

Chapter 5

Rules and Policies

5.1.1 Notice of Amendments to OSC Rule 13-502 - Fees, Including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4, and Companion Policy 13-502CP - Fees

NOTICE OF AMENDMENTS TO RULE 13-502 - FEES, INCLUDING FORMS 13-502F1, 13-502F2, 13-502F3, AND 13-502F4, AND COMPANION POLICY 13-502CP - FEES

Notice of Amendments to Rule and to Companion Policy

The Commission has made amendments to Rule 13-502 - *Fees* (the **Rule**), including Forms 13-502F1, 13-502F2, 13-502F3, and 13-502F4, under section 143 of the *Securities Act* (the **Act**) (collectively, the **Rule Amendments**).

The Rule Amendments and the materials required by the Act to be delivered to the Minister of Finance were delivered on September 17, 2003. If the Minister does not approve, reject or return the Rule Amendments by November 16, 2003, or if the Minister approves the amendments, the Rule Amendments will come into force on December 1, 2003.

The Commission has made amendments to Companion Policy 13-502CP - *Fees* (the **Companion Policy**) under section 143.8 of the Act (the **Policy Amendments**, and together with the Rule Amendments, the **Amendments**).

On May 16, 2003, we published the Amendments for comment. We received submissions from three commentators. The revisions do not materially change the Amendments. Accordingly, we are not publishing the Amendments for a further comment period. For a summary of these comments and our response to them, please see Appendix A to this Notice.

Substance and Purpose of the Amendments

Since the Rule was published, we have received numerous requests for clarification on various parts of the Rule. The purpose of the Amendments is to clarify portions of the Rule as well as add to and modify certain portions of the Rule and the Companion Policy. Furthermore, the Amendments reflect the implementation of Rule 13-503 - *Fees (Commodity Futures Act)*.

Summary of Changes to the Amendments

This section describes minor changes made to the Amendments from the version published on May 16, 2003. Changes made only for purposes of clarification or drafting are not discussed. The following changes were made based on comments received and upon further deliberations:

- Section 2.7 was amended to allow a Class 3 issuer to simply use the percentage of outstanding securities of the issuer registered in the name of Ontario persons when calculating the Ontario portion of their market capitalization.
- Section 4.1 was amended so that the fee payable by a person or company for the late filing of an insider report on Form 55-102F2 is not due until they receive an invoice from the Commission.
- Appendix C, new item H(1) was amended so that the additional \$2,000 fee would not be charged if the offeror, or an issuer of which the offeror is a wholly-owned subsidiary, is subject to, or reasonably expected to become subject to, a participation fee.
- Appendix C, new item N(2) was amended to exempt insiders from a late fee in Ontario if they are under an obligation to pay a late fee for filing a Form 55-102F2 in a jurisdiction other than Ontario.

Clarification of Consequential Amendments

A number of amendments to various rules and policies of the Commission were made at the time that the Rule came into force for the purpose of deleting or amending references to fees as required by the making of the Rule ((2003) 26 OSCB 57). Section 1.4 of those amendments referred in error to a deletion of Part 6 of Rule 45-502 - *Dividend or Interest Reinvestment and Stock Dividend Plans* and consequential renumbering; the Commission wishes to clarify that the correct reference should have been to a deletion of Part 5 of Rule 45-502 with consequential renumbering.

The Commission also notes that section 1.6 to the amendments described above contained a reference to an amendment to Companion Policy 91-504CP. This reference was in error; Companion Policy 91-504CP and the associated Rule 91-504 were proposed by the Commission in 2000 but did not come into force, and the Commission is not proceeding with those instruments at the present time.

Authority for the Rule Amendments

The following section of the Act provides the Commission with authority to make the Rule Amendments. Paragraph 143(1)43 authorizes us to make rules that prescribe the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law.

Unpublished Materials

In making the Amendments, the Commission has not relied on any significant unpublished study, report or other written material.

Text of Amendments

The text of the Amendments follows.

September 19, 2003.

APPENDIX A

**SUMMARY OF PUBLIC COMMENTS
ON THE AMENDMENTS TO
ONTARIO SECURITIES COMMISSION
RULE 13-502 – FEES
AND
COMPANION POLICY 13-502CP**

The following provided their comments:

- S. Romano – Stikeman Elliot
- R. McGee – Blake, Cassel & Graydon
- T. Robson – Bennett Jones

Theme	Detailed Comments and Arguments	Response
Concern over fee for filing 45-501F1	One commentator expressed concern that the fee of \$500 was excessive for small and medium sized private businesses raising small amounts of capital. The commentator also noted that the fee does not behave in the manner of an activity fee as defined in the Companion Policy of Rule 13-502.	The fee is intended to represent a blended fee for the “activities undertaken by staff” as well as a fee for the business’s fair share for accessing the capital market. It was decided to categorize this fee under activity fees for simplicity and ease of use by stakeholders.
Class 3 calculation	One commentator noted that it is extremely difficult for a foreign issuer to determine the amount held beneficially by an Ontario person.	We have amended the calculation to allow the issuer to simply use the percentage of outstanding securities of the issuer registered in the name of Ontario persons when calculating the Ontario portion of their market capitalization.
Ceasing to be a reporting issuer	One commentator felt the addition of section 2.9 which requires an issuer to pay a portion of their participation fees prior to being allowed to cease to be a reporting issuer is unfair to others that cease to be a reporting issuer later in the year.	In general, Rule 13-502 was intended to simplify fees and reduce costs associated with collecting fees. As part of this, refunds are not granted except as allowed under Forms 13-502F2 and 13-502F4. The addition of section 2.9 is to capture fees from issuers who were not caught in the earlier draft of the Rule.
Allocation of fees for a joint prospectus	One commentator noted that issuers generally prefer to allocate filing fees amongst themselves in the manner they deem most appropriate.	We believe that a pro-rata share is the simplest method of allocating fees. As prospectus filing fees are significantly less than before, this method of allocation should not make a material difference to a filer.
Late fees for insider reports filed on Form 55-102F2	One commentator noted that calculating late fees on calendar days rather than business days places an undue burden on filers using agents to file their reports. The commentator also felt this was incongruous with the other late fees that are calculated based on business days.	Insider reports are due 10 calendar days after the transaction. The late fee is calculated on the same basis that SEDI counts such days. Late fees are calculated on business days for filings that can not be made on a weekend or holiday.
Use of fiscal period for calculating maximum late fees on Form 55-102F2	One commentator noted that the use of April 1 – March 31 was inconsistent with the use of the period established for other late fees.	We have amended the period for late fees relating to Form 55-102F2 because the issuers year end was creating confusion for filers who are insiders of more than one reporting issuer. The OSC’s fiscal period was selected for simplicity and processing ease.