

June 11, 2001

Ontario Securities Commission  
c/o John Stevenson, Secretary  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario  
M4H 3S8

Dear Mr. Stevenson,

Re: Schedule 1 (Fees) to the Regulation to the Securities Act (Ontario)

We are writing in response to the request for comments with regard to the captioned matter, which was published in the March 29 edition of the OSC Bulletin (the "Bulletin"). We wish to thank the Commission for providing us with the opportunity to comment on the proposed fee schedule and granting us a few extra days to complete and present our views. A copy of this letter can be found on the enclosed diskette.

As an initial statement, we wish to offer our support for the effort to revise the schedule of fees which are payable by participants in Ontario's capital markets. We are quite pleased that the concerns raised by the mutual fund industry over the last several years have been addressed as part of the exercise of putting forth to the proposed fee schedule.

Despite this general support, we believe that the proposed fee schedule requires revision to address two significant concerns.

The stated premise underlying the adoption of a participation fee, that the fee should be based on a measure of a market player's use of the capital markets, is supported in principle. We are of the view that basing the participation fees for a registrant on its gross revenue attributable to Ontario is an inappropriate measure for the application of this principle. While it is stated that Staff concluded that gross revenue was the most relevant indicator of the registrant's use of the capital markets and would be the easiest measure for registrants to calculate and report, the basis for this conclusion is not

described or discussed in any matter which would permit a measured assessment of this conclusion.

The concerns that arise from the use of gross revenue as a measure or proxy for a market player's use of the capital markets are as follow.

The allocation of gross revenue for tax purposes is determined within each mutual fund organization to meet tax planning goals and internal income and expense allocation drivers. A change in the allocation of gross income by market players would result in an unforeseeable change to the "tax" base on which participation fees are applied. This would be contrary to one of the guiding principles of the new fee schedule, the reduction of the vulnerability of OSC revenues.

Further, the allocation of income takes into account many aspects of a market player's activities, which may not directly relate to participation in Ontario's capital markets, but rather reflect the business structure that the registrant has adopted. We expect that many organizations have centralized a variety of head office and other core functions and as such have made internal expense and revenue allocations to cover the cost of such expenses. This will result in gross revenue being allocated to Ontario and thus increasing the market player's participant fee, despite that the expenses associated with this revenue are incurred to support activities outside Ontario. As gross revenues will be allocated to provinces with head office locations, we anticipate that those CSA jurisdictions that do not have head office locations will be understandably reluctant to adopt the Fee Proposal. We believe that a better measure of a registrant's participation in the capital markets in any particular jurisdiction is the value of securities or assets under administration for residents in such jurisdiction. In the case of the mutual fund industry, the obligation to provide certain tax reporting to shareholders and unitholders will make this determination relatively straightforward. As the role of Commission is ultimately to protect investors in Ontario it strikes us that the measure of the investments owned by Ontario's investors is a better fundamental starting point for determining participation fees.

We have noted that it is suggested on page 1973 of the Bulletin that the Director and the Executive Director will have the jurisdiction to reduce or refund the participation fee payable by a market player on application to the OSC. The inclusion of such a provision is commendable, but in the absence of any discussion as to the situations where such a reduction or refund will be considered or granted or the principles that will guide the Executive Director or Director in the exercise of this discretion, it offers little comfort. It is also not clear that this discretion will apply to the participation fee to be levied with regard to the "Capital Markets" section of the proposed fee schedule.

We are pleased that the Commission has taken steps to ensure that its fee schedule more closely reflects its costs in attending to its mandate. However, many of its costs have

been “downloaded” to SROs on the dealer side. In this vein we are concerned that the schedule fails to take into account the fees paid by members of SROs that are outside of the proposed fee schedule. If participation fees are intended to fund the Commission’s role in regulating the capital markets, then the decision of the OSC to delegate responsibility for regulation to an SRO would suggest that either the OSC should fund the activities of the SRO, or alternatively, the participation fee of an SRO member should be reduced by the amount of any fees paid to an SRO. Unless the fees paid by market players who are members of SROs are recognized as financing the Commission in the fulfillment of its mandate, SRO members will be in effect subsidizing the market players who are not SRO members. The Commission directly regulates non-SRO market players and the costs incurred by the Commission in such direct regulation must be higher than those incurred for indirect regulation of SRO members. If the participation fees for both members and non-members of SROs are based on gross income without consideration of SRO fees, then the result will not be “increased equity amongst the various market players paying fees to the OSC” as suggested on page 1973 of the Bulletin.

We are most hopeful that our comments will be of assistance to the Commission and Staff . If any questions or concerns should arise from our submission, we would ask that you contact the undersigned at 416-866-2019 or Walter Pavan at 416-866-5203.

Yours truly,

Scotia Securities Inc.

Per: Richard E. Austin  
Deputy Head of Compliance, Wealth Management