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BY E-MAIL AND REGULAR MAIL September 27, 2002

Ontario Securities Commission
20 Queen Street West
Suite 1903, P.O. Box 55
Toronto ON M5H 3S8

Attention: Mr. John Stevenson, Secretary

Dear Mr. Stevenson:

Re: Notice and Request for Comments - Proposed Rule 13-502 – Fees

This submission is in connection with the Notice and Request for Comments in respect of Proposed Rule 13-502 - Fees (the "**Proposed Rule**"), issued on June 28, 2002. This submission is being made in my personal capacity and not on behalf of the firm.

As a general comment, while I am in principle supportive of any initiative to reduce, simplify and clarify the fees charged to capital market participants, I respectfully submit that (i) the collection, payment and calculation of the fee should not unnecessarily add to the administrative and compliance burden of market participants, and (ii) the imposition of significant new fees on international and non-resident dealers and advisers does not appear to be supported by the level of Commission regulation and oversight as such registrants participate primarily in the exempt market with institutional clients.

I. International Registrants

Part 3 of the Proposed Rule stipulates that "a person or company that is a registrant firm or an unregistered investment fund manager" is required to pay a CM participation fee in an amount stipulated in Appendix B of the Proposed Rule. The Proposed Rule defines a "registrant firm" as "any person or company registered as one or both of a dealer or an adviser under the Act" and an "unregistered investment fund manager" as "an investment fund manager that is not registered under the Act". In its present form, the Proposed Rule requires international dealers, non-Canadian advisers, international advisers and certain foreign fund advisers to submit CM participation fees.

International dealers are only permitted to engage in market transactions involving institutions that qualify under the limited "accredited investor" definition contained in OSC Rule 45-501 and international advisers are only permitted to advise permitted clients set forth in OSC Rule 35-502. By promulgating OSC Rule 45-501 and OSC Rule 35-502, the Commission has obviously concluded that such dealings do not warrant the heightened regulatory scrutiny otherwise necessary where the interests of non-accredited or non-permitted individuals or entities are involved. International dealers are precluded from transacting with individual investors, even where such investors otherwise qualify under the accredited investor "net asset" or "net income" tests established in subsection 1.1(m) and 1.1(n) of OSC Rule 45-501, respectively. International advisers are similarly limited to providing services to institutional and high net worth Ontario clients by OSC Rule 35-502.

In the Proposed Rule, the Commission states that CM participation fees have been implemented, in part, to account for the cost of regulating Ontario capital markets, including the cost of "market oversight, oversight of self-regulatory organizations ("SRO's"), enforcement, policy development, continuous disclosure and compliance reviews". It should be noted that most international dealers and international advisers are registered in an equivalent registration category in their home jurisdiction outside of Canada and are therefore subject to the full regulatory oversight of their home jurisdiction's securities regulator, including requirements dealing with proficiency standards, capital requirements, etc. Moreover, international dealers and international advisers are not required to be members of, and do not generally qualify for membership in, a Canadian SRO as a condition of registration in Ontario and are not generally subject to proficiency, capital and other requirements under Ontario securities law. By exempting international dealers and international advisers from such requirements, the Commission has deferred, at least in part, to the principal regulatory supervision and oversight of the securities regulator in the registrant's home jurisdiction. It is submitted that the demands imposed on the Commission in the regulation and oversight of international dealers and advisers, most of whom are registered with the U.S. Securities and Exchange Commission or other foreign regulators, do not warrant such a radical departure from the current fee structure in respect of such registrants.

International dealers and international advisers pay annual registration renewal fees to the Commission and the Commission receives filing fees in the amount of .02% of the aggregate transaction value of any distribution in Ontario effected with an accredited investor through an international dealer in reliance on section 2.3 of OSC Rule 45-501 (the "Post Trade Filing Fee"). Most foreign private investment funds are sold in Ontario through registered dealers and are also typically subject to the payment of the Post-Trade Filing Fee. It is submitted that the Commission should consider adjusting the level of fees paid for annual registration or Post-Trade Filing Fees as a means of addressing the appropriate level of fees for international dealers and international advisers rather than introducing an additional layer of fees.

As it relates to international advisers, the Proposed Rule will require the payment of CM participation fees based on advisory activities undertaken in Ontario. Heretofore, international advisers have not been required to pay transactional fees and, at least initially, the ability of an international adviser to recover these additional costs may be constrained under existing investment management contracts.

II. Non-Canadian Unregistered Investment Fund Managers

For similar reasons we ask that the Commission also reconsider the application of CM participation fees to unregistered foreign fund advisers. Under the Proposed Rule, a foreign fund adviser to a foreign fund, the securities of which are primarily offered outside of Canada but may also be privately placed in Ontario, will be subject to CM participation fees. Like international dealers and international advisers, foreign fund advisers are principally regulated outside of Canada. The likely effect of the Proposed Rule will be to discourage some foreign funds and their foreign advisers from offering securities and advice in Ontario.

Furthermore, we note that the exempt private placement of foreign funds in Ontario requires the payment of the Post Trade Filing Fee and that the private placement of foreign funds in Ontario is typically effected through a dealer that is registered in Ontario. The requirement that CM participation fees be paid by both the dealer and the foreign fund adviser in respect of an exempt transaction, when combined with the Post Trade Filing Fee required for the same transaction, will effectively impose a multiple layer of fee payments.

III. Canadian GAAP Financial Statements

An additional source of concern is the requirement contained in the Notes and Instructions to Form 13-503F3 that "the components of revenue reported in each Part should be based on the same principles as the comparative statement of income which is *prepared in accordance with generally accepted accounting principles (GAAP)*, except that revenues should be reported on an unconsolidated basis." At present, international dealers are not required to file annual financial statements with the Commission and pursuant to OSC Rule 35-502, most international advisers are also exempt this requirement. Unregistered foreign fund advisers are not required to file their financial statements in Ontario. Should the Commission insist on the use of Canadian GAAP qualified financial statements in the calculation of specified Ontario revenue, international dealers, international advisers and foreign fund advisers will incur significant additional accounting, administrative and operational costs in the preparation of Canadian GAAP qualified financial statements.

IV. Unregistered Foreign Sub-Advisers

Subsection 3.6(3)(a) of the Proposed Rule permits the deduction by Ontario registrants of sub-advisory fees paid to another registrant firm in Ontario when calculating specified Ontario revenue for a financial year. The Proposed Rule does not permit a deduction where the advisory fee is paid to an unregistered foreign sub-adviser. It is submitted that the ultimate effect of this subsection may be to deter some Ontario registrants from seeking the specialized services of foreign sub-advisers.

Although the Commission has responded to prior comments raising similar concerns by stating that the discriminatory treatment of non-registrant sub-advisers does not penalize Ontario investment funds and investment managers who seek investment advice outside of Ontario through the services of a non-registered foreign sub-adviser and by suggesting that the decision to use the services of a non-registrant sub-adviser is a "business decision" for the fund, it is submitted that the Commission should address the consequences of the Proposed Rules in the context of applicable international free trade treaties and conventions that prohibit latent barriers to free trade.

As a final comment, it is submitted that the Proposed Rule, in its present form, may have the effect of reducing the level of Canadian activities of international dealers, international advisers and unregistered foreign fund advisers by increasing the burden of Ontario compliance and by imposing significant new transactional fees on such registrants and certain non-registrants.

Thank you for your consideration of this submission.

Respectfully,

Kenneth G. Ottenbreit

KGO/bb