

Ontario Securities Commission

Companion Policy 13-502CP

Unofficial consolidation current to 2019-07-17.

This document is not an official statement of law or policy and should be used for reference purposes only.

Any forms referenced in this document are available separately on the Ontario Securities Commission website.

COMPANION POLICY 13-502CP

FEES

Contents

Part 1 Purpose of Companion Policy

Purpose of Companion Policy

Part 2 Purpose and General Approach of the Rule

Purpose and general approach of the Rule

Participation fees

Application of participation fees

Registered individuals

Activity fees

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

Refunds

Indirect avoidance of Rule

Part 3 Corporate Finance Participation Fees

Application to investment funds

Late fees

Exemption for subsidiary entities

Determination of market value

Owners' equity and non-current borrowings

Identification of non-current liabilities

Part 4 Capital Markets Participation Fees

Liability for capital markets participation fees

Filing forms under section 3.2 of the Rule

Late fees

Form of payment of fees

"Capital markets activities"

Permitted deductions

Active solicitation

Confidentiality of forms

Part 5 Other Participation Fees

General

Specified regulated entities

Part 6 Activity Fees

Technical reports
Concurrent application by permitted individual

Part 7 Late Fees

Late fees relating to Form 33-109F5
Moratorium on OBA Late Fee
Late fees under section 6.4 of the Rule for registrant firms
Late filings for the purpose of amending Form 33-109F6

PART 1 PURPOSE OF COMPANION POLICY

Purpose of Companion Policy

1.1 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 (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

2.2 (1) Reporting issuers, registrant firms and unregistered capital markets participants, as well as specified regulated entities and designated rating organizations, are required to pay participation fees annually.

(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 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 calendar 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 B.1. 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) 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 2.7(2).

Application of participation fees

2.3 Although participation fees are 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

2.4 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

2.5 (1) 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 C 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.

(2) Under certain circumstances, Staff may consider reducing activity fees for applications made by or on behalf of two or more reporting issuers that are affiliates of each other, and who are applying for the same exemptive relief. In such circumstances, the activity fees will be reduced such that the activity fees paid on an application will be the same as if one reporting issuer filed the application.

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

2.6 (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 2.1 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) Note that dealers and advisers registered under the *Commodity Futures Act* are 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

2.7 (1) The Rule provides the specific circumstances where the Commission is required to refund fees in subsections 2.5(3) and 3.2(3) of the Rule. These subsections allow for a refund where a reporting issuer, registrant firm or unregistered capital markets participant overpaid an estimated participation fee provided the request is made within the time the related form was required to be filed.

(2) A further refund mechanism is provided under subsection 4.3(4). 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.

(3) 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 set out in the Rule and discussed in subsections (1) and (2) 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.

(4) 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.

Indirect avoidance of Rule

2.8 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 8.1 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

3.1 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

3.2 Section 2.7 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

3.3 Under section 2.4 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 section 2.2(1) of the Rule determined with reference to the parent's capitalization for the parent's financial year. For greater certainty, this condition to the exemption is not satisfied in circumstances where the parent of a subsidiary entity has paid a participation fee in reliance on subsection 2.2(2) or (3) of the Rule.

Determination of market value

3.4 (1) Paragraph 2.8(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 2.8(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 without regard to 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) 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

3.5 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

3.6 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

4.1 Capital markets participation fees are payable annually by registrant firms and unregistered capital markets participants, as defined in section 1.1 of the Rule.

Filing forms under section 3.2 of the Rule

4.2 If the estimated participation fee paid under subsection 3.2(1) of the Rule by a registrant firm or an unregistered capital markets participant does not differ from its true participation fee determined under paragraph 3.2(2)(b) of the Rule, the registrant firm or unregistered capital markets participant is not required to file either a Form 13-502F4 or a Form 13-502F5 under paragraph 3.2(2)(c) of the Rule.

Late fees

4.3 Section 3.4 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

4.4 Registrant firms pay through the National Registration Database. The filings and payments for unregistered capital markets participants should be sent via wire transfer or sent to the Ontario Securities Commission (Attention: Manager, Compliance and Registrant Regulation).

“Capital markets activities”

4.5 (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

4.6 Subsection 3.6 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.

Active solicitation

4.7 For the purposes of the definition of unregistered investment fund manager in section 1.1 of the Rule, “active solicitation” refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund’s securities, such as proactive, targeted actions or communications that are initiated by an investment fund manager for the purpose of soliciting an investment. Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

Confidentiality of forms

4.8 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 OTHER PARTICIPATION FEES

General

5.1 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

5.2 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 B.1 of the Rule.

(1) 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 4.3.

For example, assume that participation fees under Part 3 for an eligible ATS payable on December 31, 2015 is \$74,000 and the ATS’s Canadian trading share is under 5%. In this case, the ATS would pay \$74,000 on December 31 when filing its Form 13-502F4. Before April 30, 2016 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 B.1 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 4.2(2) and (3).

An ATS described in subsection 4.3(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 B.1 row C2.

(2) 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, 2016, 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, 2016 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 2016 and zero for the months before it received recognition (i.e. April 2015 to January 2016).

PART 6 ACTIVITY FEES

Technical reports

6.1 Item A2 of Appendix C requires fee payment of \$2,500 for the filing of a technical report, including 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 included or incorporated in the prospectus.

Concurrent application by permitted individual

6.2 Item K4 of Appendix C imposes a fee of \$100 for an individual seeking approval as a permitted individual. Item K5 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.

PART 7 LATE FEES

Late fees relating to Form 33-109F5

7.1 Paragraph (e) to item A of Appendix D to the Rule provides for a late fee of \$100 per day to a maximum cap for each year. Form 33-109F5 is required to be filed for changes in registration information within the time periods specified in Parts 3 and 4 of NI 33-109. In some cases, registrants

file the form merging a number of changes that have occurred and were required to be reported at different times. Staff will generally apply the late fee under paragraph (e) of Item A for each change reported on the F5 on the basis that a separate form was required to be filed in respect of each change.

Moratorium on OBA Late Fee

7.1.1 (1) Under paragraph 4.1(b) of National Instrument 33-109 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-109F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-109F5. Subject to the exceptions in subsection (2) and a cap contained in Appendix D, a late filing of Form 33-109F5 gives rise to a late fee of \$100 per business day under subparagraph (e)(i) of Row A of Appendix D.

(2) Registrants have commented that the scope of outside business activities (OBAs) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. Amendments to the OBA reporting regime will require a CSA initiative. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the \$100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix D.

Late fees under section 6.4 of the Rule for registrant firms

7.2 Appendix D 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 filings for the purpose of amending Form 33-109F6

7.3 For amendments to item 5.5 *Bonding or insurance details* on Form 33-109F6, registrant firms are expected to notify the regulator of any change to bonding or insurance details in accordance with section 12.2 of NI 31-103, including the renewal of an insurance policy. The Commission will not charge a late fee with respect to renewal of bonding or insurance policies. However, late notifications of any changes in insurer or coverage amounts are subject to the late fees outlined in the Rule.