

6.1.5 Notice of Proposed OSC Rule 13-503 (Commodity Futures Act) Fees, Forms 13-503F1 and 13-503F2 and Companion Policy 13-503CP Fees

**NOTICE OF PROPOSED
ONTARIO SECURITIES COMMISSION RULE 13-503
(COMMODITY FUTURES ACT)
FORMS 13-503F1 AND 13-503F2
COMPANION POLICY 13-503CP
FEES**

Substance and Purpose of Proposed Rule

On March 31, 2003, OSC Rule 13-502 (OSA Fees Rule), which governs fees paid under the *Securities Act* (Ontario)(OSA), came into effect. The purpose of proposed Rule 13-503 (the Proposed Rule) and proposed Companion Policy 13-503CP (the Proposed Companion Policy) is to establish a fee regime under the *Commodity Futures Act* (CFA) that is consistent with the approach of the OSA Fees Rule. The OSA Fees Rule is designed to accomplish three primary purposes: to reduce the overall fees charged to market participants from what existed previously in Ontario; to create a clear and streamlined fee structure; and to adopt fees that accurately reflect the Commission's costs of providing services.

Similar to the OSA Fees Rule, the Proposed Rule requires the payment of "participation fees" and "activity fees". Participation fees are generally intended to represent the benefit derived by registrant firms from participating in Ontario's capital markets. Activity fees, on the other hand, are intended to represent the direct cost of OSC staff resources to take a specific action or provide a specific service requested by a market player.

Summary of Proposed Rule, Forms and Companion Policy

Proposed Rule

The Proposed Rule sets out the requirements to pay participation fees and activity fees.

Part 1

Section 1.1 sets out definitions of terms and phrases used in the Proposed Rule and Companion Policy. For example, the term "CFA activities" is defined to mean activities for which registration under the CFA or an exemption from registration is required. The term "registrant firm" is defined to mean a person or company registered as one or both of a dealer or an adviser under the CFA.

Part 2

This part requires the payment of a participation fee by a registrant firm. The participation fee is calculated on the basis of a registrant firm's gross revenues, earned from CFA activities, attributable to Ontario. The participation fees range from a minimum of \$1,000 (for revenues under \$500,000) to a maximum of \$850,000 (for revenues of \$1 billion and over). This part also prescribes the time of payment, the form(s) to complete for that purpose, the method of calculation of specified Ontario revenues, and the additional fee for late payment.

Section 2.8 provides an exemption from Part 2, the payment of participation fees, where a registrant firm is also registered under the OSA and is current in paying its participation fees under the OSA Fees Rule. It is the intention of the OSC that registrant firms that are registered under both the OSA and the CFA will pay one participation fee only, based on their revenues from capital markets activities, including CFA activities. However, registrant firms that are dually registered will still have to pay activity fees under both the Proposed Rule and the OSA Fees Rule.

Part 3

This part requires the payment of activity fees and prescribes the fee for each activity listed in Appendix B of the Proposed Rule. Activity fees are payable in connection with applications for discretionary relief or regulatory approval, registration related activity, and requests to the Commission for certified statements, copies of documents or searches of Commission records. Late filing fees are also prescribed for the late filing of certain documents.

Parts 4 to 6

Part 4 deals with currency calculations if a required fee is paid in a currency other than Canadian dollars. Part 5 authorizes the Director to grant an exemption from any provision of the Proposed Rule. Part 6 stipulates the date the Proposed Rule is to become effective.

Proposed Forms

Registrant firms are required to complete Form 13-503F1 in connection with the payment of the participation fee. Parts I and II ask for the current year's revenue that is subject to the participation fee and the previous year's revenue. Part III calculates the total participation fee payable and Part IV is management's certification.

Where an adjustment to the participation fee paid by the registrant firm is required, pursuant to section 2.3(4) of the Proposed Rule, a registrant firm must file Form 13-502F2, completed in accordance with its terms.

Proposed Companion Policy

The Proposed Companion Policy is intended to state the views of the OSC as to the manner in which the Proposed Rule is to be interpreted and applied.

Part 2 details the purpose and general approach of the Proposed Rule including the rationale behind participation fees and activity fees. Section 2.4 clarifies that participation fees are to be paid at the registrant firm level and not by individual partners, directors, officers, representatives, salespersons and floor traders. Section 2.6 states that there are generally no refunds of fees paid, except in certain circumstances.

Part 3 explains that the participation fees payable pursuant to the Proposed Rule are payable in advance. For example, the participation fee for the calendar year 2004 is payable by December 31, 2003. The participation fee is calculated on the basis of the registrant firm's financial year ending in 2003.

The Proposed Companion Policy also includes appendices that illustrate the application of the fees to a Commodity Trading Manager and a Future Commission Merchant.

Authority for the Proposed Rule and Companion Policy

Paragraph 25 of section 65(1) of the Act authorizes the OSC to make rules "prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in contracts, in respect of audits made by the Commission and in connection with the administration of Ontario commodity futures law".

Unpublished Materials

In proposing the Rule, the OSC has not relied on any significant unpublished study, report, decision, or other written materials.

Anticipated Costs and Benefits

The New Fee Model is expected to generate net positive benefits in two primary areas, fairness and efficiency, both for the industry and the OSC. The changing nature of the securities industry, from a business based on primary offerings to one where 95% of the activity takes place in the secondary markets, has not been reflected in the current fee structure. With the shift to monitoring continuous disclosure and trading, fees based primarily on filings no longer mirror the cost of regulation. The New Fee Model ties the OSC's cost of regulation to the revenues from fees. The shift to fees based primarily on participation in the capital markets represents a considerable improvement in fairness.

Through reducing the number of payments based on activity fees, the administration costs associated with paying the fees should drop significantly for all stakeholders involved. With the fee calculation based on standard disclosure items, the set-up and ongoing costs of calculation should be minor. With improvements in both fairness and efficiency, only marginally offset by very modest set-up costs, the New Fee Model is expected to deliver substantial net benefits to the capital markets intermediaries and to the OSC.

Regulations to be revoked

The Commission proposes to revoke Schedule 1 to the Regulation made under the CFA. It is intended that the revocation will become effective on the same date that the Proposed Rule comes into force.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Rule, Forms and Companion Policy. Submissions received by August 14, 2003 will be considered.

Request for Comments

Submissions should be sent in duplicate to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

A diskette or an e-mail attachment containing submissions (in DOS or Windows format, preferably Word) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

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