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November 14, 2005

**VIA EMAIL**

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario  
M5H 3S8

Dear Sirs/Mesdames:

**Re: Ontario Securities Commission Rule 13-502 Fees - Comments of the International Bar Association**

On August 12, 2005 the Ontario Securities Commission (the "Commission") proposed an amended and restated OSC Rule 13-502 *Fees* and its accompanying Companion Policy (collectively, the "Fee Rule"). This letter of comment on the Fee Rule is respectfully submitted by Committee I of the International Bar Association ("IBA"). The IBA is a voluntary organization comprised of 16,000 individual lawyers and 190 Bar Associations and Law Societies. Committee I (Investment Companies and Mutual Funds) currently has over 1,000 members from over 120 countries, who specialize or are interested in the legal aspects of investment companies and other pooled investment vehicles. We are grateful for the opportunity to comment on the Fee Rule and to provide our suggestions with respect to the applicability of the Fee Rule to offshore investment managers. We believe in the value of meaningful dialogue between regulators and industry participants, and as such we wish to comment on an issue that is of particular significance to non-resident unregistered managers of investment funds.

***Application of the Fee Rule to "Unregistered Investment Fund Managers"***

We urge the Commission to delete section 4.5 of the Companion Policy and change the Fee Rule to clarify that participation fees are not payable by "unregistered investment fund managers" that manage investment funds that are not reporting issuers in Ontario but that are distributed in Ontario pursuant to prospectus and registration exemptions. In our view, a very simple amendment to the Fee Rule is necessary. The definition of "investment fund manager" should be amended to refer only to entities that are managing investment funds that are reporting issuers. Section 4.5 of the Companion Policy should be deleted.

The current proposed Commission policy results in an inequitable situation for unregistered investment fund managers. Requiring unregistered investment fund managers to pay participation fees in Ontario simply because they privately place funds under prospectus and registration exemptions is inconsistent with the treatment afforded to corporate finance

issuers that are not reporting issuers, but that distribute securities in Ontario on the same exempt basis. These corporate finance issuers are required to pay activity fees on a private placement, not participation fees. Unregistered managers of investment funds that are not reporting issuers should not receive inequitable treatment under the Fee Rule, and accordingly should be required to pay activity fees on a private placement but not participation fees.

For non-resident unregistered investment fund managers that manage offshore funds that privately place securities in Ontario, this situation is particularly acute. According to the Fee Rule, participation fees are levied against unregistered fund managers based on revenues earned from their “capital markets activities”. However, the only capital markets activity that is carried on by foreign fund managers is the distribution of securities. Moreover, if the fund management and advisory is taking place outside of Ontario, then offshore investment funds are not receiving any of the benefits of mutual fund regulation. In view of this, we believe that such foreign fund managers should not be required to pay participation fees to the Commission.

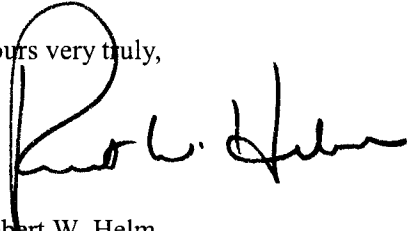
We have reviewed the summary of comments made with respect to the Fee Rule, and we agree with one commentator who notes:

... in respect of a foreign investment fund, the OSC would end up collecting multiple fees – i.e. the exempt distribution fee payable by the foreign investment fund for any private placement in Ontario; the participation fee payable by a limited market dealer on revenues generated from the private placement in Ontario; and the participation fee payable by the investment fund manager on revenues from providing investment management to the foreign investment fund.

Against this background, we urge you to change the Fee Rule to clarify that participation fees are not payable by unregistered investment fund managers that are not reporting issuers in Ontario. With this clarification, unregistered investment fund managers or their applicable investment funds will still be required to pay the requisite activity fee. In our view, the foregoing should apply to all unregistered investment fund managers who manage non-reporting issuer investment funds without regard to whether or not they conduct their activities offshore.

In closing, we ask the Commission to reconsider the above matters. That said, we are pleased that the Commission has recognized the need to reevaluate the Fee Rule with a view to levelling the playing field for all market players.

Yours very truly,

A handwritten signature in black ink, appearing to read "Robert W. Helm". The signature is written in a cursive style with a large, prominent initial "R".

Robert W. Helm  
Chair

cc: Officers of IBA Committee I (Investment Funds and Trusts):

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