Chapter 6

Request for Comments

6.1.1 Notice of Proposed Rule 13-502 - Fees, Companion Policy 13-502CP - Fees, Form 13-502F1, Form 13-502F2 and Form 13-502F3

NOTICE OF PROPOSED
RULE 13-502 - FEES
COMPANION POLICY 13-502CP - FEES
FORM 13-502F1, FORM 13-502F2 AND FORM 13-502F3

Introduction

On March 30, 2001, the Ontario Securities Commission (the "OSC") published for comment a concept proposal (the "Concept Proposal") for revising Schedule 1- Fees ("Schedule 1") to the Regulation to the *Securities Act* (Ontario) (the "Act")[1]. Schedule 1 prescribes the fees that are payable to the OSC by market players.

The Concept Proposal discussed the OSC's intention to substantially amend Schedule 1 with a view to achieving three primary objectives:

- to reduce the overall fees charged to market players,
- to simplify, clarify and streamline the current fee schedule, and
- to ensure that the fees more accurately reflect the OSC's cost of providing services to market players.

It also described a proposed fee model that would require the payment of "participation fees" and "activity fees". Participation fees are generally intended to represent the benefit derived by market players from participating in Ontario's capital markets. Activity fees, on the other hand, are intended to represent the direct cost of OSC staff resources to take a specific action or provide a specific service requested by a market player.

The Concept Proposal referred to a graduated schedule of participation fees ("CF Participation Fees") payable by reporting issuers ("CF Market Players"), and a separate schedule of participation fees ("CM Participation Fees") payable by registrants and unregistered fund managers ("CM Market Players"). It also referred to schedules of activity fees for CF Market Players and CM Market Players.

The 60-day comment period for the Concept Proposal expired on May 31, 2001. During that period, the OSC heard from different market players – issuers, dealers, portfolio advisers, mutual fund dealers, fund managers, self-regulatory organizations, industry associations, and legal advisers to some market players. Appendix A to this Notice is a list of those who provided comments on the Concept Proposal. Appendix B to this Notice contains a summary, in tabular form, of the comments received and OSC staff's response to them.

The details of the fee model (the "New Fee Model") contemplated by the Concept Proposal are contained in proposed OSC Rule 13-502 – Fees (the "Proposed Rule"). It was drafted in a way that reflects the OSC's intentions as described in the Concept Proposal, modified after further staff analysis of anticipated OSC revenue stream and in response to some of the comments received on the Concept Proposal. With this Notice, the OSC is seeking public comment on the Proposed Rule and the proposed Companion Policy 13-502CP (the "Proposed Policy")

Substance and Purpose of the Proposed Rule

The Proposed Rule establishes the New Fee Model, which is essentially and substantially the same as the fee model described in the Concept Proposal, except as described below.

[1] Concept Proposal, (2001) 24 OSCB 1971-1972.

Part 1

This Part defines the terms used in the Proposed Rule and deals with certain interpretation issues. The following are some of the terms used:

- "capitalization", "corporate debt", "Class 1 reporting issuer", "Class 2 reporting issuer" and "Class 3 reporting issuer" - defined for the purpose of the CF Participation Fees

- "capital markets activities", "IDA", "investment fund", "investment fund manager", "MFDA", "Ontario percentage", "registrant firm", "specified Ontario revenues", "scholarship plan" and "unregistered investment fund manager" - defined for the purpose of the CM Participation Fees

In the Proposed Rule, the term "investment fund" is defined to mean a mutual fund, a non-redeemable investment fund (as such term is defined in OSC Rule 14-501) or a scholarship plan. The use of this term is intended to ensure that all investment funds are subject to and are generally treated the same under the Proposed Rule.

Part 2

This Part requires the payment of CF Participation Fees by existing and new CF Market Players and prescribes the CF Participation Fees in Appendix A of the Proposed Rule. The fees are the same as those published with the Concept Proposal, calculated on the basis of a CF Market Player's capitalization. Under the Concept Proposal, the graduated schedule of CF Participation Fees would range from a minimum of $750 (for capitalization of under $25 million) to a maximum of $75,000 (for capitalization of over $25 billion). In the Proposed Rule, the minimum and maximum fees are $1,000 and $85,000, respectively. These figures reflect current calculation of the OSC's anticipated revenue needs and may change before finalization of the Proposed Rule.

This Part prescribes the time of payment, the form to complete for that purpose, and the additional fee for late payment. It also prescribes the manner of calculating the capitalization of each of the three classes of reporting issuers, for the purpose of determining the amount of CF Participation Fees payable by each of them.

The manner in which the capitalization of a foreign issuer is calculated has changed from what was described in the Concept Proposal. The Concept Proposal based a foreign issuer's capitalization upon the number of equity or debt securities that the foreign issuer had ever distributed into Ontario. In response to a concern that this would result in an outdated estimation of capitalization, it was decided that the calculation be based upon the number of equity or debt securities that are registered or beneficially held by persons or companies in Ontario at the end of a financial year.

Section 2.1 expressly carves out investment funds from the application of this Part, except if they do not have an investment fund manager. Where an investment fund has an investment fund manager, the fund does not have to pay CF Participation Fees. Instead, the fund's manager will be paying the CM Participation Fees in respect of revenues generated from managing the fund. However, if an investment fund does not have an investment fund manager, section 2.1 makes it clear that it is subject to the CF Participation Fees. This ensures that such investment fund does not have an unfair advantage over other reporting issuers that are required to pay the CF Participation Fees.

Part 3

This Part requires the payment of CM Participation Fees by CM Market Players, and prescribes the CM Participation Fees in Appendix B of the Proposed Rule. The fees are the same as those published with the Concept Proposal, calculated on the basis of a CM Market Player's revenues attributable to Ontario. Under the Concept Proposal, the graduated schedule of CM Participation Fees would range from a minimum of $750 (for revenues under $500,000) to a maximum of $600,000 (for revenues over $1 billion). In the Proposed Rule, the minimum and maximum are $1,000 and $850,000, respectively. Again, these figures reflect current calculation of the OSC's anticipated revenue needs and may change before finalization of the Proposed Rule.

This Part prescribes the time of payment, the form to complete for that purpose, and the additional fee for late payment. It also prescribes the manner of calculating the specified Ontario revenue of registrant firms that are members of the IDA or MFDA and of the unregistered investment fund managers, for the purpose of determining the CM Participation Fees payable by them.

It was initially intended to require unregistered investment fund managers to pay the CM Participation Fees at the time of filing a pro forma prospectus for any mutual fund managed by it. However, OSC staff noted that some unregistered fund managers might be managing investment funds that are not in continuous distribution and are not required to file a pro forma prospectus. Accordingly, it was decided that an unregistered investment fund manager be required to pay the CM Participation Fees no later than 90 days after the end of its financial year. This requirement is reflected in subsection 3.2(2) of this Part.

Section 3.8 of this Part is intended to ensure that CM Participation Fees paid by investment fund managers, whether or not registered, will not be charged to the investment funds they manage or to the securityholders of such funds.

Part 4

This Part requires the payment of activity fees and prescribes the fee for each activity in Appendix C of the Proposed Rule, which combines into a single list the separate activity fees for CF Market Players and CM Market Players originally contemplated by the Concept Proposal. The applicable activity fee is payable by a person or company when

- filing prospectuses or other distribution-related documents, applications for discretionary relief, take-over bid and issuer bid documents, applications for registration and other registration-related documents, or
- requesting copies of Commission documents or a search of Commission records.

Appendix C of the Proposed Rule contains the same fees that were published with the Concept Proposal, except for the following:

- There is now a $5,500 fee for filing a prospecting syndicate agreement. See item C of the Appendix.
- In addition to applications under sections 74, 104 and 144 that require the $5,500 fee, applications under certain other sections of the Act and certain Rules of the OSC will require the same fee. These are listed in items D.1 and D.2 of the Appendix.
- The Concept Proposal contemplated a two-tier fees for applications processed by OSC Corporate Finance staff – $5,500 for applications under more than one section of the Act, Regulation or Rules and $1,500 for other applications (for example, an application under only one section of the Act). These are now combined into one fee of $1,500 per section up to a maximum of $5,500 in item D.3 of the Appendix. This is intended to avoid possible administrative inefficiencies arising if, for example, filers decide to file 3 separate applications for relief from 3 sections of the Act in order to save on fees.
- The original flat fee of $1,500 for applications under the Act, Regulation and Rules that are processed by OSC Capital Markets staff is now subsumed into item D.3 of the Appendix. The reason for this is that the cost of OSC staff resources in processing an application does not differ between Capital Markets staff and Corporate Finance staff.
- The original flat fee of $500 for applications under subsection 62(5) of the Act is also subsumed into item D.3 of the Appendix.
- The additional fees for “rush” applications or prospectuses that involve “complex” or “novel” offerings or issues have been dropped.
- No fee will be charged for an application under section 213 of the *Loan & Trust Corporations Act* (Ontario). See item D.3(iv) of the Appendix.
- A fee is now required to be paid for pre-filing, which will be credited against the applicable fee if the formal filing is subsequently proceeded with. See item E of the Appendix.

Appendix C currently contains footnotes that explain certain fees. The footnotes will be omitted in the final form of the Proposed Rule.

Parts 5 to 7

Part 5 deals with currency calculations if a required fee is paid in a currency other than Canadian dollars. Part 6 authorizes the Director to grant an exemption from any provision of the Proposed Rule. Part 7 deals with transitional issues.

Substance and Purpose of Proposed Policy

The purpose of the Proposed Policy is to state the views of the OSC as to the manner in which the Proposed Rule are to be interpreted and applied.

For example, Part 2 of the Proposed Policy states that no person or company that pays a fee under the Proposed Rule would generally be entitled to a refund. However, it also states that adjustments in the fees paid may be made in certain cases.

Another example relates to certain provisions of the Proposed Rule concerning the basis of the calculation, and the timing of payment, of the CF Participation Fees or CM Participation Fees. Sections 3.2 and 4.1 of the Proposed Policy explain that the combined effect of those provisions is that the participation fees are payable in advance for the payor's current financial year. However, the participation fees are calculated on the basis of the payor's financial statements as at the end of its immediately preceding financial year-end.

The Proposed Policy also includes Appendices that illustrate the application of the fees to a reporting issuer, an investment counsel/portfolio manager, an IDA member, a mutual fund dealer, and an unregistered investment fund manager. Some of the Appendices currently contain footnotes that refer to specific fee items in Appendix C of the Proposed Rule. The footnotes will be omitted in the final form of the Proposed Policy.

Authority for the Proposed Rule

Paragraph 43 of subsection 143(1) of the Act authorizes the OSC to make rules "prescribing the fees payable to the OSC, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the OSC, and in connection with the administration of Ontario securities law".

Unpublished Materials

In proposing the New Fee Model, the OSC has not relied on any significant unpublished study, report, decision or other written materials. However, the OSC sought input from market players from three different focus groups. The focus groups consisted of reporting issuers, dealers (including the Investment Dealers Association), advisers and mutual fund managers (including The Investment Funds Institute of Canada).

Anticipated Costs and Benefits

The New Fee Model is expected to generate net positive benefits in two primary areas, fairness and efficiency, both for the industry and the OSC. The changing nature of the securities industry, from a business based on primary offerings to one where 95% of the activity takes place in the secondary markets, has not been reflected in the fee structure. With the shift to monitoring continuous disclosure and trading, fees based primarily on filings no longer mirror the cost of regulation. The New Fee Model ties the OSC's cost of regulation to the revenues from fees by sector. The rapid growth of some sectors, particularly investment funds, has increased the fees collected out of proportion to the cost of regulation. The shift to fees based primarily on participation in the capital markets represents a considerable improvement in fairness.

Through reducing the number of payments based on activity fees, the administration costs associated with paying the fees should drop significantly for all stakeholders involved. Based on the experience of the past year, over 40,000 fee payments will be eliminated from the system. With improvements in both fairness and efficiency, only marginally offset by very modest set-up costs, the New Fee Model is expected to deliver substantial net benefits to the capital markets intermediaries and to the OSC.

Regulations to be revoked

The OSC will request the Lieutenant Governor in Council to revoke Schedule 1. The revocation will become effective on the same date that the Proposed Rule comes into force.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Rule. Submissions received by September 27, 2002 will be considered.

Submissions should be sent in duplicate to:

c/o John Stevenson, Secretary
Ontario Securities OSC
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

A diskette or an e-mail attachment containing submissions (in DOS or Windows format, preferably Word) should also be submitted.

Comment letters submitted in response to requests for comments are placed on the public file and form part of the public record, unless confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation may require the OSC to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to comment letters.

Questions may be referred to:

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APPENDIX A
TO
NOTICE OF PROPOSED
RULE 13-502 - FEES
COMPANION POLICY 13-502CP - FEES
FORM 13-502F1, FORM 13-502F2 AND FORM 13-502F3

LIST OF COMMENTERS

1. Barclays Global Investors Canada Limited

2. BMO Investments Inc.

3. Canadian Bankers Association

4. Elliott and Page Limited

5. Fidelity Investments Canada Limited

6. Investment Counsel Association of Canada

7. Investment Dealers Association of Canada

8. Jennifer Northcote of Stikeman Elliott *(Commented in her personal capacity and not on behalf of the firm*)

9. Leith Wheeler Investment Counsel Ltd.

10. Manulife Financial Corporation
The Manufacturers Life Insurance Company
Sun Life Financial Services of Canada Inc.
Sun Life Assurance Company of Canada
Canada Life Financial Corporation
The Canada Life Assurance Company

11. Merrill Lynch Canada Inc.
Merrill Lynch & Co. Canada Ltd.
Merrill Lynch Canada Finance Company
Merrill Lynch Financial Assets Inc.

12. Nortel Networks

13. Placer Dome Inc.

14. Royal Mutual Funds Inc.
RBC Dominion Securities Inc.
RBC Global Investment Management Inc.
RBC Private Counsel Inc.
RT Capital Management Inc.

15. Scotia Securities Inc.

16. Sprucegrove Investment Management Ltd.

17. The Investment Funds Institute of Canada

APPENDIX B
TO
NOTICE OF PROPOSED
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FEE PROPOSAL - PUBLIC COMMENTS

General Comments

Theme	Detailed Comments and Arguments	Staff Response
Guiding principle of ability to pay may be inequitable for larger market players	The commenter thought that it was inequitable for large market players to be required to subsidize small market players. Another commenter observed (from the fee examples) that there is a significant decrease in the fees paid by large market players and a significant increase in the fees paid by small market players. The commenter stated that, from a business perspective, a small market player cannot afford to absorb large increases and the fees cannot be unfairly passed on to clients.	The concept proposal bases participation fees on a measure of the market player's size so as to measure the market player's use of (and, therefore, benefit from) Ontario's capital markets. As a result, large market players will pay higher participation fees than small market players because they are using Ontario's capital markets more than smaller market players. In staff's view, this model does not result in large market players subsidizing small market players.
60 day comment period was too short	One commenter thought that the 60 day comment period was too short and that, when a redraft of the concept proposal is published for comment, a more substantive comment period should be provided, along with the finalized fee schedule. Another commenter urged further consultation throughout the next stages of the project, with ample opportunity given for comment.	OSC staff consulted with industry representatives from both the issuer and registrant communities prior to releasing the concept proposal for the 60 day comment period. Proposed OSC Rule 13-502 - Fees (the "Proposed Rule") is now being published for the statutory 90-day comment period - which should allow sufficient time for further comment on the new fee regime.
Guiding principle of reducing the vulnerability of OSC revenues to fluctuations in general market activity shifts this vulnerability to market players	The commenter thought that, by trying to reduce the vulnerability of OSC revenues, the OSC is shifting this vulnerability to market players. Market players are highly vulnerable to revenue fluctuations and are required to make periodic adjustments to their expenses. The OSC should be subject to a similar discipline. Another commenter noted that the fee model seemed to be primarily concerned with predictability of revenues and setting an appropriate rate schedule to avoid any changes to the rate schedule during an economic downturn. The focus is entirely on rate increases to address revenue decreases, rather than reducing costs to match reduced revenues. The commenter suggested that cost reductions are the more appropriate method of dealing with an economic downturn since the level of capital markets activity typically declines with the economy, which implies fewer OSC staff resources needed. Consequently, the rate schedule should be set to provide enough revenue to cover the OSC's costs in today's economic environment.	In order to provide effective regulation of Ontario's securities markets - whether the markets are bear markets or bull markets - it is critical that the OSC have sufficient operating revenues and staff at all times. As a result, it was important for staff to develop a concept proposal that limited, to the extent possible, large swings in the OSC's revenues. Also, as discussed in the concept proposal, the OSC intends to review participation fees and activity fees every three years and will adjust the fees as necessary.

Theme	Detailed Comments and Arguments	Staff Response
Director/Executive Director discretion	Two commenters thought that guidance should be provided as to when a reduction or refund of participation fees would be granted or that the principles that will guide the exercise of discretion by the Director/Executive Director should be provided.	As in all circumstances where a rule provides for discretionary authority to grant relief from securities legislation, the Director or Executive Director will exercise discretion based on the facts and circumstances of the particular case. Generally, as in most cases where exemptive relief is sought, staff's preliminary view is that requests for reductions and refunds of participation fees will only be granted in rare and unusual circumstances. For transparency of this process, any decision granting a reduction or refund of participation fees will be published in the OSC weekly bulletin.
	One commenter requested elaboration of what would be considered to be a complex filing or a novel product or security.	The additional fee for a complex filing or a novel product or security has been dropped from the Proposed Rule.
OSC taking the lead in discussions with Canadian Securities Administrators ("CSA") regarding fee revisions	One commenter was concerned that other Canadian regulators may also adopt similar fee schedules that include participation fees. The commenter argued that there is a weaker argument in other Canadian jurisdictions that participation fees measure use of the capital markets. Fees should be coordinated with the CSA in order that the aggregate effect of participation fees on issuers be considered.	The concept proposal indicated that the OSC was taking the lead in discussions with the CSA with respect to revisions to the fee schedule. Any other CSA member that adopted a participation fee/activity fee model for charging fees would likely determine which costs are large enough and occur frequently enough to be charged as activity costs and then determine what costs remain to be charged to market players as participation fees. Since both activity fees and participation fees will be based on the jurisdiction's costs of regulating its capital markets, it is unlikely that the adoption of the OSC fee model in another CSA jurisdiction would result in inappropriate fees.
	Another group of commenters stated that any OSC fee schedule should be considered in the context of overall fees that would be payable by an issuer to the CSA. As well, the participation fee/activity fee model is workable in Ontario where the OSC is the primary regulator and Ontario is the jurisdiction whose capital markets are accessed regularly by a market participant. However, a similar model in other jurisdictions may result in a substantial increase in fees that is not justified by the services provided or expenses incurred in that jurisdiction. One commenter noted that any new fee model will only be of assistance to most major market players if adopted on a national basis. Another commenter noted that until the other [Canadian] jurisdictions adopt the new model, the full benefits of the new model will not be realized by its [Investment Counsel Association of Canada] members. A further commenter stated that to encourage other CSA jurisdictions to adopt the new fee model, the OSC should adjust the basis for calculating participation fees for capital markets market players. While it will continue to	The OSC continues to take the lead in discussions with the CSA with respect to revisions to the fee schedule in each of the CSA jurisdictions, and will address issues relating to harmonization in that context.

Theme	Detailed Comments and Arguments	Staff Response
	be based on gross revenues, the commenter suggests allocating the amount payable to each province by the proportion of total assets held by clients in the province, based on client account addresses. This comment was echoed by another commenter who recommended that allocation be harmonized across all provinces and that, for each province, the allocation be based on revenues generated from investors in that province. Another commenter stated that its [IFIC] members would welcome the implementation of an acceptable, uniform fee model across all jurisdictions. This commenter also stated that there should be some consideration of how the gross revenues model, if adopted nationally for capital markets market players, might disadvantage other jurisdictions.	
Basic premise of participation fee is incorrect - OSC costs should be allocated based on a user- pay system	One commenter thought that costs incurred by the OSC in regulating Ontario's capital markets should be allocated amongst market players on an equitable basis using a user pay system - i.e. where an entity draws on the resources of the OSC, it pays the resultant costs. The proposed tiered system for participation fees allocates costs to companies with large market capitalizations. The commenter argues that this is a flawed assumption in that companies with large market capitalizations do not necessarily use Ontario's capital markets to a greater extent than companies with small capitalizations, so that companies with large market capitalizations bear a disproportionate share of the OSC's costs. Another commenter stated that OSC fees must be based on usage of services by a market player, because usage fees are better aligned with the stated goals of the OSC. Some of the reasons given for this position include: - participation fees proposed will not necessarily result in lower fees and may result in substantially higher fees for large issuers that do not access the markets on a frequent basis and for large registrants; - cost of participation in Ontario's markets is not determinable by the market capitalization of an issuer. An issuer that goes to market frequently is using more of the OSC's resources and fees charged should reflect this; - revenues of a registrant do not correlate to the usage of services provided by the OSC. The amount paid by large registrants may be disproportionately higher than the fees paid by small registrants for the same level of service, resulting in large firms subsidizing small firms. Small firms with fewer resources in the areas of law, compliance and audit may, in fact, generate proportionately higher regulatory costs than large registrants with such resources; - OSC provides services and has jurisdiction only in Ontario. Accordingly, any fee should have a link to the capital raised in the Ontario marketplace and not to the overall value of the issuer; - participation fees are not charged by most other major market regulators. This may act as a	The fee model outlined in the concept proposal is partially based on a user-pay system. Activity fees will be charged for costs that staff could specifically identify and which were large enough to charge as separate fees. Participation fees will be based on a measure of the market player's size (based either on market capitalization or Ontario-based revenues) so as to measure the market player's use of the capital markets. The participation fees include all costs of OSC regulation which could not be identified as costs for which activity fees could be charged. As a result, the participation fees include costs of OSC securities and market regulation generally - including market oversight, oversight of self-regulatory organizations ("SRO's), enforcement, policy development, continuous disclosure and compliance reviews, etc.

Theme	Detailed Comments and Arguments	Staff Response
	competitive impediment or disincentive to access Ontario's capital markets. Another commenter stated that the examples show that an issuer with a large market capitalization that accesses markets frequently pays lower fees, while an issuer that uses the markets less frequently may pay higher fees, depending on its size. In this commenter's case, this results in a disproportionately high fee. The company has high a market capitalization but its size does not relate to its use of Ontario's capital markets since it has not filed a prospectus since 1987. Current fee is $2K. Proposed participation fee is $65K. Another commenter stated that [registrants] that rarely access the public markets are expected to pay significantly higher fees in exchange for no incremental activities from the OSC. Market players who have large activity volume and have a larger asset base should proportionately take on more of both the participation and activity fees because they require more attention from the OSC and collect more revenues from their clients.	
Proposed participation fees are too high. Fee amendments should result in decreased costs to all market players	The commenter stated that for services provided by the OSC that are not directly attributable to usage, smaller participation fees may be appropriate. Further, given the size of OSC surpluses in recent years, fee amendments should not result in increased costs to any market participant.	Many of the large OSC surpluses were generated before the OSC attained self-funding status. These surpluses were not retained by the OSC. When the OSC obtained self-funding status, the OSC agreed with the Ontario government that it would reduce its fees (on a going forward basis) to match its costs. The concept proposal is the OSC's fourth step in reaching this goal. The first step was the elimination of the secondary market fee and the termination and transfer fee for salespersons. The second step was the 10% fee reduction across-the-board effective August 4, 1999. The third step was the further 10% fee reduction across-the-board effective June 26, 2000. One of the objectives of the concept proposal is to rationalize the fees charged to market players - some of whom paid lower fees than they should have over the past several years and some of whom paid higher fees. By analysing the OSC's costs in detail, staff were able to develop a proposed fee structure that more fairly allocates the OSC's costs to market players. While this approach does not result in decreased fees to all market players, it does result in an overall reduction in fees payable by market players to the OSC of approximately 20% (based on its current revenues).

Theme	Detailed Comments and Arguments	Staff Response
Activity fees	One commenter noted that it would be preferable to have sufficient resources available so that applications are turned around in a reasonable time frame. The commenter said that, before commenting on the appropriateness of charging extra fees for rush applications, it would be appropriate to understand what normal turnaround periods for applications are anticipated to be. Another commenter wanted to confirm its understanding that the rush application fee would only be required where the applicant was responsible for initiating the application on a rush basis.	The additional fee for "rush" applications has been dropped from the Proposed Rule. OSC staff will continue to try and accommodate reasonable and justifiable requests for expedited processing of applications, subject to availability of resources.

Corporate Finance Market Players

Theme	Detailed Comments and Arguments	Staff Response
Duplicate participation fees	Certain Canadian life insurance companies (that provided a combined response) that adopted a holding company structure following their demutualization, for federal financial institution regulatory purposes, will be assessed a duplicate participation fee. In the case of three of these commenters, each of their operating companies and respective holding companies are reporting issuers and would each be subject to a participation fee - resulting in duplicate participation fees. Submission is that the subsidiary company should not be required to pay a separate participation fee so long as its assets are the same as those of its parent company and a participation fee is paid by the parent company.	The Proposed Rule provides that, where a reporting issuer ("subsidiary issuer") is wholly-owned by another reporting issuer ("parent issuer"), the subsidiary issuer will be exempt from paying participation fees so long as the parent issuer pays applicable participation fees, and so long as each of the assets and revenues of the subsidiary issuer represent greater than 90% of the parent issuer's assets and revenues.
Proposed fee model penalizes inactive special purpose vehicles and other inactive issuers	One commenter noted that the current fee schedule imposes high fees for offerings and low annual fees for continuous disclosure documents and thus inactive issuers have relatively small ongoing fees. Proposed fee schedule reverses this and thus penalizes inactive issuers. This is unjustified since inactive issuers are not putting any strain on the resources of the OSC and are deriving minimal ongoing benefit from Ontario's capital markets. Most of these inactive issuers have already paid significant fees to make their public offerings and have therefore already compensated the system for their participation in Ontario's capital markets. Revise concept proposal to lower participation fees for an issuer that has not accessed Ontario's capital markets in the previous 18 months and provide a "grandfathering" mechanism which permits issuers to pay lower participation fees if they have not accessed the capital markets in the 18 months prior to the new fee schedule coming into force.	The proposed participation fees include all OSC's costs that cannot be specifically identified and charged as activity fees. As a result, the participation fees include the cost of securities regulation generally (as discussed above). In staff's view, previously paid activity fees do not compensate the system for the OSC's ongoing costs of ensuring that market players have a strong and vibrant market in Ontario. As a result, the Proposed Rule does not have any "grandfathering" provision. However, the Proposed Rule provides for prorated participation fees in the first year of implementation of the new fee model.

Capital Markets Market Players

Theme	Detailed Comments and Arguments	Staff Response
Fees generated by investment vehicles should reflect the cost of regulating them	One commenter said that fees generated by investment vehicles should reflect the cost of regulating them. The proportion of OSC revenues generated by the increased popularity of mutual funds and pooled funds has greatly exceeded the cost to the OSC of regulating these investment products. Another commenter stated that the proposed fee schedule favours large capital markets market players, especially those managing large pooled/mutual funds.	Managers of mutual funds, scholarship plans and other investment funds benefit from OSC regulation of the capital markets, which provides effective and efficient capital markets for investors to invest in, resulting in increased capital for fund managers to manage. The fee proposal is not intended to favour large market players. It is intended to deal with large and small market players as fairly as is reasonably possible by imposing participation fees based on an appropriate factor -- the size of their gross revenue attributable to Ontario.
Proposed fees duplicate SRO fees	One commenter was concerned that the proposed fee model would be neutral to its [IDA] members as a whole and that its members would not participate in the relief from excess fees at all. The commenter also noted that this was unfair and burdensome since its members must also pay $21 million for self-regulation through the IDA, as well as the fees charged by other securities regulators in Canada.	Based on the fees prescribed in the Proposed Rule, it is anticipated that IDA members would enjoy savings of approximately 10% from the fee schedule currently in place in Ontario (after the 20% reduction). However, not all dealers will achieve this 10% reduction in fees. Some will pay more; some will probably pay substantially less. Also, since OSC fees are based on its costs of regulation, duplicate fees are not being charged to IDA members by the OSC. IDA members are being charged fees by the IDA for the IDA's direct regulation of those members. IDA members are also being charged fees by the OSC for oversight of the IDA operations.
Duplicate participation fees within families of registrants	The commenter thought that tiered participation fees would lead to unfair results because two registrants within the same corporate entity could end up paying a higher combined participation fees than one registrant with the same revenue base. The commenter proposed that related parties should be able to consolidate their gross revenues for the purpose of calculating their annual participation fees. Another commenter made a similar comment. This commenter proposed that a "consolidated" fee schedule be available for related companies at least in circumstances where there are no outside shareholders.	Staff considered permitting consolidation of gross revenues of affiliated registrants but decided that the OSC should not have to tailor the formula for calculating the participation fee in order to accommodate different corporate structures. It is up to a registrant or group of registrants to determine the corporate structure that would best suit their business needs, after giving consideration to a host of factors which could include the participation fee. Also, staff believe that, by permitting registrants within an affiliated group to deduct certain payments made to each other (e.g., trailer fees, advisory or sub-advisory fees) in determining their respective gross revenues attributable to Ontario,

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		the concerns raised by these comments are somewhat mitigated.
Increasing adviser fees are subsidizing other registrants	One commenter noted that advisers will pay higher fees under the concept proposal. If the proposal is intended to reduce overall fees collected by the OSC, the commenter did not understand why advisers should pay more and not benefit from the overall fee reduction which most, if not all, other categories of registration will receive. The commenter's concern was that advisers may be subsidizing other registrants under the new fee model. Furthermore, the increase in adviser fees does not seem to add any value to the services rendered to advisers or the protection of clients. Further, the commenter noted that the participation fees paid by registrants and issuers should bear some relationship to the OSC's cost of regulation. For example, if the OSC's costs of regulating advisers represents a certain percentage of the OSC's total costs, then total participation fees paid by advisers should make up a similar percentage of participation fees collected by the OSC. This analysis does not appear to be reflected in the concept proposal.	In developing the activity and participation fees, staff analysed costs on an OSC-wide basis and on a branch by branch basis. For example, when setting the activity fee for prospectuses, the actual costs of reviewing long and short form prospectuses were analysed. Similarly, the participation fees payable by capital markets market players are based on costs incurred by the capital markets branch and the branch's percentage of OSC general overhead. While this results in some market players paying more fees and some market players paying less fees, it is a fairer method of allocating fees than arbitrarily applying different participation fees to different classes of registrants.
Shift in fees from investment funds to fund managers	One commenter stated that an assumption underlying the fee model is that the increase in registrant fees (to fund managers) resulting from participation fees is balanced by the reduction in activity fees for investment fund filings. This results in an unjustified increase in the cost of business to fund managers, while the immediate beneficiary of the fee reduction would be the unitholders of the funds. Fund managers have no ability to reduce the effect of the participation fee by raising management fees because these fees are fixed and require approval to be increased. The commenter went on to note that ultimately the investment fund or fund manager clients will end up paying the participation fee of the fund manager. The commenter's proposal was that the OSC charge a participation fee for investment funds that reflects the level of regulatory activity required for these funds, which is relatively standard for all fund participants and should lend itself to a standard charge. Two other commenters stated that the concept proposal resulted in a shift in fees from investment funds to fund managers. It was unclear to the commenters whether fund managers had any basis to charge their participation fee to their funds. If the OSC's intent is that these fees may not be charged to the funds, then there will be a	In the concept proposal, investment funds will only pay for activity fees, e.g., for prospectus filings and applications for discretionary relief. All of the other costs involved in regulating investment fund activities are included in the participation fee charged to fund managers. However, this would result in only a partial shift of the fee burden to the fund managers because, under the current fee schedule, the distribution fee that is paid by investment funds directly is indirectly shared by the funds' unitholders and the fund managers to the extent that the amount of the distribution fee reduces the fund's net asset value ("NAV"). This means reduced returns for the unitholders and, for the fund manager, a lower NAV on which to calculate its management fee. Staff's view is that the proposal is a more appropriate fee structure for this industry. Staff also believe that it is fair to impose the participation fee on fund managers (rather than on the funds which they manage), since fund managers earn revenues from managing investors' money entrusted to them. The fact that fund managers would absorb the participation fee is offset by the fact that their management fee will be calculated on a higher NAV because there will be no distribution fee to reduce an investment fund's

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	significant shifting in the burden of regulatory fees from funds to the fund manager, thus changing the economics of the industry. (Commenters: Fidelity Investments Canada Limited and Royal Bank of Canada affiliates)	NAV. The Proposed Rule clarifies that the participation fee payable by fund managers cannot be charged directly to investment funds. However, there is nothing to prevent fund managers from recouping participation fees by seeking unitholder approval to increase the management fees payable by investment funds.
Gross revenue may not be the most relevant indicator of a registrant's use of the capital markets	One commenter was unable to assess the staff conclusion that gross revenue is the most relevant indicator of a registrant's use of the capital markets because the basis for staff's choice is not set out in the concept proposal. The commenter thought that a more appropriate indicator would be value of securities or assets under administration. The commenter also noted that income allocation may not directly relate to a registrant's participation in Ontario's capital markets but may instead reflect the registrant's business structure. Gross revenues will generally be allocated to the province where the registrant has its head office. Thus, if the registrant's head office is in Ontario, revenue would be allocated to Ontario even if the revenue was earned from activities outside of Ontario.	Before deciding on gross revenue as the basis for calculating the participation fee, staff considered its advantages and disadvantages relative to those of using "asset under administration" for that purpose, from the perspective of both the OSC and the market players. Staff determined that there are more advantages and less disadvantages to using gross revenue as opposed to using assets under administration. Staff understand that federal tax laws prescribe the manner of determining the percentage of revenue that a business entity (including a player in the capital markets) earned/generated in each of the Canadian jurisdictions, and require the business entity to indicate such percentage on its income tax return. Based on that information, the income tax paid by the business entity is apportioned to all the other Canadian jurisdictions where the taxable revenue was earned/generated. On many occasions, market players invoke federal tax requirements as a basis for obtaining discretionary relief from Ontario securities law, and the OSC has invariably accepted such arguments. The OSC should also be able to rely on the same federal tax requirements in determining a market player's gross revenue attributable to Ontario, for the purpose of calculating the participation fee payable by the market player.
	Another commenter stated that using gross revenues presupposes that there is a correlation between revenues and services provided to a registrant. The gross revenue approach penalizes firms that are small in terms of product lines, number of clients and number of employees, relative to the amount of revenue generated. Under the concept proposal, its fees would increase from $15K to $50K. Commenter believes that the increased fee exceeds the cost of services provided to it by the OSC.	Staff has already explained elsewhere the correlation between a market player's gross revenue and the services provided by the OSC to ensure that the market player continues to earn revenue in a capital market that is efficient and has the confidence of all market participants, including public investors.

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	Another commenter thought that the OSC should provide guidance on how revenue is to be appropriately allocated. The commenter refers to Appendix E of the concept proposal which indicates that, for the purpose of determining the participation fee, non-resident registrants that do not pay tax must allocate a proportion of total revenue generated from Ontario residents. The commenter believes that it would be unfair to require this from non-resident registrants and not to permit those who do pay tax in Ontario to do the same allocation of revenue.	Since the OSC is prepared to accept the allocation of gross revenue among Canadian jurisdictions in the manner prescribed by federal tax laws as a basis for determining gross revenue attributable to Ontario, staff believe that it is not necessary for the OSC to provide guidance for such purposes. Moreover, item 7 of Appendix E will be revised to state that, for non-resident and international registrants, gross revenue attributable to Ontario will be based on the proportion of total revenues generated from "capital markets activities" in Ontario. Such term is defined in the Proposed Rule to "include trading in securities, providing securities-related advice, portfolio management, and investment fund management and administration".
	A further commenter said that the use of gross revenue does not recognize the different sources of revenue and their relationship to regulatory activity. This may result in a larger proportionate amount of fees being allocated to fund managers that include institutional funds (vs. conventional mutual funds) in their business. Commenter believes that institutional funds require less regulatory oversight than mutual funds, and that this should be taken into account in setting fees.	The fact that a fund manager deals exclusively, substantially or partially in retail funds or institutional funds should not make a difference in the amount of the participation fee that the fund manager pays. The primary rationale for the participation fee is that the regulatory activities of the OSC enable the fund manager to use (and enjoy the benefits of) a capital market that is efficient and in which all market participants (and investors) have a great deal of confidence.
	Another commenter thought that the fee model did not contemplate a situation where a registrant may earn significant revenues that are not attributable to capital markets activity. For example, certain financial institutions carry on numerous non-capital market activities which generate significant revenues. Registrants should not be penalized because of their corporate structure. Further, the commenter questions whether it is appropriate from a jurisdictional perspective for the OSC to levy fees on revenues generated from activities unrelated to the Ontario markets. The commenter's proposal is to allow registrants that earn gross revenues from activities that are not related to capital market activities to deduct those revenues in calculating participation fees.	The definition of "Gross Revenue" in note 1 under Notes and Instructions - Part III of Form 13-502F3 (Appendix E of Concept Proposal) has been revised to "the sum of all revenues *earned from capital markets activities and* reported on a gross basis as per the audited financial statements in accordance with GAAP". The term "capital markets activities" is defined as indicated above.

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	A further commenter thought that the legal and financial structure of a registrant may not accurately represent where the fee revenue is derived from. For example, while the fees generated from distribution of Royal Mutual Funds ("RMF") result from investments of residents in all provinces, RMF is taxed 100% in Ontario because its sole place of business for tax purposes is Ontario. The commenter suggests that a more appropriate measure is the relative provincial allocation of the fees generated from the distribution of RMF - 41% of which is distributed to Ontario residents. Another commenter stated that its Ontario tax return specifies that 100% of its revenues are attributable to Ontario, which is where it has one permanent establishment. This commenter pays tax in Ontario based on worldwide revenues. A third commenter also advised that it attributes 100% of its gross revenues to Ontario. This commenter suggested using gross revenues as the basis for the participation fee, but allocating the amount payable to each province by the proportion of total assets held by clients in each province, based on client account addresses.	As previously stated, the OSC will rely on the percentage stated on a market player's income tax return, pursuant to federal tax laws, which indicates the portion of taxable revenue earned/generated in Ontario and other provinces (if any). If, under federal tax laws, less than 100% of a market player's revenues can be properly determined as having been earned/generated in Ontario, then its income tax return should state a percentage that is less than 100%. Staff believe that the other issues raised by these comments can be adequately addressed by the revised definition of "gross revenue" and by the definition of "capital markets activities" as stated above. With regard to fund managers, their gross revenues will be earned in Ontario if their fund management activities are carried on in Ontario, whether or not the assets of the funds they are managing are located in or obtained from Ontario.
	Another commenter was concerned that it would be subject to double fees if another regulator (e.g. the SEC) decided to assess the commenter based on revenues related to clients in their jurisdiction. The commenter suggested that a more appropriate revenue base would be revenues generated from Ontario residents.	In response to the first comment, staff believe that a market player which carries on activities in multiple jurisdictions should be prepared to pay the cost of doing business in multiple jurisdictions. As for the second comment, staff believe that "capital markets activities" in Ontario should be the determining factor for the participation fee.
Tiering of participation fees	One commenter thought that the tiered participation fees were too broad and all encompassing and that the current participation fee schedule would lead to registrants with largely divergent gross revenues paying the same participation fee. The commenter's proposal was to replace the "tiers" with a fixed percentage of revenue (similar to the Mutual Fund Dealers Association). A fixed percentage of revenue would be payable within defined tiers, as opposed to having a fixed dollar amount payable within each tier. Another commenter also thought that the participation fee tiers were too broad. This commenter would replace the "fixed tier" approach with a "declining tier" approach. Under the latter approach, a fixed percentage of revenue would be payable within defined tiers. At each progressive revenue tier, the percentage of revenue that would be payable as the participation fees would decrease. The proposed model alleviates the obvious unfairness that arises under the "fixed tier" approach. A further commenter thought that the participation fee tiers are too wide and that the levels of fees charged are too high at the low end and too low at the high end.	Staff decided on a few "broad tiers", as opposed to more and narrower tiers, in order to ensure that the OSC would have a reasonably stable revenue stream irrespective of market conditions. It is for the same reason that staff decided on fixed dollar amounts, rather than percentages, within tiers. The OSC must, at all times, have the financial resources to perform its regulatory function and fulfill its statutory mandate.

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Deductions from participation fees	One commenter thought that the model was unfair, because many mutual fund companies have financed the commissions payable to dealers from the sale of deferred charge units through securitisation vehicles that are not registrants. While the revenue may initially show on the mutual fund company's income statement, it is then paid to the securitisation vehicle. The commenter proposed that there be a deduction for amounts payable to securitisation vehicles.	The deductions from gross revenues for payments made to other registrants in Ontario are intended to avoid double charging of the participation fee on the same revenues. They are not intended to reduce the participation fee payable by a registrant for any revenue that is subsequently paid out to other entities, even if they are not registered in Ontario. Accordingly staff do not propose to allow a deduction for revenues paid by fund managers to unregistered securitisation vehicles or for revenues paid to advisers or sub-advisers not registered in Ontario.
	The same commenter said that no deduction had been provided for commissions payable by mutual fund companies to dealers for the sale of deferred charge units. The commenter proposed that a deduction be provided in order to eliminate the double counting that otherwise arises. The commenter also requested confirmation that the deduction for trailer fees paid to another registrant in Ontario can be made, even if the individual advisers or investors in respect of whom the trailer fees have been paid are non-Ontario residents.	With respect to the comment relating to the sale of deferred charge units, staff realize that, where an investment fund sells units on a deferred sales-charge basis, the fund manager pays to the dealer the commissions that should have been paid by the investors. It is for this reason that a deduction is permitted for "redemption fees earned upon redemption of units sold" on a deferred sales-charge basis. The residence of a client in respect of which a trailer fee is paid to an Ontario registrant is not a relevant consideration in the deductibility of the trailer fee from the gross revenue of another Ontario registrant.
	A further commenter noted that, by not permitting a deduction for sub-advisory fees paid to non-registrant advisors (e.g. international sub-advisors with expertise in foreign markets), the proposal effectively penalizes advisers who seek investment expertise outside of Ontario.	If, by using the services of foreign advisers, a fund manager is able to increase the NAV of the fund it is managing, the return to investors would be improved and the fund manager's management fee that is calculated on the fund's NAV would increase. Staff believe that a fund manager's decision whether or not to use the services of a foreign adviser is a business decision, and the cost (if any) of such decision should be borne by the fund manager.
Activity fees for mutual funds	Two commenters stated that in many cases, a single prospectus covers a number of mutual funds. Both commenters thought that this should significantly reduce the amount of work required to review the prospectus on a per fund basis. One commenter suggested that some form of discount should be available where a single prospectus covers a number of mutual funds. The other commenter suggested that one flat fee be charged for the first fund, with a lower fee for each additional fund under the same prospectus. This commenter suggested that this model is already in use in other jurisdictions of Canada.	In developing the proposed activity fees for mutual funds, staff analysed in detail the OSC's costs relating to mutual fund prospectus review. The total costs were then divided by the number of public mutual funds. As a result, the OSC's cost per mutual fund does not decline based on the number of mutual funds that are included in a single prospectus document. Also, contrary to what the commenters stated, combining the prospectuses of two or more mutual funds in a single

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		voluminous prospectus document does not, in fact, reduce the amount of staff time and effort necessary to review them. For example, whether staff is reviewing the prospectus of one mutual fund or the prospectuses of 20 mutual funds in a single document, staff still has to complete the initial review and do a comment letter within the same 10-business day period that is normally intended for the review of one prospectus. The use of multiple-fund prospectus documents simply means that staff have to work longer hours to meet timing expectations.
Duplication of activity fees with the *Commodity Futures Act*	Two commenters asked for clarification regarding whether activity fees would be charged twice if the firm or individual is registered under both the *Securities Act* ("SA") and the *Commodity Futures Act* ("CFA") The commenter's proposal was that these fees should not be duplicated.	With respect to non-registration-related activity fee, whether or not there would be a fee duplication would depend on the activity for which the fee is being levied. For example, if a SA/CFA registrant applies for concurrent relief from a SA requirement that has an equivalent CFA requirement, a single activity fee may be appropriate. However, if the application is for relief from one SA requirement and also from a separate and distinct CFA requirement, then two activity fees would be appropriate. With respect to the registration-related activity fees, the proposed Companion Policy 13-502CP (the "Proposed Policy") clarifies that, if a concurrent application for registration or for an exemption from a registration-related requirement is made pursuant to both the CFA and the SA, there will only be one activity fee levied for the concurrent applications. Where the applications are not made concurrently, the appropriate activity fee payable pursuant to either the CFA or the SA will be levied.
Drafting comments	One commenter wanted clarification that mutual funds and pooled funds would not be required to pay a participation fee.	It is clear in the Proposed Rule that investment funds (i.e., mutual funds, non-redeemable investment funds, or scholarship plans) are not subject to participation fees payable by CM Market Players (as that term is defined in the Notice) . It is the investment fund managers who would be subject to such fees. However, if an investment fund does not have an investment fund manager, the investment fund would be subject to the participation fees payable by CF Market Players (also as defined in the Notice).

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	A second commenter was concerned that the words "limited solely to those that represent the recovery of costs" have profit or loss implications that would prevent deduction for "administration fees" if, for example, a third party made a profit from such fees. (Commenter: Fidelity Investments Canada Limited)	The Proposed Policy clarifies that the words "limited solely to those that represent the recovery of costs" mean that a fund manager will not be permitted to make a deduction for more than the amount of "administration fees" it has paid on behalf of an investment fund. In staff's view, the words have nothing to do with whether or not a third party made a profit from the fees paid to it by the fund manager on behalf of the mutual fund.
	The same commenter also was unclear as to when rent and advertising would ever be charged to a mutual fund, other than (in the case of rent) as part of transfer agent charges. The commenter was unclear why rent would be specifically mentioned; many other costs relate to transfer agent functions, including salaries, system costs, etc.	The Proposed Policy clarifies that transfer agent charges mean the amount of fees/charges paid to the transfer agent.
	One commenter requested clarification as to whether the late filing fee of $100 per day for activity fees related to business days or calendar days.	The Proposed Rule states clearly that the late-filing fee relates to business days and not to calendar days. Staff do not think it is appropriate to charge a late per diem fee for a day on which it is not possible to make a filing through SEDAR.
	One verbal corporate finance commenter questioned when the first participation fees are payable. For example, if we implement the new fee schedule on April 1, 2002 and a reporting issuer has a December 31 year end, would the issuer be required to pay prorated participation fees (presumably 9/12) for the period from April 1, 2002 to December 31, 2002 or would the participation fees not kick in until the following year?	The transition provision of the Proposed Rule makes it clear that participation fees will be prorated in the first year of implementation of the new fee model. For example, if the new fee schedule comes into effect on April 1, 2003, an issuer with an October year end will be required to pay 7/12 of the applicable participation fee for that year.
	One verbal commenter questioned whether The Canadian Ventures Exchange ("CDNX") is considered to be a stock exchange for fee calculation purposes. Apparently the concept proposal is inconsistent. In some places, the term "Canadian stock exchange" is used – which would presumably include CDNX. In others, the term stock exchange is used more narrowly (inferring The Toronto Stock Exchange only)	The Proposed Rule uses the term "marketplace" as defined in National Instrument 21-101 Market Operations, which covers both CDNX and TSX.
	A further verbal commenter questioned whether the definition of equity securities included in the participation fee calculation was limited to listed securities that carry residual rights.	The Proposed Rule defines "equity securities" as having the same meaning ascribed to it in subsection 89(1) of the Act.