

6.1.2 Proposed Amendments to OSC Rule 13-503 (Commodity Futures Act) Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees

**REQUEST FOR COMMENTS
PROPOSED AMENDMENTS TO
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES
AND COMPANION POLICY 13-503CP (COMMODITY FUTURES ACT) FEES**

August 23, 2012

Introduction

The Commission is publishing for a 90-day comment period proposed amendments (the Proposed Amendments) to OSC Rule 13-503 (*Commodity Futures Act*) Fees (the Current Rule) made under the *Commodity Futures Act* (CFA), together with proposed changes (the Proposed CP Changes) to Companion Policy 13-503CP. In this Notice, the proposed versions of the Current Rule and the Companion Policy are referred to as the Proposed Rule and the Proposed CP, respectively. The Proposed Amendments and the Proposed CP Changes are referred to collectively as the Proposed Materials.

The Proposed Materials are available on the Commission's website (www.osc.gov.on.ca). Related proposed changes to the *Securities Act* are being published today for comment in this Bulletin.

The on-going feedback received by us on Commission fees charged suggests that they are considered by market participants to be a modest component of their overall cost structures. The input sought by the Commission includes whether any part of the proposals put forth today would, if implemented, change this assessment.

We request comments on the Proposed Materials by November 21, 2012.

Substance and Purpose of the Proposed Materials

The Proposed Amendments are consistent with the Current Rule. That is, under the Proposed Rule, registrant firms would continue to be required to pay fees reflecting the Commission's costs of regulating activities governed by the *Commodity Futures Act* (CFA).

The two main types of fees charged under the Current Rule are participation fees and activity fees.

Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a CFA registrant is a measure of the CFA registrant's size, which is used as proxy for its proportionate participation in the Ontario capital markets. However, 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*. As set out below, it is proposed to increase participation fees over three years.

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 B of the Current Rule and the Proposed Rule are considered in determining these fees (e.g., reviewing 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. We are proposing to increase some of our activity fees where the complexity of the work and the costs of our resources have increased. Under the Proposed Rule, there is also provision in narrow circumstances for charging a variable cost-based fee for certain applications by CFA exchanges and clearing houses, in light of the high degree of variability of the costs in these applications.

The Proposed Amendments make adjustments so that the fees charged by the Commission are aligned more closely with the Commission's costs. In order to allow for the greater predictability of fee revenues, the Proposed Amendments applicable to CFA registrant participation fees provide for those fees to be determined by reference to historical data (rather than on-going current data) and for that reference point to be the basis for fees for the anticipated three-year period of the Proposed Rule.

The Proposed CP Changes reflect the Proposed Amendments.

Further details on the Proposed Amendments and the Proposed CP Changes are provided below under the headings "Summary of Proposed Amendments" and "Summary of Proposed CP Changes".

Anticipated Costs and Benefits and Supplementary Information

Financial information relevant to fees established under both the CFA and the *Securities Act* is contained in the notice in the Bulletin on proposed amendments to OSC Rule 13-502 Fees.

Summary of the Proposed Amendments

The Proposed Amendments are described in greater detail below.

Use of pre-May, 2012 information in determining market participant size

Under the Current Rule, a participation fee for a CFA registrant is determined with reference to its specified Ontario revenues for its last completed fiscal year. Under the proposed Rule, a participation fee for a CFA registrant is determined with reference to its specified Ontario revenues for its "reference fiscal year".

Under section 1.1 of the Proposed Rule, a CFA registrant's "reference fiscal year" is its last fiscal year ending before May 1, 2012, assuming it was a registrant firm at the end of that fiscal year. As a consequence of the way in which "reference fiscal year" is used in the Proposed Rule, the participation fee is generally fixed for three years, with reference to data from a CFA registrant's "reference fiscal year".

Where the CFA registrant did not have the required status at the end of that fiscal year, its "reference fiscal year" is its "previous fiscal year" (as defined in section 1.1 of the Rule), which in general terms is its last completed fiscal year. Where a CFA registrant's "reference fiscal year" is its "previous fiscal year", the result is that the registrant's size is determined with reference to the same time period as it is under the Current Rule. For a CFA registrant that is required to calculate its fees based on its previous fiscal year, this means that it will use its annual financial statements each year as a basis for the information required in Form 13-503F1.

To take into account this amendment, numerous consequential changes have also been made to Form 13-503F1.

The main objective of this amendment is to enable the better matching of the Commission's revenues and expenditures. The proposed amendment eliminates the need to forecast market conditions in determining the fees for each participation fee tier since, with the use of the reference fiscal year, participation fees will be known and be predictable over the life of the Proposed Rule. This provides more stability for the benefit of the Commission and for CFA registrants.

Participation fees

One additional tier is proposed for CFA registrants with under \$250,000 of specified Ontario revenues, with a lower participation fee of \$800 initially being provided for this tier. Those participants with revenues between \$250,000 and \$500,000 are initially proposed to remain subject to a \$1,035 participation fee. The \$800 and \$1,035 participation fees would be increased as shown in Appendix A of the Rule in the last two years of the three-year fee cycle. Participation fees for CFA registrants within higher tiers of revenue would increase by 7.9% annually throughout the three-year fee cycle.

Activity fees

(i) Adjustments in Amounts of Existing Activity Fees

There are number of changes in the amounts of existing activity fees, made in order to better match the Commission's costs for specified activities and to reduce increases that would otherwise be required in the setting of participation fees. Proposed increases in activity fees reflect increases in OSC costs as well as increases in the complexity of much of the OSC's work which has resulted in greater time/resource requirements for certain activities.

The base fee for an application under a CFA section for relief, approval or recognition specified in Appendix B (A) 1 is proposed to increase from \$3,250 to \$4,500 (or, in the case of an application under multiple sections, from \$5,000 to \$7,000). However, it is proposed that applications for recognition/registration of an exchange or clearing house and exemptions from such recognition/registration be no longer subject to this fee. Instead, these fees would now be provided under Appendix B (A.1). No fee would be charged in connection with recognitions under section 16 of the CFA, approvals under section 18 of the CFA or applications under subsection 78(1) of the CFA that are made in conjunction with corresponding recognitions/approvals/applications under the Securities Act.

The fee for application for relief under the Proposed Rule is proposed to increase from \$1,500 to \$1,750 (Appendix B (A) 3).

The following fee adjustments are proposed to fees for registration-related activities:

- fee for new registration of a firm is proposed to increase from \$600 to \$1,200 (Appendix B (B) 1);
- fee for change in registration category is proposed to increase from \$600 to \$700 (Appendix B (B) 2);
- fee for registration resulting from an amalgamation of firm proposed to decrease from \$2,000 to \$1,000 (Appendix B (B) 5);
- fee for approval under subsection 9(3) of the Regulation 90 under the CFA (requiring the approval of the Director before a CFA registrant, or a partner, officer or associate of a CFA registrant, has a direct or indirect interest in any other CFA registrant)
 - increased from \$1,000 to \$3,500 for consistency with corresponding proposed fee in OSC Rule 13-502 (Appendix C (I)), and
 - eliminated if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*.

(ii) Changes in Fee Structure in Relation to Exchanges and Clearing Houses

Under Appendix B (A.1), the fee for stand-alone CFA applications for recognition/registration by exchanges and clearing houses would be increased to \$100,000 and the fee for exemption from registration under the CFA for exchanges would be increased to \$75,000. An additional fee of \$100,000 would be charged in four cases, in connection with each such application that:

- reflects a merger of an exchange or clearing house,
- reflects an acquisition of a major part of the assets of an exchange or clearing house,
- involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or
- reflects a major reorganization or restructuring of an exchange or clearing house.

The same additional \$100,000 fee would be charged under Appendix B (A) in connection with stand-alone CFA applications to vary applications reflecting the circumstances described above.

In the event that applications described above are in conjunction with corresponding applications under the *Securities Act*, the base activity fee would be limited to \$20,000 and there would be no additional CFA fee of \$100,000.

Further, provision is made in section 3.1.1 of the Proposed Rule for a variable cost-based CFA fee to be charged in connection with an application described in section A or A.1 of Appendix B from an exchange or clearing house if the “designated cost” of the work on the application exceeds \$300,000. For this purpose, the “designated cost” of work done by OSC staff would be equal to product of the the number of hours worked on the application by non-managerial professional OSC staff and \$140, plus the cost of external services used by the Commission on the application. Once the \$300,000 threshold is reached, the Commission would be entitled to issue invoices to recoup the OSC’s cost of processing the application. The special activity fee is not intended to apply frequently and would only apply to very special circumstances, such as the recently completed “Maple recognition”. Further elaboration of the process contemplated in connection with variable cost-based activity fees is set out in the Proposed CP.

(iii) Information Requests to the Commission

Section E of Appendix B sets out the fees that the Commission charges for retrieving and copying records, mostly of a public nature.

It is proposed to update this section to refer to copies made in any format (rather than photocopies). It is proposed to express the \$0.50 charge as applying per image (rather than per page).

It is also proposed to adjust the amount of fee charged for a search of the Commission's public records to reflect required retrieval time. The fee is proposed to be changed from a \$150 flat fee to a \$7.50 charge for each 15 minutes of search time.

Additional technical changes

The Proposed Amendments also include some non-material technical changes.

Proposed CP Changes

The purpose of the Proposed CP Changes is to clarify the Commission's view of the application of the Proposed Amendments, as well as to address the additional issue described below and to make a number of non-material technical changes.

Section 3.1 of the Proposed CP deals with the passing on of participation fees. The Commission takes the position that these participation fees should be paid by, and borne by, those who are charged the participation fees. A similar change is reflected in proposed section 4.1 of Companion Policy 13-502CP, which is also being published for comment today.

Part 4 of the Proposed CP elaborates on the process foreseen in the event that a variable cost-based activity fee is charged under proposed section 3.1.1 of the Rule.

Authority for the Proposed Amendments

Paragraph 25 of subsection 65(1) of the CFA authorizes the Commission 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."

Alternatives Considered

The Commission did not consider any alternatives to rule amendments in the development of the Proposed Amendments..

Unpublished Materials

The Commission has not relied on any significant unpublished study, report, decision or other written materials in putting forward the Proposed Materials.

How to Provide Your Comments

You must provide your comments in writing by November 21, 2012. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The Commission will publish written comments received unless the Commission approves a commenter's request for confidentiality or the commenter withdraws its comment before the comment's publication.

Questions

Please refer your questions to:

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Text of the Proposed Materials

Annex A provides a blackline showing the impact of the Proposed Amendments on the Current Rule.

Annex B provides a blackline showing the impact of the Proposed CP Changes.

**ANNEX A
BLACKLINE SHOWING PROPOSED CHANGES TO
RULE 13-503 (COMMODITY FUTURES ACT) FEES**

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**ONTARIO SECURITIES COMMISSION
RULE 13-503 (COMMODITY FUTURES ACT) FEES**

PART 1 – DEFINITIONS

1.1 Definitions – In this Rule

“CFA” means the *Commodity Futures Act*;

“CFA activities” means activities for which registration under the CFA or an exemption from registration is required;

“IIROC” means the Investment Industry Regulatory Organization of Canada and, where context requires, includes the Investment Dealers Association of Canada;

“Ontario allocation factor” has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words “ending after December 31, 2008”;

“Ontario percentage” means, for a fiscal year of a registrant firm

- (a) if the registrant firm is a company that has a permanent establishment in Ontario in the fiscal year, the registrant firm’s Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,
- (b) if paragraph (a) does not apply and the registrant firm would have a permanent establishment in Ontario in the fiscal year if the registrant firm were a company, the registrant firm’s Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and
- (c) in any other case, the percentage of the registrant firm’s total revenues for the fiscal year attributable to CFA activities in Ontario;

“permanent establishment” has the meaning provided in Part IV of the regulations under the ITA;

“previous fiscal year” of a registrant firm in respect of a participation fee that becomes payable under section 2.2 on December 31 of a calendar year, the last fiscal year of the registrant firm ending in the calendar year;

“reference fiscal year” of a registrant firm in respect of a participation fee means,

- (a) the participant’s last fiscal year ending before May 1, 2012, if the firm was a registrant firm at the end of the fiscal year, and
- (b) in any other case, the previous fiscal year in respect of the participation fee;

“registrant firm” means a person or company registered as a dealer or an adviser under the CFA; and

“specified Ontario revenues” means the revenues determined in accordance with section 2.4, 2.5 or 2.6.

PART 2 – PARTICIPATION FEES

2.1 Application – This Part does not apply to a registrant firm that is registered under the *Securities Act* and that has paid its participation fee under Rule 13-502 *Fees* under the *Securities Act*.

2.2 Participation Fee – On December 31, ~~a~~31 of each calendar year, registrant firmfirms must pay the participation fee shown in Appendix A opposite the registrant firm’s specified Ontario revenues for its ~~previous~~reference fiscal year, as that revenue is calculated under section 2.4 or 2.5.

2.3 Disclosure of Fee Calculation

- (1) By December 1, ~~a~~registrant firmfirms 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.

2.4 Specified Ontario Revenues for IIROC Members

- (1) The specified Ontario revenues for its previousreference fiscal year of a registrant firm that was an IIROC member at the end of the previousreference fiscal year is calculated by multiplying
- (a) the registrant firm's total revenue for its previousreference fiscal year, less the portion of that total revenue not attributable to CFA activities, by
 - (b) the registrant firm's Ontario percentage for its previousreference fiscal year.
- (2) For the purpose of paragraph (1)(a), "total revenue" for a previousreference fiscal year means the amount shown as total revenue for the previous fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm.

2.5 Specified Ontario Revenues for Others

- (1) The specified Ontario revenues of a registrant firm that was not an IIROC member at the end of its previous reference fiscal year is calculated by multiplying
- (a) the registrant firm's gross revenues, as shown in the audited financial statements prepared for the previousreference fiscal year, less deductions permitted under subsection (2), by
 - (b) the registrant firm's Ontario percentage for the previousreference fiscal year.
- (2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items otherwise included in gross revenues for the reference fiscal year:
- (a) revenue not attributable to CFA activities,
 - (b) -advisory or sub-advisory fees paid during the previousreference 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*.

2.6 Estimating Specified Ontario Revenues for Late Fiscal Year End

- (1) If the reference fiscal year of a registrant firm in respect of a participation fee under subsection 3.1(1) coincides with the previous fiscal year in respect of the participation fee and the annual financial statements of a registrant firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the registrant firm must,
- (a) by the time on or before December 1 in that calendar year ~~specified in section 2.3.1~~ 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
 - (b) on December 31 in that calendar year, pay the participation fee shown in Appendix A opposite the specified Ontario revenues estimated under paragraph (a).
- (2) A registrant firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the previous fiscal year have been completed,
- (a) calculate its specified Ontario revenues under section 2.4 or 2.5, as applicable,
 - (b) determine the participation fee shown in Appendix A opposite the specified Ontario revenues calculated under paragraph (a),

- (c) complete a Form 13-503F1 reflecting the annual financial statements, and
- (d) if the participation fee determined under paragraph (b) differs from the participation fee paid under subsection (1), the registrant firm must, not later than 90 days after the end of the previous fiscal year,
 - (i) pay the amount, if any, by which
 - (A) the participation fee determined without reference to this section, exceeds
 - (B) the corresponding participation fee paid under subsection (1),
 - (ii) file the Form 13-503F1 completed under paragraph (c), and
 - (iii) file a completed Form 13-503F2.
- (3) If a registrant firm paid an amount paid under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the registrant firm is entitled to a refund from the Commission of the excess.

2.7 Late Fee

- (1) A registrant firm that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.
- (2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a registrant firm is deemed to be nil if
 - (a) the registrant firm pays an estimate of the participation fee in accordance with subsection 2.6(1), or
 - (b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than \$10.

PART 3 – ACTIVITY FEES

3.1 Activity Fees

A person or company that files a document or takes an action listed in Appendix B must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix B opposite the description of the document or action.

3.1.1 Special Circumstances

- (1) If the designated cost, in connection with an application referred to in section A or A.1 of Appendix B from an exchange or clearing house, is greater than \$300,000, the Commission must
 - (a) issue one or more invoices to the person or company for an amount equal to the difference between that designated cost and the total fee charged in respect of the application under section A or A.1 of Appendix B, in which case the amount specified in each invoice is deemed to be part of the fee for that matter and become payable, 30 days after the receipt of a the invoice, by the person or company, or
 - (b) despite section A(3) of Appendix C, request that the Director consider or reconsider under section 5.1 the extent to which this section applies.
- (2) No invoice shall be issued under subsection (1) in relation to work performed by staff of the Commission more than twelve months before the invoice is issued or in relation to services performed by a third party more than twelve months after a bill for those services was rendered.

- (3) For the purposes of subsection (1) the “designated cost” of work in relation to a matter is the total of:
- (a) the product of \$140 and the number of complete hours worked by a specified member of the staff of the Commission in connection with the matter and, for the purposes of this paragraph, a specified member of the staff is a member of staff of the Commission who is engaged by the Commission for their expertise and knowledge in any combination of law, accounting and the markets, but does not include managers, assistant directors and executives; and
 - (b) the cost to the Commission of services provided by third parties contracted in connection with the matter.
- (4) An invoice under subsection (1) in respect of a matter must
- (a) to the extent it reflects work done by staff of the Commission,
 - (i) specify the number of complete hours worked by each individual on the matter to the extent that those hours were relevant in the determination of the portion of the amount invoiced under subsection (1),
 - (ii) specify the dates on which those hours were worked, and
 - (iii) describe in general terms the work performed during those hours, and
 - (b) to the extent it reflects the cost described in paragraph (3)(b), describe in general terms the services provided for those costs.

3.1.2 Information Request

Section 3.1 does not apply with regard to requests to the Commission under section E of Appendix B but the Commission must only fulfill a request under that section upon full payment of the applicable fee.

- 3.2 Late Fee** – A person or company that files a document listed in Appendix C after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix C opposite the description of the document.

PART 4 – CURRENCY CONVERSION

- 4.1 Canadian Dollars** – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

PART 5 – EXEMPTION

- 5.1 Exemption** – The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 – REVOCATION AND EFFECTIVE DATE

APPENDIX A – PARTICIPATION FEES

Specified Ontario Revenues for the Previous <u>Reference</u> Fiscal Year	Participation Fee (effective <u>April 1, 2013</u>)	Participation Fee (effective <u>April 7, 2014</u>)	Participation Fee (effective <u>April 6, 2015</u>)
under <u>\$250,000</u>	\$800	\$925	\$1,060
<u>\$250,000</u> to under \$500,000	\$1,035	\$1,115	\$1,200
\$500,000 to under \$1 million	\$3,240 <u>3,500</u>	\$3,775	\$4,075
\$1 million to under \$3 million	\$7,250 <u>7,825</u>	\$8,440	\$9,110
\$3 million to under \$5 million	\$16,325 <u>17,615</u>	\$19,000	\$20,500
\$5 million to under \$10 million	\$33,000 <u>35,610</u>	\$38,425	\$41,460
\$10 million to under \$25 million	\$67,400 <u>72,725</u>	\$78,470	\$84,670
\$25 million to under \$50 million	\$101,000 <u>108,980</u>	\$117,590	\$126,880
\$50 million to under \$100 million	\$202,000 <u>217,960</u>	\$235,180	\$253,760
\$100 million to under \$200 million	\$335,400 <u>361,900</u>	\$390,490	\$421,340
\$200 million to under \$500 million	\$679,900 <u>733,625</u>	\$791,580	\$854,100
\$500 million to under \$1 billion	\$878,000 <u>947,360</u>	\$1,022,200	\$1,103,000
\$1 billion to under \$2 billion	\$1,107,300 <u>1,195,000</u>	\$1,289,400	\$1,391,250
\$2 billion and over	\$1,858,200 <u>2,000,000</u>	\$2,158,000	\$2,328,500

APPENDIX B - ACTIVITY FEES

Document or Activity	Fee
<p>A. Applications for relief, approval and recognition</p> <p>1. Any application for relief, regulatory approval or recognition under an eligible CFA section, being for the purpose of this item any provision of the CFA or any Regulation or OSC Rule made under the CFA not listed in item A.2 or A.3.3 nor section A.1.</p> <p><i>Note: The following are included in the applications that are subject to a fee under this item:</i></p> <p>(i) recognition of an exchange under section 34 of the CFA, a self-regulatory organization under section 16 of the CFA or a clearing house under section 17 of the CFA;</p> <p>(ii) registration of an exchange under section 15 of the CFA;</p> <p>(iii) approval of the establishment of a council, committee or ancillary body under section 18 of the CFA;</p> <p>(iviii) applications by a person or company under subsection 78(1) of the CFA; and</p> <p>(iv) except as provided in section A.1, exemption applications under section 80 of the CFA.</p>	<p>\$3,2504,500 for an application made under one eligible CFA section and \$5,0007,000 for an application made under two or more eligible CFA sections (plus \$2,000 if none of the following is not subject to, or is not reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 under the <i>Securities Act</i>:</p> <p>(i) the applicant;</p> <p>(ii) an issuer of which the applicant is a wholly owned subsidiary;</p> <p>(iii) the investment fund manager of the applicant);</p> <p><u>(plus an additional fee of \$100,000 in connection with each particular application by a person or company under subsection 78(1) of the CFA in respect of an application described in section A.1 that is not in conjunction with a corresponding application under subsection 144(1) of the <i>Securities Act</i> if the particular application</u></p> <p>(a) <u>reflects a merger of an exchange or clearing house.</u></p> <p>(b) <u>reflects an acquisition of a major part of the assets of an exchange or clearing house.</u></p> <p>(c) <u>involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or</u></p> <p>(d) <u>reflects a major reorganization or restructuring of an exchange or clearing house.)</u></p> <p>Despite the above, if an application is made under at least one eligible securities section described in Appendix C(E) 1 of OSC Rule 13-502 and at least one eligible CFA section, the fee in respect of the application is equal to the amount, if any, by which the fee under this Item for a recognition described in Note (i) of the first column, an approval described in Note (ii) of the first column or an application described in Note (iii) of the first column does not apply where the</p>

Document or Activity	Fee
	<p><u>recognition, approval or application is in conjunction with a recognition, approval or application under the <i>Securities Act</i>.</u></p> <p>(a) the fee that would have been charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application if each eligible CFA section were an eligible securities section</p> <p>exceeds</p> <p>(b) the fee charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application.</p>
<p>2. Application under</p> <p>(a) Section 24 or 40 or subsection 36(1) or 46(6) of the CFA, and</p> <p>(b) Subsection 27(1) of the Regulation to the CFA.</p>	Nil
<p>3. An application for relief from any of the following</p> <p>(a) this Rule;</p>	\$1,500 \$1,750
<p>4. <u>An application for relief from any of the following:</u></p> <p>(ba) OSC Rule 31-509 (<i>Commodity Futures Act</i>) <i>National Registration Database</i>;</p> <p>(eb) OSC Rule 33-505 (<i>Commodity Futures Act</i>) <i>Registration Information</i>;</p> <p>(ec) Subsection 37(7) of the Regulation to the CFA.</p>	\$1,500
<p><u>A.1 Market Regulation Recognitions and Exemptions</u></p> <p>(a) <u>Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is not made in conjunction with the application for recognition of an exchange under the <i>Securities Act</i>;</u></p> <p>(b) <u>Application for registration or recognition of an exchange under section 15 or 34 of the CFA if the application is made in conjunction with the application for recognition of an exchange under the <i>Securities Act</i>;</u></p> <p>(c) <u>Application for exemption from registration of an exchange under section 80 of the CFA if the application is not made in conjunction with the application for exemption from the recognition of an exchange under the <i>Securities Act</i>;</u></p>	<p>\$100,000</p> <p>\$20,000</p> <p>\$75,000</p>

Document or Activity	Fee
<p>(d) <u>Application for exemption from registration of an exchange under section 80 of the CFA if the application is made in conjunction with the application for exemption from the recognition of an exchange under the <i>Securities Act</i>;</u></p> <p>(e) <u>Application for recognition of a clearing house under section under section 17 of the CFA if the application is not made in conjunction with the application for recognition of a clearing agency under the <i>Securities Act</i>;</u></p> <p>(f) <u>Application for recognition of a clearing house under section under section 17 of the CFA if the application is made in conjunction with the application for recognition of a clearing agency under the <i>Securities Act</i>.</u></p>	<p style="text-align: right;">\$20,000</p> <p style="text-align: right;">\$100,000</p> <p style="text-align: right;">\$20,000</p> <p>(plus, in connection with each such application described in paragraph (a), (c) or (e) of this Item, an additional fee of \$100,000 if the application</p> <p>(a) <u>reflects a merger of an exchange or clearing house,</u></p> <p>(b) <u>reflects an acquisition of a major part of the assets of an exchange or clearing house,</u></p> <p>(c) <u>involves the introduction of a new business that would significantly change the risk profile of an exchange or clearing house, or</u></p> <p>(d) <u>reflects a major reorganization or restructuring of an exchange or clearing house).</u></p>
B. Registration-Related Activity	
1. New registration of a firm in one or more categories of registration	\$600,200
2. Change in registration category <i>Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general category of adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding section.</i>	\$600,700
3. Registration of a new director, officer or partner (trading or advising), salesperson or representative <i>Notes:</i> (i) <i>Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.</i> (ii) <i>If an individual is registering as both a dealer and an adviser, the individual is required to pay only one activity fee.</i>	\$200 per individual

Document or Activity	Fee
(iii) <i>A registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.</i>	
4. Change in status from a non-trading or non-advising capacity to a trading or advising capacity	\$200 per individual
5. Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	\$2,000 <u>1,000</u>
6. Application for amending terms and conditions of registration	\$500
C. Application for Approval of the Director under Section 9 of the Regulation to the CFA <i>Note: No fee for an approval under subsection 9(3) of the Regulation to the CFA is payable if a notice covering the same circumstances is required under section 11.9 or 11.10 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Requirements.</i>	\$1,500 <u>3,500</u>
D. Request for Certified Statement from the Commission or the Director under Section 62 of the CFA	\$100
E. Requests of the Commission	
1. Request for a photocopy (in any format) of Commission public records	\$0.50 per page
2. Request for a search of Commission public records	\$150 <u>7.50</u> for each 15 minutes search time spent by any person
3. Request for one's own Form 7 individual registration form.	\$30
F. Pre Filings of Applications <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>	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.

APPENDIX C – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
<p>Fee for late filing of any of the following documents:</p> <ul style="list-style-type: none"> (a) Annual financial statements and interim financial reports; (b) Report under section 15 of the Regulation to the CFA; (c) Report under section 17 of the Regulation to the CFA; (d) Filings for the purpose of amending Form 5-er Form 7 under the Regulation to the CFA or Form 33-506F4 or Form 33-506F6 under OSC Rule 33-506, including the filing of Form 33-506F1; (e) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to <ul style="list-style-type: none"> (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-503F1; (g) Form 13-503F2. 	<p>\$100 per business day (subject to a maximum of \$5,000 for a registrant firm for all documents required to be filed within a calendar year)</p>

**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 but not under the Securities Act~~. It must be 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~~ 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~~ form. All other registrant firms must complete Part II. Everyone completes Part III.
4. The components of revenue reported in this ~~Form~~ 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 reference~~ fiscal year, which is generally referred to the Rule as its "previous fiscal year". A firm's reference fiscal year is generally its last fiscal year ending before May 1, 2012. For further detail, see the definition of "reference fiscal year" in section 1.1 of the Rule.
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: _____

Part III – Calculating Specified Ontario Revenues

1. Gross revenue for relevant reference fiscal year subject to participation fee
(line 3 from Part I or line 4 from Part II)
2. Ontario percentage for relevant reference 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.	_____	_____	_____

**FORM 13-503F2
(COMMODITY FUTURES ACT)**

ADJUSTMENT OF FEE PAYMENT

Firm Name: _____

Fiscal Year End: _____ **End date of last completed fiscal year:** _____

Note: Subsection 2.6(2) of the Rule requires that this Form must be filed concurrent with a completed Form 13-503F1 that shows the firm's actual participation fee calculation.

- 1. Estimated participation fee paid under subsection 2.6(1) of the Rule: _____
- 2. Actual participation fee calculated under paragraph 2.6(2)(b) of the Rule: _____
- 3. Refund due (Balance owing): _____
(Indicate the difference between lines 1 and 2)

**ANNEX B
BLACKLINE SHOWING CHANGES PROPOSED TO
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES**

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**ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) FEES**

PART 1 – PURPOSE OF COMPANION POLICY

- 1.1 Purpose of Companion Policy** – The purpose of this Companion Policy is to state the views of the Commission on various matters relating to OSC Rule 13-503 (*Commodity Futures Act*) 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

2.1 Purpose and General Approach of the Rule

- (1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of OSC Rule 13-502 (the “OSA Fees Rule”), which governs fees paid under the *Securities Act*. Both rules are designed to create a clear and streamlined fee structure.
- (2) The fee regime of the Rule is based on the concepts of “participation fees” and “activity fees”.

2.2 Participation Fees

- (1) Registrant firms are required to pay participation fees annually. Participation fees are designed to cover the Commission’s costs not easily attributable to specific regulatory activities. The participation fee required of each market participant is based on a measure of the market participant’s size, which is used as a proxy for its proportionate participation in the Ontario capital markets.
- (2) Participation fees are determined with reference to gross revenue from a firm’s “~~previous~~reference fiscal year”, ~~which is essentially, as defined in section 1.1 of the Rule as the, a firm’s “reference fiscal year” is generally the firm’s last fiscal year ending before May 1, 2012. However, if the firm was not a registrant at the end of that fiscal year, the “reference fiscal year” is its last completed fiscal year before the participation fee is required to be paid. (which is defined in section 1.1 of the Rule as the firm’s “previous fiscal year”).~~

- 2.3 Application of Participation Fees** – Although participation fees are determined by ~~using~~with reference to information from a fiscal year of a registrant firm ending before the time of the payment, participation fees are applied to the costs of the Commission of regulating the ongoing participation in Ontario’s capital markets of the firm and other firms.

- 2.4 Registered Individuals** – The participation fee is paid at the firm level under the Rule. ~~That is~~For example, a “registrant firm” is required to pay a participation fee, not an individual who is registered as a salesperson, representative, partner, or officer of the firm.

- 2.5 Activity Fees** – 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 B of the Rule are considered in determining these fees (e.g., reviewing 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.

- 2.5.1. Additional Activity Fees in Special Circumstances** – Variable cost-based activity fees for certain applications specified in sections A and A.1 of Appendix B, involving CFA exchanges and clearing houses, may be payable where the “designated cost” of work exceeds \$300,000. The additional fee are levied to help recover the Commission’s costs in non-routine, novel or complex regulatory applications. The administration of these additional fees is addressed in Part 4 of this Policy.

2.6 Registrants under the CFA and the *Securities Act*

- (1) A registrant firm that is registered both under the CFA and the *Securities Act* is exempted by section 2.1 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. The registrant firm will include revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under the OSA Fees Rule.
- (2) A registrant firm that is registered both under the CFA and the *Securities Act* must pay activity fees under the CFA Rule even though it pays a participation fee under the OSA Fees Rule.

2.7 No Refunds

- (1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. 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 registrant firm whose registration is terminated later in the year for which the fee was paid.
- (2) An exception to this principle is provided in subsection 2.6(3) of the Rule. This provision allows for a refund where a registrant firm overpaid an estimated participation fee.
- (3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

2.8 Indirect Avoidance of Rule – The Commission may examine arrangements or structures implemented by registrant firms 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 be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the firm's specified Ontario revenues and, consequently, its participation fee.

2.9 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

PART 3 – PARTICIPATION FEES

3.1 Passing on of Participation Fees Participation fees are payable annually by registrant firms. The participation fees represent, in general, their costs of participating in Ontario's capital markets and should be paid and borne by them.

3.2 Filing Forms under Section 2.6 – If the estimated participation fee paid under subsection 2.6(1) by a registrant firm does not differ from its true participation fee determined under subsection 2.6(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.6(3).

3.23.3 Late Fees – Section 2.7 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.

3.33.4 "CFA Activities" – Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term "CFA activities" is defined in section 1.1 of the Rule to include "activities for which registration under the CFA or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.

PART 4 – VARIABLE COST-BASED ACTIVITY FEE PAYABLE IN SPECIAL CIRCUMSTANCES

4.1 General – A variable cost-based activity fee may be charged under section 3.1.1 of the Rule with regard to specified applications described in sections A and A.1 of Appendix B (relating to exchanges and clearing houses), but only where the designated cost of the work is \$300,000 or greater. It is expected that variable cost-based activity fees will only apply in rare cases.

4.2 Standard activity fees – Each applicant will be required to pay the fee associated with the relevant matter described in section A or A.1 of Appendix B. If OSC staff expect that a particular application described in section A or A.1 of Appendix B may be one to which the variable cost-based activity fee may apply due to its anticipated complexity, the applicant will be so advised. OSC staff would also advise the applicant as to the expected scale and duration of the work it anticipates.

4.3 Designated cost of work – As set out in subsection 3.1.1(3) of the Rule, the designated cost of work done by OSC staff is the product of \$140 and the number of complete hours worked by specified OSC staff in connection with the specified application. An applicant is also responsible for any fees incurred by the Commission in retaining external legal counsel or external experts in relation to the matter under review.

4.4 Instalments – Depending on the circumstances, an applicant may be required to pay the variable cost-based activity fee in instalments. The amount and frequency of the instalments depends on the complexity of the application, the expected duration of the review, the internal Commission resources necessary for completion of the review, the amount

of the activity fee already paid by the applicant and any other relevant consideration. Such factors will be discussed with the applicant at the time when OSC staff identify that the additional fee may be applicable. These terms may be reconsidered and/or revised during the course of the review period, as appropriate.

4.5 Draft invoices – OSC staff intend to provide draft invoices relating to variable cost-based fees, prior to issuing the final invoices required by the Rule. The purpose of issuing a draft invoice is to give the applicant an opportunity to put forward any basis as to why the fee reflected on the draft invoice should be lowered. If the applicant does not make a submission with 30 days of receiving the draft invoice, the corresponding final invoice may be issued once reviewed first by the Director and then by the Commission. Both the draft and final invoices would be expected to meet the requirements set out in subsection 3.1.1(4) of the Rule.

4.6 Review – The Director and the Commission may evaluate the appropriateness of amounts set out in a draft invoice, giving consideration to any submission made by the applicant in response to a draft invoice described in section 4.5 and other factors including:

- (a) the complexity of the matter;
- (b) the reasonableness of the time expended;
- (c) the expertise that was required, including whether external counsel or experts were retained by the Commission;
- (d) the applicant's expectation as to fees based on estimate provided; and
- (e) any action taken by OSC staff, by external counsel or experts or by the applicant which caused a notable increase in the amount of work required;