



Participation Fees Calculation

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Agenda

1. General overview: OSC Rule 13-502 *Fees*
2. Summary of amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*
3. Filing requirements for capital markets participation fee calculation
4. Walkthrough of Form 13-502F4 along with common errors
5. Cooperative Capital Markets Regulatory System – Fees
6. References



General overview: OSC Rule 13-502 *Fees*

OSC Rule 13-502 Fees

- OSC Rule 13-502 Fees
- OSC Rule 13-503 (*Commodity Futures Act*) Fees
- OSC fee structure is designed to recover the costs the OSC incurs
- Two main types of OSC fees:
 1. **Activity Fees** - generally charged for a filing of a specific document
 2. **Participation Fees** - broad range of regulatory services that cannot be practicably or easily attributed to individual activities or entities
 - Corporate finance participation fees for reporting issuers
 - Capital markets participation fees for registrants and certain unregistered capital markets participants

Capital Markets Participation Fees

Firms required to calculate and pay capital markets participation fees annually:

- Firms registered under the *Securities Act* and/or *Commodity Futures Act*
- Exempt international firms relying on section 8.18 [international dealer] and 8.26 [international adviser] of NI 31-103
- Firms that are unregistered investment fund managers (as defined in the Fee Rule)



Summary of Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

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Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

- Current Rule came into effect April 6, 2015
- OSC committed to re-examine fee structure earlier than intended in order to consider issues raised by market participants
- Amendments to OSC Rule 13-503 (*Commodity Futures Act*) *Fees* and Companion Policy 13-503CP (*Commodity Futures Act*) *Fees*
 - Mirrors amendments to OSC Rule 13-502 and Companion Policy 13-502CP

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

Key amendments impacting registrants and unregistered capital markets participants:

1. Reference fiscal year - removed

- Amendments removed the use of the reference fiscal year
- Registrants and unregistered capital markets participants will have to use “previous financial year” which means “the financial year of the registrant or participant ending in the then calendar year”
 - For 2015 calculation: All firms should calculate fees based on the firm’s financial year ending in 2015
 - For 2016 calculation: All firms should calculate fees based on the firm’s financial year ending in 2016

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

2. Definition of “capital markets activities”

Capital markets activities means

- Current language: activities for which registration is required, or activities for which an exemption from registration is required under the Act or under the *Commodity Futures Act* (CFA), or would be so required if those activities were carried on in Ontario
- Previous language: (a) activities for which registration under the Act or an exemption from registration is required, (b) acting as an investment fund manager, or (c) activities for which registration under the CFA, or an exemption from registration under the CFA is required

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

2. Definition of “capital markets activities” (cont’d)

Amendments meant to:

- Address common error by firms that deduct all non-Ontario revenues even if they are considered capital markets activities, and then applying “Ontario percentage” which dilutes specified Ontario revenues further
- Reflect that investment fund managers (IFMs) are required to be registered [subsection 25(4) of the Act and Part 7.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*]

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

3. Definition of “Ontario percentage”

Current language:

“Ontario percentage” means, in relation to a person or company for a previous financial year,

(a) in the case of a person or company that has a permanent establishment in Ontario in the previous financial year and no permanent establishment elsewhere, 100%,

(b) in the case of a person or company that has a permanent establishment in Ontario and elsewhere in the previous financial year and has taxable income in the previous financial year that is positive, the percentage of the taxable income that is taxable income earned in the year in Ontario, and

(c) in any other case, the percentage of the total revenues of the person or company for the previous financial year attributable to capital markets activities in Ontario;

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

3. Definition of “Ontario percentage” (cont’d)

Amendments meant to:

- Simplify and clarify the definition by outlining the requirements for firms that have a permanent establishment in Ontario only, a permanent establishment in Ontario and elsewhere, and all other scenarios
- Remove concept of “Ontario allocation factor” and references to various tax legislation which were tied to that definition

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

4. Filing and payment deadline for unregistered IFMs

- Amendments align the fee calculation and payment time with registrants and exempt international firms
 - Filing deadline by December 1
 - Fee payment by December 31

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

5. Certification of participation fees calculation

Current language:

- Require Chief Compliance Officer (CCO) or in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity, to attest to completeness and accuracy of Form 13-502F4 calculation

Previous language:

- Required two members of senior management to attest to completeness and accuracy of calculation, or one member in cases of firms with only one officer and director

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

6. Late fees (Appendix D)

Amendments:

- unregistered IFMs are subject to late filing fee in respect of Form 13-502F4
- Increase late fee cap for all forms or documents to be filed from \$5,000 to \$10,000 for the three largest categories of registrants whose specified Ontario revenues are greater than or equal to \$500 million
- No late fee if less than \$100

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

7. No refunds

Amendments:

- Section 2.7 of Companion Policy clarifies Commission's views with respect to refund requests and circumstances under which a refund will be issued
- Unless there are exceptional circumstances, will not generally issue a refund if a request is made more than 90 days after the fee was required to be paid

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

8. Indirect avoidance of Rule

Amendments:

- Section 2.8 of Companion Policy clarifies Commission's views
- Must pay participation fees based on all revenues attributable to capital markets activities in Ontario, regardless of how revenues recorded or structured

Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

9. Participation fee rates

Amendments:

- Amendments keep participation fee rates at the 2014 rates and flat for duration of the Fee Rule



Amendments to OSC Rule 13-502 *Fees* and Companion Policy 13-502CP *Fees*

Specified Ontario Revenues for the Previous Financial Year	Participation Fee (Effective April 6, 2015)
under \$250,000	\$835
\$250,000 to under \$500,000	\$1,085
\$500,000 to under \$1 million	\$3,550
\$1 million to under \$3 million	\$7,950
\$3 million to under \$5 million	\$17,900
\$5 million to under \$10 million	\$36,175
\$10 million to under \$25 million	\$74,000
\$25 million to under \$50 million	\$110,750
\$50 million to under \$100 million	\$221,500
\$100 million to under \$200 million	\$367,700
\$200 million to under \$500 million	\$745,300
\$500 million to under \$1 billion	\$962,500
\$1 billion to under \$2 billion	\$1,213,800
\$2 billion and over	\$2,037,000



Filing requirements for capital markets participation fee calculation

Requirements

Registrant firms, firms relying on the international dealer or international adviser exemption and unregistered IFMs

- Complete online Form 13-502F4 *Capital Markets Participation Fee Calculation*
 - Filing deadline: December 1
 - Payment deadline: December 31
 - Fee automatically pulled on December 31 for firms with an NRD bank account
 - Submit cheque or wire transfer for firms that are EFT-exempt
 - Late fees
 - \$100 per business day for late filing of the participation fee calculation (s. 6.4)
 - 0.1% of the outstanding participation fee for each business day late (s. 3.4)
-

Requirements (cont'd)

Unregistered investment fund managers (no other category of registration or reliance on exemption) – section 3.1(5)

- Unregistered IFMs with financial year ending between January 1, 2015 to April 5, 2015 that filed their 2015 Form 13-502F4 and paid the 2015 participation fee within 90 days of their year end:
 - *No need to file again by December 1, 2015 or pay by December 31, 2015.*
- Unregistered IFMs with a December 31 financial year end that filed the 2014 Form 13-502F4 and paid the 2014 participation fee within 90 days of their year end:
 - Must file the 2015 Form 13-502F4 by December 1, 2015
 - Must pay the 2015 participation fee by December 31, 2015

Previous financial year

- All firms required to calculate capital markets participation fees based on the previous financial year
- Defined as the financial year ending in the then current calendar year

Previous financial year – Example #1

Fact pattern:

- Firm ABC Ltd. was registered as an exempt market dealer on July 10, 2010.
- Financial year end is March 31.

Previous financial year to be used for 2015 participation fees:

- March 31, 2015 (i.e. the financial year ending in the then current calendar year)

Previous financial year – Example #2

Fact pattern:

- Firm DEF Inc. was incorporated on March 10, 2012 and registered as an investment fund manager on July 31, 2012.
- Financial year end is December 31.

Previous financial year to be used for 2015 participation fees:

- December 31, 2015 (i.e. the financial year ending in the then current calendar year)
- Since calculation is due December 1, DEF Inc. will estimate revenues for its financial year ending December 31, 2015
- If actual participation fees differ from estimated participation fees, make adjusted filings and payments no later than 90 days after financial year end using Form 13-502F4 and Form 13-502F5 online

Previous financial year – Example #3

Fact pattern:

- Firm XYZ Ltd. began relying on the permitted client exemption available under MI 32-102 *Exemptions from Investment Fund Manager Registration* on January 1, 2013 (i.e. unregistered IFM).
- Financial year end is December 31.

Analysis:

- Under the previous Fee Rule, XYZ Ltd. was required to file the 2014 Form 13-502F4 and pay the 2014 participation fee by no later than 90 days after the end of its fiscal year. Assume the firm filed the calculation and paid the fee on March 30, 2015.
- Although the 2014 filing and payment were done in 2015, the firm will also be required to file a 2015 calculation by December 1, 2015 and pay the participation fee by December 31, 2015.

Previous financial year – Example #3 (Cont'd)

Previous financial year to be used for 2015 participation fees:

- December 31, 2015 (i.e. the financial year ending in the then current calendar year)
- Since calculation is due December 1, XYZ Ltd. will estimate revenues for its financial year ending December 31, 2015
- If actual participation fees differ from estimated participation fees, make adjusted filings and payments no later than 90 days after financial year end using Form 13-502F4 and Form 13-502F5 online



Walkthrough of Form 13-502F4 along with common errors

Form 13-502F4 *Capital Markets Participation Fee Calculation*

- Completed annually by firms
- For firms solely registered under the *Commodity Futures Act*, Form 13-502F4 can be completed instead of Form 13-503F1

Form 13-502F4 – Chief Compliance Officer Certification

Chief Compliance Officer Certification

I, _____, of the registrant firm / unregistered capital markets participant noted below have examined this Form 13-502F4 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s) _____

Name:

Title:

_____ Date:

Form 13-502F4 – General info

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: _____

Form 13-502F4 – General info (cont'd)

3. Membership Status (one selection)

- The firm is a member of the Mutual Fund Dealers Association (MFDA).
- The firm is a member of the Investment Industry Regulatory Organization of Canada (IIROC).

For a firm that does not hold membership with the MFDA or IIROC:

- The firm is an unregistered investment fund manager only
- All other firms

4. Financial Information

Is the firm providing a good faith estimate under section 3.2 of the Rule?

- Yes
- No (one selection)

If no, end date of previous financial year: _____ / _____ / _____
yyyy mm dd

If yes, end date of financial year for which the good faith estimate is provided: _____ / _____ / _____
yyyy mm dd

Form 13-502F4 – Part I for IIROC firms

5. Participation Fee Calculation

Previous financial
year \$

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

Part I — IIROC Members

1.	Total revenue for previous financial year from Statement E of the Joint Regulatory Financial Questionnaire and Report	\$	
2.	Less revenue not attributable to capital markets activities		
3.	Revenue subject to participation fee (line 1 less line 2)	\$	
4.	Ontario percentage for previous financial year (See definition of “Ontario percentage” in the Rule)		%
5.	Specified Ontario revenues (line 3 multiplied by line 4)	\$	
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	\$	

NOTE: Use this part if firm is an IIROC member

Form 13-502F4 – Part II for MFDA firms

5. Participation Fee Calculation

Previous financial
year \$

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

Part II — MFDA Members

1.	Total revenue for previous financial year from Statement D of the MFDA Financial Questionnaire and Report	\$	
2.	Less revenue not attributable to capital markets activities		
		\$	
3.	Revenue subject to participation fee (line 1 less line 2)		
		\$	
4.	Ontario percentage for previous financial year (See definition of “Ontario percentage” in the Rule)		%
5.	Specified Ontario revenues (line 3 multiplied by line 4)		
		\$	
6.	Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)		
		\$	

NOTE: Use this part if firm is an MFDA member

Form 13-502F4 - Part III for all other firms

Part III – Advisers, Other Dealers, and Unregistered Capital Markets Participants Notes:

1.	Total revenue for previous financial year (note 1)	\$	_____
Less the following items:			
2.	Revenue not attributable to capital markets activities	\$	_____
3.	Redemption fee revenue (note 2)	\$	_____
4.	Administration fee revenue (note 3)	\$	_____
5.	Advisory or sub-advisory fees paid to registrant firms or unregistered exempt international firms (note 4)	\$	_____
6.	Trailer fees paid to registrant firms or unregistered exempt international firms (note 5)	\$	_____
7.	Total deductions (sum of lines 2 to 6)	\$	_____
8.	Revenue subject to participation fee (line 1 less line 7)	\$	_____
9.	Ontario percentage for previous financial year (See definition of “Ontario percentage” in the Rule)		_____ %
10.	Specified Ontario revenues (line 8 multiplied by line 9)	\$	_____
11.	Participation fee (From Appendix B of the Rule, select the participation fee beside the specified Ontario revenues calculated above)	\$	_____

Form 13-502F4 – General common errors

- Incorrect financial year used to calculate participation fees
 - For 2015 calculation: All firms should calculate fees based on the firm's financial year ending in 2015
- Failure to complete and file an amended participation fee calculation online if participation fees changed (for firms that estimated revenues due to a late year end)
 - Use Form 13-502F5 (from OSC website)
- Amounts reported were not in Canadian dollars
 - Convert to CAD using daily noon exchange rate from Bank of Canada website

Form 13-502F4 – Line 1

Line 1 Gross revenue for previous financial year

- Report total firm revenue from audited financial statements
 - If net revenue, report gross revenue on Line 1
- Common errors:
 - Revenue does not agree to audited financial statements
- Other errors:
 - Arrangements where clients pay management fees to a registrant firm's unregistered parent company and revenue is recognized in parent company
 - Revenue should be recognized in the registrant firm
 - "Cost recovery model" – recognize fees received to cover costs as gross revenue

Form 13-502F4 – Deductions: Line 2

Line 2 Revenue not attributable to capital markets activities

- Deduct revenue that is not generated through capital markets activities
- Examples:
 - Consulting revenue
 - Interest income (e.g. earned from loans or deposits)
- Common errors:
 - Firms are deducting all non-Ontario revenues even if they are considered capital markets activities

Form 13-502F4 – Deductions: Line 3

Line 3 Redemption fee revenue

- Firms may earn redemption fees if investors sell units in a fund before the redemption-fee period expires
- Redemption fees earned upon the redemption of investment fund units sold on a deferred sales charge basis are permitted as a deduction

Form 13-502F4 – Deductions: Line 4

Line 4 Administration fee revenue

- If the registrant firm or unregistered capital markets participant pays the operating expenses for the investment fund and administration fees are charged to investment funds, an amount equal to the reasonable recovery of costs of those operating expenses can be deducted

Form 13-502F4 – Deductions: Line 5

Line 5 Advisory or sub-advisory fees paid to registrant firms or exempt international firms

- If a registrant firm or exempt international firm pays another registered firm or exempt international firm to advise on a portion of its assets under management, these costs can be deducted
 - Only applies if registrant firm recognizes advisory fees
 - Prevents double-counting of revenues. The other advisor or sub-advisor would recognize the revenues for the purposes of calculating its participation fees
- Common errors:
 - Advisory fees deducted that did not relate to advisory services for assets under management

Form 13-502F4 – Deductions: Line 6

Line 6 Trailer fees paid to registrant firms or unregistered exempt international firms

- If a registrant firm or unregistered exempt international firm pays a trailer fee to another registrant firm or unregistered exempt international firm for advising on a portion of its assets under management, these costs can be deducted
 - Prevents double-counting of revenues. The other registrant firm or unregistered exempt international firm would recognize the trailer fee revenues for the purposes of calculating its participation fees

Form 13-502F4 – Line 7 and 8

Line 7 Total deductions (sum of lines 2 to 6)

Line 8 Revenue subject to participation fees (line 1 less line 7)

= Gross revenue less total deductions

Form 13-502F4 – Line 9

Line 9 Ontario percentage for previous financial year

- Definition of “Ontario percentage” set out in section 1.1 of the Fee Rule
- For firms with a permanent establishment in Ontario in the previous financial year and no permanent establishment elsewhere:
 - Ontario percentage = 100%
- For firms with a permanent establishment in Ontario and elsewhere in the previous financial year:
 - Ontario percentage = the percentage of the taxable income that is taxable income earned in the year in Ontario
- For firms with no permanent establishment in Ontario in the previous financial year:
 - Ontario percentage = percentage of the total revenues for the previous financial year attributable to capital markets in Ontario

Form 13-502F4 – Line 9 (cont'd)

Line 9 Ontario percentage for previous financial year

- Common errors identified:
 - Ontario percentage calculated based on number of clients or AUM
 - Where firms filed corporate tax returns in Ontario, the Ontario percentage was not calculated based on taxable income

Form 13-502F4 – Line 10

Line 10 Specified Ontario revenues (line 8 multiplied by line 9)

=Revenue subject to participation fee X Ontario percentage

- This represents the total Ontario revenues that the participation fee is based on

Form 13-502F4 – Line 11

Line 11 Participation fee (from Appendix B of the Fee Rule)

Specified Ontario Revenues for the Previous Financial Year	Participation Fee (Effective April 6, 2015)
under \$250,000	\$835
\$250,000 to under \$500,000	\$1,085
\$500,000 to under \$1 million	\$3,550
\$1 million to under \$3 million	\$7,950
\$3 million to under \$5 million	\$17,900
\$5 million to under \$10 million	\$36,175
\$10 million to under \$25 million	\$74,000
\$25 million to under \$50 million	\$110,750
\$50 million to under \$100 million	\$221,500
\$100 million to under \$200 million	\$367,700
\$200 million to under \$500 million	\$745,300
\$500 million to under \$1 billion	\$962,500
\$1 billion to under \$2 billion	\$1,213,800
\$2 billion and over	\$2,037,000

Form 13-502F5 *Adjustment of Fee for Registrant Firms and Unregistered Capital Markets Participants*

- If estimated vs. actual specified Ontario revenues resulted in a change in the participation fee, use this form to file an adjusted form

FORM 13-502F5

ADJUSTMENT OF FEE FOR REGISTRANT FIRMS AND UNREGISTERED CAPITAL MARKETS PARTICIPANTS

Firm name: _____

End date of previous completed financial year: _____

Note: Paragraph 3.2(2)(c) of OSC Rule 13-502 *Fees* (the Rule) requires that this form must be filed concurrent with a completed Form 13-502F4 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under section 3.2 of the Rule: \$ _____
2. Actual participation fee calculated under paragraph 3.2(2)(b) of the Rule: \$ _____
3. Refund due (Balance owing):
(Indicate the difference between lines 1 and 2) \$ _____

Review of participation fee calculations

- Ongoing reviews of participation fee calculations
- Random and targeted samples
- Firms should be able to provide documentation to support each line item
 - Examples:
 - Maintain signed copy of participation fee calculation
 - Audited financial statements (or audited MFDA Form 1 / IIROC Form 1)
 - Backup for deductions taken
 - Backup for calculation of “Ontario percentage”



Cooperative Capital Markets Regulatory System

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Cooperative Capital Markets Regulatory System

- Memorandum of Agreement (MOA) signed between the federal Department of Finance and the following jurisdictions:
 - British Columbia
 - New Brunswick
 - Ontario
 - Prince Edward Island
 - Saskatchewan
 - Yukon
- MOA sets out terms and conditions to implement a cooperative capital markets regulatory system
- Participating jurisdictions will enact uniform legislation
- A common regulator, the Capital Markets Regulatory Authority (CMRA), would administer the provincial and federal legislation and regulations

Cooperative Capital Markets Regulatory System

Excerpt from MOA regarding fees:

"Fees: a single, simplified fee structure designed to allow the self-funding of the CMRA that does not impose unnecessary or disproportionate costs on market participants."



References

References

- OSC Rule 13-502 *Fees and Companion Policy 13-502CP Fees*
https://www.osc.gov.on.ca/en/SecuritiesLaw_13-502.htm
- OSC Rule 13-503 (*Commodity Futures Act*) *Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees*
https://www.osc.gov.on.ca/en/SecuritiesLaw_13-503.htm
- Online participation fee calculations for:
 - Form 13-502F4 (for registered and unregistered capital markets participants)
 - Form 13-503F1 (for firms registered under the *Commodity Futures Act* only)https://www.osc.gov.on.ca/en/Dealers_forms_index.htm



Questions?

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416-593-8314
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