November 17, 2008

Mr. John Stevenson
Secretary
Ontario Securities Commission
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Dear Sir:

Re: Comments on OSC Rules 13-502 and 13-503, Fees

Below are my views on the OSC Requests for Comments on OSC Rules 13-502 and 13-503. The request for comments said that "no alternatives" had been considered, but I assume that the OSC is taking the comments provided by respondents as alternatives for consideration.

The philosophy of the fee calculation appears to be to develop fees to cover expenses based on unallocable costs (participation fees) and attributable costs (activity-based fees). No doubt there are additional details elsewhere of which I am not aware, but this appears to miss some key opportunities to improve benefits for investors, for issuers and for the majority of registrants who want to do the right thing in working for investors, that is, by implementing a more incentive/disincentive-based structure.

Recommendations

1. **Start with a transparent statement about the fee philosophy.** This should include reference to revenues and expenses even though requirements regarding budget development may be elsewhere. This statement should be no more than two pages in length, in plain language, accessible to all who want it from the OSC's website (sort of like fund facts) and clear as to what issuers, registrant types and investors pay.
2. **Those regulated should have an opportunity to review and comment on the draft budget.** Drawing from a case with well-known ramifications, there should be no taxation without representation. There used to be discussion of OSFI's budget between bankers and the bank regulator and this is reasonable as long as the discussions are transparent to all affected parties.
3. **A loss should be permitted OR there should be provision for a refund of participating fees proportional to what each registrant or issuer paid in the next year**. The $56 million surplus at year-end March 31, 2008, plus the $20 million contingency fund, exceed expenses of the OSC for an entire year. A good part of this would likely be taxable for any other "not-for-profit" organization. Also, to provide for a refund or fee reduction two years after the fact means potentially refunding the "wrong" people or firms. Just as many argue that taxes are better in

the hands of Canadians, fees are better in the hands of issuers, registrants and ultimately investors unless there is some evident publicized agreed-upon infrastructure-equivalent project to save for – one that would benefit investor, issuer and registrant (e.g., much-improved SEDAR).

4. **The fee philosophy should be less revenue- and more risk-based.** This is equitable and provides the right incentives for improvement. Risk-based means reduced fees or a rebate for firms that display better compliance systems, but can also take into account the riskiness of the business to the retail investor. There should be a reasonable minimum, not to discourage new registrants but to ensure that basic costs are covered – $1,000 is too little as that would mean only 20 hours of OSC attention at an average cost of $50 an hour to get access to investors who stand to lose many times that amount of money if the wrong person is granted registrant status.
5. **Who pays what at the registrant group level should be evident.** The specifics of what issuers pay, what IIROC registrants pay, what MFDA and other registrants pay relative to their sizes should be evident to investors and to each other so that there can be informed discussions of reasonability. The OSC has chosen to adopt a different fee approach than the rest of the securities commissions. While it may be a better approach, it does not allow easy comparability and could therefore be unfair. It should be fairly straightforward to complete a reasonable approximation of what the fees would be for easy reconciliation with the other provinces' approaches.

One thing I have appreciated about the OSC in its reports after comments on proposals and drafts have been received is the summary of views provided and explanation of why the OSC accepts or does not accept individual suggestions. The above suggestions are straightforward and will no doubt echo some of the others you will receive. I look forward to their implementation in the coming year or two or to a clear and unambiguous explanation of why they cannot be implemented, if not in the coming fiscal year, then in the next.

Yours truly,

B. White