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

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

December 31, 2009

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

Attn: John Stevenson
Secretary

Dear Sirs/Mesdames:

Re: Proposed Amendments to OSC Rule 13-502 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 amendments to OSC Rule 13-502 *Fees*. IFIC members were pleased with the OSC's decision to maintain participation fees and activity fees at existing rates until March 31, 2010. We are aware that as a result, the OSC is anticipating a $22M deficit in the 2009/10 fiscal year. We continue to support the OSC's full use of the remaining surplus to minimize fee increases over the next three years.

Extending the OSC Fee Freeze

The OSC is proposing annual increases of 17% and 9% for corporate finance and capital market participation fees respectively over three years to allow the OSC to fully pay-out its accumulated surplus of approximately $24.8M by the end of fiscal 2013. Despite these fee increases, the OSC anticipates a revenue shortfall of $16.2M and $8.6M in 2010/11 and 2011/12. As noted above, IFIC members support the full use of the surplus to address the revenue shortfall but would recommend an alternative schedule for the use of the surplus over the next two years.

As the OSC acknowledged in its 2009 Annual Report, the past year was an unprecedented time for the capital markets in Ontario and " current economic conditions continue to pose challenges for those that the OSC regulates."[1] In the Request for Comments, the OSC indicates that its revenue growth estimates are consistent with historical analysis of market growth after previous market corrections. It is important to note that there is still considerable uncertainty about the path of the market to full recovery over the next year or two. IFIC members had $573B in assets under management as at October 31, 2009, up 9.7% from the previous year, but down significantly from the market peak of $648B in October 2007. While the market recovery appears underway, it is not certain that IFIC members will have sufficient sustained revenue growth to support 9% annual increases in OSC fees over the next three years. [2]

The mutual fund industry is also operating in a different environment compared to previous market corrections, and it may not be fair to assume that the same relationship exists between revenues and income. IFIC members have significant expenses associated with regulatory requirements that were not in place in the period following previous market corrections, including Mutual Fund Dealers Association of Canada (MFDA) fees and costs associated with Independent Review Committees and the production of the Management Report of Fund Performance. In the future, IFIC members also will expect to face additional new costs associated with Point of Sale Disclosure. As such, the ability of IFIC members' revenues over the next three years to support fee increases to the same extent may be significantly different from what historical analysis may suggest.

In light of the above, IFIC members recommend that the OSC continue to maintain participation fees and activity fees (excluding the new fees associated with the implementation of National Instrument 31-103 *Registration Requirements and Exemptions*) at existing rates until March 31, 2011. We appreciate that this may result in significantly lower revenue than forecasted for 2010/11 and could require the OSC to use a much larger portion of the surplus than anticipated to cover the revenue shortfall. IFIC members would support the full use of the surplus in 2010/11 if necessary to maintain fees until March 31, 2011.

Extending the moratorium on fee increases would serve several purposes. First, it would keep fees constant until the market fully stabilizes. Second, it would give the OSC an opportunity to explore further one of the proposals outlined in the October 2008 consultation draft OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*.

---

[1] 2009 OSC Annual Report, p.63.

[2] In fact, some of our members estimate that they face an increase of up to 19% in OSC fees over the next 3 year fee cycle under the new proposals.

Two-Year Fee Cycle

The OSC has indicated that it will further review its fee model over the next year with the goal of developing "a more predictable fee structure that will allow full recovery of its costs in a way that is fair and transparent to market participants."[3] The October 2008 consultation draft OSC rule contained one proposal that we recommend the OSC adopt: a two-year fee cycle.

The OSC has acknowledged that the difficulty in predicting OSC revenues led to the accumulation of significant surpluses between 2003 and 2008. While the optimal solution to this particular issue would be to set fees on an annual basis, we acknowledge the OSC's view that this would not be feasible. As such, we recommend that the OSC adopt a two-year fee cycle beginning on April 1, 2011.

Allocation of Fee Burden

We continue to be concerned about the level of participation fees charged to mutual fund industry registrants who continue to shoulder a disproportionate burden of the OSC's operating costs. The OSC is proposing a differential between the fee increases proposed for issuers (17%) and registrants (9%) in order to better align revenues generated from market participant groups with their level of participation in the Ontario capital markets. However, the OSC acknowledges that after the proposed increases are implemented, the weighted average fees for issuers will be 10.6% less in 2013 than they were in 2003, whereas the participation fees payable by registrants will be 4.0% higher than in 2003.

The market capitalization of reporting issuers (other than investment funds) far exceeds the size of the mutual fund industry, yet registrant participation fees comprise approximately 53% of total OSC revenues, while reporting issuer fees comprises less than 30% of its total revenues.[4] We urge the OSC to address this imbalance in the current fee review, or at the latest, after the extension of the fee freeze until March 31, 2011 as recommended above.

OSC Fees Paid by MFDA Members

In our December 30, 2008 submission, we expressed concern about the OSC participation fees paid by MFDA members given that the OSC has delegated the regulation of mutual fund dealers' operations, standards of practice and business conduct to the MFDA. We urged the OSC to review its participation fees to eliminate any duplication with MFDA

---

[3] 2009 OSC Annual Report, p.64.

[4] 2008 OSC Annual Report, p. 33.

membership fees. The OSC's response to the industry indicated that the Commission recovers the costs related to the oversight of the MFDA through participation fees and that these oversight activities do not duplicate any MFDA activities.

We would like to reiterate our concerns about the OSC participation fees paid by MFDA members. We would expect direct regulation by the MFDA to result in net expense reductions at the OSC. We also note that the British Columbia Securities Commission is the lead regulator for the MFDA. We assume that the OSC participation fees paid by MFDA members are attributed to the registration function but note that this function has been largely automated with the establishment of the National Registration Database. We urge the OSC to (a) review the level of participation fees paid by MFDA members and (b) take into consideration MFDA fee increases when setting its own fees.

***

We thank you for the opportunity to comment on the proposed amendments to OSC Rule 13-502. Please contact Ralf Hensel, Director, Policy - Manager Issues (416-309-2314; rhensel@ific.ca) should you wish to discuss our comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Joanne De Laurentiis
President and Chief Executive Officer