Chapter 5

Rules and Policies

5.1.1 Notice of Final Rule and Policy - 13-502 Fees and Companion Policy 13-502CP, Notice of Revocation of Sched. 1 to Reg. 1015 and Notice of Amendments to Reg. 1015, Policy 12-602, OSC Rules 45-501, 45-502 and 45-503 and Companion Policy 91-504CP

NOTICE OF FINAL RULE AND POLICY UNDER THE SECURITIES ACT
RULE 13-502 FEES, INCLUDING
FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4 AND
COMPANION POLICY 13-502CP

AND

NOTICE OF REVOCATION OF SCHEDULE 1 TO REGULATION 1015
MADE UNDER THE SECURITIES ACT, AND NOTICE OF AMENDMENTS TO REGULATION 1015 MADE UNDER THE SECURITIES ACT, POLICY 12-602, OSC RULES 45-501, 45-502 AND 45-503, AND COMPANION POLICY 91-504CP

Introduction

The Ontario Securities Commission (the "Commission") has, under section 143 of the *Securities Act* (Ontario) (the "Act"), made Rule 13-502 Fees (the "Rule") as a rule under the Act, and has adopted Companion Policy 13-502CP (the "Companion Policy") as a policy under the Act. The Rule contains forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4 (collectively, the "Forms").

The Rule and other required material were delivered to the Minister of Finance on December 20, 2002. If the Minister does not reject the Rule or return it to the Commission for further consideration by March 5, 2003, or if the Minister approves the Rule, the Rule will come into force on March 31, 2003. The Companion Policy will come into force on the date that the Rule comes into force.

Concurrently with making the Rule, the Commission has, by regulation, revoked Schedule 1 (the "Fee Schedule") to Regulation 1015 of the Revised Regulations of Ontario, 1990 (the "Regulation"), and revoked Forms 42, 43 and 44 of the Regulation and their corresponding filing requirements. See "Amendments to Regulation" below. The amendments to the Regulation will be effective when the Rule comes into force.

Also concurrently with making the Rule, the Commission has made non-material amendments to Policy 12-602, Rules 45-501, 45-502 and 45-503, and Companion Policy 91-504CP (the "Consequential Amendments") in order to delete references to fees formerly payable under the Fee Schedule. See "Amendment of Rules" below. The Consequential Amendments will come into force on the date that the Rule and the Forms come into force.

Substance and Purpose of the Rule and the Companion Policy

The Rule and Companion Policy are intended to replace the Fee Schedule with a new fee regime 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.

The Rule requires the payment of "participation fees" and "activity fees". Participation fees are generally intended to represent the benefit derived by market players participating in Ontario's capital markets. All market players, including reporting issuers, registrants and mutual fund managers, will be required to pay participation fees annually. The participation fee will be based on a measure of the market player's size which is intended to serve as a proxy for the market player's use of the capital markets. Participation fees will be based on the cost of a broad range of regulatory services which cannot practically or easily be attributed to individual activities or entities. For reporting issuers, the participation fee will replace most of the continuous disclosure filing fees and for registrants the participation fee will replace many of the smaller activity fees charged to registrants relating to changes in their registration or to their mutual fund prospectuses during a year and certain related fees.

Activity fees, on the other hand, are intended to represent the direct cost of OSC staff resources to take a specific action or provide service requested by a market player (for example, reviewing prospectuses and applications for discretionary relief or processing registration documents). Activity fees will be charged for a limited number of activities only and will be flat rate fees based on the average cost to the OSC of providing the service.

The Rule refers 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 refers to schedules of activity fees for CF Market Players and CM Market Players.

The Fee Schedule has been in place since 1990. It includes approximately 60 provisions (many with numerous sub-provisions) relating to the calculation of various fees to various market players. It is a complex fee schedule which is both difficult to interpret and difficult to regulate. As part of the OSC becoming a self-funding corporation in the fall of 1997, the OSC committed to the Government of Ontario that it would reduce its fees so that fees collected by the OSC would more closely match expenditures incurred by the OSC. As a first step in this process, the OSC eliminated the secondary market fee. As the second step in this process, the OSC implemented a 10 percent across-the-board reduction in its current fees effective August 4, 1999. As the third step in this process, the OSC implemented a 10 percent across-the-board reduction in its current fees effective June 26, 2000. The Rule is the next step in this process.

The Rule establishes a new fee model, which is essentially and substantially the same as the fee model described in the Concept Proposal and the June Materials, except as described below.

Estimated Impact of the Rule by Sector

Overall, the new fee model, in combination with the two 10 percent fee reductions already implemented, is expected to decrease revenues to the OSC by $ 40 million or 40 percent relative to the revenues that would have been generated by the Fee Schedule.

Much of this decrease in revenues has already been experienced by the OSC as a result of the two across-the-board 10 percent decreases already implemented. Implementation of the new fee model will redistribute the effect of the across-the-board decreases because the new fee model attributes costs more equitably among market participants and ties fees more closely to underlying costs.

Although market participants will generally pay less than they would have under the current fee model, the effect will vary across groups of market participants and within groups as well. This results from the fact that the current fee model is based entirely on activity charges. The new fee model, however, recognises that even though a number of market participants don't create activity directly for the OSC, they do benefit from the broad range of initiatives the OSC undertakes in carrying out its mandate.

The following table sets out the average expected change (compared with the current fee model) in fees to be paid in some important market sectors:

Market Sector	Mean $ Change
IDA	
<$25M *	(3,331)
>$25M *	(15,010)
Full Sector	(9,171)
ICPM	
<$25M *	(16,732)
>$25M *	(654,880)
Full Sector	(314,535)
MFD	
<$25M *	($18,832)
>$25M *	($684,526)
Full Sector	($312,520)
Issuers	$1,312

* Gross Revenues attributed to Ontario

Explanatory Notes

1. There was no clear pattern of net increasing or decreasing fees paid among the Investment Dealer Association members. The current fee model is not tied directly to the costs borne by regulators or to the benefits to registrants of participation in the market. Consequently, smaller firms frequently pay more fees than dealers several times larger. The new fee model will mean substantially lower fees for the majority, significant increases for a few and a much closer connection with the costs and benefits of regulation for both groups.

2. Few firms fit neatly into the Investment Counsellor/ Portfolio Manager (ICPM) or Mutual Fund Dealer (MFD) categories. Many of these firms manufacture mutual funds as well. Many firms that only perform ICPM or MFD activities pay relatively little in the way of fees or none at all. As a result, even a modest fee structure represents a very large percentage increase. This tends to skew the percentage changes upward. Mutual Fund manufacturers, even though most of their activities are very similar to others in the group, pay very high issuance fees, frequently in excess of $3 million. This group will see a large absolute decline in the dollar value of their fees paid, generating a large net decline on average.

3. Similar to the point made in 1 above, issuers who access the market will see a substantial decline in fees paid, for many, in the millions of dollars. Others, who do not access the market in the survey period, currently pay very low fees. When those issuers do come to market, regulatory fees will be much lower than they would have been under the current fee model. With the shift to a continuous disclosure regime, the fees paid by those not accessing the markets in any given year do not cover the costs borne by the OSC or the benefits received from a liquid market. The new fee model more clearly aligns OSC costs and issuer benefits from a continuous market.

The example below may help to illustrate the point. Based on the level of activity in the markets, ABC and DEF are roughly equal. Under the current fee model, DEF pays over 16 times the fees paid by ABC. Under the new fee model, fees are brought more into line. However, the $57,000 saved by DEF represents a 46 percent drop while the $42,500 increase for ABC translates into a 567 percent increase. As a percentage of revenue, the impact on ABC is actually lower, but relative to the current fee model, the impact appears to be substantially higher. Consequently, the average dollar decline in fees is more representative for the impact on the sector of the proposed new fee model.

Category	Registrant	Revenue	Current Fees	Proposed Fees	Variance	Change
ICPM	ABC Funds	$24 million	7,500	50,000	42,500	567%
MFD/ICPM	DEF Funds	$25 million	124,302	67,700	(56,602)	-46%

Background

On March 30, 2001, the Commission published for comment a concept proposal (the “Concept Proposal”) for revising the Fee Schedule at (2001) 24 OSCB 1971. As a result of staff’s consideration of the comment letters received on the Concept Proposal, its recommendations to the Commission and the deliberations of the Commission, a proposed draft of the Rule and Companion Policy were published for comment on June 28, 2002 (the “June Materials””). The notice that accompanied the June Materials advised that the proposed Rule was essentially and substantially the same as the fee model described in the Concept Proposal, with a few exceptions.

The Commission received submissions on the June Materials from 18 commentators during the 90-day comment period from June 28, 2002 to September 27, 2002. Appendix A to this Notice is a list of those who provided comments. The Commission is of the view that none of the revisions made by it to the Rule from the June Materials, including those resulting from the latest comments received on the June Materials, are material. Accordingly, the Rule is not subject to a further comment period. For a summary of these comments and the Commission’s response, please see Appendix B to this Notice.

Summary of Changes to the Rule

This section describes changes made to the proposed Rule, proposed Forms and proposed Companion Policy published for comment in June 2002, except that changes of a minor nature, changes made only for purposes of clarification or drafting changes, are generally not discussed.

The changes made are not material changes.

Part 1 Definitions

“capital markets activities” has been amended to clarify that it pertains only to registrable activities, activities that are exempt from registration and investment fund management and administration.

Part 2 Corporate Finance Participation Fees

Subsections 2.3(2) & (3) of the Rule were amended to allow certain Class 3 reporting issuers who calculate their CF Participation Fees under paragraph 2.7(b) of the Rule, to pay the CF Participation Fees for a financial year on the basis of a good faith estimate of its capitalization as at the end of that financial year, and subsequently calculate its CF Participation Fees when it files its annual financial statements for the applicable financial year.

Paragraph 2.5(b) of the Rule was amended to capture in the calculation of the capitalization for Class 1 Reporting Issuers the corporate debt of any of its subsidiary entities exempted by subsection 2.2(2) from paying CF Participation Fees.

Paragraph 2.6(c) of the Rule was amended to contemplate non-corporate issuers, by adding 'owner's equity' to the item 'share capital'.

Paragraph 2.7(b) of the Rule was amended to provide that the calculation of the percentage of the capitalization of a Class 3 reporting issuer that has no debt or equity securities listed or traded on a marketplace located anywhere in the world, attributable to Ontario persons would be based on the percentage of outstanding equity securities of the Class 3 reporting issuer registered in the name of, or held beneficially by, Ontario persons.

Part 3 Capital Markets Participation Fees

Section 3.1 of the Rule was amended to clarify that CM Participation Fees for registrant firms are payable in advance for the upcoming calendar year based on the previous year's annual financial statements

Section 3.3 of the Rule was amended to require registrant firms to file a Form 13-502F3, in relation to CM Participation Fees, by December 1 of each year for payment of the CM Participation Fees referred to in section 3.1 of the Rule by December 31 of each year.

Section 3.3 of the Rule was further amended to allow registrant firms to file a good faith estimate of their Specified Ontario Revenues on December 1 and make a payment based on this estimate on December 31. This section also provides for a readjustment of the fee when the financial statements of the registrant firm have been completed.

Paragraph 3.6(1)(a) of the Rule was amended so that it refers to the "gross revenues *'earned from capital markets activities'* of the registrant firm…"

Paragraph 3.6(3)(a) of the Rule was amended so that it refers to both "advisory fees" and "sub-advisory fees".

Section 3.8 of the Rule was deleted so that an investment fund manager is no longer precluded from passing the cost of its CM Participation Fees to the investment funds (and their securityholders) under its management.

Part 5 Currency Calculations

Section 5.1 was amended to specify that currency calculations should use the daily noon exchange rate posted by the Bank of Canada.

Part 7 Effective Date and Transitional

Paragraph 7.2(3) of the Rule was deleted. The phase in time for registrant firms is no longer necessary.

Appendix A – Corporate Finance Participation Fees

To clarify that a reporting issuer with zero capitalization is still subject to CF Participation Fees, the appendix was amended to specify "$0 to under $25 million."

Appendix B – Capital Markets Participation Fees

To clarify that a registrant firm and an unregistered investment fund manager with zero Specified Ontario Revenues is still subject to CM Participation Fees, the appendix was amended to specify "$0 to under $500,000."

Appendix C – Activity Fees

A new activity fee was added to Appendix C for an exempt distribution of securities of an issuer not subject to a participation fee. A new activity fee of $2,000 has been added for reports of exempt distributions in Form 45-501F1. This fee was proposed in the Concept Proposal, but mistakenly omitted from the June Materials.

A new activity fee of $500 was added to Appendix C for an application for recognition, or for renewal of recognition, as an accredited investor as defined in Rule 45-501. This filing fee formerly appeared in Rule 45-501. Staff decided that it is appropriate that all fees appear in the Rule, for ease of reference.

The activity fee for filing of a prospecting syndicate agreement was reduced to $500, after consultation with the OSC technical consultant.

The activity fee for applications for discretionary relief was amended to exclude applications by limited market dealers under section 147 of the Act.

The registration-related activity fee for a new registrant firm as a result of an amalgamation was amended to include "…the continuation of registration of an existing registrant firm…" resulting from or following an amalgamation of registrant firms.

Forms

Item 3 in the Notes and Instructions of Form 13-502F1 was amended to specify that currency calculations should use the daily noon exchange rate posted by the Bank of Canada.

Item 2 in the Notes and Instructions of Form 13-502F3 was amended to permit non-resident registrants and unregistered foreign fund managers to use equivalent principles to Canadian GAAP with respect to reported "components of revenue".

Form 13-502F4 was created to allow for the calculation, at the time that its annual financial statements have been completed, of the participation fee owing by a registrant firm who has filed a good faith estimate under subsection 3.3(4) of the Rule.

Companion Policy

Section 2.5 entitled Indirect Avoidance of Rule was added to Part 2 to clarify that the Commission may examine arrangements or structures implemented by market participants and their affiliates that raise the suspicion of being structured solely for the purpose of reducing the fees payable under the Rule.

Subsection 3.3(1) in Part 3 was amended to provide further clarification of paragraph 2.5(b) of the Rule.

Section 3.4 was inserted in Part 3 to provide further clarification of paragraph 2.7(b) of the Rule.

Section 4.1 of Part 4 was amended to describe and provide examples of the revisions in Section 3.3 of the Rule requiring registrant firms to file a Form 13-502F3, in relation to CM Participation Fees, by December 1.

Section 4.3 was added to Part 4 to clarify that unregistered fund managers will make filings and pay fees under Part 3 of the Rule by paper copy to the OSC, Investment Funds.

Section 4.4 was added to Part 4 to provide further explanation of the definition of "capital market activities".

Section 4.5 was added to Part 4 to provide further clarification of the term "owner's" equity, used in section 2.6 of the Rule.

Authority for the 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 Rule and Companion Policy, the OSC has not relied on any significant unpublished study, report, decision or other written materials. However, as disclosed in the Concept Proposal, 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).

Amendments to Regulation

The purpose of the Rule and Companion Policy is to substantially replace the fee model under the current Fee Schedule. Accordingly, the Commission will revoke the Fee Schedule upon the adoption of the Rule, which establishes the new fee model proposed in the Concept Proposal and June Materials.

Forms 42, 43 and 44 under the Regulation will also be revoked since these forms relate to fees that will no longer be payable under the new fee model under the Rule. The corresponding filing requirements in the Regulation for these forms will also be revoked.

Amendment of Rules

Certain existing rules and policies refer to the Fee Schedule or to fees that are payable under the Fee Schedule. Since the Fee Schedule will be revoked when the Rule comes into force, it is necessary to delete references to fees payable under the Fee Schedule. Accordingly, the Commission has, under section 143 of the Act, made a rule that amends Rules 45-501, 45-502 and 45-503.

It is the view of the Commission that the amendments to Rules 45-501, 45-502 and 45-503 merely remove fees and references to fees that will no longer be payable upon the implementation of the Rule. Accordingly, the Commission is of the view that these amendments consist only of the removal of requirements and accordingly are not likely to have a substantial effect on the interests of persons or companies subject to Rules 45-501, 45-502 and 45-503 other than those who benefit from the amendments.

The Commission has also made minor amendments to Policy 12-602 and Companion Policy 91-504CP in order to delete references to fees payable under the Fee Schedule, and replace them with references to the Rule, as necessary. It is the view of the Commission that the amendments to Policy 12-602 and Companion Policy 91-504CP do not result in any material substantive change to any existing policy.

The Consequential Amendments will come into force on the same date that the Rule and Forms come into Force. The text of the Consequential Amendments can be found in Appendix C.

Text of Rule and Companion Policy

The text of the Rule and Companion Policy follows. Staff is currently working on a parallel rule to be made under the Commodities Futures Act (the "CFA"). Staff anticipates that this Rule and Companion Policy under the Act will be amended to address consistency issues with the CFA rule at that time.

Questions

Questions may be referred to:

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APPENDIX A
TO
NOTICE OF FINAL
RULE 13-502 – FEES, INCLUDING
FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4, AND
COMPANION POLICY 13-502CP – FEES

LIST OF COMMENTERS

1. Aegon Canada Inc.
2. Barclays Global Investors Canada Limited
2. BMO Investments Inc.
3. Canadian Bankers Association
4. Capital Guardian Trust Company
5. Capital International Asset Management (Canada), Inc.
6. Canadian Imperial Bank of Commerce
7. Fidelity Investments
8. Franklin Templeton Investments Corp.
9. Guardian Group of Funds
10. The Investment Funds Institute of Canada
11. Investors Group Inc.
12. Potash Corporation of Saskatchewan Inc.
13. Power Corporation of Canada
14. Royal Bank of Canada
15. Scotia Securities Inc.
16. Stikeman Elliott – William J. Braithwaite
17. Stikeman Elliott – Kenneth G. Ottenbreit
18. Torys – Glen R. Johnson

APPENDIX B
TO
NOTICE OF FINAL
RULE 13-502 – FEES, INCLUDING
FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4 (the "Proposed Rule"), AND
COMPANION POLICY 13-502CP – FEES (the "Proposed Policy")

Theme	Detailed Comments and Arguments	Response
Support for certain features of new fee model	One commenter expressed support for the segregation of corporate finance and capital markets sectors of the securities industry in the new fee model. In this commenter's view, the "participation" and "activity" fee approach reflects the underlying regulatory responsibilities of ongoing oversight and activity specific review across Ontario's securities market. The commenter acknowledged that the fee proposals will have different impact on different market participants, and expected opposition from those whose fees will rise. The commenter also expected its own direct fees to rise under the new fee model. Still, the commenter expressed support for an approach that "sees fees tied to OSC costs" and did not think that the "approach can be convincingly opposed on principle". The commenter expressed the hope that the increase in fees (for certain market participants such as itself) would be offset by a decrease in their current compliance costs by the elimination of certain current filing fees. Another commenter expressed support for the • flat activity fee per fund family, including the flat fee for prospectus lapse date extensions regardless of the number of funds within the same prospectus; • flat prospectus renewal fee per fund with no additional fees determined upon proceeds of sales in Ontario; and an "all-encompassing" participation fee that, in turn, eliminates the current fees for a number of registration-related filings. Yet another commenter acknowledged that fund managers would be adversely impacted by the Proposed Rule because the burden of the capital markets participation fee would be shifted from mutual funds to the fund managers. Still this commenter believed that this result would be offset by reduced fees payable by other registrants. This commenter expressed support for the new fee model, believing that "it will reduce the overall fees charged to capital markets participants".	The OSC appreciates the commenters' support for its efforts to rationalize the fees charged to market participants.
Harmonization with other Canadian jurisdictions	Some commenters reiterated their previous comments about the "absolute necessity" for harmonizing the fee regimes of the various Canadian securities regulatory authorities Three commenters expressed concern that harmonization of fees across jurisdictions would be difficult to achieve. This is because the Proposed Rule requires a determination of capital markets participation fees ("CM Participation Fees") by an allocation methodology that would be disadvantageous to the other jurisdictions and,	The OSC believes that the new fee model in the Proposed Rule has a sound and reasonable basis and overall results in a reduction in the fees payable by market participants. For this reason, the OSC does not consider it to be in the best interest of investors and market participants generally to delay the implementation of the Proposed Rule until full harmonization of fees across jurisdictions is achieved.

Theme	Detailed Comments and Arguments	Response
	accordingly, would not be acceptable to them. One of the commenters argued that, unless there is change in other jurisdictions, certain market participants would continue to unfairly bear the compliance costs of others. This commenter believes that "the OSC's approach to fees is correct on principle and should be adopted by other Canadian securities regulators immediately".	
Currency calculations	One commenter noted that the reference to "the exchange rate posted by the Bank of Canada website on the day for which the calculation is made" in section 5.1 of the Proposed Rule should be more specific.	Section 5.1 of the Proposed Rule has been revised to specify that the daily noon rate should be used as the appropriate exchange rate.
Director's discretion to grant exemption	One commenter reiterated its previous comment that there be more discussion of the situations where reductions or refunds to the participation fee will be considered by the Director or Executive Director in exercising their discretion.	The issue of refunds is addressed in section 2.4 of the Proposed Policy. With respect to exemptions, certain factors that might be considered relevant are financial hardship, payment of fee would result in undue detriment or unfairness to the person or company that owes the fee, whether or not an issuer is subject to continuous disclosure obligations, etc. The OSC also reiterates that the exercise of the discretion to grant relief will be rare and will be based on the facts and circumstances of a particular situation.
Other market participants bear no regulatory cost	Some commenters stated that the Proposed Rule "ignores other market participants such as insurance companies and pension funds who benefit from the regulation of Ontario's capital markets but would not be bearing any cost for their market participation".	Neither the insurance industry nor the pension industry is subject to regulation by the OSC. The OSC does not generally regulate and therefore does not impose regulatory fees on the participants in those industries. However, if an insurance company is itself a reporting issuer or otherwise engages in capital markets activities directly or indirectly, such as the management of investment funds, it would be subject to the fees prescribed by the Proposed Rule. As for the pension funds, they would be impacted indirectly by the fees that are payable by issuers in which they are invested.
Inactive or "special purpose" issuers	Four commenters felt that shifting the financial burden from activity fees to annual participation fees penalizes issuers, such as special purpose issuers, who make only one or very few public offerings of securities. For example, one commenter on behalf of a large reporting issuer pointed out that the issuer would see an increase in annual fees of 3000%, even though the issuer has not made a public offering since 1995. It was suggested that annual fees could be reduced for issuers that rarely access the capital markets. This could be carried out by lowering the annual fee where a reporting issuer has not paid any activity fee within the previous eighteen months, or "grandfathering" existing issuers who have not paid	The annual participation fee is intended to cover the monitoring, enforcement and administrative costs of the OSC. It is not simply a replacement for fees currently payable in connection with the distribution of securities. For example, it will replace the various existing fees payable on the filing of continuous disclosure documents. An important factor in deciding to use market capitalization as the basis for determining the annual participation fee for reporting issuers (as opposed to basing the fee on the number or value of securities distributed by an issuer)

Theme	Detailed Comments and Arguments	Response
	activity fees within the previous eighteen months, allowing them to pay reduced fees. Alternatively, one commenter asked if discretionary relief from participation fees might be granted to a special purpose issuer.	was the increasing shift of the OSC's regulatory resources away from primary distributions of securities into continuous disclosure and ongoing reviews. One commenter recognized this fact but still noted that an inactive issuer could expect its annual fees to increase dramatically under the Proposed Rule, even though the issuer is not putting any strain on the resources of the OSC. Every issuer utilizes the Ontario capital markets to a different degree. It is impossible for the Proposed Rule to precisely link the fee payable by an issuer with the amount of regulatory oversight and monitoring that the OSC carries out in connection with that particular issuer. However, it is staff's view that the Proposed Rule more accurately equates fees with OSC costs of providing services than the current fee structure, and therefore it is preferable to the status quo. In exceptional and rare cases where it would be unduly detrimental or unfair to impose a participation fee on a particular issuer, the Director may be persuaded to consider the grant of an exemption from the fee requirement, or a reduction of the fee that is otherwise payable. Factors that might be considered for this purpose could include whether the issuer is subject to continuous disclosure filing requirements and whether the issuer is insolvent or in serious financial difficulty.
Concern about large participation fee payable by significant issuers	Two commenters expressed concern that large issuers would bear a disproportionate share of the cost of regulation. One commenter submitted that an annual participation fee of $85,000 for an issuer with a market capitalization of over $25 billion is unfair, since it places a disproportionate amount of the cost of regulation on these large capitalization issuers simply because they have "deep pockets".	The use of market capitalization as the basis for determining the annual corporate finance participation fees ("CF Participation Fees") is not intended to impose fees based upon an issuer's ability to pay the fee. It was decided that an issuer's market capitalization should form the basis for calculating the participation fee because this was the most relevant indicator of the issuer's use of the capital markets. The "use of the capital markets" is not simply a reference to how often an issuer distributes securities. A relatively larger market capitalization typically means a relatively larger number of securityholders and a larger market following.
Additional fee for late payment of participation fee	One commenter expressed serious concern with the appropriateness and fairness of charging extra fees in connection with the late filing of a participation fee equal to 1% of the participation fee payable for each business day that the fee remains due and unpaid, up to a maximum of 25% of the fee otherwise payable. The commenter questioned the legality and enforceability of these late fees.	Because the new fee model attempts to match the OSC's expected revenues with expected costs, it is very important that fees are paid on time. In addition, there is additional work and cost associated with the collection of late fees. The late fee of 1% per business day up to a maximum of 25% is intended to represent a meaningful incentive to issuers and registrants

Theme	Detailed Comments and Arguments	Response
		to make their fee payment on time. The Commission has the jurisdiction to make rules prescribing the fees payable to the Commission, including those for filing, pursuant to paragraph 43 of subsection 143(1) of the Act. With respect to enforceability of the late fee, where an issuer or registrant does not make the appropriate late fee payment, that issuer or registrant will be considered to be in breach of Ontario securities law. Accordingly, the OSC would have the various enforcement and sanction powers that are available in connection with any breach of Ontario securities laws.
Calculation of market capitalization	One commenter noted that the calculation of market capitalization under the concept proposal published in March, 2001 (the "Concept Proposal") included only those classes of equity and debt securities listed on a Canadian stock exchange, whereas the Proposed Rule does not carve out unlisted securities. The commenter suggested that unlisted securities (including debt securities) be excluded from the calculation of market capitalization. The commenter argued that unlisted securities are not part of market activity and therefore, the holders should not be required to pay for oversight of those securities.	In staff's view, trading in securities that are not listed on a Canadian stock exchange can still be considered "market activity". There are a very large number of Canadian reporting issuers whose securities are not listed on any Canadian stock exchange, yet their securities are still issued to and traded by Ontario residents. In defining market capitalization for Class 1 reporting issuers, staff felt that it would be inappropriate to ignore the market for corporate debt (which is actually many times larger than the market for equity securities) in defining market capitalization, particularly since Class 2 reporting issuers must factor their long term debt into their calculation of market capitalization. It is only in the case of Class 3 reporting issuers that staff was prepared to confine the calculation of market capitalization to securities listed or traded on a marketplace. Staff felt that this different treatment was warranted because a publicly traded foreign issuer will typically be subject to principal regulatory oversight in a foreign jurisdiction. Where the securities of a foreign issuer are not listed on any marketplace, the calculation of market capitalization is the same as for a Class 2 reporting issuer.
Public companies with public subsidiaries	One commenter expressed concern that the rule results in the payment of duplicate participation fees by public companies that have public subsidiaries. The exemption provided in Section 2.2(2) is not available to the commenter as their ownership of their various subsidiaries ranges from 56% to 78%. The commenter feels that an assessment on the capitalization of each company without regard for the ownership structure results in a disproportionate share of the participation fees being paid by a corporation with subsidiaries compared to a corporation with a different corporate structure.	As the commenter is a public company, its public subsidiaries are subject to the participation fee as they are all market participants. The intention is not to charge duplicate fees; therefore, the 90% exemption found in 2.2(2) is provided for cases where essentially all of the assets and revenues of the subsidiary are the assets and revenues of the parent. In considering cases where ownership is less than 90%, staff decided that as the subsidiary is not wholly owned the cost of regulating the parent who has assets and revenues that are not essentially the same as the subsidiary are the same or more as regulating a similar corporation with no subsidiaries. As well, the cost of regulating the subsidiary is the same as the cost of regulating a similar sized corporation that has no parent.

Theme	Detailed Comments and Arguments	Response
		As the fees are based on participation in the markets, staff decided that it is appropriate to charge both the parent and the subsidiary in these cases.
Non-resident registrants	One commenter was concerned about the fact that international and non-resident dealers and advisers would be subject to the CM Participation Fees. The commenter said that such fee "does not appear to be supported by the level of OSC regulation and oversight as such registrants participate primarily in the exempt market with institutional clients". The commenter submitted that "the demands imposed on the Commission in the regulation and oversight of international dealers and advisers, most of whom are registered with the U.S. Securities and Exchange Commission or other foreign regulators, do not warrant such a radical departure from the current fee structure in respect of such registrants." To address its concerns, the commenter suggested an adjustment to the level of annual registration fees payable by non-resident registrants in lieu of the CM Participation Fees.	The OSC considered the issue of non-resident registrants being subject to the CM Participation Fees notwithstanding that they participate primarily in the exempt market with institutional clients. The OSC believes that there is no reasonable basis to treat non-resident registrants differently from other registrants (such as limited market dealers) that also operate primarily in the exempt market, by excluding non-resident registrants from the application of the CM Participation Fees. However, the OSC recognized that non-resident registrants are subject to regulation, and their revenues would be obtained primarily from activities, in their home jurisdiction. Accordingly, the CM Participation Fees of non-resident registrants are calculated differently from the CM Participation Fees of other registrants, in that the CM Participation Fees of the former would be based on the percentage of total revenues attributable to capital markets activities in Ontario. Based on the proposed calculation, the OSC believes that the fees of non-resident registrants would not be significant. The commenter's proposed alternative of adjusting the annual registration fee will not work because the OSC has already made a decision to replace it with the CM Participation Fees. As for the exempt distribution fees, the OSC stated in the Concept Proposal that issuers who pay participation fees would no longer be subject to any fee for their exempt distributions. However, issuers who do not pay any participation fee would be subject to an exempt distribution fee of only $2000. This is reflected in the new item B of Appendix C – Activity Fees.
Managers of foreign investment funds or assets pertaining to foreigners	A few commenters expressed concerns that managers of foreign investment funds (whose securities may also be privately placed in Ontario) or assets of foreign clients that are invested outside Canada would be subject to the CM Participation Fees. One commenter thought that, in respect of a foreign	After due consideration of the comment, the OSC determined not to make any change to the Proposed Rule. The OSC's intention is for the CM Participation Fees to be based on gross revenue, including revenues generated from assets pertaining to foreign investors and Ontario assets invested outside Canada.

Theme	Detailed Comments and Arguments	Response
	investment fund, the OSC would end up collecting multiple fees – i.e., the exempt distribution fee payable by the foreign investment fund for any private placement in Ontario; the participation fee payable by a limited market dealer on revenues generated from the private placement in Ontario; and the participation fee payable by the investment fund manager on revenues from providing investment management to the foreign investment fund. Anther commenter was concerned that the "participation fees will compel asset managers who advise international clients to relocate outside" Ontario.	
Investors in mutual funds should be treated the same as investors in corporate finance issuers	One commenter stated that the proposed prospectus fee for each mutual fund does not reflect the true cost of regulating mutual funds. For this commenter, since both mutual funds and corporate finance issuers are subject to the same regulatory requirements – timely and continuous disclosure filings and prospectus amendments – their securityholders should be treated the same insofar as the burden of the regulatory cost is concerned. The commenter believes that the CF Participation Fees treat shareholders of corporate issuers as indirect participants in Ontario's markets because they bear the burden of such fees. The commenter thinks that, similarly, securityholders of mutual funds should bear more of the regulatory costs than is currently contemplated by the Proposed Rule, in order to reflect their share of the true cost of the ongoing regulation of mutual funds. The commenter made the following suggestions to correct what it perceived to be a more favourable fee treatment for mutual funds under the Proposed Rule. The prospectus fees in Appendix "C: of the Proposed Rule could be amended to more accurately reflect the true cost of regulating mutual funds. Alternatively, mutual funds could be made subject to a participation fee similar to that prescribed in Appendix "A" of the Proposed Rule.	As investors in corporate finance issuers, mutual funds and their securityholders bear indirectly the fees currently paid by corporate finance issuers, and will continue to bear indirectly the participation fees and activity fees payable by corporate finance issuers under the Proposed Rule. Moreover, section 3.8 of the Proposed Rule has been deleted so that a fund manager is no longer precluded from passing the cost of its CM Participation Fees to the investment funds (and their securityholders) under its management. All in all, securityholders of investment funds will bear the burden of three fees: the participation and activity fees payable by issuers in which their fund is invested in; the participation fees of their fund's investment fund manager; and their fund's own activity fees. Accordingly, the OSC believes that there is no reason to impose a participation fee on investment funds directly or to change the activity fees that would be applicable to them.
Multiple mutual funds in one prospectus document	Some commenters said that the proposed fee for the prospectus of multiple mutual funds contained in a single document are excessive, and that some form of discount would be appropriate. In these commenters' view, "certain efficiencies must accrue with the overlap of material provisions that would be common to a family of funds". The activity fee payable should reflect the work required on the part of regulatory staff.	It is true that the use of a single document containing the prospectuses of several mutual funds (the "Multiple-Prospectus Document") could achieve certain efficiencies. It enables fund companies, for example, to obtain receipts for several prospectuses in the same amount of time that a receipt is obtained for one prospectus. However, the use of a Multiple-Prospectus Document also gives rise to filings-related problems the resolution of which invariably requires the use of the OSC's administrative (and sometimes legal) resources. These filings-related problems arise before the filing, during the processing, or following completion of the processing of a Multiple-Prospectus Document. The proposed $600 prospectus fee per fund is already 25% less than the current preliminary prospectus fee of $800 per fund (and is substantially less than the current (final) prospectus fee based on a percentage of sales

Theme	Detailed Comments and Arguments	Response
		of the funds). The fact that a Multiple-Prospectus Document contains information common to funds in the same family has not significantly reduced the work necessary to complete a review of the document. On the contrary, the review of fund-specific information of several funds, which are different from each other and could give rise to different regulatory issues, requires significantly more work to complete. When regulatory issues arise as a result of staff's review of a fund's prospectus, the amount of $600 per fund is not adequate to defray the costs (in terms of professional resources) incurred by the OSC in resolving them. The deficiency, however, is covered by the fees of other funds included in the Multiple-Prospectus Document, whose prospectuses do not give rise to regulatory problems. Accordingly, the OSC cannot accept the commenters' suggestion that the proposed prospectus fee be reduced for Multiple-Prospectus Documents.
Fees on exempt affiliate	One commenter said that the Proposed Rule indirectly imposes fees on its exempt affiliate. This commenter manages the asset of its affiliate, and the fees received from asset management accounts for more than 95% of its revenues. The commenter believes it is "inappropriate to levy fees on this activity which would be exempt if conducted in-house" by its affiliate.	If the affiliate's assets were to be managed by an unrelated fund or asset manager, the resulting revenues of the latter would be subject to the CM Participation Fees. The fact that the asset management is carried on by the commenter should not give rise to a different result.
CM Participation Fees and SRO members' fees	One commenter reiterated its previous comment that the fee schedule does not take into account the fees paid by SRO members. This commenter thought that much of the OSC's responsibility for regulation of dealers has been downloaded to SROs. Therefore, according to the commenter, either the OSC funds the activities of the SROs or the participation fee of SRO members should be reduced by the amount of the SRO fees. Otherwise, this commenter believes that SRO members would effectively be subsidizing other market participants that are not SRO members.	The OSC reiterates that its fees are based on its own costs of regulation. This includes the costs incurred by the OSC in carrying out oversight of SRO operations, for which no fee is being charged against the SROs in recognition of the importance of their role in securities regulation.
Impact of capital markets fees	One commenter said that smaller money managers will experience significant increases in their fees when the Proposed Rule is implemented. In the specific circumstances of the commenter, its fees would increase by 800%. The commenter said this is unreasonable.	The OSC anticipated that a small number of market participants would, under the new fee model, be paying significantly more than they are currently paying. However, a greater number of market participants would benefit from an overall reduction in the fees that they would have to pay. On this basis, the OSC believes that the new fee model is generally reasonable.
Investment fund managers or portfolio managers should be able to charge their CM	Several commenters said that the Proposed Rule will alter the contractual relationship between fund managers and the investment funds they manage (or the investors in such funds). According to these commenters, the pricing of investment products is a very technical and competitive endeavour that takes into consideration regulatory fees and many costs. By increasing the fees for regulation but	After much debate, the Proposed Rule has been revised by deleting section 3.8. By deleting this provision, an investment fund manager (whether or not registered) is no longer prohibited from passing on the cost of its CM Participation Fees to the investment

Theme	Detailed Comments and Arguments	Response
Participation Fees to the investment funds under management or to the clients of the portfolio managers	not permitting them to be passed on to the clients or investors, the OSC is upsetting the delicate and fixed pricing already established and upon which corporate budgeting is based. These commenters said the OSC staff position that fund managers may recoup participation fees by seeking unitholder approval to increase management fee is unrealistic. In their view, it is not a simple matter to seek unitholder approval or to renegotiate management fees with clients pursuant to account agreements. Unitholder meetings are expensive and will simply increase costs to funds and fund managers. Most unitholders will naturally be against any increase and private clients can refuse to re-open an investment management agreement to charge higher management fees.	funds under its management. If it does, the OSC would expect that the portion of the fee charged to each fund under management would be accounted for separately in the records of the fund and be clearly described as the fund's share of the regulatory fees paid by the fund manager. It would also be expected that the fund manager, acting in good faith and in the best interest of the funds under its management, would make a reasonable and equitable allocation of the regulatory fees among all of them. Also, the requirement of clause 5.1(a) of NI 81-102 for unitholder approval would not be necessary. This is because regulatory fees are already currently paid by mutual funds, albeit in the form of distribution fees. Since it is expected that the new fee model would generally result in an overall reduction of the fees payable by market participants, the change in the basis for calculating the regulatory fees charged to the fund should not result in an increase in charges to the mutual fund. As to whether or not fund managers can charge the cost of their CM Participation Fees to clients whose accounts are under their discretionary management, the absence of a prohibition indicates that they may also do so, without revisiting their client agreements. At the very least, though, it would be expected that any increase in the fees charged by a fund manager to its clients would be disclosed to them as their share of the regulatory fees paid by the fund manager.
Tiers of fees in Appendix B are too broad.	Several commenters reiterated previous comments about the broad tiers of CM Participation Fees as proposed in Appendix B. Although each commenter articulated specific issues , they all share the following underlying concerns • the tiers are so broad that a nominal increase in gross revenues could result in significant increase in CM Participation Fees. • Appendix B would treat participants inequitably as firms with very divergent gross revenues would bear the same amount of participation fees. Two commenters suggested that the OSC adopt a different schedule that would be more consistently proportionate and equitable. One commenter reiterated its previous suggestion that a percentage-based set of tiers be adopted, even if it may result in more fluctuation in OSC revenues. This commenter believes that the flat fees currently proposed	The proposed structure of the participation rates and tiering was designed to minimize volatility in fees to participants and revenue to the OSC. While the markets are currently in an extended downturn, the medium to long-term time trend is positive. That is, in general, revenue is on a rising trend over time. Narrower tiers would result in a more rapid increase in participation fees and OSC revenue. Conversely, during an extended downturn in the market, the OSC generally faces increasing costs, particularly in the areas of enforcement and compliance. Given that the primary purpose of the change in fee structure is to align costs with revenue, a more rapid decline in revenues, implied by narrower tiers, could put the OSC in the difficult, if not untenable position, of raising fees during a period of market participant retrenchment. Statistically, the proposed structure of the participation fee tiers most effectively balances the goals of stability in fee payments with

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	in Appendix B would not necessarily give a "stable" revenue for the OSC. In the commenter's view, market fluctuations will cause participants to move above or below the gross revenue thresholds, resulting in an increase or decline of expected OSC revenues. In generally rising markets, over time, the OSC would benefit from bull market years, when revenues will outpace the budgeted cost of regulation. The OSC should be required to manage such surpluses prudently to cover market regulation costs in weaker market years. Another commenter suggested • an increase in the number of fee categories so that the increase in fees when a registrant moves from one category to the next is not as drastic, or • an introduction of some method of pro-rating the fee so that the increase in fees more closely matches the percentage change in a registrant's gross revenues. This commenter also suggested that it would not be administratively burdensome to establish a method to pro-rate the fees payable within each bracket. It would not make it more difficult for the OSC to budget its revenues and, in fact, may enhance its ability to do so. This is because the OSC would not be subject to sudden fee decreases in circumstances where a relatively minor decrease in revenues would put a manager in a lower participation fee tier and a corresponding substantial drop in fees payable to the OSC. Another commenter suggested that Appendix B be amended such that participation fees applicable to the tiers be expressed as a percentage of an entity's specified Ontario Revenues, rather than a fixed amount.	flexibility through re-evaluation of the schedule every three years. In terms of the fees as a percentage of revenue and the incremental fees moving up a tier, both average less than 0.1%. The fee for companies with less than $5 million in revenues was lowered relative to the rest of the schedule in order to improve access to the market for smaller companies and start-ups. The rest of the fee schedule shows a slight decline in fees as a percentage of revenue to reflect the cost of regulation, which tends to fall in relative terms as the size of the organization increases. In other words, while regulation of a firm with $1 billion in revenue will cost more than the regulation of a firm with $100 million, it doesn't cost ten times as much. The balancing concern is that a firm with $1 billion in revenue does receive a substantially greater benefit from participation in the markets than the smaller firm. The principles of basing regulation on cost-benefit analysis and avoiding barriers to entry support the proposed fee structure.
Calculation of fees of non-SRO members	One commenter is in favor of the approach for determining the CM Participation Fees fee payable by dealers that are not IDA or MFDA members – i.e., based on gross revenues earned from capital markets activities in Ontario. The commenter suggested a revision of paragraph 3.6(1)(a) of the Proposed to reflect that approach.	As suggested, paragraph 3.6(1)(a) of the Proposed Rule has been revised so that it refers to "the gross revenues earned from capital markets activities of the registrant firm….."
Time of payment/ transition	One commenter noted that, under subsection 3.2(2) of the Proposed Rule, unregistered investment fund managers must pay participation fees no later than 90 days after the end of each financial year. The commenter is concerned that, if the selected implementation date is one that occurs late in the calendar year, its members will have to pay a second set of fees after having only recently paid under the old fee schedule in accordance with prospectus renewal dates of its members' funds. This would lead to a significantly increased fee burden during the transition period. The commenter said that it is important to establish a firm implementation date and clarify how the industry will be expected to pay fees during the transitional period.	Section 7.1 of the Proposed Rule specifies the date (the "Specified Date") that it becomes effective, April 1, 2003. Some mutual funds that are in continuous distribution may still have to pay the required distribution fee up to the Specified Date. Others may not have to if their distributions prior to the Specified Date result in a fee that is less than the fee for the pro forma prospectus. Even if an investment fund manager's CM Participation Fees during the transition period are charged to a mutual fund under its management, the CM Participation Fees may be a lot less than the distribution fees payable by the mutual fund during the same period. Accordingly, the OSC

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		does not expect a great number of mutual funds to be significantly burdened with both the former distribution fee and their share of the fund manager's CM Participation Fees during the transition period. If any mutual fund finds itself to be the exception during the transition period, the OSC is open to considering reasonable proposals for installment payments until both fees are covered.
"Ontario percentage" applicable to market participants with establishments in Ontario	A few commenters objected to the requirement that market participants with permanent establishments in Ontario use their tax-related percentage in determining their CM Participation Fees. In particular, they felt that it would result in Ontario-based mutual fund companies paying to this province fees that are inappropriately high, while at the same time paying fees to other provinces based on net or gross mutual fund sales. They also thought that it provides a strong disincentive for new firms to set up their primary operations in Ontario. They would like the OSC to consider doing away with the permanent establishment concept and simply base the CM Participation Fees on revenues "attributable to capital market activities in Ontario".	After due consideration of the comment, the OSC determined not to make any change to the Proposed Rule. Since section 3.8 has been deleted from the Proposed Rule, investment fund managers would not be precluded from charging the CM Participation Fees to the funds under their management. The OSC is also well aware that the funds would continue to pay distribution fees based on the value of securities sold in the other jurisdictions. Even so, the OSC is strongly of the view that each fund's share of the investment fund managers' CM Participation Fees would still be less than the fees that each fund is now required to pay under the current fee regime.
Gross revenue as basis for participation fees	One commenter said that using gross revenue as a basis for charging participation fees is too simplistic and may have negative or unintended impacts on the investment funds industry. The use of gross revenue as a basis for charging participation fees equates to a revenue tax that will likely cause mutual fund managers to re-evaluate and restructure their organizations as they seek to reduce the revenue subject to such tax. This could result in a number of unintended negative consequences, including: • reduced revenue for the OSC; • increased costs to mutual fund managers (and possibly unitholders) to effect any changes; • an inability to account for different current and future business models used by mutual fund managers; and • an uneven playing field for market participants that is driven by corporate structures. Using gross revenues as a basis for charging participation fees ignores the reality that revenues of a registrant are not necessarily directly correlated with the usage of regulatory services by that registrant.	The commenter objects to the use of a market participant's "gross revenue" from capital markets activities as a basis for calculating the CM Participation Fees. The reason for this objection would appear to be because it would catch the market participant's revenues from operations in the exempt market. In other words, it would appear that the commenter would like revenues from the exempt market to be excluded from the calculation of CM Participation Fees. The OSC disagrees with the suggestion that revenues from a market participant's exempt-market operations should not be subject to the CM Participation Fees. Although the exempt market is not as regulated as the non-exempt market, the OSC believes that the public confidence in Ontario's capital markets, which results from its regulation, benefits both sectors of the market. For this reason, the OSC is not persuaded that revenues from the exempt market operations of a market participant should be carved out from the calculation of gross revenues for the purpose of determining the applicable CM Participation Fees.
Gross revenue as basis for participation fees	One commenter reiterated its previous comment that basing the participation fees for a registrant on its gross revenue attributable to Ontario is an inappropriate measure. The allocation of income takes into account many aspects of a market player's activities, which may	After due consideration of the comment, the OSC determined not to make any change to the Proposed Rule. The new fee model is intended to apply to all market participants regardless of their structure.

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	not directly relate to participation in Ontario's capital markets, but rather reflect the business structure that the registrant has adopted, such as a centralized head office. This will result in gross revenue being allocated to Ontario and thus increasing the participant fee, even though the expenses associated with this revenue are incurred to support activities outside Ontario. The better measure, according to the commenter, is the value of securities or assets under administration for residents in the jurisdiction.	
Canadian GAAP requirement with respect to reported components of revenue in Form 13-503F3 - Notes and Instructions	One commenter expressed concern about the Canadian GAAP requirement in Form 13-502F3 with respect to reported "components of revenue", insofar as it applies to non-resident registrants and unregistered foreign fund managers. At present, international dealers are not required to file annual financial statements with the OSC. Under OSC Rule 35-502, most international advisers are also exempt from this requirement. Unregistered foreign fund advisers are not required to file their financial statements in Ontario. Should the OSC insist on the use of Canadian GAAP qualified financial statements in the calculation of specified Ontario revenue, international dealers, international advisers and foreign fund advisers will incur significant additional accounting, administrative and operational costs in the preparation of Canadian GAAP financial statements.	To address the commenter's concern on behalf of international dealers and advisers and foreign fund managers, item 2 in the Notes and Instructions of Form 13-502F3 has been revised to read as follows: "…..generally accepted accounting principles ('GAAP'), or such equivalent principles applicable to the audited financial statements of international dealers and advisers and foreign investment fund managers, except that revenues should be reported on an unconsolidated basis. …."
Deductions from gross revenue – advisory fees paid to Ontario registrants	One commenter suggested that paragraph 3.6(3)(a) of the Proposed Rule be revised so that it refers to "advisory fees or sub-advisory fees" rather than to "sub-advisory fees" only. The commenter thinks that the current text applies only in a situation where a fund manager that is also the portfolio adviser engages the services of a portfolio sub-adviser. The revision is suggested so that the provision applies to a fund manager that is not also the portfolio adviser, and who contracts out portfolio management of a fund to a portfolio adviser that is a registrant firm in Ontario.	For additional clarity, paragraph 3.6(3)(a) of the Proposed Rule has been revised so that it refers to both "advisory fees" and "sub-advisory fees".
Deductions from gross revenue – advisory fees paid to non-Ontario registrants	Two commenters objected to the deduction permitted by paragraph 3.6(3)(a) of the Proposed Rule being limited to payments to advisors or sub-advisors that are registrants in Ontario. These commenters state that, although many Ontario-based primary portfolio advisors ("PPA") engage the services of non-registrant sub-advisors, liability for the advice provided by such sub-advisors rests with the Ontario-based PPA. Accordingly, the commenter would like the provision in question to be revised so that it permits the deduction from gross revenues of all advisory or sub-advisory fees, whether or not the payee is another registrant firm in Ontario.	The point of the permitted deduction for amounts paid to another registrant firm in Ontario is that those amounts would be included in the gross revenue of the latter for the purpose of the latter's CM Participation Fees. The law does not permit any person or company to engage in the business of advising in Ontario, unless the person or company is registered or exempt from registration under the Act. Accordingly, a PPA who decides to engage the services of a sub-advisor for its clients in Ontario generally has a legal responsibility to ensure that the sub-advisor is registered in Ontario. The PPA may appoint a non-Ontario registrant to act as sub-advisor in reliance upon section 7.3 of Rule 35-502, which requires the PPA to assume responsibility for the advice provided

Theme	Detailed Comments and Arguments	Response
		by the sub-advisor. If the PPA chooses to enable a non-Ontario registrant to act as sub-advisor to Ontario clients, the PPA should also assume the responsibility for the CM Participation Fees that the sub-advisor would have had to pay if it were a registrant firm in Ontario.
Deductions from gross revenue – trailing commissions	One commenter said that it manages funds-of-funds which include underlying funds managed and investment managed by third-party managers who are unrelated to the commenter. The fund-of-funds discretionary relief obtained by the commenter has a condition that prohibits duplication of certain fees payable by the top funds. To comply with this condition, the commenter negotiated certain payments to be made by certain third-party managers to the commenter, described as "trailing commissions". These payments would be used by the commenter to pay the trailing commissions to an affiliate (which is the principal distributor of the commenter's funds) and to unrelated mutual fund dealers and investment dealers who participate in the distribution of such funds. The affiliate and the other participating dealers are registrant firms in Ontario and would be including the trailing commissions received from the commenter in their own gross-revenue determination. Subsection 3.6(3)(b) precludes the third-party managers from deducting from their gross revenues the payments made to the commenter, because the commenter is not a "registrant firm" in Ontario. The commenter submitted that this would result in the OSC collecting double fees on such amounts, which would ultimately be included in the gross revenues of the affiliated principal distributor and the participating dealers. Accordingly, the commenter suggested a revision of paragraph 3.6(3)(b) of the Proposed Rule to permit third-party fund managers, in the circumstances described, to deduct the payments made to the commenter.	The OSC believes that the specific circumstances of the third-party manager and the commenter would be best dealt with by an application for relief.
Request for deduction from gross revenue of management fee rebate	One commenter said that management fee rebates are a common attribute of fund-of-fund structures where the underlying funds do not have an "I" class or "O" class with a reduced, institutional management fee. This type of rebate is specifically contemplated by the proposed fund-of-funds amendments to NI 81-101 and 81-102. Management fee rebates payable by an underlying fund manager to a top fund in a fund-of-fund structure should be deductible from the underlying fund manager's gross revenues. The inability to deduct management fee rebates would disadvantage those underlying fund managers whose funds do not offer classes or series of securities that carry a lower, institutional management fee. The commenter suggest that subsection s. 3.6(3) of the Proposed Rule be amended to permit managers of underlying funds in fund-of-fund structures to deduct from their gross revenues all management fee rebates.	After due consideration of the comment, the OSC determined not to make any change to the Proposed Rule. The OSC's intention is for the CM Participation Fees to be based on gross revenues.
Calculation of gross	The OSC previously received a comment that the fee model did not deal with the situation where a capital	The OSC disagrees with the commenter's statement that "underwriting debt and equity

Theme	Detailed Comments and Arguments	Response
revenues for IDA members	market participant earns revenues that are not attributable to capital market activities. The OSC has addressed this concern in respect of non-IDA and non-MFDA members by defining gross revenues in note 1 under Notes and Instructions – Part III of Form 13-502F3, as "all revenues earned from capital markets activities reported on a gross basis as per the audited financial statements". Capital market activities are defined in Part 1 of proposed Rule to include "trading in securities, providing securities related advice, portfolio management, and investment fund management and administration". Non-capital markets activities can be excluded in determining gross revenues for non-MFDA and non-IDA members. This is not the case for IDA members. Section 3.4 (a) of the Rule requires IDA members to use the "Total Revenue" figure on the summary statement of income contained in the Joint Regulatory Financial Questionnaire and Report of the IDA for the financial year (the "JFQR"). According to the commenter, "[T]otal Revenue on the JFQR includes non-capital markets activities such as revenues earned through underwriting debt and equity and corporate advisory fees". (underline added) As these activities do not fall within the definition of capital markets activities as set out in the Rule they should be excluded.	securities" does not come within the definition of "capital markets activities". To the extent that a person or company underwrites an equity or debt offering with a view to selling the underwritten securities in the primary or secondary market, the activity constitutes "trading in securities". With respect "corporate advisory fees" for advisory activities unrelated to trading in securities (including underwriting), the OSC agrees that they should be excluded from gross revenue determination. The definition of "capital markets activities" has been revised so that it does not catch these advisory activities.

APPENDIX C
TO
NOTICE OF FINAL
RULE 13-502 – FEES, INCLUDING
FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4, AND
COMPANION POLICY 13-502CP – FEES

CONSEQUENTIAL AMENDMENTS

AMENDMENTS TO ONTARIO SECURITIES COMMISSION POLICY 12-602, RULES 45-501, 45-502 AND 45-503, AND COMPANION POLICY 91-504CP

Part 1 AMMENDMENT

1.1 **Policy 12-602 Amendment** – Policy 12-602 Deeming a Reporting Issuer in Certain Other Canadian Jurisdictions to be a Reporting Issuer in Ontario is amended by deleting subsection 4.1(9) and substituting for that subsection:

"(9) the filing fee prescribed under Rule 13-502 Fees."

1.2 **Rule 45-501 Amendment** – Rule 45-501 Exempt Distributions is amended by

(a) deleting section 7.3 and substituting for that section:

"7.3 [deleted]";

(b) deleting section 7.4 and substituting for that section:

"7.4 [deleted]";

(c) deleting subsection 7.5(4) and substituting for that subsection:

"(4) [deleted]";

(d) deleting subsection 7.5(5) and substituting for that subsection:

(5) [deleted]";

(e) deleting subsection 7.5(6) and substituting for that subsection:

(6) [deleted]";

(f) deleting section 7.6 and substituting for that section:

"7.6 [deleted]"; and

(g) deleting section 7.7 and substituting for that section:

"7.7 Report of a Trade Made under Section 2.12 – If a trade is made in reliance upon an exemption from the prospectus requirement in section 2.12, the issuer shall, not later than thirty days after the financial year end of the issuer in which the trade occurred, file a report, in duplicate, prepared in accordance with Form 45-501F1."

1.3 **Form 45-501F1 Amendment** – Form 45-501F1 – Securities Act (Ontario) Report under Section 72(3) of the Act or Section 7.5(1) of Rule 45-501 is amended by

(a) deleting item 8 and substituting for that item:

"8. Has the seller paid a participation fee for the current financial year in accordance with Rule 13-502?"; and

(b) deleting instruction 3 and substituting for that instruction:

"3. If the seller has not paid a participation fee for the current financial year, or if this form is filed late, a fee may be payable under Rule 13-502. Otherwise, no fee is payable to the Commission in connection with the filing of this form. Cheques must be made payable to the Ontario Securities Commission."

1.4 **Rule 45-502 Amendment** – Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans is amended by deleting Part 6, by renumbering Part 7 as Part 6, and by renumbering section 7.1 as section 6.1.

1.5 **Rule 45-503 Amendment** – Rule 45-503 Trades to Employees, Executives and Consultants is amended by deleting Part 11, by renumbering Part 12 as Part 11, and by renumbering section 12.1 as section 11.1.

1.6 **Companion Policy 91-504CP Amendment** – Companion Policy 91-504CP to Ontario Securities Commission Rule 91-504 Over-the-Counter Derivatives is amended by

(a) deleting subsection 6.4(2) and substituting for that subsection:

"(2) Any OTC derivative transaction effected in reliance upon a paragraph of section 72 of the Act enumerated in subsection 72(3) triggers the requirement of the filing of a Form 45-501F1 and payment of the requisite filing fee, if any, under Rule 13-502."; and

(b) deleting subsections 6.4(3) and 6.4(4).

Part 2 EFFECTIVE DATE

2.1 **Effective Date** – This amendment comes into force on the date that Ontario Securities Commission Rule 13-502 Fees comes into force.