

6.1.1 Proposed Amendments to OSC Rule 13-502 *Fees*, OSC Rule 13-503 (*Commodity Futures Act*) *Fees* and Proposed Changes to their Companion Policies

OSC NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 13-502 FEES, ONTARIO SECURITIES COMMISSION RULE 13-503 (COMMODITY FUTURES ACT) FEES AND PROPOSED CHANGES TO THEIR COMPANION POLICIES

January 21, 2022

Introduction

The Ontario Securities Commission (the **OSC**, the **Commission** or **we**) is publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to OSC Rule 13-502 *Fees* (the **Main Fee Rule**), and to OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (the **CFA Rule**), together with proposed changes to Companion Policy 13-502 *Fees* (the **Proposed Main Fee CP Changes**), and to Companion Policy 13-503 (*Commodity Futures Act*) *Fees* (the **Proposed CFA Rule CP Changes**). The Proposed Amendments, the Proposed Main Fee CP Changes and the Proposed CFA Rule CP Changes are referred to collectively as the **Proposed Materials**.

The Proposed Materials and their respective blacklines are in Annexes A to H of this Notice and Request for Comment. The Proposed Amendments reflect the increase in funding required to grow and mature our derivatives regulatory oversight program, growth and complexity of capital market activities and the OSC's expanded mandate and structure, while considering burden reduction and fair allocation of costs across market segments. These amendments establish a new fee for entities that enter into over the counter (OTC) derivatives transactions while reducing fees for certain existing fee payers to ensure that as specific sectors grow more than others, fees collected are proportionate to the cost of regulation across market segments. Furthermore, these amendments are expected to generate efficiencies for most market participants and the OSC by eliminating a number of activity and late fees without compromising investor protection.

The Proposed Amendments would:

- Add new participation fees totaling \$13.5 million towards specific entities engaged in the trading of OTC derivatives.
- Reduce an estimated \$5.6 million in annual fees for most existing payers by lowering participation fees and eliminating a number of activity and late fees.

The proposed fee reductions are in addition to approximately \$1.7 million of fee savings due to lower volumes of regulatory filings from policy-driven burden reduction initiatives, some which have already been implemented and some that are planned over the next few years. Where applicable, these fee savings will be communicated as part of the implementation plan for these initiatives.

The timing of the Proposed Amendments aligns with the OSC's periodic review of fees and are anticipated to become effective on April 3, 2023. The Proposed Materials are available on the Commission's website (www.osc.ca). We request comments on the Proposed Materials by April 21, 2022.

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 to provide protection to 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. 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. The two main types of fees charged to market participants under the Main Fee Rule are participation fees and activity fees.

Participation fees are based on the cost of a broad range of regulatory services that cannot be practicably or easily attributed to individual activities or entities. Participation fees are intended to serve as a proxy for the market participants' use of the Ontario capital markets. Participation fees are calculated differently for reporting issuers, registrant firms and certain unregistered capital market participants, specified regulated entities and designated rating organizations.

Activity fees are generally charged when a document of a designated class is filed with the Commission or a request for service has been made. The set fee is based on an estimate of the average direct cost of Commission resources (labour and materials) utilized in performing an activity. Activity fees are charged in connection with the following filings: prospectuses, registration applications, reports of exempt distribution, applications for discretionary relief and various other filings.

The guiding principles used by the OSC when evaluating potential fee changes are as follows:

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

As part of the OSC's periodic fee re-evaluation, market participants were informed in November 2020 that there would be no changes to the Main Fee Rule and the CFA Rule at that time, primarily as a result of uncertainty surrounding the Canadian capital markets during the early stages of the COVID-19 pandemic. The OSC implemented a cost reduction plan in fiscal year 2021 to address potential revenue implications from the COVID-19 pandemic, deferring a number of multi-year initiatives. Despite earlier market fragility concerns, Canadian equity markets have recovered from March 2020 declines and their continued growth to date has resulted in strong OSC revenues. Since the November 2020 notice, the OSC's mandate was expanded and the complexity and levels of market activity requiring regulatory oversight have increased. The OSC is in the process of implementing significant structural changes as set out in the Ontario Government's 2021 budget and in alignment with certain recommendations made by the Capital Markets Modernization Task Force, specifically to further separate the OSC Board from the Tribunal and separating OSC Chair and CEO roles. In addition, the OSC is aligning its operational capacity with growing market activity levels. We plan to draw down on cash to deliver multi-year initiatives, including a comprehensive derivatives regulatory oversight program and significant investments in technology modernization projects, some of which were previously slowed down or deferred.

When reviewing fee levels, the OSC considers the existing cash position, projected level of revenue and expenses, capital spending and the level of cash resources required to fund operations during market downturns. OSC revenues, particularly from participation fees, are impacted by capital market fluctuations. To this effect, the OSC's existing cash position provides for an appropriate reserve, comprised of cash and reserve funds.

Substance and Purpose

The Proposed Amendments are aimed at aligning fees to costs, reflective of the evolution of the regulatory landscape. This section provides information on fees required to support the maturing derivatives oversight framework while also summarizing proposed fee reductions across different market segments. The OSC's fee re-evaluation process encompasses an assessment of funding requirements to recover growing costs associated with delivering significant multi-year initiatives. Consequently, the proposed fee reductions can only be offered with a successful introduction of the derivatives participation fee.

The OSC's Oversight of the OTC derivatives market

The OSC established a Derivatives Branch in 2009 to implement the G20 Reforms following the 2008 financial crisis. The implementation of the G20 Reforms by the OSC resulted, among other things, in the creation of the following:

- a series of OTC derivatives specific rules (e.g., OSC 91-506 *Derivatives: Product Determination*, OSC 91-507 *Trade Repositories and Derivatives Data Reporting*, NI 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, NI 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*),
- proposed rules (NI 93-101 *Derivatives: Business Conduct*, NI 93-102: *Derivatives: Registration*),
- consultations (e.g., CSA Consultation Paper 92-401 *Derivatives Trading Facilities* and CSA Consultation Paper 95-401 *Margin and Collateral Requirements for Non-Centrally Cleared Derivatives*), and
- the development of a compliance oversight framework to ensure that the requirements set out in the rules that have already been implemented are being met.

The OSC's oversight continues to evolve to adequately address the complexity and growth in the OTC derivatives sector. The aggregate notional amount of OTC derivatives transactions in Ontario continues to increase significantly annually. There is over \$60 trillion of outstanding notional and over 3.7 million OTC derivative transactions outstanding, which the OSC monitors and analyzes for the purposes of achieving its mandate. The OSC receives approximately 10-12 million OTC derivatives trade reporting records per day, or approximately 2.4 billion records per year. Consequently, significant investments in both technology and staffing resources are necessary over the next few years to ensure the OSC is positioned to effectively ingest, manage, and analyze the vast quantity and complex nature of the OTC derivatives transaction data reported and to conduct appropriate oversight of derivatives market participants and address instances of non-compliance.

The OSC's expanded systemic risk related mandate

The OSC's mandate includes the monitoring of systemic risks in the capital markets.¹ Systemic risk in the OTC derivatives market was a significant contributor to the 2008 financial crisis. Ontario's OTC derivatives market is highly concentrated with the largest derivatives dealers representing the vast majority of the market.

Monitoring systemic risk involves not only monitoring the emergence of risks and financial system vulnerabilities that can threaten the stability of capital markets and have serious negative consequences to Ontario's economy, but also identifying vulnerabilities such as access to liquidity, market fragmentation and trends in price formation that may impede efficient operation of the markets. We are continuing to evolve a framework for analyzing OTC derivatives data for systemic risk oversight and market surveillance, including the development of enhanced derivatives data capabilities and analytical tools to monitor and assess risk factors such as interconnectedness and concentration risk, as well as to detect market abuses such as manipulation and other unfair trading practices.

As part of the OSC's mandate to contribute to the stability of the financial system and the reduction of systemic risk, we also work with other provincial, federal and global agencies to enhance the identification of financial system vulnerabilities and promote financial system resilience.

In order to achieve effective systemic risk oversight in relation to OTC derivatives, we require significant increases in staffing resources and technological capabilities for risk analysis.

Summary of the New OTC Derivatives Fee

Costs to monitor and regulate the OTC derivatives market are projected to increase significantly in the future as a result of the aforementioned future investments in both technology and people. Total annual costs are anticipated to be nearly \$13.5 million by 2023, representing 9% of total projected OSC costs. These costs include direct costs and an allocation of indirect costs, such as premises, human resources, financial management, regulatory, advisory, and enforcement. The proposed targeted fee is intended to recover \$13.5 million of estimated annual costs from entities who engage in the trading of OTC derivatives.

Consistent with a participation fee model charged to other market participants, we are proposing an annual participation fee comprised of a series of tiers based on a fee payer's average outstanding notional of all transactions that are required to be reported under OSC Rule 91-507 over a one-year period. No fee is payable

- if a fee payer's average outstanding notional is under \$3 billion,
- by an entity that is not a reporting counterparty (as defined in OSC Rule 91-507), or
- by a recognized or exempt clearing agency.

¹ *Securities Act (Ontario)*, s. 1.1, as amended by the *Stronger, Fairer Ontario Act (Budget Measures)*, 2017 (Ontario), Sch. 37, s. 2. IOSCO has referred to systemic risk as "the potential of any widespread adverse effect on the financial system and thereby on the wider economy" (*Mitigating Systemic Risk A Role for Securities Regulators*, IOSCO, February 2011 at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD347.pdf>).

The tiers and associated fees are proposed as follows:

Outstanding Notional	Fee
\$10 trillion and over	\$ 1,900,000
\$4 trillion to under \$10 trillion	\$ 1,350,000
\$1 trillion to under \$4 trillion	\$ 750,000
\$500 billion to under \$1 trillion	\$ 450,000
\$300 billion to under \$500 billion	\$ 200,000
\$100 billion to under \$300 billion	\$ 100,000
\$50 billion to under \$100 billion	\$ 50,000
\$15 billion to under \$50 billion	\$ 15,000
\$7.5 billion to under \$15 billion	\$ 7,500
\$3 billion to under \$7.5 billion	\$ 3,000

The OSC acknowledges that while these fees will increase regulatory costs for a select group of entities (namely, large financial institutions responsible for the vast majority of derivatives transactions occurring in Ontario), we believe these fees appropriately reflect the oversight required for monitoring OTC derivatives activity in Ontario.

Summary of Fee Reductions and Fees Eliminated

As summarized below, the Proposed Amendments are expected to result in a targeted reduction in OSC participation, activity, and late fees of approximately \$5.6 million (4.0%) from fiscal year 2021. These changes are further explained under “Detailed Listing of Fee Amendments”. The Proposed Materials also include changes to improve conciseness, simplicity and understandability. In addition, we outline below various changes where we are proposing to simplify, harmonize and reduce burden on market participants.

1) Proposed participation Fee Reductions

We estimate \$3.1 million in savings from proposed fee rate reductions on participation fees, benefiting 98% of registrant firms and unregistered capital market participants and 88% of issuers. Issuers with a capitalization for the previous year below \$1 billion are expected to see rate savings between 5% to 16% while registrant firms and unregistered capital market participants with specified Ontario revenues below \$100 million are expected to see rate savings between 2% to 16%. The participation fee reduction proposal is aimed at small and medium-sized businesses as part of our ongoing efforts to reduce regulatory burden, foster capital formation and competitive capital markets.

2) Fee reductions proposed on exempt distribution filings under OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and NI 45-106 *Prospectus Exemptions*

\$1.8 million savings from reducing fees relating to exempt distribution filings under OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* and NI 45-106 *Prospectus Exemptions*. The proposed rate reduction of 30% will reduce the fee to \$350 from \$500.

3) Elimination of certain activity and late fees

\$0.7 million savings from the proposed elimination of a number of activity fees and late fees. To streamline the fee rules, we have eliminated various activity fees that generate minimal volume and associated OSC regulatory work. In addition, we eliminated a fee that disincentivized shareholder activism, an activity that encourages accountability of public management and boards of directors. A number of document filings that attract possible late fees will be eliminated without compromising investor protection. Many of the late fees proposed to be eliminated will also result in harmonization with other Canadian Securities Administrators (CSA) jurisdictions. These amendments also reflect permanently eliminating late fees on outside business activities (OBAs), for which a moratorium has been in place since January 2019.

4) Simplify annual capital market participation fee calculation for registrant firms and unregistered capital market participants

We propose to simplify the annual capital market participation fees calculation by using the most recent completed financial statements. This calculation will no longer require the use of estimates of specified Ontario revenues by any filers, or the subsequent filing of Form 13-502F5 (Adjustment of Fee for Registrant Firms and Unregistered Capital Markets Participants) or Form 13-503F2 (Adjustment of Fee Payments for Commodity Futures Act Registrant Firms) to provide for adjustments to estimates based upon actuals. Consequently, we propose that Forms 13-502F5 and 13-503F2 be eliminated.

Under the Proposed Amendments, capital markets participation fees will be calculated using a “designated financial year”. The definition of “designated financial year” will entail the use, in the case of registrants, of actual financial information based upon most recently audited financial statements.

In the case of unregistered capital markets participants that normally do not audit their financial statements, the definition of “designated financial year” will entail the use of available unaudited financial statements.

The Proposed Amendments will change the requirement and deadline for registrant firms to file between September 1st and November 1st based on actual financial statements. The previous deadline to file was December 1. The foregoing changes will reduce burden on market participants by reducing the amount of required form filings and are not intended to have a significant financial impact on fees.

5) Simplify and clarify annual capital market participation fee submission for Class 2 reporting issuers

As part of the simplification process, we propose to repeal section 2.5, Participation fee estimate for Class 2 reporting issuers, of the Main Fee Rule and the accompanying Form 13-502F2A (Adjustment of Fee Payment for Class 2 Reporting Issuers) and eliminate the use of estimates. The method of calculating capitalization under section 2 of the Main Fee Rule, which is relevant for issuer participation fees, has also been clarified.

6) Relief for investment fund families and affiliates

Section 6.3 of the Main Fee Rule, Investment fund families and affiliated registrants, presently provides relief from the duplication of activity fees paid within investment fund families and by affiliated registrants. This relief is extended through the introduction of section 6.3(a) so that this relief applies to joint applications made by any applicants affiliated with each other. The same type of relief is also provided in section 3.3 of the CFA Rule.

7) Requests to the Commission

Minor adjustments to fees for the search of Commission public records and copies are proposed as per Rows P1 and P2 of Appendix C of the Main Fee Rule and Rows G1 and G2 of Appendix B of the CFA Rule.

8) Harmonization of Late Fee Calculations

We propose to harmonize within our fee rules and other jurisdictions the basis for the calculation of late fees by using calendar days where it currently states business days.

Detailed Listing of Fee Amendments

Proposed Fee Reductions	
Stakeholders	Description
Registrant Firms, Unregistered Capital Markets Participants	Reduce participation fees between 2% and 16% for firms with specified Ontario revenues up to \$100 million (Main Fee Rule: Appendix B, CFA Rule: Appendix A)
Issuers	Reduce participation fees between 5% and 16% for issuers with capitalization up to \$1 billion (Main Fee Rule: Appendix A/A.1)
Issuers	Reduce the activity fee from \$500 to \$350 for exempt distribution filings under OSC Rule 45-501 Ontario Prospectus and Registration Exemptions and NI 45-106 Prospectus Exemptions Report of Exempt Distribution (Main Fee Rule: Appendix C, Paragraph B)
Specified Regulated Entities	Reduce both the participation and activity fee to certain foreign clearing agencies providing services in Ontario, if they do not have a clearing member resident in Ontario. The Proposed Amendments will require such an exempt clearing agency with at least one customer resident in Ontario ² to pay an activity fee of \$15,000 (instead of \$83,000) and an annual participation fee of \$7,500 (instead of \$10,000). (Main Fee Rule: Appendix B.1, Row E1 & Appendix C, Row F5)

Proposed Removal of Fees	
Stakeholders Affected	Description
Activity Fees	
Registrant Firms	Remove the activity fee of \$100 for a certified statement from the Commission/Director under section 139 of the OSA. (Main Fee Rule: Appendix C, Row M1)

²As defined in National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*

Investment Funds	Remove the activity fee of \$1,500 associated with Application for approval under s.213(3) of the <i>Loan and Trust Corporations Act</i> (Main Fee Rule: Appendix C, Row E7)
Individuals	Remove the activity fee of \$30 for requests to the Commission for one's individual registration form (Main Fee Rule: Appendix C, Row P3, CFA Rule, Appendix B, Row G3)
Shareholders	Remove the activity fee of \$4,500 for filing an information circular by a person or company in connection with a solicitation that is not made by or on behalf of management (dissident proxy circular) (Main Fee Rule: Appendix C, Row J1)
Issuers	Remove the activity fee of \$2,000 for a Notice of Exemption under paragraph 2.42(2)(a) of National Instrument 45-106 (Main Fee Rule: Appendix C, Row C1)
Issuers	Remove the activity fee for distribution of securities of an issuer under section 2.9 of (Offering memorandum) National Instrument 45-106 (Main Fee Rule: Appendix C, B2.1), now consolidated within Main Fee Rule: Appendix C, B2.
Issuers	Remove the activity fee of \$500 for filing a prospecting syndicate agreement (Main Fee Rule: Appendix C, Row D1)
Issuers	Remove the activity fee of \$3,800 for rights offering circular (Main Fee Rule: Appendix C, Row B3).
Late Fees	
Issuers	Remove various issuer late fees associated with late filing of participation fee documents (Main Fee Rule: Appendix D, Paragraph A. (g), (h),(i),(l))
Specified Regulated Entities	Remove various late fees charged to specified regulated entities associated with the late filing of participation fee documents (Main Fee Rule: Appendix D, Paragraph A.(m),(n))
Registrant Firms	Remove various registration related late fees (Main Fee Rule: Appendix D, Paragraph A. (c), (e), (k), Paragraph B. and corresponding provision in Appendix C of CFA Rule.
Investment Fund Families and Affiliated Registrants	Relief provided from late fees for investment fund families and affiliated registrants: Subsection 7A.3(3) and (4) of the Main Fee Rule.

Coming-into-Force

The Proposed Amendments will come into force on April 3, 2023.

Proposed Companion Policy Changes

The Proposed Main Fee CP Changes and the Proposed CFA Rule CP Changes correspond to the Proposed Amendments to the Main Fee Rule and the CFA Rule. The purpose of the Proposed Main Fee CP Changes and Proposed CFA Rule CP Changes is to clarify the Commission's view of the application of the Proposed Amendments.

Authority for the Proposed Amendments

The following provision of the *Securities Act* (Ontario) provides the Commission with the authority to adopt the Proposed Amendments:

- Paragraph 43 of subsection 143(1) of the *Securities Act* (Ontario) authorizes the Commission to make rules prescribing fees payable to the Commission.

The following provision of the *Commodity Futures Act* (Ontario) provides the Commission with the authority to adopt the Proposed Amendments:

- Paragraph 25 of subsection 65(1) of the *Commodity Futures Act* (Ontario) authorizes the Commission to make rules prescribing fees payable to the Commission.

Alternatives Considered

The Commission considered increasing existing fees across all market participants; however, we are proposing these amendments because the increasing regulatory costs for the oversight of OTC derivatives markets, and the risks they contribute to the Ontario capital markets, should be borne directly by the entities that create the need for this oversight. The derivatives dealers in the top tiers in the rule are responsible for the vast majority of derivatives transactions occurring in Ontario and therefore are a significant source of potential operational and systemic risk in the Ontario capital markets. Accordingly, they should be bearing the costs of this oversight, instead of small and medium sized participants in the market.

Unpublished Materials

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

Content of Annexes

The following annexes form part of this Notice:

Annex A – Proposed amendments to OSC Rule 13-502 *Fees*

Annex B – Blackline of OSC Rule 13-502 *Fees* showing the proposed amendments

Annex C – Proposed changes to Companion Policy 13-502 *Fees*

Annex D – Blackline of Companion Policy 13-502 *Fees* showing the proposed changes

Annex E – Proposed amendments to OSC Rule 13-503 (*Commodity Futures Act*) *Fees*

Annex F – Blackline of OSC Rule 13-503 (*Commodity Futures Act*) *Fees* showing the proposed amendments

Annex G – Proposed changes to Companion Policy OSC Rule 13-503 (*Commodity Futures Act*) *Fees*

Annex H – Blackline of Companion Policy OSC Rule 13-503 (*Commodity Futures Act*) Fees showing the proposed changes

Annex I – 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 April 21, 2022. 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
20 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:

Greg Toczylowski
Manager
Derivatives
gtoczylowski@osc.gov.on.ca

Benjamin Sing
Accountant
Investment Funds and Structured Products
bsing@osc.gov.on.ca

Matthew Au
Senior Accountant
Corporate Finance Branch
mau@osc.gov.on.ca

Alina Bazavan
Senior Analyst
Market Regulation
abazavan@osc.gov.on.ca

Roger Aguiar
Controller
Financial Management and Reporting
raguiar@osc.gov.on.ca

Anita Chung
Senior Accountant
Compliance and Registrant Regulation
achung@osc.gov.on.ca

Robert Kohl
Senior Legal Counsel
Compliance and Registrant Regulation
rkohl@osc.gov.on.ca

Liliana Ripandelli
Senior Legal Counsel
General Counsel's Office
lripandelli@osc.gov.on.ca