



VIA E-MAIL

January 2, 2009

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

Attention: Mr. John Stevenson, Secretary

Dear Sirs:

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

We are writing in response to the request for comments to the replacement of OSC Rule 13-502 – *Fees* (the “Proposed Rule”).

Insofar as the Proposed Rule affects Invesco Trimark, Ltd., our concerns fall into two categories. First, under static economic conditions, the most significant fees payable under the Proposed Rule, the capital markets participation fee, will increase significantly. Second, the primary feature of the revised rule is to freeze capital market participation fees based on revenue for the financial year ended December 31, 2007, despite the fact that Ontario capital markets, namely, the S&P/TSX Composite Index, have declined by 38.8% since the end of the 2007 fiscal year (8461.63 on December 15, 2008 from 13833.0596 on December 31, 2007).

Specific Fee Increases

Under the Proposed Rule, for firms with Ontario revenue of at least \$3 million, the capital markets participation fee increases by 12%, with most firms above that level of revenue facing a fee increase of over 13%, as compared to the previous fee schedule which went into effect April 1, 2006. We note that from April 1, 2006 to November 30, 2008, the cumulative rate of inflation for the province of Ontario was 4.50% and for the City of Toronto it was 4.79%. (These are non-annualized numbers.) Therefore, the proposed increase in capital markets participation fees is almost 3 times the rate of inflation. As discussed further in this letter, we do not understand how such an increase is warranted at this time.

Eric J. Adelson
Senior Vice President, Legal
T: 416.228.3670
F: 416.590.1621
Email: eric.adelson@invescotrimark.com

Invesco Trimark
5140 Yonge Street, Suite 900
Toronto, Ontario M2N 6X7
Telephone: 416.590.9855 or 1.800.874.6275
Facsimile: 416.590.9868 or 1.800.631.7008

5140, rue Yonge, bureau 900
Toronto (Ontario) M2N 6X7
Téléphone : 1.800.200.5376
Télécopieur : 1.800.631.7008

www.invescotrimark.com

We note that since the previous version of OSC Rule 13-502 came into effect, the mutual fund industry has had to cope with significant regulatory changes and is anticipating additional regulatory change, all of which come with significant costs of compliance:

- the introduction of National Instrument 81-106 – *Investment Fund Continuous Disclosure*, the full brunt of which was not felt until the 2006 fiscal year;
- the introduction of National Instrument 81-107 – *Independent Review Committee for Investment Funds*;
- the anticipated introduction of National Instrument 31-103 – *Registration Requirements*; and
- the anticipated introduction of a new national instrument and *Securities Act* amendments relating to point of sale.

All of these initiatives have or will have significant financial costs for mutual funds. Furthermore, with the exception of NI 31-103, all of these costs are or will be borne by investors in mutual funds. We note that the capital markets participation fee is also passed on directly to investors in mutual funds. Our point is that while we appreciate that this specific fee schedule has not changed in some time, the costs of complying with regulatory requirements has significantly increased since Ontario fees were last reviewed.

The mutual fund industry has come under significant pressure from regulators and the media in regard to fund operating expenses. At Invesco Trimark, it is clear that those expenses that are within our control have significantly declined over time. The one area that runs counter to this trend is the direct costs of complying with our regulatory requirements. Costly initiatives such as the Proposed Rule continue to put pressure on us to find offsetting savings and more to pass on to our investors to respond to the question of “why can’t we get our MERs down?” constantly posed to us by securities regulators and the media.

We appreciate the rationale for the fee increases, the fact that the Ontario Securities Commission (OSC) has been operating with a surplus for several years and that this surplus is dwindling. We appreciate that the surplus has resulted in fees lower than what the OSC perceives they should have been during the subject periods. We believe that there may be a time when it is appropriate to restore fees to “where they should have been”. However, now is not that time. In the current environment, quasi-government authorities must think long and hard about fee increases and must go to greater lengths than usual to justify them. We do not believe that burden has been met with the Proposed Rule.

Change to the Reference Year

Most investors in Ontario’s capital markets have experienced significant declines in the value of their investments during 2008. This experience has been shared by most investors in mutual funds. Under the current version of OSC Rule 13-502, the tiers for the

Invesco Trimark

5140 Yonge Street, Suite 900

Toronto, Ontario M2N 6X7

Telephone: 416.590.9855 or 1.800.874.6275

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fees are extremely wide; a fund company's assets under management (AUM), and hence its Ontario revenue, can decline by more than 50% but the company could still pay the same dollar amount for its capital markets participation fee. As noted above, this fee is passed on directly to investors in a fund complex's mutual funds. Therefore, even without a fee increase, many investors are facing a proportionate increase in the capital markets participation fee for 2009.

Under the current fee schedule, if a fund company had Ontario specified revenue of \$490 million in 2007 and, as result of market activity, assuming flat sales, their revenue declined in direct proportion to AUM so that the revenue is now \$300 million, under the current rule, the fee would still be \$525,000, implying a smaller base over which to spread that expense. If in 2009, markets decline a further 20%, under the same assumption, revenue would fall to \$240 million and the fee would remain \$525,000. Despite a 50% decline in revenue over a 2 year period, a fund complex's capital markets participation fee would remain the same. As such, the impact, in basis points, to an investor in that complex's funds would double. Under the Proposed Rule, in 2009, the fee would increase to \$595,000.

The foregoing example demonstrates significant problems inherent in the current formula. The Proposed Rule significantly amplifies and exacerbates these problems.

Further, by changing the reference fiscal year under the Proposed Rule to a fixed fiscal year, financial market participants must rely on the OSC to in fact propose a revision to the rule in two years. It is open to the OSC to refrain from proposing a revision in 2010, i.e. there is nothing that legally compels the OSC to do so. As a result, it is possible that fees paid in 2011 will be based on the 2007 fiscal year. It is clear that the 2007 fiscal year represented a high water mark for mutual fund assets under management. We do not expect industry AUM to recover to that level during the 2 years that the Proposed Rule is intended to cover. It remains an open question as to when AUM will recover to those levels.

In the context of financial service industry layoffs, steep investor losses and a faltering economy, we question whether the result likely to be achieved by the Proposed Rule is what the OSC intended. Many firms regulated by the OSC are freezing salaries and new hires; some are even cutting staff outright. As such, it is difficult for us to comprehend why our regulator seeks to increase its fees in order to achieve the opposite result at this time.

While the desire for the OSC to have fee and revenue predictability is commendable, we note that none of the subjects of OSC regulation have that degree of comfort and the cost of that comfort is simply too high in the present circumstances for all of the reasons cited above.



In criticizing a proposed regulatory action, we would ordinarily feel compelled to offer an alternative suggestion to achieve the regulatory goals. However, the timing of this particular proposal is so poor given the current state of the markets that we cannot offer any alternative suggestions other than abandonment of the Proposed Rule, and the continuation of the current OSC Rule 13-502, until such time as capital markets recover.

Yours very truly,

Invesco Trimark

A handwritten signature in black ink, appearing to read "Eric J. Adelson", with a long horizontal flourish extending to the right.

Eric J. Adelson
Senior Vice President, Legal