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October 2, 2002

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

Dear Mr. Stevenson:

RE: Ontario Securities Commission Proposed Rule 13-502 – Fees

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments with respect to the Proposed Rule 13-502 Fees of the Ontario Securities Commission.

We wish to point out that we endorse the comments concerning the Proposal that have been submitted to the Commission by the Investment Funds Institute of Canada, which includes in its membership mutual fund dealers and managers that are owned by CBA members.

General Comments

We endorse the Commission's initiative to simplify, clarify and streamline the OSC's fee structure, to establish fees that reflect the Commission's cost of providing services and to levy fees based on actual participation in the capital markets. However, we wish to reiterate some of the concerns that were expressed in our letter of May 20, 2001, and we also wish to express our support for a number of the concerns expressed by IFIC, as outlined below.

Impact of Activity Fees on Inactive Special-Purpose Issuers

As stated in our May 30, 2001 letter, by reversing the financial burden from *activity* to *participation*, the proposed fee structure penalizes those reporting issuers, such as special purpose vehicles, that have made one or only a few public offerings and are now inactive except for their continuous disclosure activity. We submitted in our last letter that the Concept Proposal should be revised to:

- a) on a going forward basis, lower the annual participation fee to be paid by a reporting issuer if that reporting issuer has not paid any activity fees during the previous eighteen months (i.e. has not actively participated in Ontario's capital markets); and/or

- b) provide a "grandfathering" mechanism for issuers in existence at the time of coming into force of the new fee structure that have not accessed the capital markets in the eighteen months prior to the coming into force of the new fee structure, allowing such issuers to pay lower participation fees until such time as they make a new public offering.

The OSC responded that the proposed participation fees include all of the OSC's costs that cannot be specifically identified and charged as activity fees. As a result, the participation fees include the cost of securities regulation generally. We appreciate the difficulty involved in quantifying the cost of participating in Ontario's capital markets. However, by way of example, an existing special purpose vehicle that may have issued just under \$1 billion of units into the market for which it would have submitted prospectus filing fees in Ontario of up to \$320,000, currently pays continuous disclosure fees in Ontario that are not likely to exceed \$5,000 in any given year. This entity will now find itself paying up to \$35,000 per year in Ontario participation fees under the Proposed Rule without having gone to the market for many years. We believe this penalty is unjustified because such dormant issuers are not putting any strain on the resources of the OSC and are deriving minimal ongoing benefit from Ontario's capital markets.

As a corollary comment, we note that the Concept Proposal's calculation of market capitalization for the purpose of determining the participation fee payable includes all classes of equity and debt securities that are listed and posted for trading on a Canadian stock exchange, whereas the proposed Rule does not appear to carve out unlisted securities from the calculation of market capitalization. Again, using a special purpose vehicle as an example, these often entail a funding structure to facilitate the operation of the vehicle and can include the promoter taking back a class of securities that is unlisted. In the case of the example cited in the paragraph above, if the unlisted securities issued to the promoter of that special purpose vehicle were to be included in the market capitalization used to determine the participation fee, such an entity could well have been pushed into the next bracket of participation fees (\$50,000).

Therefore, we request that unlisted securities (including debt) be excluded from the calculation of market capitalization for the purpose of calculating the participation fee payable. The Commission's role is to protect investors and to foster fair and efficient capital markets, and the participation fees payable under the proposed Rule are intended to be an accurate reflection of the Commission's costs of providing such services. Unlisted securities are not part of market activity and, therefore, the holders thereof do not derive any benefit from the OSC's market oversight role.

Shift of Fee/Expense Burden onto Mutual Fund Managers

The Proposal would require fund managers to pay participation fees that they will not be able to recover from the funds they manage or from investors. We believe that this element of the Proposal will have a profound impact on our members, and will make it necessary, in a difficult economic climate, to either absorb these additional costs or to incur the expense of obtaining investor approval for the flow-through of the cost of the participation fees, simply to maintain the *status quo*.

Gross Revenue Attributable to Ontario

The Proposal would require dealers, advisors, registrants and unregistered mutual fund managers to pay an annual participation fee based on gross revenues that are attributed to their respective businesses in Ontario.

The proposed formula for calculating the Ontario business of firms that have a permanent

establishment in Ontario will require Ontario-based mutual fund companies to pay fees in Ontario that are disproportionately high, which will thereby penalize firms that have permanent establishments in Ontario.

We agree with the IFIC Submission that the better and more equitable approach to calculating Ontario revenue is to dispense with the formula based on whether the firm has a permanent establishment in Ontario and instead, to apply one formula to all firms. The formula in the Proposal for the Ontario percentage determination for firms without permanent establishments in Ontario can equally be applied to firms with permanent establishments in Ontario.

We note, as well, that the proposed formula has implications for the harmonisation of regulatory requirements across Canada. The proposed methodology for allocating gross revenue may be difficult to harmonise nationally, as jurisdictions that do not have head office locations will be reluctant to adopt such a regime.

We also agree with the IFIC Submission that the calculation of assets derived from fund-on-fund structures should incorporate a “look-through” to the assets of the top fund.

Activity Fees - Multiple Mutual Funds

We agree with the IFIC Submission, that the activity fees proposed for prospectuses for multiple mutual funds are excessive and that there should be a discount on the activity fee payable where multiple fund prospectuses are contained in a single document. The activity fee payable for twenty prospectuses that are contained in a single document should reflect the work that this requires on the part of regulatory staff, and there is no justification for charging an activity fee that is twenty times as great as the fee for a single-prospectus document.

In Closing

We have appreciated the opportunity to express our comments regarding the New Fee Model Proposal. We would be pleased to answer any questions that you may have about our comments.

Yours truly,

WL/DI/sh