Annex I

Summary of Comments and OSC Responses

Section Reference (Rule 13-502 of the replaced Main Fee Rule)	**Issue/Comment**	**Response**
General Comment	One commenter is supportive of the consultation period and is very supportive of the lower participation and activity fees, simplification of fee calculations and elimination of outside activity late filing fee.	We appreciate the commenters review and feedback of the proposed amendments.
General Comment	One commenter supports the reduction in participation and activity fees impacting their members and the elimination of the outside (business) activity late filing fee.	We appreciate the commenters review and feedback of the proposed amendments.
General Comment	One commenter requested further information on the resourcing and funding strategy of the Office of Economic Growth and Innovation (Innovation Office) and whether the establishment required a reallocation of resources away from regulatory activities.	The formation and establishment of the Innovation Office did not require a reallocation of resources away from regulatory activities. Instead, an increase in the OSC's staffing complement was necessary to establish and operationalize the Innovation Office. Subject to Ministerial approval, the OSC plans to fund the Innovation Office using funds held pursuant to designated settlements and orders.
Part 6	One commenter suggested that derivatives dealers responsible for a majority of derivatives transactions in Ontario are not a significant source of potential operational and systemic risk. This commenter wrote that many of the largest OTC transactions conducted in Ontario represent hedging activity run in a matched book and, as such, help reduce systemic risk rather than increase it. Accordingly, this commenter suggested that the derivatives participation fee does not take into account the fact that many large OTC derivatives transactions also reduce systemic risk and that high transaction volumes may actually be a sign of systemic stability in the OTC derivatives market in Ontario. This commenter asks that the OSC reconsider the proposed fee structure in favour of a model that is more proportionate to the systemic risks	No change. We do not agree with this comment. Large, interconnected derivatives dealers introduce significant potential systemic risk in Ontario's derivatives market. Among the CSA's derivatives rules, the rule that relates most closely to systemic risk mitigation is NI 94-101 *Mandatory Central Counterparty Clearing of Derivatives*. As previously requested by this same commenter, NI 94-101 is calibrated to apply to larger entities that pose potential systemic risk.[1] The fee rule is consistent with this approach because the higher fee tiers align with greater potential systemic risk associated with these participants in the Ontario derivatives market and accordingly higher costs of oversight. The fee payers that we estimate to be in the higher fee tiers have generally been designated as global systemically important banks or domestic systemically important banks. The elevated

[1] "The goal of implementing a mandatory clearing regime is to mitigate systemic risk in derivatives markets. CMIC submits that goal is achievable by limiting the regime to large financial entities." Letter from the Canadian Market Infrastructure Committee dated May 13, 2015, available at https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20150513_94-101_canadian-market-infrastructure-committee.pdf

	posed by market participants, and fairer and more equitable between various market participants.	potential for systemic risk in Ontario's derivatives market arises in part due to the interconnected nature of these dealers and their important role in the derivatives market. Risks arising in or transmitted through these dealers have the potential to spread to many other market participants and the financial system. A dealer that attempts to operate a balanced portfolio or "matched book" enters into offsetting transactions to mitigate market risk, to the extent feasible given the bespoke nature of over-the-counter derivatives transactions, and subject to the dealer's market risk tolerance. However, this practice does not reduce other risks, such as counterparty default risk and operational risk, which have an increased potential to be systemic due to the interconnected nature of these entities and their concentration in the market. Counterparty defaults could lead to significant losses, and would also result in unbalanced portfolios, exposing counterparties to additional market risk. At the time of the 2008 financial crisis, many large dealers likewise sought to operate matched books, but this did not prevent significant systemic impact when they or their counterparties defaulted or obtained bailouts to mitigate this impact. We also note that clearing agencies run perfectly matched books, but this alone is not sufficient to mitigate the potential systemic risk associated with their positions, which necessitates additional safeguards and oversight. In addition to systemic risk, the OSC monitors other risks in the market, including market abuse. While this risk may arise in relation to any market participant, the cost of oversight is greater in relation to dealers with more significant activity and that serve a market making function and transact with a larger population of counterparties. In addition, any misconduct involving large dealers has the potential to impact a more significant number of market participants, and therefore the risks to other market participants of such potential abuse are proportionately greater. The use of notional thresholds to establish fee tiers is an equitable approach that is proportionate to the cost of regulatory oversight and facilitates fee administration and predictability. Notional amounts are reported to trade repositories and are used by regulators globally in many areas of

		derivatives regulation to calibrate requirements as they apply to market participants.[2]
Part 6	One commenter wrote that the decision to impose significantly higher fees on the largest OTC derivatives dealers risks creating distortions in the market and may affect the ability of participants to compete on a level playing field. This commenter suggested that the fee may disincentivize derivatives dealing activity, which is important in reducing systemic risk. The commenter is concerned that increasing regulatory burden by imposing higher fees in this important market could have negative unintended consequences for hedging activity in Ontario. This commenter also noted that increased regulatory costs imposed on dealers lead to higher transaction costs for end user clients. Another commenter indicated that while investors ultimately bear the cost of fees levied by the OSC, notwithstanding the market participants on whom the fees are actually levied, it is appropriate that investors shoulder these costs to the extent that the OSC contributes to a more fair and safe environment for investors.	No change. The fee tiers are designed to ensure a level playing field, so that reporting counterparties engaging in a similar level of notional activity in the Ontario derivatives market are charged the same fee. The fee has been designed to be neutral as to different circumstances, such as whether transactions are cleared or uncleared, or the asset class of the transaction. Many of the institutions that will be subject to the derivatives participation fee are already accustomed to paying fees to support regulation of their activities. For instance, the Office of the Superintendent of Financial Institutions collected $181,394,011 in assessments for the regulation and supervision of financial institutions for 2020-21.[3] The National Futures Association in the U.S. also levies membership dues on swap dealers and collected US $42,494,583 in membership dues for 2020-21.[4] We estimate that the OSC's derivatives participation fee will result in $13.5 million in assessments. Although the commenter did not specify the nature of potential distortions that it is concerned about, the OSC will continue to monitor the fee rule as it is introduced to assess any potential negative impact on the market. We share concerns regarding transaction costs. The OSC has adopted many measures in the last few years to reduce regulatory burden and costs on market participants, including through recent proposed amendments to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*. The fee is a balanced approach that reflects the long-term benefit of maturing and developing regulatory oversight in the derivatives market to ensure that we continue to meet Canada's G20 commitments in this area.
Part 6	One commenter requests more information regarding the specific uses by the OSC on the additional $13.5 million annual fee revenue earmarked for OTC derivatives oversight.	The $13.5 million revenue target was established by determining direct costs to oversee OTC derivatives entities and a recovery of a proportionate share of the OSC's indirect costs. Specific uses to directly oversee OTC derivatives entities include 28 dedicated permanent positions

[2] Examples of notional amount thresholds include mandatory clearing thresholds in Australia, Canada, the European Union, Hong Kong, Singapore and the United Kingdom, trade execution requirements in the European Union, Japan, Singapore and United Kingdom, and global margin requirements for uncleared derivatives. Basel III also includes notional amount as one of the metrics in global systemically important bank methodology.
[3] See https://www.osfi-bsif.gc.ca/Eng/osfi-bsif/rep-rap/uf/Pages/fees2021.aspx
[4] Includes membership dues received from members other than swap dealers. While the CFTC has delegated certain functions to the NFA, the fees levied by the NFA only relate to the NFA's oversight and do not include costs relating to the CFTC's swaps oversight. See https://www.nfa.futures.org/members/ib/regulatory-obligations/membership-dues-revenue-structure.html and https://www.nfa.futures.org/about/annual-reviews-files/2021_AnnualReview.pdf

		who will be responsible for OTC derivatives policy development, compliance audits, systemic risk monitoring and data analysis. A portion of the OSC's enforcement, advisory and back-office functions, including occupancy charges, are necessary to support core regulatory functions, including oversight of OTC derivatives entities. These functions are charged back on a proportionate basis, utilizing specific cost drivers to determine a fair and appropriate allocation method by sector.
Part 6	Two commenters request that the OSC calculate the derivatives participation fee, and in turn levy the fee on each payer.	No change. This process is consistent with fee calculation requirements imposed on all other market participants.
s. 30	Two commenters note that the calculation of the average daily notional amount outstanding would require extensive technology builds that would require a significant investment in time and resources, including internal processes to generate, maintain and audit reports of the information required to calculate the fee, which would impose an increased regulatory burden. These commenters indicated that the regulatory burdens imposed on dealers by the new fee, including the increased costs of calculating the fee, should be carefully evaluated to ensure sustainability of the Ontario market in the long term. These commenters suggested a quarterly calculation, rather than a daily calculation. One commenter noted that figures are more accessible on a quarterly, rather than a daily, basis. The commenter believes that a quarterly calculation would provide similar results to a daily calculation with respect to determining the applicable fee tier, but without the unnecessary additional regulatory burden.	Change made. We have significantly reduced the potential for regulatory burden by requiring fee payers to determine their outstanding notional amounts on a quarterly basis, rather than a daily basis. All three trade repositories that have been designated by the OSC produce position reports that are available to their participants. These reports indicate, for each asset class, as of a particular day, the notional amount of each of the participant's outstanding transactions that are reported under OSC Rule 91-507. This is the same data that is required to calculate a fee payer's fee. For a fee payer that is not an Ontario local counterparty (such as a foreign bank), the reports can identify transactions with Ontario local counterparties, which are relevant to the fee calculation for these fee payers. As a result, even where outstanding notional may not be readily available on a fee payer's internal systems, this information is available from the trade repositories. These reports, together with the change to a quarterly calculation, significantly mitigate any regulatory burden associated with the fee.
s. 30	Two commenters suggested the quarterly calculation be determined as at the end of the last day of each of the four most recent fiscal quarters of the firm, so that it could be folded into the normal quarter end financial reporting for each firm.	No change. Fee payers have a variety of financial year-end dates. We are not able to tailor the derivatives fee year for each fee payer to align with their respective fiscal year, as this would increase the burden of administering the fee rule. Receiving revenue from the fee at different times during the calendar year would also not facilitate predictability of cost recovery and budgetary needs. We also note that fee payers' accounting requirements for quarterly financial statements may not align with trade reporting data that is required to determine the fee. Finally, we note that other notional calculations in derivatives rules (for

		instance, prudential margin rules and notional thresholds in NI 94-101) are not aligned with fiscal quarters. We have not altered the timing of the derivatives fee year (which commences July 1 each year) set out in the proposed amendments, which was chosen to meet OSC funding requirements. Therefore, quarter-end notional calculations will be as of the last business day in September, December, March, and June.
s. 30	One commenter expressed a view that, if the new fee is required to be calculated based on daily notional amounts, a transition period of at least one calendar year would be appropriate between the date the adoption of the fee in final form and the first day of the first derivatives fee year under the amended fee rule	Change made. The requested two-year delay before the first derivatives participation fee payment is unnecessary because the calculation is quarterly and notional data is available from trade repositories. As previously indicated, the fee rule amendments are scheduled to take effect in April 2023. Therefore, the first derivatives participation fee will be due on August 29, 2023. We are mindful of the potential for regulatory burden in requiring fee payers to determine notional amounts in respect of quarter-ends that pre-date publication of the final amendments. The availability of position reports from designated trade repositories as of these prior dates should mitigate this concern. In order to further alleviate this potential burden, we have provided fee payers with the option, only in respect of the first derivatives fee year, either: (a) to calculate the fee payment based on the four quarter-ends during the first derivatives fee year (i.e. the last business day in September 2022, December 2022, March 2023 and June 2023), or (b) to calculate the fee payment based solely on the last business day in June 2023. Subsequent derivatives fee years must be calculated based on all four quarter-ends in the derivatives fee year.
para. 30(2)(a)	One commenter suggests that the following changes be considered to this paragraph (assuming quarter end amounts are used): <u>Current Wording</u>: “for each day in the derivatives fee year, determine the total of the notional amounts of the fee payer’s outstanding positions, as reported under OSC Rule 91-507, referenced in the currency of the outstanding position, as reported under OSC Rule 91-507.”	Change made. We have revised this language to improve clarity and reflect the change to quarterly notional amounts.

	Proposed Changes: "for the last day of the fee payer's four most recent fiscal quarters, determine the notional amounts of the fee payer's outstanding positions as at the end of such day, in respect of transactions reported under OSC Rule 91-507, referenced in the currency of the outstanding position, as reported under OSC Rule 91-507."	
para. 30(2)(e)	One commenter is seeking the OSC's confirmation that the denominator in Section 5A.2(3)(e) of the draft fee rule is the number of calendar days in the year (365 or 366, as applicable).	This comment is no longer applicable as a result of the change to quarterly notional amounts.
s. 31	One commenter raised concerns that if a firm miscalculated its fee under a lower fee tier, late fees could accumulate at a significant rate.	No change. This concern should be mitigated by only requiring reporting counterparties to calculate their notional outstanding four times per year, which reduces the likelihood of miscalculation. As the new fee is implemented, we will work with market participants to address potential discrepancies between the notional data reported under OSC Rule 91-507 and the fee payer's fee calculation.
Companion Policy s. 25	One commenter suggests alternate introductory language in section 5A.2 of the draft Companion Policy to improve clarity.	Change made. We have revised the introductory language to improve clarity and reflect the change to quarterly notional amounts.
Companion Policy s. 25	One commenter suggests that the three references to "cumulative" amounts in section 5A.2 of the draft Companion Policy be replaced by references to "aggregate" amounts for consistency with the draft wording of Section 5A.2 of the draft fee rule.	Change made. We have removed the references to "cumulative".
s. 40(2)	One commenter suggested that OSC make it clear in Rule 13-502 that late filing fees for exempt distribution filings of investment funds, which have the same investment fund manager, are treated as one "person or company" for purposes of late fee calculation.	Change made. We acknowledge that late filing fees can be overly burdensome for investment fund families and affiliated registrants and address this by extending the relief from late fees for investment fund families and affiliated registrants to the filing of Form 45-106F1 in s. 40(2).

List of Commenters:

1. Bridgehouse Asset Managers
2. Canadian Market Infrastructure Committee
3. Canadian Bankers Association
4. Harvey S. Naglie
5. Portfolio Management Association of Canada
6. Private Capital Markets Association of Canada