

June 7, 2001

Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario  
M4H 3S8

Attention: Mr. John Stevenson, Secretary

Dear Sirs:

**Re: Request for Comments 11-901 ? Concept Proposal to Revise Schedule 1  
(Fees) to the Regulation to the Securities Act (Ontario)**

On March 30, 2001, the Ontario Securities Commission (?OSC?) published for comment a Concept Proposal to revise Schedule 1 (Fees) to the Regulation to the *Securities Act* (Ontario) (?the Concept Proposal?). We are submitting comments on the Concept Proposal on behalf of the following affiliates of the Royal Bank of Canada: Royal Mutual Funds Inc. (?RMFI?), the manager and principal distributor of the Royal Mutual Funds, registered as a Mutual Fund Dealer, RBC Dominion Securities Inc. (Private Client Division) (?RBC DS?), a wholly-owned subsidiary of the Royal Bank of Canada registered as an investment dealer or its equivalent across Canada and the following registered investment counselling business units of RBC Investments, the wealth management division of the Royal Bank of Canada - RBC Global Investment Management Inc. (?RBC GIM?), RBC Private Counsel Inc. (?RBC PC?) and RT Capital Management Inc. (?RT Capital?). RBC GIM is registered as an Adviser in the categories of Investment Counsel and Portfolio Manager. It is also a Limited Market Dealer (Conditional) and a Commodity Trading Manager under the *Commodity Futures Act*. RBC PC is also registered as an Adviser in the categories of Investment Counsel and Portfolio Manager and as a Limited Market Dealer. RT Capital is registered as an Adviser in the category of Investment Counsel and Portfolio Manager and is also registered as a Limited Market Dealer.

### **General Comments**

We wish to preface our remarks by stating that we are generally supportive of the OSC?s

efforts to reduce and streamline the fees currently charged to market participants to more accurately reflect the OSC's cost of providing services. We concur that the existing transaction-based fee schedule is not only complex, but is also both difficult to interpret and regulate.

In our opinion, fees generated by investment vehicles should reflect the cost of regulating them. The proportion of OSC revenues generated as a result of the increased popularity of the use of mutual funds and pooled funds has greatly exceeded the cost to the OSC of regulating these investment products.

Moreover, we wish to point out that there is generally a lack of harmonization of the fees currently charged to registrants, including fees charged not only by the OSC, but by self-regulatory organizations (SROs) like the Investment Dealers Association (IDA) and the Mutual Fund Dealers Association (MFDA). In view of the fact that registrants must pay fees to their respective SROs to cover the cost of regulation by these entities, it should follow that the OSC's cost of regulation of registrants like RMFI and RBC DS should be reduced, as should the fees payable by these registrants to the OSC.

We would also like to voice our general concern with the relatively short response timeframe that was provided in the Request for Comments (60 days) in view of the complexity of the new fee models proposed under the Concept Proposal. We also note that in the Background to the Concept Proposal it states that "the fees may change, perhaps substantially, before the OSC's fee schedule is finalized. Accordingly, we believe that when a redraft of the Concept Proposal is published for comment in the future, a more substantive comment period should be provided, along with a finalized fee schedule.

Finally, we would like to emphasize that any new fee model will only be useful if it is adopted on a national basis. Since harmonization in this area is critical, we strongly urge the OSC to continue working with representatives of the Canadian Securities Administrators to undertake a similar review of the fees charged in other jurisdictions across Canada to develop a harmonized fee model.

## **Specific Comments**

### *Participation Fees*

You have specifically requested comments relating to whether or not the participation fee/activity fee model is appropriate. The Notice to the Concept Proposal states that participation fees are intended to represent the benefit derived by market players from participating in Ontario's capital markets. Activity fees, on the other hand, are intended to represent the direct cost of OSC Staff resources expended in undertaking certain specified activities requested by market participants, such as applications for discretionary relief, review of prospectuses and processing of new applications for registration.

It is our understanding that firms registered as dealers or advisers will be charged an annual participation fee. In addition, fund managers that are not registered with the

Commission in any capacity will also be charged an annual participation fee. The participation fee will replace many of the smaller fees presently charged to registrants relating to changes in their registration or to their mutual fund prospectuses during a year.

In our opinion, the concept of a tiered participation fee based on gross revenues can lead to unfair results, since two registrants within the same corporate entity may end up paying a higher participation fee than one registrant with the same revenue base. For instance, if one registrant has gross revenues in Ontario of \$400 million, it would have to pay an annual participation fee of \$350,000 under the new proposal, while two registrants with gross revenues of just under \$200 million each would pay an annual participation fee of \$200,000 each (a \$400,000 combined total). In the interest of fairness, we recommend that related parties such as RBC GIM and RMFI, or RBC DS and Royal Bank Action Direct, should be able to consolidate their gross revenues for the purpose of determining their annual participation fee.

In addition, the tiers at the higher revenue levels are too broad and all encompassing, which will lead to registrants with largely divergent gross revenues paying the same participation fee. We suggest that this problem can be remedied by discarding the "fixed tier" approach in favour of a "percentage of revenue" approach similar to the MFDA's fee structure. Under this latter approach, a fixed percentage of revenue would be payable within defined tiers as opposed to having a fixed dollar fee payable within each tier.

We note that the new fee proposals represent a fundamental shift in who bears the costs, from investment products to registrants. While registrants such as RBC GIM will face higher fees under the new fee proposals, on the face of the Concept Proposal, it appears that RMFI's fees will be lower. In fact, RMFI may end up paying more fees, since fees for prospectus renewals etc., which are currently charged back to the mutual funds that they manage, will be subsumed in the participation fee, which may not be chargeable to the funds. The Concept Proposal indicates that activity fees may be charged not only to registrants, but "to their investment funds, where applicable". We note that similar language is not used with respect to participation fees and seek clarification as to whether or not a fund manager can charge the participation fee back to the fund.

Regarding the use of the provincial tax allocation for the allocation of revenue to Ontario, we would like to point out that the legal and financial structure of the registrant may not accurately represent where the fee revenue is derived from. For example, while the fees generated from the distribution of Royal Mutual Funds result from the investments of residents in all provinces, RMFI is taxed 100% in Ontario because this is RMFI's sole place of business from a tax perspective. To fulfil the role of manager and dealer of Royal Mutual Funds RMFI contracts certain services from other members of RBFG, including contracting RBC GIM for investment advisory services and Royal Trust for custodial services. RMFI earns a taxable income after payment for services and this income is taxed 100% in Ontario. For the allocation of RMFI's revenue to Ontario, a more representative measure is the relative provincial allocation of the fees generated from the distribution of Royal Mutual Funds. Based on this measure, about 41% of Royal Mutual Funds are distributed to Ontario residents. To do otherwise could result in double payment of fees where other provinces use another methodology for charging fees, such as revenues based

on residence. This illustrates the importance of attaining harmonization in this area across the country.

It is not clear whether pooled funds will have to pay an annual participation fee under the new proposals. If so, it would appear that they are being treated differently from prospectus-qualified funds that only have to pay activity fees. We assume, but it is not clear in the Concept Proposal, that neither mutual funds nor pooled funds will have to pay an annual participation fee.

We also note that in certain instances, the payment of a participation fee may result in inequity among market players. It appears that registrants in the category of IC/PM, such as RBC GIM will pay higher fees under the Concept Proposal. As previously stated, we support the thrust of the proposal, which is intended to reduce the overall fees collected by the OSC and simplify the fee schedule, however, we do not understand why advisers should pay more and not benefit from the overall fee reduction which most, if not all other categories of registrants will receive. Our concern is that registrants in the IC/PM category of registration may end up subsidizing other registrants under the new proposal. Furthermore, the increase in fees for advisers does not seem to add any value to the services rendered to the registrant or to the protection of clients.

This inequity stems from the introduction of a ?participation fee? based on a registrant?s gross revenues or a reporting issuer?s market capitalization. While this may be reasonable on a conceptual level, as with the ?activity fees?, the participation fees paid by registrants and issuers should bear some relationship to the OSC?s costs in relation to the regulation of registrants and issuers, since one of the OSC?s stated primary purposes in the Concept Proposal is to more accurately reflect the OSC?s cost of providing services. For example, if the OSC?s costs associated with the regulation of IC/PMs represent a certain percentage of the Commission?s total expenses, then total participation fees paid by IC/PMs should make up a similar percentage of the OSC?s total revenues from participation fees. Such an analysis does not appear to be reflected in the Concept Proposal, which we consider necessary in order to be able to comment on the appropriate split between revenues raised under the Corporate Finance Model and the Capital Markets Model.

We note that in determining gross revenues, sub-advisory fees paid to another Ontario registrant can be deducted, while fees paid to non-registrant sub-advisers (typically international sub-advisers with expertise in foreign securities) cannot be deducted. This would seem to penalize advisers, who in the best interest of their clients seek investment expertise outside of Ontario. The Concept Proposal is silent on the policy rationale behind this provision.

### Activity Fees

We understand that ?activity fees? are intended to represent the direct cost of OSC Staff resources expended in undertaking certain activities requested by market participants, such as reviewing prospectuses and processing applications for discretionary relief or new

registration documents. In the Overview to the Concept Proposal it states that activity fees will be charged to registrants (and to their investment funds, where applicable) for certain specified activities undertaken by OSC Staff at the request of the registrant and will be flat rate fees based on the average cost to the OSC of providing the service. It also states that any Director, or the Executive Director of the OSC will have the ability to impose additional activity fees or increase any activity fee in applicable circumstances. We would appreciate clarification as to what is meant by the term "in applicable circumstances".

We support the aspects of the Proposal that many of the smaller fees currently charged for specified activities will no longer attract a charge, including fees for amending certain registration particulars, or for amending mutual fund prospectuses, however, we note that these fees are now subsumed into the annual participation fee.

With respect to the registration-related activities that will attract an activity fee, we do not understand why the activity fee for a new registration of a firm would be \$800, while the registration of a new registrant firm resulting from an amalgamation of registrant firms would result in a \$6,000 activity fee. The latter fee seems inordinately high for no apparent reason.

We would also appreciate clarification regarding whether or not activity fees would be charged twice if a firm or individual is registered under both the Ontario *Securities Act* and the *Commodity Futures Act*. We submit that to pay the fees under both acts would be duplicative and this can be easily addressed by including a credit in the fee schedule under the *Commodity Futures Act* for all participation fees paid under the *Securities Act*.

### Other Comments

The Economic Analysis Overview provided in Appendix F appears to be primarily concerned with the predictability of revenues under the proposed model and setting an appropriate rate schedule to avoid any changes to the rate schedule during an economic downturn. We note that the focus is entirely on rate increases to address revenue decreases rather than reducing costs to match reduced revenues. This suggests that the level of rates will probably be set higher than necessary to build in a cushion in the event of a downturn.

We respectfully suggest that cost reductions are the more appropriate method of dealing with an economic downturn since the level of capital markets activity typically declines with the economy (e.g. fewer initial public offerings and prospectuses to review, fewer new registrations, etc.), which implies fewer OSC staff resources needed. Consequently, it is our view that the rate schedule should be set at the level necessary to provide enough revenue to cover the OSC's costs in today's economic environment. Increased economic activity should produce increased revenues to handle increased costs, while decreased revenues should be addressed by cost reduction measures and not by a built in cushion in the rate structure.

### Conclusion

In conclusion, while we fully support the OSC's initiative in attempting to revamp the current Fee Schedule and reduce fees charged to market participants, we reiterate that any new fee model will only be of assistance to most major market participants if adopted on a national basis.

Thank you for providing us with the opportunity to comment on the Concept Proposal. As requested, we are also enclosing a diskette with our submission in WordPerfect 8.0. If you have any questions, or require additional information, please do not hesitate to contact the undersigned, or Lori Lalonde, Senior Counsel, at (416) 955-7826.

Yours truly,

Sandra Jorgenson  
Assistant General Counsel

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