

OSC NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 13-502 FEES AND ONTARIO SECURITIES COMMISSION RULE 13-503 (*COMMODITY FUTURES ACT*) FEES

November 9, 2023

Introduction

The Ontario Securities Commission (the **OSC**, the **Commission** or **we**) is publishing for a 90-day comment period the following:

- (a) proposed amendments (the **Proposed 13-502 Amendments**) to OSC Rule 13-502 *Fees* (the **Fee Rule**), which are set out in Annex A; and
- (b) proposed amendments (the **Proposed 13-503 Amendments**) to OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (the **CFA Fee Rule**), which are set out in Annex A.1.

In this Notice and Request for Comment, the Proposed 13-502 Amendments and the Proposed 13-503 Amendments are referred to collectively as the **Proposed Amendments**.

The Proposed Amendments respond to the increase in funding required to address the additional regulatory costs required to onboard restricted dealers when compared to most existing market participants. The OSC has been supporting registration by providing a tailored regulatory regime to support restricted dealers, which include Crypto-Asset Trading Platforms (**CTPs**); however, in taking a leadership role in dealing with emerging sectors, additional resources have been dedicated to support the significant regulatory activity. The Proposed Amendments introduce two targeted incremental fees towards restricted dealers:

- an additional fee of \$24,500 at the time of OSC registration; and
- an additional exemptive relief application (**ERA**) fee of \$24,500 for restricted dealers operating as a marketplace.

The Proposed Amendments also include a change to the definition of “registrant firm” in each of the Fee Rule and the CFA Fee Rule that will extend the application of the participation fee and late fee requirements:

- in the Fee Rule, to unregistered persons or companies that are required to be registered as dealers, advisers, or investment fund managers, under the *Securities Act* (Ontario) (the **OSA**)
- in CFA Fee Rule, to unregistered persons or companies that are required to be registered as dealers or advisers, under the *Commodity Futures Act* (the **CFA**).

The timing of the Proposed Amendments is anticipated to become effective on July 2, 2024. The Proposed Amendments are available on the Commission's website (www.osc.ca). We request comments on the Proposed Amendments by February 7, 2024.

Background

The OSC is a self-funded agency that regulates Ontario’s capital markets. The OSC’s mandate is to protect investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital

markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk.

The fee structure is designed to recover the OSC's costs in carrying out its mandate. Fees are typically re-evaluated every three years based on the anticipated operating and capital costs to be incurred over the following period and infrequent cyclical investments that occur beyond a three-year cycle.

These Proposed Amendments are being brought forward at this time (and off the regular three year fee cycle) to align fees to the higher costs being incurred by the OSC to onboard restricted dealers when compared to onboarding other market participants. Furthermore, as the proposed fees are sector neutral, they aim to proactively address an evolving cross-subsidization risk of regulatory costs associated with the new and emerging sectors.

Novel businesses, which include CTPs, require significant resource efforts to initiate compliance discussions, including understanding these entities' novel business models and imposing detailed obligations to mitigate investor protection risk. These businesses are typically registered as restricted dealers, subject to specific requirements or conditions as they are exempt from various aspects of the OSA.

The guiding principles used by the OSC to establish any fee rule amendments are as follows:

- Recovery of regulatory costs
- Ease of administration
- Fair and proportionate fees
- Fee predictability

Current registration and ERA fees for dealers and marketplaces, are minimal compared to the costs being incurred by OSC staff during the onboarding stage. Significant OSC staff time is dedicated to understanding these entities' business models and assessing detailed obligations to mitigate investor protection risk.

Substance and Purpose

Restricted Dealers

The Proposed Amendments are aimed at better aligning fees to costs, reflective of the evolution of the regulatory landscape. This section provides information on fees required to manage the increased costs to support the regulatory activities for registration and ERA for restricted dealers and marketplaces, respectively.

The OSC has and continues to observe higher onboarding costs, that is, to register and exempt restricted dealers and restricted dealers performing marketplace functions. Activity fees are relevant in this proposal given OSC staff perform specific regulatory functions that directly benefit the firms applying for registration/exemption.

There is an estimated additional \$24,500 in costs to register CTPs with terms and conditions compared to typical firm registrations. The additional work is required in order to assess the appropriate regulatory framework considering business models that are complex, as typically seen with most restricted dealers. Historically, the average registration fees paid by a CTP amounted to approximately \$2,600. Accordingly, the OSC proposes an additional \$24,500 registration fee for restricted dealers, to better align fees with costs.

Once registered, restricted dealers are subject to annual participation fees within the OSC’s existing fee structure.

Restricted Dealers Performing Marketplace Functions

Under the interim approach¹, a CTP performing marketplace functions would need to register as a restricted dealer. Firms will file an ERA to obtain an exemption from operating as a recognized Alternative Trading System. OSC staff estimate that they spend on average \$24,500 more on ERAs for platforms that perform marketplace functions as compared to a typical ERA. Accordingly, the OSC proposes an additional \$24,500 exemption fee in addition to existing ERA fees which is \$4,800 or \$7,000 depending on if relief is sought from one or two (or more) sections of the OSA at the same time, respectively.

Firms that operate a marketplace platform will incur total additional onboarding fees of \$49,000: \$24,500 to apply as a restricted dealer and \$24,500 for those restricted dealers performing marketplace functions.

Summary of Fees for Restricted Dealers and Restricted Dealers Performing Marketplace Functions

The table below summarizes the total one-time and ongoing fee implications for restricted dealers and restricted dealers performing marketplace functions:

	Restricted Dealer	Restricted Dealer who also performs marketplace functions
One-time fees		
Registration fee *	\$ 2,600	\$ 2,600
ERA fee **	7,000	7,000
NEW: Additional registration fee for restricted dealer	24,500	24,500
NEW: Additional ERA fee for restricted dealer who also performs marketplace functions	-	24,500
Total	\$ 34,100	\$ 58,600

* Fee begins at \$1,300 per firm, increasing based on number of categories of registration and representatives. \$2,600 represents average historical fee paid by registered CTPs.

** ERA fees are either \$4,800 or \$7,000, depending on whether one or two or more sections of the OSA are requested from exemption. Most CTPs require relief from two or more sections of the OSA, which means most CTPs are required to pay the \$7,000 ERA fee.

Approximate one-time fees are estimated to be \$34,100 and \$58,600 for restricted dealers and restricted dealers performing marketplace functions, respectively.

¹ As described in CSA Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*

Detailed Listing of Fee Amendments

Proposed New Fees	
Stakeholders	Description
Restricted dealer	New additional registration fee for restricted dealer - \$24,500 (Fee Rule: Appendix F)
Restricted dealer who also performs marketplace functions	New additional registration fee for restricted dealer - \$24,500 (Fee Rule: Appendix F) New additional exemptive relief application (ERA) fee for restricted dealer who also performs marketplace functions - \$24,500 (Fee Rule: Appendix F)

Change to the definition of “registrant firm”

As indicated above, the Proposed 13-502 Amendments and Proposed 13-503 Amendments include changes to the definition of “registrant firm” in each of the Fee Rule and CFA Fee Rule to extend the application of the participation fee and late fee requirements to unregistered firms that are required to be registered. These changes better align the definition of “registrant firm” in the Fee Rule and the CFA Fee Rule with the respective definitions of “registrant” in the OSA and CFA.

In the OSA, requirements that are made applicable to a “registrant” apply to “a person or company registered or *required to be registered*”. Similarly, in the CFA, requirements that are made applicable to a “registrant” apply to “a person or company registered or *required to be registered*”.

The proposed changes to the definitions of “registrant firm” in the Fee Rule and the CFA Fee Rule are intended to achieve a more equitable allocation of regulatory costs among participants in Ontario’s capital markets, and are consistent with the principles guiding our formulation of fee rule amendments that are referred to above.

The proposed changes to the definition of “registrant firm” in each of the Fee Rule and the CFA Fee Rule will mean that, after the coming into force of these changes: unregistered firms that participate in Ontario’s capital markets in non-compliance with the relevant dealer, adviser and investment fund manager requirements in either the OSA or the CFA - as a result of their failure to obtain registration - will become responsible under the corresponding fee rule for paying the participation fees applicable to other registered firms that are now included within the definition of a registrant firm.

Coming-into-Force

The Proposed Amendments will come into force on July 2, 2024.

Authority for the Proposed Amendments

The following provision of the OSA and CFA provide the Commission with the authority to make the Proposed Amendments:

- Paragraph 43 of subsection 143(1) of the OSA, which authorizes the Commission to make rules prescribing fees payable to the Commission.
- Paragraph 25 of subsection 65(1) of the CFA, which authorizes the Commission to make rules prescribing fees payable to the Commission.

Alternatives Considered

The Commission considered maintaining the existing Fee Rule; however, based on recent and increasing disparity in regulatory costs required to onboard restricted dealers when compared to most existing market participants, new fees were necessary. In continuing to provide a tailored regulatory regime to support restricted dealers, which include CTPs; the Commission’s regulatory activity has been significant in dealing with emerging sectors. This approach allows the OSC to maintain its commitment to proactively consider regulatory implications of new and emerging sectors and maintain fair and proportionate fees.

Moreover, as noted above, the proposed changes to the definitions of “registrant firm” in the Fee Rule and the CFA Fee Rule are intended to achieve a more equitable allocation of regulatory costs amongst participants in Ontario’s capital markets, and are consistent with the principles guiding our formulation of fee rule amendments that are referred to above.

Unpublished Materials

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

Content of Annexes

The following annexes form part of this Notice:

[Annex A – Proposed Amendments to OSC Rule 13-502 Fees](#)

[Annex A.1 - Proposed Amendments to OSC Rule 13-503 Fees \(Commodity Futures Act\)](#)

[Annex B – Local Matters \(Regulatory Impact Assessment\)](#)

Request for Comments

We welcome your comments on the Proposed Amendments.

How to Provide Your Comments

You must provide your comments in writing by February 7, 2024. If you are sending your comments by email, you should also send an electronic file containing the submissions using Microsoft Word.

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
22 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318

[Email: comments@osc.gov.on.ca](mailto: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.

Please refer your questions to:

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