

5.1.3 OSC Rule 13-503 (Commodity Futures Act) Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees

**NOTICE OF AMENDMENTS TO
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES
AND COMPANION POLICY 13-503CP (COMMODITY FUTURES ACT) FEES**

Introduction

On January 19, 2010 the Ontario Securities Commission (OSC, Commission or we) made amendments to OSC Rule 13-503 (*Commodity Futures Act*) Fees and adopted a change to Companion Policy 13-503CP (*Commodity Futures Act*) Fees (collectively, the Proposed Materials) under the *Commodity Futures Act* (the CFA). An earlier version of the proposed amendments to the Rule was published for a 90-day comment period on October 2, 2009. In this notice, references to the "Proposed Rule" are to the Rule as it is proposed to be amended.

Under section 68 of the CFA, the proposed amendments to the Rule were delivered to the Minister of Finance on January 20, 2010. If the Minister approves the proposed amendments by March 19, 2010, they will come into force on April 5, 2010.

Substance and purpose of the Proposed Materials

The proposed amendments to the rule are consistent with the basic framework under the current rule. Under the current rule and the Proposed Rule, participation fees are designed to cover Commission costs that are not attributable to activities on behalf of a specific participant. These fees are based on the CFA registrant's size, which is used as a proxy for its use of Ontario's capital markets. A CFA registrant is not required to pay a participation fee under the current rule or proposed Rule if it is subject to a capital markets participation fee under OSC Rule 13-502 Fees. Activity fees are designed to cover direct costs the Commission incurs in reviewing documents.

The proposed amendments to the Rule provide adjustments with regard to both participation fees and activity fees. With the exceptions noted below, all of the proposed amendments to the Rule were published for comment on October 2, 2009.

The proposed amendments to the Rule and the proposed change to the Companion Policy are summarized below.

Participation fees

(i) Fee increases

There are no changes to the tiers of specified Ontario revenues used in determining participation fees. However, it is proposed that capital markets participation fees be increased by 9% annually over three years at each tier of specified Ontario revenues. This increase was reflected in the materials published for comment on October 2, 2009. The minor technical changes described below with regard to participation fees were not.

(ii) Disclosure of Fee Calculation – section 2.3

Section 2.3 of the Rule provides that registrant firms must file a completed Form 13-503F1 by December 1 of a calendar year, showing the information required to calculate the participation fee due on December 31 of the calendar year.

Section 2.3 of the Rule does not address the situation where a firm becomes registered after December 1 in a calendar year.

New subsection 2.3(2) of the Proposed Rule provides that, in this case, the calculation information can be filed after December 1 (as soon as practicable after registration). This amendment conforms with current administrative practice. The reference to December 1 in paragraph 2.6(1)(a) of the Proposed Rule is likewise revised as a consequence of new subsection 2.3(2) of the Proposed Rule.

(iii) Payment to Exempt International Firms of Advisory and Sub-advisory Fees – subsection 2.5(2)

Subsection 2.5(2) of the Rule allows, in computing the specified Ontario revenues of registrant firms, the deduction of advisory and sub-advisory fees payable to other registrant firms. The deduction of these fees can result in a firm being subject to a smaller participation fee if the deduction results in a lower relevant tier of specified Ontario revenues. Subsection 2.5(2) is designed to address the potential duplication of participation fees for parties involved in structures where advisory and sub-advisory fees are payable.

Rules and Policies

In the Proposed Rule, subsection 2.5(2) is extended to cases where the recipient of such fees is an exempt international firm under OSC Rule 13-502 *Fees*. The amendment is designed to allow this measure to operate as it did before registration reform, given the new exemption for registration provided to exempt international firms as a consequence of registration reform.

(iv) Form 13-503F1

In the Proposed Rule, Form 13-503F1 is amended to reflect the proposed changes in section 2.3 and subsection 2.5(2) of the Proposed Rule.

Non-substantive changes to the form has been made to improve its organization and clarify instructions provided. All of these changes are consistent with present administrative practice.

Activity fees

Under amended item 1 of section A of Appendix B of the Proposed Rule, the fee for various application reviews would increase from \$3,000 to \$3,250. This primarily reflects the higher costs of resources involved in their review and the increased complexity of issues arising in these reviews.

Under new section F of Appendix B of the Proposed Rule, a pre-filing fee is proposed to be charged in connection with pre-filings of applications for which fees are charged in Appendix B. This pre-filing fee, which is creditable against the corresponding filing fee, is equal to the corresponding filing fee. This pre-filing fee corresponds to the fee currently charged in section F of Appendix C to OSC Rule 13-502 *Fees*.

Companion Policy 13-503CP

The change to the Companion Policy sets out the Commission's interpretation with regard to materials required to be filed under the Rule, in order to clarify that this material will continue to held in confidence. This is consistent with administrative practice.

Comments received

No specific comments were received on the Proposed Rule. However, many of the issues raised in the comments received on proposed OSC Rule 13-502 are also relevant to the Proposed Rule. A summary of these comments and OSC responses is included in Table A of today's notice on proposed OSC Rule 13-502. The comment letters are available on the Commission's website at www.osc.gov.on.ca.

Text of the Proposed Materials

The text of the Proposed Materials follows. The proposed amendments to the Rule are in Annex A. The proposed amendment to the Companion Policy is in Annex B.

Questions

Please refer your questions to any of the following:

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Annex A

Amendments to Ontario Securities Rule 13-503 (*Commodity Futures Act*) Fees

1. ***Ontario Securities Rule 13-503 (Commodity Futures Act) Fees is amended by this Instrument.***
2. ***Section 2.3 is repealed and substituted by the following:***
 - 2.3 **Disclosure of Fee Calculation**
 - (1) By December 1, a registrant firm must file a completed Form 13-503F1 showing the information required to determine the participation fee due on December 31.
 - (2) Despite subsection (1), if at a particular time after December 1 and in a calendar year, a firm becomes registered, the completed Form 13-503F1 must be filed as soon as practicable after the particular time.
3. ***Paragraph 2.5(2)(b) is repealed and substituted by the following:***
 - (b) advisory or sub-advisory fees paid during the previous fiscal year by the registrant firm to
 - (i) a person or company registered as a dealer or an adviser under the CFA or under the *Securities Act*,
or
 - (ii) an unregistered exempt international firm, as defined in Rule 13-502 Fees under the *Securities Act*.
4. ***Paragraph 2.6(1)(a) is repealed and the following substituted:***
 - (a) by the time in that calendar year specified in section 2.3, file a completed Form 13-503F1 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and

5. *Appendix A is repealed and substituted by the following:*

APPENDIX A — PARTICIPATION FEES

Specified Ontario Revenues for the Previous Fiscal Year	Participation Fee
under \$500,000	\$870
\$500,000 to under \$1 million	\$2,725
\$1 million to under \$3 million	\$6,100
\$3 million to under \$5 million	\$13,725
\$5 million to under \$10 million	\$27,800
\$10 million to under \$25 million	\$56,700
\$25 million to under \$50 million	\$85,000
\$50 million to under \$100 million	\$170,000
\$100 million to under \$200 million	\$282,300
\$200 million to under \$500 million	\$572,250
\$500 million to under \$1 billion	\$739,000
\$1 billion to under \$2 billion	\$932,000
\$2 billion and over	\$1,564,000

6. *Appendix A, as enacted by section 2, is repealed and substituted by the following:*

APPENDIX A — PARTICIPATION FEES

Specified Ontario Revenues for the Previous Fiscal Year	Participation Fee
under \$500,000	\$945
\$500,000 to under \$1 million	\$2,970
\$1 million to under \$3 million	\$6,650
\$3 million to under \$5 million	\$14,975
\$5 million to under \$10 million	\$30,300
\$10 million to under \$25 million	\$61,800
\$25 million to under \$50 million	\$92,650
\$50 million to under \$100 million	\$185,300
\$100 million to under \$200 million	\$307,700
\$200 million to under \$500 million	\$623,750
\$500 million to under \$1 billion	\$805,500
\$1 billion to under \$2 billion	\$1,015,900
\$2 billion and over	\$1,704,800

7. **Appendix A, as enacted by section 3, is repealed and substituted by the following:**

APPENDIX A — PARTICIPATION FEES

Specified Ontario Revenues for the Previous Fiscal Year	Participation Fee
under \$500,000	\$1,035
\$500,000 to under \$1 million	\$3,240
\$1 million to under \$3 million	\$7,250
\$3 million to under \$5 million	\$16,325
\$5 million to under \$10 million	\$33,000
\$10 million to under \$25 million	\$67,400
\$25 million to under \$50 million	\$101,000
\$50 million to under \$100 million	\$202,000
\$100 million to under \$200 million	\$335,400
\$200 million to under \$500 million	\$679,900
\$500 million to under \$1 billion	\$878,000
\$1 billion to under \$2 billion	\$1,107,300
\$2 billion and over	\$1,858,200

8. **Appendix B is amended by**

- a. **striking out “\$3,000” in item 1 of section A and substituting “\$3,250”, and**
- b. **adding the following after section E:**

<p>F. Pre Filings of Applications</p> <p><i>Note: The fee for a pre-filing of an application will be credited against the applicable fee payable if and when the corresponding formal filing is actually proceeded with; otherwise, the fee is nonrefundable.</i></p>	<p>The fee for each pre-filing of an application is equal to the applicable fee that would be payable if the corresponding formal filing had proceeded at the same time as the pre-filing.</p>
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9. **Form 13-503F1 is repealed and substituted by the following:**

**FORM 13-503F1
(COMMODITY FUTURES ACT)**

PARTICIPATION FEE CALCULATION

General Instructions

1. This form must be completed by firms only registered under the *Commodity Futures Act* and returned to the Ontario Securities Commission by December 1 each year pursuant to section 2.3 of Rule 13-503, except in the case where firms register late in a calendar year (after December 1). In this exceptional case, this Form must be filed as soon as practicable after December 1.
2. The completion of this form will serve as an application for the renewal of your firm and all its registered individuals wishing to renew under the *Commodity Futures Act*.
3. IIROC members must complete Part I of this Form. All other registrant firms must complete Part II. Everyone completes Part III.
4. The components of revenue reported in this Form should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.
5. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.
6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's most recently completed fiscal year, which is generally referred to the Rule as its "previous fiscal year".
7. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.
8. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.
9. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy. However, it is acceptable to provide certification of this nature by only one member of senior management in cases of firms with only one officer and director.
10. There are a number of references in this form to "relevant fiscal year". The "relevant fiscal year" is generally a firm's last completed fiscal year. However, if good faith estimates for a fiscal year are provided in this Form pursuant to section 2.6 of the Rule, the relevant fiscal year is the fiscal year for which the good faith estimates are provided.

1. Firm Information

Firm NRD number: _____

Firm legal name: _____

2. Contact Information for Chief Compliance Officer

Please provide the name, e-mail address, phone number and fax number for your Chief Compliance Officer.

Name: _____

E-mail address: _____

Phone: _____ Fax: _____

3. Membership Status

The firm is a member of the Investment Industry Regulators Organization of Canada (IIROC).

The firm does not hold membership with IIROC.

4. Financial Information

Is the firm providing a good faith estimate under section 2.6 of the Rule?

Yes No

If no, end date of last completed fiscal year: $\frac{\quad}{\text{yyyy}} / \frac{\quad}{\text{mm}} / \frac{\quad}{\text{dd}}$

If yes, end date of fiscal year for which the good faith estimate is provided:

$\frac{\quad}{\text{yyyy}} / \frac{\quad}{\text{mm}} / \frac{\quad}{\text{dd}}$

Note: The fiscal year identified above is referred to below as the relevant fiscal year.

5. Participation Fee Calculation

Relevant
Fiscal Year
\$

Note: Dollar amounts stated in thousands, rounded to the nearest thousand.

Part I --- IIROC Members

- 1. Total revenue for relevant fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report
- 2. Less revenue not attributable to CFA activities
- 3. Revenue subject to participation fee (line 1 less line 2)

Part II - Other Registrants

Notes:

- 1. Gross Revenue is defined as the sum of all revenues reported on a gross basis as per the audited financial statements prepared in accordance with Accepted Accounting Standards, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation. Gross revenues are reduced by amounts not attributable to CFA activities.
- 2. Where the advisory or sub-advisory services of another registrant firm, or of an exempt international firm under Rule 13-502 Fees of the *Securities Act*, are used by the registrant firm to advise on a portion of its assets under management, such advisory or sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

- 1. Gross revenue for relevant fiscal year (note 1)

Less the following items:

- 2. Amounts not attributable to CFA activities
- 3. Advisory or sub-advisory fees paid to other registrant firms or to exempt international firms under Rule 13-502 (Fees) of the *Securities Act* (note 2)

- 4. Revenue subject to participation fee (line 1 less lines 2 and 3)

Part III – Calculating Specified Ontario Revenues

- 1. Gross revenue for relevant fiscal year subject to participation fee
(line 3 from Part I or line 4 from Part II)
- 2. Ontario percentage for relevant fiscal year
(See definition of “Ontario percentage” in the Rule) _____ %
- 3. Specified Ontario revenues
(line 1 multiplied by line 2) _____
- 4. Participation fee
(From Appendix A of the Rule, select the participation fee
opposite the specified Ontario revenues calculated above) _____

Part IV – Management Certification

Where available, we have examined the financial statements on which the participation fee calculation is based and certify that, to the best of our knowledge, the financial statements present fairly the revenues of the firm for the period ended as noted under **Financial Information** above, and that the financial statements have been prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

	Name and Title	Signature	Date
1.	_____	_____	_____
2.	_____	_____	_____

- 10. (1) **Subject to subsections (2) and (3), this Instrument comes into force on April 5, 2010.**
- (2) **Section 6 comes into force on April 4, 2011.**
- (3) **Section 7 comes into force on April 2, 2012.**

Annex B

**Amendments to Ontario Securities Commission
Companion Policy OSC 13-503CP (*Commodity Futures Act*) Fees**

1. ***Companion Policy 13-503CP (*Commodity Futures Act*) Fees is amended by this Instrument.***

2. ***Part 2 is amended by added the following:***

2.8 Confidentiality of Forms The material filed under the Part 2 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.

3. ***This Instrument becomes effective on April 5, 2010.***

5.1.4 Amendments to NI 21-101 Marketplace Operation, NI 23-101 Trading Rules and Companion Policy 23-101CP Trading Rules

AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

1.1 Amendments

- (1) This Instrument amends National Instrument 21-101 *Marketplace Operation*.
- (2) The definitions in section 1.1 are amended as follows:
 - (a) the definition of “IDA” is repealed and replaced by the following ““IIROC” means the Investment Industry Regulatory Organization of Canada”;
 - (b) the definition of “inter-dealer bond broker” is amended by:
 - (i) striking out “IDA” and substituting “IIROC”;
 - (ii) striking out “By-law No. 36” and substituting “Rule 36”; and
 - (iii) striking out “Regulation 2100” and substituting “Rule 2100”;
 - (c) the definition of “recognized exchange” by repealing and replacing paragraph (b) and substituting with the following:

“(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization”; and
 - (d) the definition of “recognized quotation and trade reporting system” is amended by
 - (i) adding “and Québec” between “British Columbia” and “, a quotation and trade reporting system” in paragraph (a);
 - (ii) striking out “and” at the end of paragraph (a) and adding “and” at the end of paragraph (b); and
 - (iii) adding the following:

“(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization”;
- (3) The following subsection is added to section 1.4:

“(3) In Québec, the term “security”, when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*.”.
- (4) Part 10 is amended by:
 - (a) striking out “Disclosure of” in the title of Part 10; and
 - (b) adding the following section after section 10.2:

“10.3 Discriminatory Terms – With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.”.
- (5) (a) Subsection 11.5(1) is amended by:
 - (i) adding “and” between “securities,” and “a dealer”;
 - (ii) striking out “and a regulation services provider monitoring the activities of marketplaces trading those securities”; and
 - (iii) adding “with the clock used by a regulation services provider monitoring the activities of marketplaces