

September 27, 2002

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON
M5H 3S8
Email: jstevenson@osc.gov.on.ca

Dear Mr. Stevenson:

Re: Ontario Securities Commission Proposed Rule 13-502 – Fees (the “Concept Proposal”)

Introduction

We have reviewed the Concept Proposal and thank you for providing us with the opportunity to comment on same. While we strongly support the intention of the Ontario Securities Commission (the “Commission”) to reduce the overall fees charged to market players, to simplify, clarify and streamline the current fee schedule, and to ensure that fees charged more accurately reflect the Commission’s cost of providing services, we continue to have significant concerns with the structural impact of the Concept Proposal which we believe will fundamentally change the economics of the industry as a whole.

We, along with a number of other market participants, undertook to review the Concept Proposal during the previous request for comments and provided the Commission with the benefit of our perspective. However, the most recent version of the Concept Proposal does not appear to have incorporated or given serious consideration to many of the submissions made during that previous comment period. Prior comment on the Concept Proposal raised important and clearly contentious issues and we had hoped for a more thorough consideration and discussion of industry comments generally.

After much thought and careful analysis, we wish to offer the following comments on the Concept Proposal:

Shift in Fees/Expenses to Mutual Fund Managers

In reviewing the Concept Proposal and its actual impact upon the relationship between our industry and Canadian investors, we find it difficult to escape the conclusion that the Commission is seeking to unilaterally alter the relationship between investors and fund managers by charging participation fees to fund managers that cannot be recouped from either the funds themselves or investors.

The implications that arise from an economic restructuring of the relationships in the industry are among the most obvious and significant of the potential consequences of the Concept Proposal. We are disappointed to see that the structural impact of the Concept Proposal has either not been given serious consideration by the Commission, or at least has not been made the subject of frank and open discussions or even acknowledged as an issue meriting further investigation and dialogue with the industry.

The organization of our business is tied significantly to how costs are allocated. We make product pricing decisions, organize complex business structures and establish contractual relationships on the basis of how certain costs, such as regulatory fees, are shared between the fund manager and the mutual funds themselves.

The flow-through character of regulatory expenses is already clearly disclosed to individual investors and we are of the view that the Concept Proposal would inappropriately alter the pre-existing contractual relationship that exists between investors and fund managers.

Staff responses to concerns surrounding the inability to flow-through regulatory fees to the funds indicate that nothing in the Concept Proposal prevents firms from asking unitholders for an increase in management fees payable by the funds.

We acknowledge that managers could theoretically resort to obtaining investor approval to raise management fees so as to be compensated for the new fees that managers will be made to bear. However, having to seek unitholder approval to increase management fees would be redundant insofar as the real purpose of this request would effectively be to facilitate the flow-through of regulatory expenses. Attempting to recapture the cost of participation fees in this manner would unjustifiably compel fund managers to expend additional resources simply to maintain the status quo.

Gross Revenue Attributable to Ontario

Dealers, advisors, registrants and each unregistered mutual fund manager (the “subject firms”) are to pay an annual participation fee based upon the proportion of gross revenues for the most recently audited financial year that is attributed to the entity’s business in Ontario for tax purposes.

We remain concerned with this proposed method of income attribution for the purpose of calculating participation fees in the province of Ontario, as we believe the adopted methodology to be seriously flawed.

In our view, the definition of Ontario Percentage as set out in Part 1 of the Concept Proposal, prejudices firms with a permanent establishment in Ontario. Ontario-based mutual fund companies would, under the Concept Proposal, pay fees to this province that are inappropriately high, while still being required to pay fees to other provinces that are based on net or gross mutual fund sales. This, in our view, would clearly be an inequitable outcome as it would result in a regulatory fee burden that is both duplicative and unjustifiably oppressive to the operation of subject firms.

We think the Ontario Percentage determination for firms without permanent establishments in Ontario articulates the more equitable test for both Ontario-based and non Ontario-based firms. The most appropriate allocation methodology should use the percentage of assets that are Ontario-based (“Ontario assets” being quantified and calculated on the basis of average daily assets over a year attributable to the capital market activities in the province of Ontario).

We are also concerned that new firms looking for a jurisdiction in which to establish primary operations will be discouraged from selecting Ontario as participation fees, in addition to the cost of establishing a mutual fund company in this province, will likely provide a strong disincentive to accessing our capital markets.

Conclusion

It is our view that the Concept Proposal will fundamentally change the economics of the industry as a whole. As a result, it is imperative for the Commission to address the issues and concerns raised by the industry and come to a resolution in a more considered manner.

Thank you for the opportunity to submit our comments. Should you have any questions, please call Darcy Lake, Director, Regulatory Affairs & Compliance at 416-867-5724 or me at 416-867-6455.

Yours truly,

“signed”

Darcy Lake
Director, Regulatory Affairs & Compliance
BMO Investments Inc.