

6.1.4 Amendment to OSC Rule 13-502 Fees and Companion Policy 13-502CP Fees

**AMENDMENT TO
RULE 13-502 FEES**

PART 1 AMENDMENTS TO RULE 13-502 FEES

1.1 Amendments to Rule 13-502 Fees

- (1) Rule 13-502 Fees is amended by this Part of this instrument.
- (2) Section 1.1(1) is amended by
 - (a) the deletion of the definition of “capital markets activities” and its replacement by the following:

“capital markets activities” means

 - (a) activities for which registration under the Act or an exemption from registration is required,
 - (b) acting as an investment fund manager, and
 - (c) activities for which registration under the *Commodity Futures Act* or an exemption from the registration under the *Commodity Futures Act* is required;”
 - (b) the deletion of the definition of “corporate debt” and the substitution of the following:

“corporate debt” means debt issued in Canada by a person or company that has a remaining term to maturity of one year or more;
 - (c) the deletion of the definition of “entity”;
 - (d) the deletion of the definition of “equity security” and the substitution of the following:

“equity security” means a security

 - (a) within the meaning of the term “equity security” in subsection 89(1) of the Act, or
 - (b) of an issuer that is exchangeable for an equity security, within the meaning of subsection 89(1) of the Act, of another issuer.”; and
 - (e) the deletion of the definition of “investment fund” and the substitution of the following:

“investment fund” means a mutual fund or a non-redeemable investment fund;
- (3) Subsection 2.3(1) is deleted and the following substituted:

“(1) A reporting issuer shall pay the participation fee by the earlier of the date on which its annual financial statements are required to be filed and the date on which its annual financial statements are filed.”.
- (4) Section 2.5 is deleted and the following substituted:

“2.5 Calculation of Capitalization for Class 1 Reporting Issuers – The capitalization of a Class 1 reporting issuer at the end of a financial year of the reporting issuer is the aggregate of

 - (a) the market value of each class or series of a reporting issuer’s equity securities listed or quoted on a marketplace on that date, calculated by multiplying
 - (i) the total number of securities of the class or series outstanding on that date; and
 - (ii) the simple average of the closing price of the class or series of securities as of the last trading day of each of the months of the financial year of the reporting issuer on

- (A) the marketplace in Canada on which the highest volume of the class or series of securities were traded in that financial year, or
 - (B) if none of the class or series of securities were traded on a marketplace in Canada, the marketplace in the United States of America on which the highest volume of the class or series of securities were traded in that financial year, and
- (b) as determined by the reporting issuer, the market value, at the end of the financial year, of each class or series of corporate debt or preferred shares of the reporting issuer, and of a subsidiary entity of the reporting issuer that is exempt from the requirement to pay a participation fee under subsection 2.2(2), if securities of that class or series are listed, quoted or traded on a marketplace, trade over the counter or, after their initial issuance, are otherwise generally available for purchase or sale by way of transactions carried out through, or with, dealers.”.
- (5) Section 2.6 is amended by:
 - (a) the renumbering of the existing section 2.6 as subsection 2.6(1);
 - (b) the addition of the following as subsection 2.6(2):
 - “(2) Despite subsection (1), a reporting issuer may base the calculation of its market capitalization on unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.”; and
 - (c) the addition of the following as subsection 2.6(3):
 - “(3) Despite subsections (1) and (2), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may base the calculation of its market capitalization on the monthly filed distribution report for the last month of its financial year, if the reporting issuer is not required to prepare, and does not ordinarily prepare, annual financial statements.”.
- (6) Section 2.7 is amended by the deletion of the words “debt or equity securities listed or traded”, in the first line of each of paragraphs (a) and (b) of section 2.7 and the substitution of “securities listed, quoted or traded”.
- (7) Subsection 2.8(4) is amended by the deletion of the introductory words and the substitution of the following:

“Despite sections 2.2 and 2.3, and subject to subsection (5), a person or company that becomes a reporting issuer other than through the filing of a prospectus shall pay a participation fee within two business days of the date on which the person or company becomes a reporting issuer, calculated by multiplying”.
- (8) The following is added as section 2.9, and sections 2.9 and 2.10 are renumbered:

“2.9 Participation Fee for an Issuer Ceasing to be a Reporting Issuer - Despite sections 2.2 and 2.3, an issuer that ceases to become a reporting issuer before it has paid its participation fee for the current financial year, and before that participation fee has been required to be paid, shall pay a participation fee at the time that it ceases to be a reporting issuer, calculated by multiplying

 - (a) the participation fee that would be otherwise payable for that financial year; and
 - (b) the number of entire months in the financial year before it submitted its application to cease to become a reporting issuer, divided by 12.”.
- (9) Old subsection 2.10(2) is deleted and the following substituted as subsection 2.11(2):
 - “(2) Subsection (1) does not apply if the reporting issuer knows that the information made available by the marketplace is incorrect and
 - (a) knows the correct information; or
 - (b) has not used reasonable efforts to learn the correct information.”.

- (10) Paragraphs (a) of section 3.4, (a) of section 3.5 and (1)(a) of section 3.6 are amended by the addition of the words “less any amounts not attributable to capital markets activities” immediately before the words “for a financial year” in each paragraph.
- (11) Paragraph 3.6(3)(a) is amended by the addition of the words “or a registrant firm as defined in Rule 13-503 (*Commodity Futures Act*) (Ontario)” immediately after the words “another registrant firm in Ontario”.
- (12) Section 3.6 is amended by the addition of the following as subsection 3.6(4):

“Despite subsection (1), a registrant firm registered only as one or more of a limited market dealer, an international dealer or an international adviser may base the calculation of its gross revenues on unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.”.
- (13) Subsection 7.2(5) is amended by the addition of the words “that is a reporting issuer” after the words “investment fund” in the first line of the subsection.

1.2 Amendments to Appendices to Rule 13-502 Fees

- (1) The Appendices to Rule 13-502 are amended by this Part of this instrument.
- (2) Appendix A is amended by
 - (a) the deletion of the words “\$0 to under \$25 million” and the substitution of the words “under \$25 million”.
 - (b) the deletion of the words “Over \$25 billion” and the substitution of the words “\$25 billion and over”;
- (3) Appendix B is amended by
 - (a) the deletion of the words “\$0 to under \$500,000” and the substitution of the words “under \$500,000”.
 - (b) the deletion of the words “Over \$1 billion” and the substitution of the words “\$1 billion and over”;
- (4) Appendix C is amended by
 - (a) the deletion of the words “or issuers” and “or issuer” in Note (iv) to item A(1);
 - (b) the addition of the following as note (v) to item A(1):

“Each named issuer should pay its proportionate share of the fee in the case of a prospectus for multiple issuers (other than in the case of investment funds).”.
 - (c) the addition of the following as note (vi) to item A(1):

“The fee for a prospectus showing minimum and maximum offering sizes shall be based on the maximum offering size.”.
 - (d) the addition of the word “Canadian” before the words “gross proceeds”, wherever appearing, in item A(3) and the deletion of the Note in item A(3);
 - (e) the addition of the following, as item B(2):
 - (i) under the heading “Document or Activity” – “Filing of a Form 45-501F1 for a distribution of securities for an issuer that is not subject to a participation fee”, and
 - (ii) under the heading “Fee” – “\$500”;
 - (f) the deletion of the words under the heading “Fee” of Item C, and the substitution of the words “\$2,000 (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule);

(g) the addition of the following as new item D, and the renumbering of the items after item D:

Document or Activity	Fee
D. Provision of Notice under section 72(1)(h)(ii) of the Act	\$2,000

(h) the deletion of old item E and the substitution of the following as item F:

Document or Activity	Fee
F. Applications for Discretionary Relief.	
1. Application under clause 72(1)(m), sections 74, 104 and 127, subsection 140(2) or section 147 of the Act (not including an application under section 3.1 of Rule 31-503 or section 4.1 of Rule 35-502), Multilateral Instrument 45-102, Rule 45-501, Rule 45-502, Rule 45-503, National Instrument 51-101, Rule 56-501, Rule 61-501, National Instrument 62-101, National Instrument 62-103 or Rule 62-501.	\$5,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario)) subject to the overall limitation set out below
2. Application under	Nil
(a) subsection 38(3), subsection 72(8) or section 83 of the Act or subsection 1(6) of the <i>Business Corporations Act</i> (Ontario);	
(b) application under section 144 of the Act for an order revoking a cease-trade order to permit trades solely for the purpose of establishing a tax loss in accordance with Commission Policy 57-602;	
(c) relief from section 213 of the <i>Loan and Trust Corporations Act</i> (Ontario);	
(d) application for waiver of the requirements of Rule 51-501; and	
(e) application where the discretionary relief or regulatory approval is evidenced by the issuance of a receipt for the applicants' final prospectus (such as certain applications under Rule 41-501 or National Instrument 81-101).	
3. Any application for discretionary relief from, or regulatory approval under, any section of the Act, the Regulations or any Rule of the Commission not listed in items F(1) or (2) above.	\$1,500 for each section under which an application is made (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario)) subject to the overall limitation set out below
<i>Note: It is noted that the following applications for recognition or approval under the Act are subject to the fees contained in this item F(3):</i>	
(i) <i>recognition of an exchange under section 21 of the Act, a self-regulatory organization under section 21.1 of the Act, a clearing house under section 21.2 of the Act or a quotation and trade reporting system under section 21.2.1 of the Act; and</i>	
(ii) <i>approval of a compensation fund or contingency trust fund under section 110 of the Regulations to the Act; and</i>	
(iii) <i>approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act.</i>	

	<p>The maximum fee for an application to which this item F applies, regardless of the number of sections under which application is made, shall be</p> <p>\$7,500 if the applicant is subject to, or is reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario),</p> <p style="text-align: center;">or</p> <p>\$9,500 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule or Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario). These limits apply to the application even if the application is made under both the Act and the <i>Commodities Futures Act</i> (Ontario); i.e. an application under both statutes will not be subject to a fee of more than \$7,500 or \$9,500, as applicable.</p>
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- (i) the deletion of old item G(1) and the substitution of the following as item H(1):

Document or Activity	Fee
1. Filing of a take-over bid or issuer bid circular under subsection 100(3) or (7) of the Act	\$5,500 (plus \$2,000 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under this Rule)

- (j) the deletion of the words “subsection 98(2) or subsection 98(4)” in old item G(2) and the substitution of the words “subsection 100(4)” in item H(2), as renumbered;
- (k) the addition of numbering for the Notes to item J(3), as renumbered, and the addition of the following Note (iii) to such item:
- “A registration fee will not be charged if an individual makes an application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm provided that the individual’s category of registration remains unchanged.”; and*
- (l) the deletion of item M and the substitution of the following as item N:

Document or Activity	Fee
N. Late Filing	
1. Fee for late filing of any of the following documents:	
<p>(a) Annual financial statements and interim financial statements;</p> <p>(b) Annual information form filed under Rule 51-501;</p> <p>(c) Report of Form 45-501F1 filed by a reporting issuer;</p> <p>(d) Notice under Section 104 of the Regulation;</p> <p>(e) Report under Section 141 or 142 of the Regulation;</p> <p>(f) Filings for the purpose of amending Form 3 and Form 4 or Form 33-109F4 under Multilateral Instrument 33-109; and</p> <p>(g) Any document required to be filed by a registrant firm or individual, in connection with the registration of the registrant firm or individual under the Act, under</p> <p>(i) terms and conditions imposed on</p>	\$100 per business day (subject to a maximum of \$5,000 per reporting issuer or registrant firm for all documents within any financial year of the reporting issuer or registrant firm)

(ii)	a registrant firm or individual; or an order of the Commission.	
2.	Fee for late filing of insider report of Form 55-102F2	\$50 per calendar day per insider per issuer (subject to a maximum of \$1,000 within any one year beginning on April 1 st and ending on March 31 st)

PART 2 AMENDMENTS TO FORMS TO RULE 13-502

2.1 Amendments to Form 13-502F1

- (1) Form 13-502F1 is amended by changing the formula for calculating a reduced participation fee for new reporting issuers, wherever appearing, to read

$$\frac{\text{Total Fee Payable} \times \text{Number of entire months remaining in the issuer's financial year}}{12}$$

- (2) Paragraph 1 of the Notes and Instructions to Form 13-502F1 is deleted and the following substituted:

“This participation fee is payable by all reporting issuers, except in the case of investment funds. An investment fund that is a reporting issuer and that has an investment fund manager does not pay a corporate finance participation fee. The only investment funds that pay a corporate finance participation fee are those that are reporting issuers and that do not have an investment fund manager.”

- (3) Paragraph 2 of the Notes and Instructions to Form 13-502F1 is amended by the deletion of the word “posting” and the substitution of the word “posted”.
- (4) Paragraph 3 of the Notes and Instructions to Form 13-502F1 is amended by the addition of the words “exchange rate” immediately after the words “daily noon” and the removal of the square brackets enclosing “daily noon”.

2.2 Amendments to Form 13-502F2 - Form 13-502F2 is amended to read as set out in Appendix A to these amendments.

2.3 Amendments to Form 13-502F3

- (1) Note 1 to the Notes and Instructions of Form 13-502F3 (including the footnotes thereto) is deleted and the following substituted:

“1. Registrant firms are required to complete the Part that applies to their particular category of registration, as follows:

Part I – Investment Dealers Association of Canada members
 Part II – Mutual Fund Dealers Association of Canada members
 Part III – Advisers¹, other Dealers² and unregistered Investment Fund Managers.

1 Includes all adviser categories as per section 99 of the Regulations in the *Securities Act* (Ontario), as well as non-resident advisors, extra-provincial advisors and registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) (Ontario).

2 Includes all dealer categories as per section 98 of the Regulations in the *Securities Act* (Ontario) and registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) (Ontario) except IDA and MFDA members which are treated separately in Parts I and II.”

- (2) Form 13-502F3 is amended to read as set out in Appendix B to these amendments.
- (3) Paragraph 1 of the Notes and Instructions to Part III of Form 13-502F3 is amended by the addition of the following at the end of that paragraph:

“Gross revenues are reduced by amounts not attributable to capital markets activities. A registrant firm registered only as one or more of a limited market dealer, international dealer or international adviser may use its unaudited financial statements as the basis for determining its gross revenues if it is not required to, and does not ordinarily prepare, audited financial statements.”

- (4) Paragraph 4 of the Notes and Instructions to Part III of Form 13-502F3 is amended by the addition of the words "or registrant firms within the meaning of Rule 13-503 (*Commodity Futures Act*) Ontario" immediately after the words "another Ontario registrant firm".

Appendix A

FEES RULE
FORM 13-502F2

ADJUSTMENT OF FEE PAYMENT
UNDER SUBSECTION 2.4(2) OF RULE 13-502

Reporting Issuer Name: _____

Participation Fee for the
Financial Year Ending: _____

State the amount paid under subsection 2.3(3) of Rule 13-502: _____(A)

Show calculation of actual capitalization based on audited financial statements:

Financial Statement Values (use stated values from the audited financial statements of the reporting issuer as at its most recent audited year end):

Retained earnings or deficit _____

Contributed surplus _____

Share capital or owners' equity, options, warrants and preferred shares (whether such shares are classified as debt or equity for financial reporting purposes) _____

Long term debt (including the current portion) _____

Capital leases (including the current portion) _____

Minority or non-controlling interest _____

Items classified on the balance sheet between current liabilities and shareholders' equity (and not otherwise listed above) _____

Any other item forming part of shareholders' equity and not set out specifically above _____

Total Capitalization _____

Total Fee payable: _____(B)

Difference between A and B: _____

Indicate refund due (balance owing): _____

**Appendix B
Revenue for Participation Fee**

Firm Name: _____

Participation Fee for the Calendar or Financial Year Ending: _____

Part I – Investment Dealers Association of Canada Members

	Current Year \$	Prior Year \$
1. Line 18 of Statement E of the Joint Regulatory Financial Questionnaire and Report	_____	_____
2. Less Amounts not attributable to capital markets activities	_____	_____
3. REVENUE SUBJECT TO PARTICIPATION FEE (line 1 less line 2)	_____	_____

Part II – Mutual Fund Dealers

REVENUE SUBJECT TO PARTICIPATION FEE

1. Line 12 of Statement D of the MFDA Financial Questionnaire and Report	_____	_____
2. Less Amounts not attributable to capital markets activities	_____	_____
3. REVENUE SUBJECT TO PARTICIPATION FEE (line 1 less line 2)	_____	_____

Part III – Advisers, Other Dealers, and Unregistered Investment Fund Managers

1. Gross Revenue as per the audited financial statements (note 1)	_____	_____
Less the following items:		
2. Amounts not attributable to capital markets activities	_____	_____
3. Redemption Fees (note 2)	_____	_____
4. Administration Fees (note 3)	_____	_____
5. Advisory or Sub-Advisory fees paid to other Ontario registrant firms and registrant firms within the meaning of Rule 13-503 (<i>Commodity Futures Act</i>) (Ontario) (note 4)	_____	_____
6. Trailer fees paid to other Ontario registrant firms (note 5)	_____	_____
7. Total Deductions – sum of lines 2 to 6	_____	_____
8. REVENUE SUBJECT TO PARTICIPATION FEE (line 1 less line 7)	_____	_____

Part IV – Calculation of Revenue Attributable to Ontario

Firm Name: _____

Participation Fee for the Financial Year Ending: _____

	\$
Line 3 from Part I	_____
Line 3 from Part II	_____
Line 8 from Part III	_____
Total	_____
Percentage attributable to Ontario (based on most recent tax return)	_____ %
Specified Revenue attributed to Ontario	_____
Total Fee payable (refer to Appendix B of the Rule)	_____

**AMENDMENT TO
COMPANION POLICY 13-502CP
FEES**

PART 3 AMENDMENTS TO COMPANION POLICY 13-502CP FEES

3.1 Amendments to Companion Policy 13-502CP Fees

- (1) Companion Policy 13-502CP is amended by this instrument.
- (2) The following is added to the Companion Policy as section 2.3:

“Registrants under the Act and the *Commodity Futures Act*

 - (1) The Rule imposes an obligation to pay a participation fee on registrant firms, as defined in the Rule. A registrant firm is a person or company registered as a dealer or adviser under the Act. An entity so registered may also be registered as a dealer or adviser under the *Commodity Futures Act*; however an entity registered under both statutes will be a registrant firm under the Rule and will therefore pay a participation fee under the Rule. The revenue of such an entity from *Commodity Futures Act* activities will be included in the calculation of revenues made by the entity for purposes of calculating its fee under the Rule, as the definition of “capital markets activities” includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. Section 2.8 of Rule 13-503 (*Commodity Futures Act*) (Ontario) exempts such an entity from paying any participation fee under that rule if the entity is current in paying its participation fees under the (*Securities Act*) Rule.
 - (2) It is noted that registrant firms will pay activity fees under Rule 13-503 (*Commodity Futures Act*) (Ontario) even if they are not required to pay participation fees under that Rule.”
- (3) The following is added to the Companion Policy as section 2.4:

“2.4 Registrant Firms - A participation fee is paid by a “registrant firm”, which is defined in the Rule as “a person or company that is registered as one or both of a dealer or an adviser under the Act”. This definition ensures that a participation fee is paid at the firm level, and not by individual partners, directors, officers, representatives or salespersons of a firm.”
- (4) Old sections 2.3, 2.4 and 2.5 are renumbered as sections 2.5, 2.6 and 2.7, respectively.
- (5) Subsection 3.3(1) is deleted and the following substituted:

“(1) Section 2.5 of the Rule requires the calculation of the capitalization of a Class 1 reporting issuer to include the market value, at the end of the relevant financial year, of each class or series of corporate debt or preferred shares of the reporting issuer or, if applicable, a subsidiary entity of the reporting issuer. It is noted that the requirement that corporate debt or preferred shares be valued in accordance with market value excludes from the calculation corporate debt or preferred shares that are not normally traded after their initial issuance. For instance, corporate debt or an issue to its bankers generally would have no market value and would not be included in these calculations.”.
- (6) Section 3.3 is amended by the addition of the following as subsections (3) and (4):
 - “(3) It is noted that market value calculation of a class of securities included in a calculation under section 2.5 will include all of the securities of the class, even if some of those securities are still subject to a hold period or are otherwise not freely tradeable.
 - (4) If the closing price of a security on a particular date is not ascertainable because there is no trade on that date or the marketplace does not generally provide closing prices, a reasonable alternative, such as the most recent closing price before that date, the average of the high and low trading prices for that date, or the average of the bid and ask prices on that date is acceptable.”.
- (7) Section 4.4 is amended by
 - (a) renumbering the existing section as subsection (1); and

- (b) adding the following as subsection (2)

“The definition of “capital market activities” also includes activities for which registration or an exemption from registration under the *Commodity Futures Act* is required. The Commission is of the view that these activities would include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.”.

- (8) Section 5.1 is deleted, and subsequent sections renumbered.

3.2 Amendments to Appendices to Companion Policy 13-502CP

- (1) The Appendices to Companion Policy 13-502CP are amended by this Part of this instrument.
- (2) Appendix A is amended by the deletion of the line item “files a Form 42 Report of Issuer Bid”.
- (3) Appendix E is amended by the deletion of the reference to “Form 13-502F2” in the first line item under “Item” and the substitution of “Form 13-502F3”.