

Annex H

This document is a blackline of proposed changes to the Companion Policy to OSC Rule 13-503.

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

TABLE OF CONTENTS

PART TITLE

PART 1 **PURPOSE OF COMPANION POLICY**

1.1 Purpose of companion policy

PART 2 **PURPOSE AND GENERAL APPROACH OF THE RULE**

2.1 Purpose and general approach of the rule

2.2 Participation fees

2.3 Application of participation fees

2.4 Registered individuals

2.5 Activity fees

2.6 Registrants under the *Securities Act* and the *Commodity Futures Act*

2.7 ~~No~~ Refunds

2.8 Indirect avoidance of rule

2.9 Confidentiality of forms

PART 3 **PARTICIPATION FEES**

3.1 Liability for participation fees

Application to investment funds

3.3 Late fees

3.4 "CFA activities"

3.5 ~~Permitted deductions~~

PART 4 **ACTIVITY FEES**

4.1 Concurrent application by permitted individual

4.2 Affiliates

4.3 Withdrawal of application

PART 5 **FEES FOR LATE FILING AND DELIVERY FEES**

5.1 Late fees under Part 3A of the Rule for registrant firms relating to Form 33-506F5

5.2 ~~Late fee for covered documents – after April 2, 2023 s under section 3.3 of the Rule for registrant firms~~

5.3 Late filings for the purpose of amending Form 33-506F6 Affiliated registrants

5.4 Transition – Certain forms and documents required to be filed or delivered before April 3, 2023

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 [generally](#) required to pay participation fees annually.
- (2) Participation fees are designed to cover the Commission's costs not easily attributable to specific regulatory activities. The participation fee required of a person or company under Part 2 of the Rule is based on a measure of the person's or company's size, which is used as a proxy for its proportionate participation in the Ontario capital markets. In the case of a registrant firm, the participation fee is based on the firm's revenues attributable to its CFA activity in Ontario.

- 2.3 Application of participation fees** – Although participation fees are [generally](#) determined with reference to information from a financial year of the payor generally ending before the time of their payment, they are applied to the costs of the Commission of regulating the ongoing participation in Ontario's capital markets of the payor and other market participants.

- 2.4 Registered individuals** — The participation fee is paid at the firm level under the Rule. 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.

2.6 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)The Rule provides the specific circumstances where the Commission is required to refund fees in subsections 2.3(3) of the Rule. This subsection allows for a refund where a registrant firm overpaid an estimated participation fee provided the request is made within the time the related form was required to be filed.~~

(2)Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee ~~unless they meet the conditions set out in the rule and discussed in subsection (1) above~~. 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.

(3) While the Commission will also review requests for adjustments to fees paid in the case of incorrect calculations, unless there are exceptional circumstances, we will not generally issue a refund if a request is made more than 90 days after the fee was required to be paid. Filers should contact OSC staff with regard to the mechanics of how to deliver such a request.

~~(3)(4)~~ Filers are expected to file correct information in a form. Correct information is important not only to reflect the filer's particular circumstances but also for more general data collection and analysis by the Commission. If a filer becomes aware that information in a previously filed form is incorrect, the filer should contact OSC staff about addressing the incorrect information on a timely basis (whether or not the correction would result in the determination of a different fee amount).

2.8 Indirect avoidance of rule — The Commission may examine arrangements or structures implemented by a person or company 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 review circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, to assess whether the firm has artificially reduced 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 Liability for participation fees — (1) Participation fees are payable annually by registrant firms as defined in §section 1.1 of the Rule.

(2)For registrants filing Form 13-503F1s for a year, the capital participation fee is based on their audited financial statements for the “designated financial year”, as defined in subsection 1.1 of the Rule. If the registrant has no financial statement for a designated financial year available, there is no fee.

~~3.2 Filing forms under Section 2.3~~ — ~~If the estimated participation fee paid under subsection 2.3(1) of the Rule by a registrant firm does not differ from its true participation fee determined under~~

~~subsection 2.3(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.3(3) of the Rule.~~

- 3.3 Late fees** — Section 2.5 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.
- 3.4 "CFA activities"** — A person or company must consider its CFA activities when calculating its participation fee. The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, carrying on the business of providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.
- 3.5 Permitted deductions** – ~~Subs~~Section 2.7 of the Rule permits certain deductions to be made for the purpose of calculating specified Ontario revenues for registrant firms. The purpose of these deductions is to prevent the “double counting” of revenues that would otherwise occur.

PART 4 — ACTIVITY FEES

- 4.1 Concurrent application by permitted individual** – Item C4 of Appendix B imposes a fee of \$100 for an individual seeking approval as a permitted individual. Item C5 imposes a fee of \$200 for an individual changing his or her status from a non-trading or non-advising capacity to a trading or advising capacity. If an individual makes a concurrent application for approval as a permitted individual and as an individual registered to trade or advise on behalf of a registrant firm, staff would expect a fee of \$200 in the aggregate.
- 4.2 Affiliates** - Subsection 3.3(1) of the Rule provides for only one activity fee to be paid for an application, in respect of a joint activity, made jointly by applicants affiliated with each other. Subsection 3.3(2) ensures that this measure applies to affiliates jointly applying for exemptive relief.
- 4.3 Withdrawal of application** - Generally, where an activity fee has been paid by a person who then abandons the matter or withdraws the application, a new activity fee would be payable if the person resurrects the application or updates the application for material changes that have occurred.

PART 5—FEES FOR LATE FEES FILING OR DELIVERY

- 5.1 Late fees under Part 3A of the Rule for registrant firms** – Appendix C of the Rule outlines additional fees payable by registrant firms for the late filing or delivery of certain forms or documents required under the CFA Act. The Commission may consider the late filing or delivery of forms or documents when assessing the ongoing suitability for registration of a registrant firm.
- 5.2 Late fee for covered documents – after April 2, 2023** - Late fees for covered documents, as defined in Appendix C of the Rule, that are incurred after April 2, 2023 are calculated in accordance with sections 3A.2 and 3A.3. The late fee is \$100 per day, subject to an annual cap for all covered documents submitted in a year of \$5,000. The annual cap is increased to \$10,000 for a person or company that has specified Ontario revenues greater than or equal to \$500 million.

5.3 **Affiliated registrants** - Subsections 3A.3(4) applies when multiple affiliated registrants fail to file the same type of covered documents due by the same date. In this case, payments attributable to a year made by anyone in the group count as payments made by everyone in the group. This means that the group will be liable to a maximum liability per year equal to the \$5,000 or \$10,000 annual cap.

5.4 **Transition – Certain forms and documents required to be filed or delivered before April 3, 2023** - Late fees for forms and documents listed in Appendix C as the Rule read on April 2, 2023 were calculated based on the number of business days that the form or document was late. Section 3A.44 provides that late fees incurred prior to April 3, 2023 will continue to be charged on this basis. Late fees incurred after that date are charged based on calendar days in accordance with sections 3A.2 and 3A.3.

Late fees relating to Form 33-506F5

5.1 — Paragraph (e) to item A of Appendix C to the Rule provides for a late fee of \$100 per day to a maximum cap for each year. Form 33-506F5 is required to be filed for changes in registration information within the time periods specified in Parts 3 and 4 of OSC Rule 33-506. In some cases, registrant firms file the form merging a number of changes that have occurred and were required to be reported at different times. Staff will generally apply the late fee under paragraph (e) of Item A for each change reported on the F5 on the basis that a separate form was required to be filed in respect of each change.

(1.1) — Under subsection 4.1(1) of OSC Rule 33-506 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-506F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-506F5. Subject to the exceptions in subsection (1.2) and a cap contained in Appendix C, a late filing gives rise to a late fee of \$100 per business day under subparagraph (e)(i) of Row A of Appendix C.

(1.2) — Registrants have commented that the scope of outside business activities (OBAs) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the \$100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix C.

Late fees under section 3.3 of the Rule for registrant firms

5.2 — Appendix C to the Rule outlines additional fees payable by registrant firms for the late filing or delivery of certain forms or documents required under the Act. The Commission may consider the late filing or delivery of forms or documents when assessing the ongoing suitability for registration of a registrant firm.

Late filings for the purpose of amending Form 33-506F6

5.3 — For amendments to item 5.5 *Bonding or insurance details* on Form 33-506F6, registrant firms are expected to notify the regulator of any change to bonding or insurance details, including the renewal

~~of an insurance policy. The Commission will not charge a late fee with respect to renewal of bonding or insurance policies. However, late notifications of any changes in insurer or coverage amounts are subject to the late fees outlined in the Rule.~~