

## 1.1.2 OSC Staff Notice 13-705 – Reduced Late Fee for Certain Outside Business Activities Filings

### OSC STAFF NOTICE 13-705 REDUCED LATE FEE FOR CERTAIN OUTSIDE BUSINESS ACTIVITIES FILINGS

January 14, 2015

#### Purpose of this Notice

This notice provides information and guidance for registered firms that sponsor registered individuals or permitted individuals (**Representatives**) to apply for reduced late filing fees relating to outside business activities (**OBAs**) not reported on a timely basis.

A notice of change to a Representative's OBAs previously reported on item 10 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals (Form 33-109F4)* is done by submitting a completed Form 33-109F5 *Change of Registration Information (Form 33-109F5)* to the regulator in accordance with National Instrument 31-102 *National Registration Database (NI 31-102)*.

The Canadian Securities Administrators recently published final amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. These amendments became effective January 11, 2015. Section 13.4 of Companion Policy to NI 31-103 (**CP 31-103**) was amended at the same time to add guidance about conflicts of interest in relation to registered representatives that serve on the boards of reporting issuers or have OBAs. As a result of the changes to CP31-103, CSA Staff Notice 31-326 *Outside Business Activities* issued on July 15, 2011 and Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*, amended effective September 28, 2009, were repealed when the amendments became effective.

Some market participants believe the additional guidance in CP 31-103 is a new requirement that now requires them to submit a completed Form 33-109F5 with respect to previously existing OBAs, some of which have been in place for a number of years. The guidance in CP 31-103 explains an existing requirement for representatives to report any OBA activities.

OSC Rule 13-502 *Fees (Fees Rule)* sets out the late fees payable of \$100 per business day for the late filing of Form 33-109F5 used to amend Form 33-109F4, subject to a maximum aggregate late fee of \$5,000 for all documents required to be filed or delivered by a firm in a calendar year.

In order to enable market participants to "catch up" with these filings, Staff (**Staff**) of the Ontario Securities Commission (**OSC**) believes that late fee relief may be appropriate for certain filings of Form 33-109F5 related to previously existing OBAs.

The eligibility criteria and the late fee relief process, including the process for reporting a change to OBAs, are set out in this staff notice.

#### Eligibility

The late fee relief application process is available to registered firms if the registered firm's Representatives:

- have amendments to item 10 of Form 33-109F4 relating to OBAs, and
- between October 16, 2014 (the date that NI 31-103 was published in final form) and on or before March 27, 2015 (the **Eligible Period**), submit a completed Form 33-109F5 via the National Registration Database (**NRD**) to report each change to OBAs reported on item 10 of Form 33-109F4.

A registered firm that meets both of these criteria will be considered for a reduced late fee of \$100 for each late notice of a change to OBAs, provided the *Procedures for fee relief* set out below are followed and provided that the OBAs, as determined by Staff, have no current impact on ongoing suitability for registration. We will not charge fees for these applications.

Where OBAs are considered by Staff to impact the ongoing suitability for registration, Staff will follow up separately and may consider taking regulatory action, where appropriate.

Registered firms that have Representatives that have amended item 10 of Form 33-109F4 on or after October 16, 2014 and paid the associated late fees may be eligible for a refund should relief be granted.

### Procedures for fee relief

To apply for fee relief related to a late OBA filing, a registered firm should complete all of the following steps by no later than March 27, 2015:

1. If applicable, for each OBA reported, complete Form 33-109F5 via the National Registration Database (or <https://www.nrd.ca>) to report a change to item 10 of Form 33-109F4. Retain a copy of the submission and submission number.

Firms are encouraged to coordinate with their Representatives to identify all OBAs and submit a completed Form 33-109F5 via NRD for each OBA.

2. Complete Form 13-705F1 *Application for Reduced Late Fee Relief – Outside Business Activities (Form 13-705F1)* at [http://www.osc.gov.on.ca/documents/en/Securities-Category1/form\\_13-705f1.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category1/form_13-705f1.pdf)

Registered firms may complete a single Form 13-705F1 provided that a schedule is attached which clearly sets out the name of all Representatives reporting OBAs during the Eligible Period, the Representative's NRD number and the related Form 33-109F5 submission numbers for which the registered firm is seeking fee relief.

Each Form 33-109F5 submission must be identified in order for the submission to be considered for fee relief. All late OBAs identified for a particular Representative must be included in the same application. However, a registered firm may submit a Form 13-705F1 more than once during the Eligible Period if OBAs are identified for other Representatives and reported subsequent to the initial application.

3. Submit a PDF copy of the completed Form 13-705F1 and any additional schedules via the OSC's Electronic Filing Portal (or <https://eforms.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6>).

Invoices (or where appropriate, refund cheques) will be issued and mailed to those registered firms once a decision has been made.

### Questions

If you have questions regarding this staff notice or how to apply for fee relief, please refer them to any of the following:

Kelly Everest  
Manager, Registration, Compliance and Registrant Regulation  
416-595-8914  
[keverest@osc.gov.on.ca](mailto:keverest@osc.gov.on.ca)

Jonathan Yeung  
Accountant, Registration, Compliance and Registrant Regulation  
416-595-8924  
[jyeung@osc.gov.on.ca](mailto:jyeung@osc.gov.on.ca)