

B.1.2 OSC Notice of Publication – Amendment of OSC Rule 13-502 Fees and OSC Rule 13-503 (Commodity Futures Act) Fees

OSC NOTICE OF PUBLICATION

**AMENDMENT OF
ONTARIO SECURITIES COMMISSION RULE 13-502 FEES AND
ONTARIO SECURITIES COMMISSION RULE 13-503 (COMMODITY FUTURES ACT) FEES**

April 18, 2024

Introduction

The Ontario Securities Commission (the **OSC**, the **Commission** or **we**) made amendments to:

- Ontario Securities Commission Rule 13-502 Fees (the **Fee Rule**) under the Securities Act (Ontario) (the OSA), and
- OSC Rule 13-503 (Commodity Futures Act) Fees (the **CFA Rule**), under the Commodity Futures Act (Ontario) (the CFA).

Annex A of this Notice sets out the amendments to OSC Rule 13-502 (the 13-502 Amendments). Annex B of this Notice sets out the amendments to OSC Rule 13-503 (the 13-503 Amendments). In this Notice, we refer to the 13-502 Amendments and 13-503 Amendments collectively as the “Rule Amendments”.

The Rule Amendments reflect 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 this leadership role in dealing with emerging sectors, additional resources have been dedicated to support the significant regulatory activity. The Rule Amendments introduces 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 Rule 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**).

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 Rule 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 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.

B.1: Notices

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 Rule 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

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

B.1: Notices

* 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.

Detailed Listing of Fee Amendments

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 13-502 Amendments and 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 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 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 Rule Amendments and other required materials were delivered to the Minister of Finance on or about April 15, 2024. The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by May 15, 2024, the Amendments will come into force on July 2nd, 2024.

Content of Annexes

The following annexes form part of this Notice:

Annex A – Amendments to OSC Rule 13-502 Fees

Annex B – Amendments to OSC Rule 13-503 Fees (*Commodity Futures Act*)

Questions

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ANNEX A
AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 FEES

1. **Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.**

2. **Section 1 is amended by:**

(a) **replacing the definition of “registrant firm” with the following:**

“registrant firm” means a person or company registered or required to be registered as a dealer, adviser or investment fund manager under the Act;

(b) **adding the following definition:** “restricted dealer” has the same meaning as in NI 31-103;

3. **Subsection 17(2)(d) is amended by:**

(a) **replacing** “advisory or sub-advisory fees paid during the designated financial year by it to (i) a registrant firm, as “registrant firm” is defined in this Rule or in Rule 13-503 (*Commodity Futures Act*) Fees, or (ii) an unregistered” exempt international firm; **with the following:**

advisory or sub-advisory fees paid during the designated financial year by it to (i) a registered dealer, registered adviser or registered investment fund manager, under the *Securities Act*; or (ii) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; or (iii) an unregistered exempt international firm;

4. **Appendix F is amended by:**

(a) **adding** “, other than in the registration category of restricted dealer” **after** “registration” **in Row 11.**

(b) **adding the following row after Row 11:**

11.1	Additional fee for new registration of a firm in the registration category of restricted dealer	\$24,500
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(c) **adding the following row after Row L4:**

L5	An application referred to in Row L1 or L2 if the application is by a restricted dealer or a firm that has applied for registration in the category of restricted dealer and involves an exemption from one or more requirements of National Instrument 21-101 <i>Marketplace Operation</i> , National Instrument 23-101 <i>Trading Rules</i> , or National Instrument 23-103 <i>Electronic Trading and Direct Electronic Access to Marketplaces</i>	The amount in Row L1 or L2 is increased by \$24,500
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5. **The General Instructions of Form 13-502F4 are amended by replacing subsection (2) with the following:**

2. This form is to be completed by “registrant firms” (as defined in the Rule) or by firms that are “registrant firms” under both the Rule and OSC Rule 13-503 (*Commodity Futures Act*) Fees. This form is also to be completed by unregistered capital markets participants.

6. **The Notes of Form 13-502F4 are amended by replacing 4. with the following:**

4. Where the advisory services of a (i) a registered dealer, registered adviser or registered investment fund manager, under the *Securities Act*; or (ii) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; or (iii) an unregistered exempt international firm, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.

7. **Part 5(c) Advisers, Other Dealers, and Unregistered Capital Markets Participants of Form 13-502F4 is amended by replacing line 5 with:**

Advisory or sub-advisory fees paid during the designated financial year by it to (i) a registered dealer, registered adviser or registered investment fund manager, under the *Securities Act*; or (ii) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; or (iii) an unregistered exempt international firm.

8. This Instrument comes into force on July 2, 2024.

ANNEX B

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

1. **Ontario Securities Commission Rule 13-503 Fees (*Commodity Futures Act*) is amended by this Instrument.**
2. **Section 1 is amended by replacing the definition of “registrant firm” with the following:**

“registrant firm” means a person or company registered or required to be registered as a dealer or an adviser under the CFA;.
3. **Subsection 7(2) is amended by:**
 - (a) **replacing** (b) advisory or sub-advisory fees paid during the designated financial year by the registrant firm to (i) a registrant firm under the CFA or a registrant firm under the Securities Act, or (ii) an unregistered exempt international firm, as defined in Rule 13-502 Fees under the Securities Act **with the following:**

advisory or sub-advisory fees paid during the designated financial year by; (i) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; (ii) a registered dealer or a registered adviser, under the *Securities Act* or (iii) an unregistered exempt international firm;
4. **The General Instructions of Form 13-503F1 are amended by replacing subsection (1) with the following:**
 1. This form must be completed by “registrant firms” as defined in this Rule that are not also “registrant firms” as defined in Rule 13-502 Fees under the *Securities Act*. It must be returned to the Ontario Securities Commission by November 1 each year, as required by section 3 of this Rule, except in the case where firms register after November 1 in a year. In this exceptional case, this form must be filed within 60 days of registration.
5. **The Notes of Form 13-503F1 are amended by replacing 2. with the following:**
 2. Where the advisory services of (i) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; or (ii) a registered dealer, registered adviser or registered investment fund manager, under the *Securities Act*; or (iii) an unregistered exempt international firm, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line to the extent that they are otherwise included in gross revenues.
6. **Part 4(b) - Other Registrants is amended by replacing line 3 with:**

Advisory or sub-advisory fees paid during the designated financial year by it to (i) a person or company registered as a dealer or an adviser under the *Commodity Futures Act*; or (ii) a registered dealer or registered adviser under the *Securities Act*; or (iii) an unregistered exempt international firm
7. This Instrument comes into force on July 2, 2024.