

January 9, 2009

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

Dear Sirs/Mesdames:

Re: ICAC's comments on Proposed Revocation and Replacement of OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

1. The Investment Counsel Association of Canada

The Investment Counsel Association of Canada ("ICAC") represents investment management firms registered to do business in Canada as investment counsel/portfolio managers. Our members are from across Canada and are comprised of both large and small firms managing both institutional and private client portfolios. The ICAC was established in 1952 and its 115 members (see Appendix A) manage in excess of \$700B in assets. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. Member firms are in the business of managing investments for clients in keeping with each client's needs, objectives and risk tolerances.

2. General Comments

The ICAC wishes to offer its comments on the Proposed Revocation and Replacement of OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees* (the "Proposal").

While we support the OSC's stated efforts to develop a fee structure that will reduce the current state of budget surpluses and to provide a more predictable participation fee for registrants, we are concerned that the Proposal falls short of achieving its goals. Under the Proposal many registrants will actually pay much higher fees over the next two years than would otherwise have been applied under the current fee schedule.

The announcement of the Proposal during this time of a historic market downturn which has had, and will continue to have, an adverse impact on many registrants' revenues, highlights the need for the OSC to take a hard look at the regulatory costs imposed on our industry. Many of our members are facing average reductions in revenues in the order of 20% and for many companies this is translating into job losses. To increase regulatory costs on these businesses at this time could have a further negative impact on staffing budgets. Added to this one must also consider the expenses borne by our members in complying with increasingly demanding regulatory initiatives. We are of the view that it is inappropriate that fees increase at this time when registrants are downsizing operations and the OSC is generating a large budget surplus.

3. Participation Fees

The most significant change is the basis of calculation of participation fees that are payable on an annual basis by registrants. Under the Proposal, instead of basing participation fees on a registrant's specified Ontario revenue for its most recently completed financial year, these fees will be calculated using data from a "reference fiscal year". The reference fiscal year will be fixed for two years until the next fee review by the OSC.

While we see the benefit of adopting a fixed historical reference point in determining participation fees from a forecasting perspective, given current market conditions, we question the need to impose these changes at this time. The fee increases resulting from the proposal are exacerbated by the fact that the first chosen "reference fiscal year" on which a registrant will prepare the required calculations will be its last completed financial year that ended prior to January 1, 2008 which represents close to the peak of many major market indices and does not reflect current conditions or most registrant's current revenues.

We recommend maintaining the existing calculation methodology for participation fees if only until the market stabilizes.

In the alternative, if the OSC is determined to proceed with the Proposal, we recommend selecting the registrant's fiscal year most closely ending before January 1, 2009 as the "reference fiscal year" under the Proposal. Given that the Proposal will not be effective for most registrants until after their participation fees for the current year have been paid, it seems unnecessary to base the first reference year on revenues that were earned two years ago (and for the second year of the Proposal's implementation, revenues that were earned three years ago). Adopting the fiscal year ended prior to January 1, 2009 as the first reference fiscal year will (i) still achieve the Proposal's goal of revenue certainty, (ii) work within the framework and implementation schedule of the Proposal, and most importantly, (iii) be fairer and more accurately reflect current market conditions.

4. Refunds and Surpluses

For many years the OSC has generated large operating surpluses that have resulted in the OSC issuing refunds to market participants. However, the refund distribution scheme is opaque to most market participants and may exacerbate mismatches in revenue. We submit that the OSC should publish a detailed accounting of its budgetary process, particularly how it determines returns of surpluses to capital markets participants. Ultimately, the overall adequacy and fairness of any fee based system that operates on a surplus basis can only be properly assessed if the refund portion is as transparent as the fee generating portion. It has never been clear to our members how the OSC determines who is entitled to a refund and how the refunds are apportioned.

In the Proposal, the OSC states that it anticipates a surplus of \$49 million at March 31, 2009 and expects that approximately \$22 million will be refunded to market participants. Rather than refunding a portion of the surplus to market participants we recommend that the OSC use this amount to reduce the fee bands or provide a credit to market participants with respect to their future participation fees.

Our working group of members would be happy to meet with you should you wish to further discuss this issue.

Yours sincerely,

Katie Walmsley
President
ICAC

William Chinkiwsky
Chair, Industry, Regulation & Tax Committee
ICAC

Appendix A

INVESTMENT COUNSEL ASSOCIATION OF CANADA MEMBERSHIP LIST

ACUITY INVESTMENT MANAGEMENT INC.
AEGON CAPITAL MANAGEMENT INC.
AGF ASSET MANAGEMENT GROUP LIMITED
AGF PIM
AIC LIMITED
ALDERSLEY SECURITIES INC.
AMG CANADA
AURION CAPITAL MANAGEMENT INC.
AVENUE INVESTMENT MANAGEMENT INC.
BARCLAYS GLOBAL INVESTORS CANADA LIMITED
BARRANTAGH INVESTMENT MANAGEMENT INC.
BASKIN FINANCIAL SERVICES INC.
BEAUJOLAIS PRIVATE INVESTMENT MANAGEMENT
BEUTEL, GOODMAN & COMPANY LTD.
BLOOM INVESTMENT COUNSEL, INC.
BMO HARRIS INVESTMENT MANAGEMENT INC.
BULL CAPITAL MANAGEMENT INC.
BURGUNDY ASSET MANAGEMENT LTD.
C.A. DELANEY CAPITAL MANAGEMENT LTD.
C.F.G. HEWARD INVESTMENT MANAGEMENT LTD.
CANSO INVESTMENT COUNSEL LTD.
CARDINAL CAPITAL MANAGEMENT INC.
CIBC GLOBAL ASSET MANAGEMENT INC.
COCKFIELD PORRETTI CUNNINGHAM INVESTMENT COUNSEL INC.
COLEFORD INVESTMENT MANAGEMENT LTD.
COLEFORD INVESTMENT MANAGEMENT LTD.
COUGAR GLOBAL INVESTMENTS LP
CRANSTON, GASKIN, O'REILLY & VERNON INVESTMENT COUNSEL
CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED
CYPRESS CAPITAL MANAGEMENT LTD.
DAVIS-REA LTD.
DE LUCA VEALE INVESTMENT COUNSEL INC.
DOHERTY & ASSOCIATES INVESTMENT COUNSEL
ECHLIN INVESTMENT MANAGEMENT LIMITED
EVANS INVESTMENT COUNSEL
FOYSTON, GORDON & PAYNE INC.
GENOVA PRIVATE MANAGEMENT INC.
GENUS CAPITAL MANAGEMENT INC.

GFI INVESTMENT COUNSEL LTD.
GMP INVESTMENT MANAGEMENT L.P.
GOODMAN & COMPANY, INVESTMENT COUNSEL
GREYSTONE MANAGED INVESTMENTS INC.
GROUNDPLAYER CAPITAL INC.
GRYPHON INVESTMENT COUNSEL INC.
GUARDIAN CAPITAL LP
GWL INVESTMENT MANAGEMENT LTD. (GWLIM)
HEATHBRIDGE CAPITAL MANAGEMENT
HÉLÈNE DION INVESTMENT MANAGEMENT INC.
HESPERIAN CAPITAL MANAGEMENT LTD.
HIGHSTREET ASSET MANAGEMENT INC.
HILLSDALE INVESTMENT MANAGEMENT INC.
HOWARD, BARCLAY & ASSOCIATES LIMITED
HSBC INVESTMENTS (CANADA) LIMITED
HUTTON INVESTMENT COUNSEL INC.
IA CLARINGTON INVESTMENTS INC.
INDEPENDENT ACCOUNTANTS' INVESTMENT COUNSEL INC.
INTEGRA CAPITAL LIMITED
JONES COLLOMBIN INVESTMENT COUNSEL INC.
JONES HEWARD INVESTMENT COUNSEL INC.
KBSH CAPITAL MANAGEMENT INC.
KINGSMONT INVESTMENT MANAGEMENT INC
LDIC INC.
LEGG MASON CANADA INC.
LEITH WHEELER INVESTMENT COUNSEL LTD.
LEON FRAZER & ASSOCIATES INC.
LONDON CAPITAL MANAGEMENT LTD.
LOUISBOURG INVESTMENTS INC.
MACKENZIE CUNDILL INVESTMENT MANAGEMENT LTD.
MAGNA VISTA INVESTMENT MANAGEMENT
MANITOU INVESTMENT MANAGEMENT LTD.
MARQUEST ASSET MANAGEMENT INC.
MARTIN, LUCAS & SEAGRAM LTD.
MAWER INVESTMENT MANAGEMENT LTD.
MCELVAIN INVESTMENT MANAGEMENT LTD.
MCLEAN BUDDEN LIMITED
MD PRIVATE INVESTMENT MANAGEMENT INC.
MFC GLOBAL INVESTMENT MANAGEMENT (CANADA)
MILESTONE INVESTMENT COUNSEL INC.
MONTRUSCO BOLTON INVESTMENTS INC.
MORGAN MEIGHEN & ASSOCIATES LIMITED
MULVIHILL CAPITAL MANAGEMENT INC.
NATCAN INVESTMENT MANAGEMENT INC.
NEXUS INVESTMENT MANAGEMENT INC.

NORTHWOOD STEPHENS PRIVATE COUNSEL INC.
PHILLIPS, HAGER & NORTH INVESTMENT MANAGEMENT LTD.
PORTFOLIO MANAGEMENT CORPORATION
PRESIMA INC.
PRIORITY CAPITAL MANAGEMENT INC.
PUR INVESTING INC.
RAE & LIPSKIE INVESTMENT COUNSEL INC.
RBC ASSET MANAGEMENT INC.
RBC PRIVATE COUNSEL INC.
ROBITAILLE ASSET MANAGEMENT INC.
ROGAN INVESTMENT MANAGEMENT LIMITED
RUSSELL INVESTMENTS CANADA LIMITED
SCEPTRE INVESTMENT COUNSEL LIMITED
SCOTIA CASSELS INVESTMENT COUNSEL LIMITED
SIONNA INVESTMENT MANAGERS
SPRUNG & CO. INVESTMENT COUNSEL INC.
STATE STREET GLOBAL ADVISORS, LTD.
STONE & CO. LIMITED
STONEGATE PRIVATE COUNSEL
SUCCESSFUL INVESTOR WEALTH MANAGEMENT INC.
SUMMERHILL CAPITAL MANAGEMENT INC.
TD ASSET MANAGEMENT INC.
TD HARBOUR CAPITAL(DIV. OF TD ASSET MANAGEMENT)
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.
TETREM CAPITAL MANAGEMENT LTD.
TFP INVESTMENT COUNSEL CORP.
THORNMARK ASSET MANAGEMENT INC.
TULETT, MATTHEWS & ASSOCIATES
UBS GLOBAL ASSET MANAGEMENT (CANADA) CO.
VAN ARBOR ASSET MANAGEMENT LTD.
VENABLE PARK INVESTMENT COUNSEL INC.
VESTCAP INVESTMENT MANAGEMENT INC.
W.A. ROBINSON & ASSOCIATES LTD.
WATSON DI PRIMIO STEEL INVESTMENT MANAGEMENT LTD.
WISE CAPITAL MANAGEMENT INC.