



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

BY EMAIL: jstevenson@osc.gov.on.ca

December 30, 2008

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

Attn: John Stevenson
Secretary

Dear Sirs/Mesdames:

Re: Proposed Revocation and Replacement of OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

We are writing to provide the comments of the members of The Investment Funds Institute of Canada in response to the Ontario Securities Commission's (OSC) Proposed Revocation and Replacement of OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees.

In general, we support the OSC's stated goal of requiring market participants to pay fees reflecting the costs of regulating Ontario's capital markets but we have concerns with a number of aspects about the OSC proposal. We believe that the OSC should further reduce the fees charged to mutual fund industry registrants who continue to shoulder a disproportionate burden of the OSC's operating costs. Instead, under the proposed fee changes, many mutual fund registrants will actually pay significantly higher fees than otherwise would have applied under the current fee schedule.

At the beginning of 2006 when the OSC implemented its current fee schedule, it indicated that one of its primary purposes is to "ensure consistency between the fees charged and our costs of providing services". This is reiterated in the current Proposal, where it states in reference to the key elements of the new fee schedule:

"Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities." ((2008) 31 OSCB 9553)

Yet, the OSC has attained a projected surplus of over \$49 million since the adoption of its new fee schedule in April 2003, including an additional \$13.4 million surplus in the current 3-year period since April 2006.

In its request for comments issued August 12, 2005 for the current 3 year fee period, the OSC stated:

“For the three years ending March 2009, we project a breakeven position, after fully applying the expected March 2006 surplus of \$35.9 million to reduce fees otherwise paid by participants. *Any actual surplus or deficit at the end of this three year period will be reflected in the fee setting process for the following three years.*” [Our emphasis] ((2005) 28 OSCB 6667)

This was reiterated again in the OSC’s 2008 Annual Report (page 41) where the OSC indicates that it currently plans to return its accumulated surplus to market participants when the fees are revised for the upcoming fee period. Yet, under the current proposal the OSC intends to increase its corporate finance participation fees by (in some cases) over 56%, and its capital market participation fees by more than 13% on average (and by as much as 40% in some cases), without fully refunding its existing surplus, in the midst of the current market turmoil and deteriorating economic conditions when registrants can least afford to absorb these increases. We submit that any fee increases now are inappropriate and unjustified and that the OSC should impose a moratorium on fee increases until it can demonstrate that its accumulated surplus will be fully refunded to market participants.

Detailed comments and suggestions regarding the draft proposals are appended to this letter.

We thank you for the opportunity to comment on the proposed revocation and replacement of OSC Rule 13-502, and look forward to discussing these matters with you further. Please contact Ralf Hensel, Director, Policy - Manager Issues (416-309-2314; rhensel@ific.ca) or Jon Cockerline, Director, Policy - Dealer Issues (416-309-2327; jcockerline@ific.ca) should you wish to discuss our comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

“Original Signed by Joanne De Laurentiis”

By: Joanne De Laurentiis
President and Chief Executive Officer

Appendix – Specific Comments

Use of pre-2008 information in determining market participant size

Given that the OSC has generated significant operating surpluses over the past several years we appreciate that the OSC is trying to refine the methodology used to calculate participation fees by moving to a reference fiscal year. Under normal circumstances using historical data rather than forecasted data to determine the size of market participants may have resulted in a better matching of the OSC's revenues and expenditures and this idea may have some merit once financial market conditions stabilize. We believe, however, that it would be inappropriate at this time for the OSC to set a market participant's reference fiscal year to its last fiscal year ending before January 1, 2008. IFIC members' revenues declined significantly in 2008 and the OSC's proposed reference fiscal year does not reflect the current reality because it requires market participants to pay participation fees based on revenues earned at the peak of the market cycle. The proposed reference year would also increase the risk that the OSC's revenues from these fees would continue to result in significant operating surpluses. To compound matters, under the current rule, participation fees are determined with reference to Ontario revenues for the last completed fiscal year. As such, many market participants have already remitted participation fees based on their fiscal 2008 revenues.

Given the concerns outlined above, we recommend that the OSC retain the current practice of determining participation fees with reference to the market participant's last completed fiscal year. We acknowledge the potential for a mismatch between the OSC's revenues and expenditures using this methodology but we believe this approach would be more equitable. If the OSC feels it is necessary to adopt a reference fiscal year at this point in time we would recommend that a market participant's last fiscal year ending before January 1, 2009 be adopted as that participant's reference year since the revenues during that time would better reflect the current economic realities.

Late Fees

The OSC is proposing to substantially reduce late fees on unpaid participation fees by reducing the daily charge and applying the charge on the unpaid portion of the participation fee. Although we support fee reductions where appropriate, and despite the fact late fees accounted for only 3.7% of OSC fees in 2008, we believe that to the extent there is any flexibility to reduce fees, we would prefer that the OSC reduce market participation fees rather than late fees. Reducing the latter effectively means that market participants that pay their fees on a timely basis are subsidizing non-compliant firms.

Capital Markets Participation Fees

The proposed Companion Policy notes that the purpose of the rule is to adopt fees that reflect the OSC's costs of regulating Ontario's capital markets. In this light, we are concerned about the OSC participation fees paid by members of the Mutual Fund Dealers Association of Canada (MFDA). The OSC has delegated the regulation of mutual fund

dealers' operations, standards of practice and business conduct to the MFDA. MFDA Member dealers currently pay fees to both the OSC and the MFDA. We appreciate that the OSC and other recognizing jurisdictions play an important role in providing oversight to the MFDA for which there are associated costs. However, to the extent the oversight role requires less resources and lower costs than a direct daily regulatory role over MFDA Members we urge the OSC to review its participation fees to eliminate any duplication with MFDA membership fees.

We also urge the OSC to consider seeking a better balance between the fees payable by smaller firms relative to those paid by larger firms in order to more clearly reflect the associated disproportionately higher costs of regulating smaller firms.

Activity Fees

Prospectus Filing by or on behalf of certain investment funds

Under Appendix C Item A.4 (a) each investment fund is charged a \$400 fee for filing a preliminary or pro-forma simplified prospectus and annual information form in Form 81-101F1 and Form 81-101F2. This applicable fee is payable per investment fund even where a single prospectus document is filed on behalf of more than one investment fund. We are aware that this is not a new proposal and that the requirement exists under the current framework however we believe it would be appropriate to review this requirement at this time.

As outlined in the proposed Companion Policy, the activity fee is based on the average cost to the OSC of reviewing documents of a particular class. To the extent that a market participant has filed a single prospectus on behalf of more than one fund, we propose an activity fee schedule where the fee payable for additional funds in the same prospectus decreases after a certain number of funds (e.g., 15 funds). In such cases OSC staff would essentially be reviewing the same document for multiple funds which is more cost and resource efficient.

Similarly, we wish to take this opportunity to mention in passing that the OSC, together with other members of the CSA, have undertaken to review the efficiency of the Passport System (and the related interface mechanisms with the OSC) to ensure that any cost savings are passed on through reduced activity fees, and we submit that it would be appropriate for the OSC to reflect in its fee schedule any current and anticipated savings in this regard.

Proposed Refund to Market Participants

The OSC anticipates a surplus of approximately \$49 million at March 31, 2009 and expects that approximately \$22 million will be refunded to market participants. Rather than refund a portion of the surplus to market participants we would recommend that the OSC use the proposed refund to reduce the fee bands or to provide a discount on the participation fees. If the OSC decides to proceed with the refund, we are concerned as to

how the recipients, and the amount of each recipient's share, will be determined to ensure an equitable refund. Registrants pay a significantly higher proportion of the participation fees. According to the OSC's 2008 Annual Report registrant participation fees accounted for the \$6.1M increase in total participation fees in 2008. The OSC is proposing to refund 72% of the anticipated \$22M to reporting issuers. We recommend that OSC ensure that any refund reflect the fact that registrants pay a higher proportion of the participation fees.

With respect to the remainder of the surplus, the OSC proposes to retain \$4 million to stabilize reporting issuer fee rates at the original 2006 levels, and to retain \$23 million "to address the revenue shortfall arising from Registration Reform" ((2008) 31 OSSCB 9558). Respectfully, we fail to understand why the OSC deems it necessary to retain any portion of its surplus for these purposes, when it has already set aside a \$20 million reserve "as an operating contingency for revenue shortfalls or unexpected expenses" (page 34 of the OSC 2008 Annual Report).