

6.1.3 Notice of Amendments to Rule 13-502 Fees, Including Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4 and Companion Policy 13-502CP

**NOTICE OF AMENDMENTS TO RULE 13-502 FEES, INCLUDING
FORMS 13-502F1, 13-502F2, 13-502F3 AND 13-502F4 AND
COMPANION POLICY 13-502CP**

Introduction

On February 17, 2003, the Minister of Finance approved Rule 13-502 Fees (the "Rule"), including Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4, as a rule under the Securities Act ("Act") and approved Companion Policy 13-502CP (the "Companion Policy") as a policy under the Act.

Concurrently with making the Rule, the Commission revoked Schedule 1 (the "Fee Schedule") to Regulation 1015 of the Revised Regulations of Ontario, 1990 (the "Regulation"), revoked Forms 42, 43 and 44, and made non-material amendments to certain rules and policies in order to delete references to the Fee Schedule.

The Rule and Companion Policy came into force on March 31, 2003. The Rule and the Companion Policy were previously published in Chapter 5 of the Bulletin on January 31, 2003 at (2003) 26 OSCB 891. FAQs concerning the implementation of the Rule were published in Chapter 1 of the Bulletin on March 14, 2003 at (2003) 26 OSCB 2166. The amendments to the Regulation and the consequential amendments also took effect on March 31, 2003.

Substance and Purpose of Amendments

Since the Rule was published, Staff has received numerous requests for clarification on various parts of the Rule. The purpose of the amendments is to clarify portions of the Rule as well as add to and modify certain portions of the Rule and Companion Policy. Furthermore, the amendments reflect the implementation of proposed Rule 13-503 (*Commodity Futures Act*) ("Rule 13-503").

Summary of Changes to the Rule

This section describes changes made to the Rule, Forms and Companion Policy published on January 31, 2003, except that changes of a minor nature, changes made only for purposes of clarification or drafting changes, are not discussed.

The Rule

Part I Definitions

- "capital markets activities" has been amended to include activities for which registration under the CFA or an exemption from the registration under the CFA is required. Registrant firms that are registered under both the Act and the CFA will only pay one participation fee, under Rule 13-502. As a result, their revenues from capital market activities should also include their CFA activities.
- "corporate debt" has been amended to include debt issued in Canada by a person that has a remaining term to maturity of one year or more. This amendment is meant to capture debt issued by trusts.
- "equity security" has been amended to include a security of an issuer that is exchangeable for an equity security, within the meaning of subsection 89(1) of the Act, of another issuer.
- "investment fund" has been amended to remove scholarship plans in order to be consistent with the definition in Bill 198. It has been determined that a scholarship plan is a non-redeemable investment fund (therefore already covered off in the definition).

Part II Corporate Finance Participation Fees

- Subsection 2.3(1) was amended to clarify that a reporting issuer shall pay its required participation fee by the earlier of (1) the date on which its annual financial statements are required to be filed, and (2) the date on which its annual financial statements are actually filed.
- Paragraph 2.5 is amended to provide clarification on the method of calculating the capitalization of a Class 1 reporting issuer. Equity securities outstanding have been clarified to read "equity securities listed or quoted on a marketplace" and, for each class of corporate debt or preferred shares, clarification has been added to specify their inclusion "if the 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.

- Rule 13-502 currently requires Class 2 reporting issuers to calculate their capitalization on the basis of their audited balance sheets. Subsection 2.6(2) is added to allow a reporting issuer to base the calculation of its market capitalization on unaudited financial statements if it is not required to file, and does not ordinarily prepare, audited financial statements.
- Subsection 2.6(3) is added to allow a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates to 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.
- 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”.
- Subsection 2.8(4) is amended to provide a person or company that becomes a reporting issuer other than through the filing of a prospectus a two business day period in which to pay a participation fee.
- Subsection 2.9 is added to provide that a reporting issuer that ceases to be a reporting issuer prior to paying its participation fee for the year will be required to pay a prorated participation fee based on the date of its application and the number of entire months it was a reporting issuer for the year divided by 12.
- Subsection 2.10(2) is amended to place an onus on a reporting issuer to use reasonable efforts to obtain the correct information with which to calculate its participation fee.

Part III Capital Markets Participation Fees

- Paragraphs (a) of section 3.4, (a) of section 3.5 and (1)(a) of section 3.6 are amended to clarify that the calculation of annual total revenue for registrant firms should not include any amounts not attributable to capital markets activities.
- Paragraph 3.6(3)(a) is amended to include registrant firms as defined in Rule 13-503.
- Subsection 3.6(4) is added to allow a registrant firm registered only as one or more of a limited market dealer, an international dealer or an international adviser to 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.

Appendix C

- Note (v) to item A(1) in Appendix C is added to instruct issuers to pay a proportionate share of the fee in the case of a prospectus for multiple issuers (other than in the case of investment funds).
- Note (vi) to item A(1) in Appendix C is added to clarify that the fee for a prospectus showing minimum and maximum offering sizes shall be based on the maximum offering size.
- Item B(2) of Appendix C is added to require a \$500 fee for the filing of a Form 45-501F1 for a distribution of securities of an issuer that is not subject to a participation fee.
- Item C of Appendix C is amended to include an additional \$2,000 fee if the applicant is not subject to a participation fee under Rule 13-502.
- Appendix C is amended to include new line item D providing for a \$2,000 fee payable for the submission of a notice in connection with section 72(1)(h)(ii) of the Act.
- Item E (renumbered as Item F) of Appendix C is amended to clarify the applicable fees for applications for discretionary relief. In addition, a maximum fee to be charged for any one application is added. The maximum fee for an application to which item F applies, regardless of the number of sections under which application is made, shall be \$7,500 if the applicant is subject to, or is reasonably expected to become subject to, a participation fee under the Rule or Rule 13-503 or \$9,500 if the applicant is not subject to, and is not reasonably expected to become subject to, a participation fee under the Rule or Rule 13-503. The maximum also applies to applications made concurrently under both the Act and the CFA.

Item F also clarifies that applications for regulatory approval include the recognition of an exchange, a self-regulatory organization, a clearing house, a quotation and trade reporting system as well as the approval of a compensation fund or contingency trust and the approval of the establishment of a council, committee or ancillary body.

- Item I (3) (renumbered as Item J (3)) of Appendix C is amended to add a third note providing that a registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with their previous registrant firm provided that the individual's category of registration remains unchanged.
- Item M (1) (renumbered as Item N (1)) of Appendix C is amended to list the documents for which a late fee will be applied. Currently, all notices, documents, reports or forms required by Ontario securities law to be filed or submitted within a prescribed period are subject to a late fee. The list is reduced to include only those documents specified in Item M (1).
- Item M (2) (renumbered as Item N (2)) of Appendix C is amended to provide for the \$50 late fee to be applied per calendar day (as opposed to business day) per insider per issuer (subject to a maximum of \$1,000 within any one year beginning on April 1st and ending on March 31st).

Form 13-502F1

- Paragraph 1 of the Notes and Instructions to Form 13-502F1 is amended to clarify that 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.
- Paragraph 3 of the Notes and Instructions to Form 13-502F1 is amended to identify the daily noon exchange rate as the applicable exchange rate with which to convert closing market prices to Canadian dollars.

Form 13-502F3

- Footnote 1 to the Notes and Instructions to Form 13-502F3 is amended to include registrant firms within the meaning of Rule 13-503.
- Paragraph 1 of the Notes and Instructions to Part III of Form 13-502F3 is amended to provide that 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. In addition, gross revenues are reduced by amounts not attributable to capital markets activities.
- Paragraph 4 of the Notes and Instructions to Part III of Form 13-502F3 is amended to include the costs attributable to the use of registrant firms within the meaning of Rule 13-503 under the CFA as a permitted deduction to the calculation of gross revenue.

Companion Policy 13-502CP

- Section 2.3 of the Companion Policy is amended to provide that an entity registered under both the Act and the CFA will be a registrant firm under the Rule and pay a participation fee under the Rule. The revenue of such an entity from CFA activities will be included in the calculation of revenues made by the entity for purposes of calculating its fee under the Rule if the entity is current in paying its participation fees under the Rule. Registrants will, however, have to pay activity fees under both the Act and the CFA.
- The interpretation of the definition of "capital markets activities" in Section 4.4 of the Companion Policy is extended to include activities for which registration or an exemption from registration under the CFA is required.
- Section 2.4 of the Companion Policy is added to clarify that a participation fee is paid at the firm level, and not by individual partners, directors, officers, representatives or salespersons of a firm.
- Subsection 3.3(1) of Companion Policy 13-502CP is amended to clarify that the calculation of the capitalization of a Class 1 reporting issuer should exclude the market value of corporate debt or preferred shares not normally traded after their initial issuance.
- Subsection 3.3(2) of Companion Policy 13-502CP is added to provide that market value calculations must be based on the number of securities outstanding, which includes securities that are not freely tradeable.

Request for Comments

- Subsection 3.3(3) of Companion Policy 13-502CP is added to provide alternative price measures with which to calculate capitalization.

Unpublished Materials

In proposing this amendment, the Commission has not relied on any significant unpublished study, report or other written material.

Comments

Interested parties are invited to make written submissions with respect to the proposed amendment. Submissions received by August 14, 2003 will be considered.

Submissions should be sent in duplicate to:

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

A diskette or an e-mail attachment containing submissions (in DOS or Windows format, preferably Word) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

The OSC Contact Centre
Helpline: (416) 593-8314
Toll-Free Line: 1-877-785-1555
e-mail: inquiries@osc.gov.on.ca

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