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**W. TERRENCE WRIGHT, Q.C.**  
Senior Vice-President  
General Counsel & Secretary

September 27, 2002

DELIVERED VIA E-MAIL

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

Dear Sirs/Mesdames:

Re: Notice and Request for Comments  
Ontario Securities Commission Concept Proposal 13-502 (Fees)  
Proposal to Revise Schedule 1 (Fees) in the Regulation to the Securities Act (Ontario)

We wish to take this opportunity to comment upon the Ontario Securities Commission (the "OSC") Proposed Rule 13-502 – Fees (the "Concept Proposal") with respect to the fee structure applicable to market participants in Ontario, and in so doing commend the OSC for attempting to reduce, simplify and streamline its fee schedule, and support this initiative to assess fees based on actual participation in the capital markets.

In particular, we wish to take this opportunity to indicate our support for the following aspects of the Concept Proposal as it relates to our mutual funds and dealer/salesperson registrations:

- A flat activity fee per fund family pursuant to section 4.2 of the Concept Proposal, including the flat fee (\$1,500) for prospectus lapse date extension applications regardless of the number of mutual funds combined within the same prospectus;
- A flat mutual fund prospectus renewal fee (\$600) per fund with no additional fees determined upon gross (or net in the case of money market funds) proceeds of sales in Ontario.

We also wish to indicate our support for the concept of an "all-encompassing" participation fee that would, in turn, eliminate the payment of fees for, *inter alia*, the following filings:

1. the registration of additional branch (and sub-branch) offices, or the deletion of same;
2. the annual renewal of salesperson and officer license registrations;
3. the annual renewal of the registration of branch (and sub-branch) offices;

4. the fee for the filing of uniform termination notices with respect to the termination of officers and salespersons;
5. the elimination of fees with respect to the filing of mutual fund prospectus amendments; and
6. the elimination of fees for the filing of various continuous disclosure documents, including annual and interim financial statements, and annual reports.

We also wish to indicate our support of the change made from the original version of the Concept Proposal published on March 30, 2001, allowing registrants to deduct from their 'gross revenues in Ontario' any revenues associated with non-capital market activities, in the determination of the applicable Participation Fee.

Please be advised that we participated in The Investment Funds Institute of Canada's ("IFIC's") discussions concerning the Concept Proposal, and we have had the benefit of reviewing a copy of IFIC's submission to the OSC, and that we fully support IFIC's submission.

In particular, however, we are especially concerned about certain aspects of the Concept Proposal as it relates to our mutual funds and capital market registrations. Accordingly, we are taking this opportunity to describe our concerns in greater detail below:

#### **MANDATORY RE-DISTRIBUTION OF FUND EXPENSES (SECTION 3.8)**

The requirement that the participation fee paid by fund managers not be borne by the funds they manage is, without doubt, our greatest concern because it fundamentally alters the financial relationship between managers and fund securityholders. Simply stated, it substantially restructures the economics of the relationship to such an extent that it may materially affect the share prices and business operations of some, if not most, fund managers.

Essentially, the Concept Proposal shifts the burden of fund registration costs to the fund manager by reducing the prospectus filing fees now payable by funds to a flat nominal amount, and increasing the registration costs payable by managers through the participation fee. With respect to the Investors Group families of funds, our initial calculations indicate that the prospectus filing expenses of our funds will drop by about \$1.4 million to about \$60,000, but our fund manager participation fee will increase to about \$150,000.

The OSC's proposed forced re-distribution of the payment of this expense from our funds to us is totally unjustifiable, given that the payment of this expense by our funds is fully disclosed in our fund prospectuses and authorised by our fund constating documents and clients. Further, the OSC's argument that managers will be able to recoup this extra cost through higher management fee income is misguided if we consider that, given an average fund annual management fee of 2.0%, the extra \$1.4 million saved by our funds by the re-allocation of this expense will generate only an extra \$28,000 of income.

We reiterate IFIC's submission that seeking client approval to increase management fees in order for managers to recoup this additional cost is untenable. The OSC's

response implicitly recognizes that, from an economic perspective, it makes no difference to clients whether their mutual fund pays registration related costs directly (as is currently the case), or whether the fund manager increases the management fees to offset these costs. Accordingly, we respectfully question the logic of requiring managers to hold securityholder meetings to ratify the payment of an expense already payable by their funds, and with the net effect of the change in fees upon ratification not being economically material to clients. Furthermore, we question the justification of incurring the expenses associated with holding such meetings.

The OSC's response to this issue also does not fully appreciate the problems that would arise in the event that some, but not all, funds within the same fund family obtained the necessary ratification or, worse still, if some but not all classes within the same fund or corporate class structure approved the proposal.

Accordingly, this aspect of the Concept Proposal effectively transfers a huge expense to managers and constitutes an unjustifiable restructuring of the industry dynamics.

#### **DETERMINATION OF 'GROSS REVENUES IN ONTARIO'**

We submit that if a purpose of charging the participation fee is to equate a Fund manager's fees with the benefits derived from its participation in the Ontario markets, it is inconsistent to arbitrarily base the determination of the amount of the fee on whether or not the manager maintains a permanent business location in Ontario.

We do not intend to restate IFIC's submission on this point, but we do wish to emphasize the inherent dangers of the possible duplication of fees that can arise when a fee determined in one jurisdiction is calculated, in whole or in part, with respect to revenues allocated to that jurisdiction from other jurisdictions, simply because of the way that a manager with operations across Canada has chosen to organize its business affairs. Also, we note with concern that these fees are determined solely on the basis of gross revenues, without consideration for the associated expenses incurred with the generation of these revenues.

#### **PARTICIPATION FEE SCHEDULE (APPENDIX 'B')**

It is not clear how the OSC came to decide the appropriate annual participation fee based on each level of gross revenues of registrants that are attributable to Ontario. Specifically, we question the justification of the magnitude of the increase in the amount of the market participation fee in certain circumstances where a registrant experiences only a marginal increase in its gross revenues when this would cause its gross revenues to rise into the next fee tier. In such circumstances, it would appear that an incremental increase in gross revenues would in some cases result in the doubling of the registrant's market participation fee. For example, we have tentatively calculated that had the proposed fee structure been in place during the past two calendar years, our mutual fund dealer subsidiary that is registered in Ontario (Investors Group Financial Services Inc.) would have paid a market participation fee of \$150,000 in 1999, and \$250,000 in 2000 (a 68% increase), simply because its gross revenues in Ontario crossed over the \$100 million tier threshold during that period of time. Although we concur with the OSC's attempt to streamline and simplify its fee structure, we suggest that it is advisable to either:

- increase the number of fee categories so that the increase in fees when a registrant moves from one category to the next is not as drastic, or
- introduce some method to pro-rate the fee so that the increase in fees more closely matches the percentage change in a registrant's gross revenues attributable to Ontario.

As presently structured, the broad participation fee tiers could pose significant budgeting problems, especially for smaller managers where the massive increase in fees is not associated with any offsetting increase in revenues. Furthermore, assuming that the industry may continue to flow these costs directly to funds for payment, such increases in fees could have a noticeable impact on the MERs of smaller funds.

The OSC has justified the wide fee tiers on the basis of keeping things simple to administer. We suggest that it would not be administratively burdensome to establish a method to pro-rate the fees payable within each bracket. We further note that this type of mechanism would not make it more difficult for the OSC to budget its revenues and, in fact, may enhance the OSC's ability to do so because the OSC would not be subject to sudden fee income decreases in circumstances where a relatively minor decrease in a manager's revenues results in the manager falling into a lower participation fee tier with a corresponding substantial drop in the fee payable to the OSC.

#### **SUMMARY**

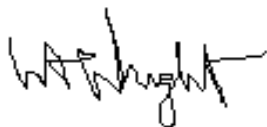
Once again, we commend the OSC for taking this initiative which, if implemented, will result in a reduction in the overall level of fees collectively paid by ourselves and our mutual funds to the OSC. This benefit, however, pales in comparison to the re-distribution of these costs as mandated by section 3.8 of the Concept Proposal. In general, we find the fee proposal to be satisfactory, other than with respect to the items noted herein above.

If you should have any questions with respect to this matter, we would be pleased to discuss them with you. Please feel free to contact myself or Mr. Doug Jones, Senior Counsel, Mutual Funds in our Legal department (204-956-8989).

Thank you for providing us with this opportunity to respond to your request for comments.

Yours truly,

**INVESTORS GROUP INC.**



**W.T. WRIGHT, Q.C.**