an application to cease to be a reporting issuer where the application falls under the "simplified procedure" under OSC Staff Notice 12-703 or CSA staff Notice 12-307.

**8. Information requests should remain based on a fixed fee**

We do not support the time based approach proposed by the Commission. Such an approach will lead to uncertainty and could cause the Commission to expend valuable resources which could later be unrecoverable. We support a continuation of a fixed fee approach, however, in the event that the time based approach as proposed is implemented, we suggest setting a set minimum fee and a notice requirement in the event the fee would surpass the minimum fee based on a time approach.

**IV. Form 13-502F4**

**Part III-Advisers, Other Dealers and Unregistered Capital Markets Participants**

**9. Clarify the deduction at line 2 of Form 13-502F4**

We recommend that Form 13-502F4 be reviewed for the purposes of clarifying or providing guidance on line items 2 and 9. Given that the definition of “capital markets activities” in the Rule itself is “Ontario-specific” (e.g. related to activities for which registration or an exemption in Ontario is required”), but that the definition of “Ontario percentage” refers in paragraph (c) to “capital markets activities in Ontario”, there is confusion as to whether the deduction in line 2 refers to revenue not attributable to capital markets activities in any jurisdiction or revenue not attributable to capital markets activities in Ontario only.

**10. Modify fee table in Appendix B of the Rule**

Where a firm generates no revenue in Ontario, it should not be required to pay a minimum capital market participation fee. Therefore the fee table (Appendix B of the Rule) should be modified to “\$1.00 to under \$250,000” rather than “\$0.00 to under \$250,000” as currently drafted.

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This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

Thank you for the opportunity to comment on these proposals.

Yours truly,

Kathleen G. Ward  
Ramandeep K. Grewal  
Martine Ordon