

B.5.2 Ontario Securities Commission Companion Policy 13-502CP Fees

**COMPANION POLICY 13-502CP
FEES**

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**PART 1
PURPOSE OF COMPANION POLICY**

Purpose of Companion Policy

1. The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-502 *Fees* (the “Rule”), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

**PART 2
PURPOSE AND GENERAL APPROACH OF THE RULE**

Purpose and general approach of the Rule

2. (1) The purpose of the Rule is to establish a fee regime that creates a clear and streamlined fee structure.
- (2) The fee regime of the Rule is based on the concepts of “participation fees” and “activity fees”.

Participation fees

3. (1) Reporting issuers, registrant firms and unregistered capital markets participants, as well as specified regulated entities and designated rating organizations, are generally required to pay participation fees annually. Participation fees must also be paid on an annual basis by certain participants in the derivatives market.
- (2) Participation fees are designed to cover the Commission’s costs not easily attributable to specific regulatory activities. The participation fee required of a person or company under Parts 2 and 3 of the Rule is based on a measure of the person’s or company’s size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a reporting issuer, the participation fee is based on the issuer’s capitalization, which is used to approximate its proportionate participation in the Ontario capital markets. In the case of a registrant firm or unregistered capital markets participant, the participation fee is generally based on the firm’s revenues attributable to its capital markets activity in Ontario.
- (3) Participation fees under Part 4 of the Rule are generally fixed annual amounts payable each year. In the case of specified regulated entities to which Part 4 of the Rule applies, participation fees are generally specified for a particular organization or type of organization in Appendix D. The level of participation fees for recognized clearing agencies is determined by reference to the services they provide.
- (4) Participation fees for designated rating organizations under Part 5 of the Rule are \$15,000 per financial year.
- (5) Participation fees in respect of derivative transactions are based on the fee payer’s notional amounts reported under Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*.
- (6) A person or company may be subject to participation fees under more than one part of the Rule. There is no cap on multiple participation fees except as described in subsection 8(1) (below).

Application of participation fees

4. Although participation fees are generally determined with reference to information from a financial year of the payor generally ending before the time of their payment, they are applied to the costs of the Commission of regulating the ongoing participation in Ontario’s capital markets of the payor and other market participants.

Registered individuals

5. The participation fee is paid at the firm level under the Rule. For example, a “registrant firm” is required to pay a participation fee, not an individual who is registered as a representative of the firm.

Activity fees

6. Activity fees are generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix F of the Rule are considered in determining these fees (e.g., reviewing prospectuses, registration applications, and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

Registrants under the *Securities Act* and the *Commodity Futures Act*

7. (1) The Rule imposes an obligation to pay a participation fee on registrant firms, defined in the Rule as a person or company registered under the Act as a dealer, adviser or investment fund manager. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*. Given the definition of “capital markets activities” under the Rule, the revenue of such an entity from its *Commodity Futures Act* activities must be included in its calculation of revenues when determining its fee under the Rule. Section 2 of OSC Rule 13-503 (*Commodity Futures Act*) Fees exempts such an entity from paying a participation fee under that rule if it has paid its participation fees under the *Securities Act* Rule.
- (2) Dealers and advisers registered under the *Commodity Futures Act* may be subject to activity fees under OSC Rule 13-503 (*Commodity Futures Act*) Fees even if they are not required to pay participation fees under that rule.

Refunds

8. (1) A refund mechanism is provided under subsection 20(4) of the Rule. This subsection deals with a refund mechanism used to effect a cap of Part 3 and Part 4 participation fees for alternative trading systems, in an attempt to align the participation fees to those charged to other specified regulated entities.
- (2) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee unless they meet the conditions discussed in subsection (1) above. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a reporting issuer, registrant firm or unregistered capital markets participant that loses that status later in the financial year in respect of which the fee was paid.
- (3) While the Commission will also review requests for adjustments to fees paid in the case of incorrect calculations, unless there are exceptional circumstances, we will not generally issue a refund if a request is made more than 90 days after the fee was required to be paid. Filers should contact OSC staff with regard to the mechanics of how to deliver such a request.
- (4) Filers are expected to file correct information in a form. Correct information is important not only to reflect the filer’s particular circumstances but also for more general data collection and analysis by the Commission. If a filer becomes aware that information in a previously filed form is incorrect, the filer should contact OSC staff about addressing the incorrect information on a timely basis (whether or not the correction would result in the determination of a different fee amount).

Indirect avoidance of Rule

9. The Commission may examine arrangements or structures implemented by a person or company and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, the Commission will review circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm to assess whether the firm has artificially reduced the firm’s specified Ontario revenues and, consequently, its participation fee. Similarly, registrant firms or unregistered capital markets participants that operate under a cost recovery model in which there are no recorded revenues on their financial statements would be expected to report a reasonable proxy of the firm’s capital markets activities in Ontario, subject to the conditions of any exemptive relief granted under section 44 of the Rule. In all cases, the Commission expects registrant firms and unregistered capital markets participants to pay participation fees based on all revenues attributable to capital markets activities in Ontario, irrespective of how these revenues are recorded or structured.

**PART 3
CORPORATE FINANCE PARTICIPATION FEES**

Application to investment funds

10. Part 2 of the Rule does not apply to an investment fund if the investment fund has an investment fund manager. The reason for this is that under Part 3 of the Rule an investment fund’s manager must pay a capital markets participation fee in respect of revenues generated from managing the investment fund.

Late fees

11. Section 8 of the Rule requires a reporting issuer to pay an additional fee when it is late in paying its participation fee. Reporting issuers should be aware that the late payment of participation fees may lead to the reporting issuer being noted in default and included on the list of defaulting reporting issuers available on the Commission’s website.

Exemption for subsidiary entities

12. Under section 6 of the Rule, an exemption from participation fees is available to a reporting issuer that is a subsidiary entity if, among other requirements, the parent of the subsidiary entity has paid a participation fee applicable to the parent under subsection 4(1) of the Rule determined with reference to the parent's capitalization for the parent's financial year. This condition to the exemption is only available if the parent was a Class 1 or Class 2 reporting issuer.

Determination of market value

13. (1) Paragraph 9(1)(a) of the Rule requires the calculation of the capitalization of a reporting issuer to include the total market value of all of its equity securities listed or quoted on a marketplace. This includes, but is not limited to, any listed shares, warrants, subscription receipts and rights.
- (2) Paragraph 9(1)(b) of the Rule requires the calculation of the capitalization of a reporting issuer to include the total fair value of its debt securities that are listed or quoted on a marketplace, trade over the counter or otherwise generally available for sale even if there is a statutory hold period. This paragraph is intended to include all capital market debt issued by the reporting issuer, whether distributed under a prospectus or prospectus exemption, and includes, but is not limited to, bonds, debentures (including the equity portion of convertible debentures), commercial paper, notes and any debt securities to which a credit rating is attached, but is not intended to include bank debt (such as term loans and revolving credit facilities) and mortgages.
- (3) Paragraph 9(1)(c) of the Rule requires the calculation of the capital of a reporting issuer to include the fair value of the outstanding debt securities at the end of the previous financial year for subsidiaries that are not reporting issuers, subject to the limit imposed in that paragraph. There is a similar rule in paragraph 9(1)(d) for specified subsidiaries that are reporting issuers.
- (4) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.

Owners' equity and non-current borrowings

14. A Class 2 reporting issuer calculates its capitalization on the basis of certain items reflected in its audited statement of financial position. Two such items are "share capital or owners' equity" and "non-current borrowings, including the current portion". The Commission notes that "owners' equity" is designed to describe the equivalent of share capital for non-corporate issuers, such as partnerships or trusts. "Non-current borrowings" is designed to describe the equivalent of long term debt or any other borrowing of funds beyond a period of twelve months.

Identification of non-current liabilities

15. If a Class 2 reporting issuer does not present current and non-current liabilities as separate classifications on its statement of financial position, the reporting issuer will still need to classify these liabilities for purposes of its capitalization calculation. In these circumstances non-current liabilities means total liabilities minus current liabilities, using the meanings ascribed to those terms under the accounting standards pursuant to which the entity's financial statements are prepared under Ontario securities law.

**PART 4
CAPITAL MARKETS PARTICIPATION FEES**

Liability for capital markets participation fees

16. (1) Capital markets participation fees are payable annually by registrant firms and unregistered capital markets participants, as defined in section 1 of the Rule.
- (2) For registrants filing Form 13-502F4s for a year, the capital participation fee is based on their audited financial statements for the "designated financial year", as defined in section 1 of the Rule.
- (3) For unregistered capital market participants filing their 13-502F4s, the fees are based on their most recent available financial statements for the "designated financial year". These financial statements may be audited. If an unregistered capital market participant's financial statements are not ordinarily audited, unaudited financial statements may be used.

Late fees

17. Section 15 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm. The Commission may also consider measures in the case of late payment of fees by an unregistered capital markets participant, such as: in the case of an unregistered investment fund manager, prohibiting the manager from continuing to manage any investment fund or cease trading the investment funds managed by the manager; or, in the case of an unregistered exempt international firm, making an order pursuant to section 127 of the Act, that the corresponding exemptions from registration requirements under which the firm acts do not apply to the firm (either permanently or for such other period as specified in the order).

Form of payment of fees

18. Registrant firms pay through the National Registration Database. The filings and payments for unregistered capital markets participants should be sent via wire transfer to the Ontario Securities Commission.

“Capital markets activities”

19. (1) A person or company must consider its capital markets activities when calculating its participation fee. The Commission is of the view that these activities include, without limitation, carrying on the business of trading in securities, carrying on the business of an investment fund manager, providing securities-related advice or portfolio management services. The Commission notes that corporate advisory services may not require registration or an exemption from registration and would therefore, in those contexts, not be capital markets activities.
- (2) The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

Permitted deductions

20. Subsection 17(2) of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for unregistered capital markets participants and registrant firms. The purpose of these deductions is to prevent the “double counting” of revenues that would otherwise occur.

Confidentiality of forms

21. The material filed under Part 3 of the Rule will be kept confidential. The Commission is of the view that the material contains intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of the principle that the material be available for public inspection.

**PART 5
PARTICIPATION FEES PAYABLE BY
SPECIFIED REGULATED ENTITIES AND DESIGNATED RATING ORGANIZATIONS**

General

22. Participation fees are also payable annually by specified regulated entities and designated credit rating organizations under Parts 4 and 5 of the Rule.

Specified regulated entities

23. The calculation of participation fees under Part 4 of the Rule is generally determined with reference to described classes of entities. The classes, and their level of participation fees, are set out in Appendix D of the Rule.
- (a) To provide more equitable treatment among exchanges and alternative trading systems (ATS) for exchange-traded securities and to take into account Part 3 participation fees payable by an alternative trading system entity for exchange-traded securities, its participation fee is adjusted under section 20.

For example, assume that participation fees under Part 3 for an eligible ATS payable on December 31, 2021 is \$74,000 and the ATS's Canadian trading share is under 5%. The ATS pays its participation fee of \$74,000 on December 31. Before April 30, 2022 when filing Form 13-502F7, the fee payable will be shown as \$17,000 (the lesser of (a) \$30,000 from Row A1 of Appendix D and (b) \$17,000). In this case, the ATS will be entitled to a refund of \$57,000 (\$74,000 paid on December 31 less \$17,000 required to be paid under Part 4). A mechanism that is similar in principle applies to other ATS entities under subsections 20(2) and (3).

An ATS described in subsection 20(6) will pay an aggregate participation fee calculated based on the type of securities traded on each of its platforms. For example, an ATS that has a platform for trading equities and another one for trading fixed income securities would pay a participation fee for its equity platform calculated as described above and a participation fee for its fixed income platform as described in Appendix D Row C2.

- (b) If a specified regulated entity is recognized during the specified period, it must pay to the Commission, immediately upon recognition, designation etc., a participation fee for the remaining specified period. The participation fee owed to the Commission will be pro-rated based on the number of remaining complete months to March 31 subsequent to it being recognized, designated, etc. For example, if an exchange was recognized on January 15, 2022, it will owe to the Commission a pro-rated participation fee in the amount of \$5,000 for the two complete months remaining until March 31 (calculated as $\$30,000 \times 2/12$). A Form 13-502F7 must be filed with the pro-rated payment.

Continuing with the example above, the recognized exchange will also need to calculate the participation fee due before April 30, 2022 and file a second Form 13-502F7 with this payment. For the purpose of calculating its Canadian trading share, the exchange should use the actual Canadian trading share for the months of February and March 2022 and zero for the months before it received recognition (i.e. April 2021 to January 2022).

**PART 6
DERIVATIVES PARTICIPATION FEES**

General

- 24. The term “business day” is defined in OSC Rule 14-501 *Definitions* as “any day other than a Saturday, a Sunday or a statutory holiday” which we interpret as referring to a statutory holiday in Ontario, a list of which is provided in section 88 of the *Legislation Act, 2006* (Ontario).

A participation fee may be payable for each derivatives fee year by a person or company who is, with respect to any transaction in the derivatives fee year, a reporting counterparty. The term “reporting counterparty” is defined in OSC Rule 91-507 as determined under the reporting hierarchy set out in section 25 of OSC Rule 91-507. Where a person or company is a reporting counterparty under that hierarchy in respect of a transaction in the derivatives fee year, the person or company is a fee payer regardless of whether the person or company has delegated its reporting obligation. However, if the person or company is a recognized clearing agency or is exempt from such recognition, the person or company is exempt from the payment of the fee.

Average quarterly notional amount

- 25. The required amount of the participation fee for a derivatives fee year is determined with reference to a fee payer’s average quarterly notional amount outstanding during the derivatives fee year, in respect of transactions that are reportable under OSC Rule 91-507. This is calculated by aggregating the notional amount of the fee payer’s outstanding positions as at the end of the last business day in each of September, December, March and June and dividing the total by four. Subsection 30(2) of the Rule sets out a detailed methodology for this calculation.

In the following example, which uses the simplified assumption that all of the fee payer’s notional amounts are reported in Canadian dollars, the fee payer’s average quarterly notional amount for the derivatives fee year would be \$110 billion and, with reference to Appendix E, the participation fee for the derivatives fee year would be \$100,000.

Quarter-End	Aggregate notional amount of outstanding positions as at end of day
September	\$100 billion
December	\$90 billion
March	\$120 billion
June	\$130 billion
Average notional:	$\$110 \text{ billion} = (100+90+120+130)/4$

In this example, the fee payer had an aggregate notional amount outstanding of \$90 billion at the December quarter-end. During the following quarter, some of the fee payer’s transactions may have expired (e.g. \$10 billion), others may remain outstanding (e.g. \$80 billion), and the fee payer may have executed new transactions (e.g. \$40 billion). As a result, the fee payer had an aggregate notional amount outstanding of \$120 billion at the March quarter-end.

First derivatives fee year

26. The first derivatives participation fee is payable by August 29, 2023 in respect of the derivatives fee year commencing July 1, 2022 and ending June 30, 2023. As provided in subsection 30(3) of the Rule, in lieu of determining an average quarterly notional amount outstanding in respect of this first derivatives fee year (i.e. as of the last business day in each of September 2022, December 2022, March 2023 and June 2023), a fee payer may instead calculate its derivatives participation fee in respect of its notional amount of outstanding positions as at the end of the last business day of the derivatives fee year (i.e. June 30, 2023), in respect of transactions that are reportable under OSC Rule 91-507. Choosing this option avoids the need for the fee payer to backdate its calculations before publication of the amendments to the Rule. However, a fee payer's participation fee in respect of subsequent derivatives fee years must be determined using the fee payer's average quarterly notional amount outstanding.

Scope of transactions

27. The determination of a fee payer's notional amount outstanding under subsections 30(2) and 30(3) of the Rule only includes transactions that are reportable under OSC Rule 91-507. For example, if a fee payer is not a "local counterparty", as defined in OSC Rule 91-507 (such as a U.S. bank), only its notional amount outstanding under transactions with Ontario local counterparties are required to be reported under OSC Rule 91-507, and therefore only these transactions are reflected in the calculation of the fee payer's average quarterly notional amount outstanding under subsection 30(2) of the Rule or notional amount outstanding under subsection 30(3) of the Rule. In contrast, if the fee payer is an Ontario local counterparty, all of the fee payer's global transactions are reportable under OSC Rule 91-507 (subject to any applicable exclusions, for example, under OSC Rule 91-506), and all such transactions are reflected in the calculation of the fee payer's average quarterly notional amount outstanding.

The determination of a fee payer's notional amount outstanding under subsections 30(2) and 30(3) of the Rule includes all transactions, both cleared and uncleared, to which the fee payer is a counterparty, regardless of which counterparty was a reporting counterparty or reported a transaction. For example, notional amounts under cleared transactions for which a recognized or exempt clearing agency is the reporting counterparty under OSC Rule 91-507 are included in determining the fee payer's participation fee.

Foreign currency

28. The participation fee is only payable in connection with notional amounts reported in a currency. With regard to non-Canadian dollar reporting, the Canadian dollar equivalent is calculated using the applicable daily exchange rate on the last business day of the derivatives fee year, as posted on the Bank of Canada website. If a notional amount is denominated in a currency for which the Bank of Canada does not post an exchange rate, the exchange rate posted by another central bank may be used.

Time of payment and late fee

29. Payments of derivatives participation fees must be made to the Ontario Securities Commission not more than 60 days after the end of the derivatives fee year and be accompanied by Form 13-502F9. For example, the fee in respect of the derivatives fee year beginning on July 1, 2022 and ending on June 30, 2023 would be payable by August 29, 2023. If the fee payer is late in paying the fee, an additional fee of 0.1% of the outstanding amount is charged for each business day.

**PART 7
ACTIVITY FEES****Technical reports**

30. Row A2 of Appendix F requires fee payment of \$2,500 for the filing of each technical report for which an activity fee has not previously been paid. This includes where a technical report is incorporated by reference into a prospectus. Staff consider that a technical report is incorporated by reference into a prospectus even if the incorporation is indirect; for example, the technical report is referenced in an annual information form that itself is incorporated in the prospectus.

Concurrent application by permitted individual

31. Row I4 of Appendix F imposes a fee of \$100 for an individual seeking approval as a permitted individual. Row I5 imposes a fee of \$200 for an individual changing his or her status to a representative of a registrant firm. If an individual makes a concurrent application for approval as a permitted individual and as a representative of a registrant firm, staff would expect a fee of \$200 in the aggregate.

Affiliates

30. Subsection 34(1) of the Rule provides for only one activity fee to be paid for an application, in respect of a joint activity, made jointly by applicants affiliated with each other. Subsection 34(2) ensures that this measure applies to affiliates jointly applying for exemptive relief.

Investment fund families

31. Section 35 of the Rule provides for only one activity fee to be paid for an application made by or on behalf of two or more investments funds in the same investment fund family.

Withdrawal of application or refiling of prospectus

32. Generally, where an activity fee has been paid by a person who then abandons the matter or withdraws the application, a new activity fee would be payable if the person resurrects the application or updates the application for material changes that have occurred. Likewise, if a prospectus is withdrawn and then refiled, there is no waiver of the prospectus fee.

**PART 8
FEES FOR LATE FILING OR DELIVERY**

Late fees under Part 9 of the Rule for registrant firms

33. Appendix G to the Rule outlines additional fees payable by registrant firms for the late filing or delivery of certain forms or documents required under the Act. The Commission may consider the late filing or delivery of forms or documents when assessing the ongoing suitability for registration of a registrant firm.

Late fees for covered documents – after April 2, 2023

34. Late fees for covered documents, as defined in section 37 of the Rule, that are incurred after April 2, 2023 are calculated in accordance with sections 38 and 39. The late fee is \$100 per day, subject to an annual cap for all covered documents submitted in a year of \$5,000. The annual cap is increased to \$10,000 for a person or company that has specified Ontario revenues greater than or equal to \$500 million.

Affiliated investment funds and registrants

35. Subsections 39(3) and (4) apply when multiple affiliated investment funds or registrants fail to file the same type of covered documents due by the same date. In this case, payments attributable to a year made by anyone in the group count as payments made by everyone in the group. This means that the group will be liable to a maximum liability per year equal to the \$5,000 or \$10,000 annual cap.

Subsection 40(2) applies when multiple affiliated investment funds fail to file Form 45-106F1 due by the same date. In this case, payments attributable to a year made by anyone in the group count as payments made by everyone in the group. This means that the group will be liable to a maximum liability per year equal to the \$5,000 annual cap.

Transition – Certain forms and documents required to be filed or delivered before April 3, 2023

36. Late fees for forms and documents listed in Row A or B of Appendix D as the Rule read on April 2, 2023 were calculated based on the number of business days that the form or document was late. Section 43 provides that late fees incurred prior to April 3, 2023 will continue to be charged on this basis. Late fees incurred after that date are charged based on calendar days in accordance with sections 38 and 39.