

1.1.2 Notice of Minister of Finance Approval of Amendments to OSC Rule 13-502 Fees, Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4, and Companion Policy 13-502CP

NOTICE OF MINISTER OF FINANCE APPROVAL OF AMENDMENTS TO OSC RULE 13-502 FEES, FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4, AND COMPANION POLICY 13-502CP

On November 17, 2003, the Minister of Finance approved the amendments to Rule 13-502 Fees, including Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4, as a rule under the Act (the "Rule") and approved the amendments to Companion Policy 13-502CP (the "Companion Policy").

The amendments to the Rule and the Companion Policy come into force on December 1, 2003. The amendments to the Rule and the Companion Policy are published in Chapter 5 of the Bulletin. In addition, a combined version of the original Rule, Forms and Companion Policy incorporating the approved amendments are published in Chapter 5 of the bulletin for the user's reference. The amendments to the Rule and the Companion Policy will be published in The Ontario Gazette on November 29, 2003.

**ONTARIO SECURITIES COMMISSION STAFF NOTICE
FREQUENTLY ASKED QUESTIONS
ONTARIO SECURITIES COMMISSION RULE 13-502**

Frequently Asked Questions

As is often the case with the introduction of a new or revised rule, users of the rule may find that they have questions regarding its application and interpretation. Therefore, to assist those users, we have compiled a list of frequently asked questions ("FAQs") which, while not exhaustive, represent the types of inquiries we have received to date.

We have divided the FAQs into the following categories:

- A. Participation Fees
- B. Activity Fees
- C. Forms
- D. Filing on SEDAR

A. Participation Fees

Corporate Finance Participation Fees

1. *Is an investment fund that is not a reporting issuer and which does not have an investment fund manager subject to the corporate finance participation fees?*

No. Corporate finance participation fees apply only to reporting issuers.

2. *My company is a reporting issuer that is a subsidiary entity that is exempt from paying fees under section 2.2(2) of Rule 13-502. How do I communicate this exemption, so that my company does not end up in default?*

Each year the company should complete the calculations required in Part 2 to verify that the company has in fact more than 90 percent of both net assets and gross revenues of the parent. These calculations should be submitted on SEDAR in place of Form 13-502F1 using document type 13-502F1. This filing is due to the commission at the same time Form 13-502F1 would otherwise have been due. See Appendix A for an example of the calculations to be filed.

3. *My company is a Class 2 reporting issuer and has a net deficit at the end of the financial year. How do I calculate my participation fee?*

As instructed in section 2.6, include the deficit in the calculation.

New Reporting Issuer

4. *My company became a reporting issuer this year by virtue of listing on the TSX. How do I*

determine my market capitalization under section 2.8(4)(a)(i)?

When calculating the market capitalization under Part 2.5, as there will be no average closing price for the preceding months, the closing price on the day of listing should be used as the price in section 2.5(a)(ii). The company should continue with the remaining parts of the calculation under section 2.5 as prescribed.

5. *My company became a new reporting issuer in the period between its year-end and the time when its financial statements were due. The company paid a participation fee at the time it became a reporting issuer. What fee do we owe when we file our annual financial statements?*

There is no further obligation at the time the annual financial statements are filed, as you will have submitted all applicable fees at the time the company became a reporting issuer.

Capital Markets Participation Fees

1. *Our firm will pay a capital markets participation fee at the time of renewal of our registration. Will we also pay a fee for each individual registered?*

Rule 13-502 changes the basis on which registrants pay for their participation in Ontario's capital markets. The number of registered individuals associated with a firm no longer has any bearing on the registration renewal fee payable to the OSC. The fees for capital markets participants are now based on the revenue generated by the company's operations in Ontario (specified Ontario revenues), as determined using the company's financial statements to complete Form 13-502F3.

2. *When the Commodity Futures Act Fee Rule 13-503 is in effect, will my registrant firm still have to pay an annual fee based on the number of individuals employed by the firm?*

No. The annual participation fee is based on the registrant firm's specified Ontario revenues. Please refer to Part 2 of Rule 13-503 for further details.

3. *Since our firm will pay a capital markets participation fee in advance for the next year (2004) and our year end is March 31, should we use the financial information from the year ended March 31, 2003 or do a good faith estimate for the year ending March 31, 2004?*

Although the fee is payable for the calendar year 2004, information from your financial statements for the year ended in 2003 should be used to prepare the Form 13-502F3. Unless financial statements are not available by the required filing date, December 1, a good faith estimate would not be done.

4. *If our firm pays capital markets participation fees under Rule 13-502, and it is also registered under*

the Commodity Futures Act ("CFA"), do we pay fees under both the CFA fees Rule 13-503 and Rule 13-502?

No. Only one participation fee is required to be paid by a firm registered under both Acts. The definition of "capital markets activities" has now been amended to include activities for which registration under the CFA or an exemption from registration under the CFA is required. Firms that are registered under both acts will only pay a capital markets participation fee under Rule 13-502. More information can be found in the amended Companion Policy to Rule 13-502 and section 2.8 of Rule 13-503.

5. *How are firms required to make payment of the capital markets participation fee?*

Form 13-502F3 and related documents for registration renewal (director's resolution, renewal application form) should be filed in paper. They may be mailed, faxed or e-mailed to the OSC (fax #416-593-8283, e-mail to renewal@osc.gov.on.ca). The information will be entered by OSC staff into the NRD system and payment will be taken from your NRD bank account on December 31. Further information can be found in OSC Staff Notice 33-722 "Registration Renewal Procedure and Payment of Annual Participation Fees", published in the October 15, 2003 OSC Bulletin and also available on the OSC website.

B. Activity Fees

Fees relating to Rule 45-501 Exempt Distributions

1. *If its investment fund manager has paid a capital markets participation fee, does the investment fund, as a reporting issuer, have to pay a \$500 fee for the filing of Form 45-501F1 under item B(2)?*

No. The general principle behind item B(2) is that if a participation fee is being paid, an activity fee on filing the exempt distribution form does not have to be paid.

C. Forms

Form 13-502F3 – Participation Fee Calculation for Registrant Firms and Unregistered Investment Fund Managers

1. *How do I complete Form 13-502F3 if the firm's 2003 financial statements have not yet been prepared?*

Prepare and file the Form based on a good faith estimate of the specified Ontario revenues at the end of the previous financial year. Once financial statements are completed (within 90 days of year end) prepare and file Form 13-502F4 and a revised Form 13-502F3.

2. *In Part III of Form 13-502F3, is it permissible to deduct advisory or sub-advisory fees paid to non-Ontario registrants?*

The intention of the deduction in line 4 of Part III of the Form is to prevent the 'double payment' of the capital markets participation fee for revenue earned from capital markets activities. If the non-Ontario registrant advisor or sub-advisor pays a capital markets participation fee, then the deduction is permissible.

3. *Should IDA members be using line 18 or line 17 of Statement E to determine revenue subject to the participation fee? Part 1 of Form 13-502F3 indicates that line 18 of Statement E of the Joint Regulatory Financial Questionnaire and Report ("JRFQR") should be used to report revenue for IDA members. However, section 3.4 (a) of the Rule states that the Total Revenue on the Summary statement of income contained in the JRFQR should be used. Per the JRFQR, this is actually line 17 of Statement E but the Form indicates that line 18 should be used.*

Line 17 of Statement E of the JRFQR should be used in Part 1 of Form 13-502 F3. At the time of drafting of the Rule, an older version of the JRFQR was in place and line 18 appropriately reflected the total revenue information in the older version. As Statement E has since undergone changes, registrants should always use the Total Revenue line from Statement E in completing the Form, irrespective of what line number it is assigned. Please also note that the MFDA has changed Line 12 of Statement D (Total Revenue) of the MFDA Financial Questionnaire and Report to Line 13. Registrants should always use the Total Revenue line for purposes of calculating the participation fee.

4. *I am a registrant trying to fill out Part III of Form 13-502F3 and am finding some inconsistency between Form 13-502F3 and parts of the Rule. Specifically, there appears to be inconsistency among the following:*

- *The gross revenue number that I am to include on line 1 – gross revenue as per the audited financial statements*
- *The definition of capital markets activities as defined in section 1.1*
- *The calculation of specified Ontario revenues in section 3.6*

Capital markets activities as defined in section 1.1 and subsection 3.6(1) explaining the calculation of specified Ontario revenues suggests that the capital markets activities that I am to include on Form 13-502F3 is to be limited to my Ontario revenue. What should I be including on line 1 of Part III of Form 13-502F3?

Capital markets activities as defined in section 1.1 are the activities that will ultimately be subject to a participation fee. The explanation in section 3.6 as to the calculation of specified Ontario revenues is intended to provide guidance that only capital markets activities in Ontario will be subject

to a participation fee. On line 1 of Part III of Form 13-502F3, include gross revenues from ALL sources. Once the permitted deductions are taken and the allocation to Ontario is determined, the result is that you will be paying a participation fee only on capital markets activities in Ontario.

D. Filing on SEDAR

1. *My company is about to file its participation fee on SEDAR. What code should we be using?*

If you are filing for a year ending between April 30, 2002 and March 30, 2003 inclusive, you will be submitting your transitional fee, and therefore you should use fee code T17220. If you are filing your participation fee for a year ending on or after March 31, 2003, you should use the applicable fee code (P12101 to P12110)

2. *I am paying a late fee at the same time as I am filing my participation fee. How should I do this on SEDAR?*

It is important that you separate the late fee from the participation fee when submitting your filing so that your company is credited appropriately. The participation fee should be coded as indicated in #1 above. The late fee should be coded based on the nature of the late fee. Use code L12901 for a late fee being paid on a participation fee (i.e. 1% of the participation fee payable to a maximum of 25%) and use code L14M1C for the late filing of documents (i.e. items for which you pay \$100 per business day to a maximum of \$5,000).

APPENDIX A

“Subsidiary Company” [replace with company name] is a subsidiary of “Parent Company” [replace with company name] that is exempt from paying the participation fee based on the following:

Under section 2.2(2) of OSC Rule 13-502, a reporting issuer is exempt from paying a participation fee if:

- (a) the parent of the subsidiary entity is a reporting issuer;
- (b) the parent has paid the participation fee required; and
- (c) the net assets and gross revenues of the subsidiary entity represent more than 90 percent of the net assets and gross revenues of the parent for the previous financial year of the parent.

	<u>Year Ending [insert date]</u>	
	<u>Net</u>	<u>Gross</u>
	<u>Assets</u>	<u>Revenues</u>
“Subsidiary Company”	\$ _____	\$ _____ (A)
“Parent Company”	\$ _____	\$ _____ (B)
Percentage (A/B)	_____ %	_____ %