

5.1.5 Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees

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

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

**PART 1 DEFINITIONS**

1.1 Definitions - **In this Rule,**

“CFA” means the *Commodity Futures Act*;

“CFA activities” means activities for which registration under the CFA or an exemption from registration is required;

“IDA” means the Investment Dealers Association of Canada;

“Ontario percentage” means, for the financial year of a registrant firm

- (a) that has a permanent establishment in Ontario, the percentage of the income of the registrant firm allocated to Ontario for the financial year in the corporate tax filings made for the person or company under the *Income Tax Act* (Canada), or
- (b) that does not have a permanent establishment in Ontario, the percentage of the total revenues of the registrant firm attributable to CFA activities in Ontario;

“registrant firm” means a person or company registered as one or both of a dealer or an adviser under the CFA; and

“specified Ontario revenues” means, for a registrant firm, the revenues determined in accordance with section 2.5 or 2.6.

**PART 2 PARTICIPATION FEES**

**2.1 Participation Fee-** Subject to section 2.8, a registrant firm shall pay, for each calendar year, the participation fee shown in Appendix A that applies to the registrant firm according to the specified Ontario revenues of the registrant firm for its previous financial year earned from CFA activities.

**2.2 Time of Payment-** A registrant firm shall pay the participation fee referred to in section 2.1 by December 31 of each year.

**2.3 Form Requirements**

- (1) A registrant firm shall file a Form 13-503F1, completed in accordance with its terms, by December 1 of each year.
- (2) The Form 13-503F1 referred to in subsection (1) shall be based on the audited financial statements of the registrant firm for its financial year last completed or to be completed before January 1 of the calendar year for which the participation fee calculated in the Form 13-503F1 will be paid.
- (3) If the financial year referred to in subsection (2) is not completed, or the financial statements of the registrant firm for that financial year are not available, by December 1, the registrant firm shall
  - (a) file the Form 13-503F1 due on that date on the basis of a good faith estimate of its specified Ontario revenues for that financial year; and
  - (b) pay its participation fee by December 31 based on the estimate of the Ontario specified revenues contained in the Form 13-503F1.
- (4) A registrant firm that filed its Form 13-503F1 under subsection (3) shall, when it files its annual financial statements for the applicable financial year,
  - (a) file a revised Form 13-503F1 reflecting the annual financial statements;
  - (b) calculate the participation fee on the basis of those financial statements; and

- (c) either
  - (i) pay any amount of the participation fee not paid under subsection (3), or
  - (ii) be entitled to receive from the Commission a refund of any amount paid under subsection (3) in excess of the participation fee payable.

**2.4 Filing of Form 13-502F2-** A registrant firm shall file a Form 13-503F2, completed in accordance with its terms, in connection with the adjustment made in accordance with subsection 2.3(4).

**2.5 Calculation of Specified Ontario Revenues for a Member of the IDA -** The specified Ontario revenues for a financial year of a registrant firm that is a member of the IDA are calculated by multiplying

- (a) the amount indicated by the registrant firm as the Total Revenue on the statement of income contained in the Joint Financial Questionnaire and Report of the IDA for the financial year, less amounts not attributable to CFA activities; and
- (b) the Ontario percentage of the member of the IDA for the financial year.

**2.6 Calculation of Specified Ontario Revenues for Others**

- (1) The specified Ontario revenues for a financial year of a registrant firm that is not a member of the IDA are calculated by multiplying
  - (a) the gross revenues earned from CFA activities of the registrant firm contained in its audited financial statements for the financial year, less amounts not attributable to CFA activities, and further less the reductions of that amount taken under subsection (2); and
  - (b) the Ontario percentage of the registrant firm for the financial year.
- (2) A registrant firm may reduce the amount referred to in subsection (1) by deducting the amount of the advisory or sub-advisory fees paid by the registrant firm to another registrant firm in Ontario in the applicable financial year.

**2.7 Late Fee**

- (1) Subject to subsection (2), a registrant firm that is late in paying a participation fee under this Part shall pay an additional fee of one percent of the participation fee payable apart from this section for each business day on which the participation fee remains due and unpaid.
- (2) A registrant firm is not required to pay a fee under subsection (1) in excess of 25 percent of the participation fee otherwise payable under this Part.

**2.8 Exemption -** This Part does not apply to a registrant firm registered under the *Securities Act* (Ontario) that is current in paying its participation fees under Rule 13-502 under the *Securities Act* (Ontario).

### **PART 3 ACTIVITY FEES**

**3.1 Activity Fees-** A person or company that files a document or takes an action listed in Appendix B shall, concurrently with the filing of the document or taking of the action, pay the activity fee shown in Appendix B beside the description of the document or action.

### **PART 4 CURRENCY CALCULATIONS**

**4.1 Currency Calculations-** Any calculation of money required to be made under this Rule that results in a currency other than Canadian dollars shall be translated into a Canadian dollar amount at the daily noon exchange rate posted on the Bank of Canada website for the date for which the calculation is made.

### **PART 5 EXEMPTIONS**

**5.1 Exemptions -** The Director may grant an exemption from the provisions of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 6 EFFECTIVE DATE**

**6.1 Effective Date-** This Rule comes into force on December 1, 2003.

**APPENDIX A – PARTICIPATION FEES**

| <b>Specified Ontario Revenues</b>    | <b>Participation Fee</b> |
|--------------------------------------|--------------------------|
| Under \$500,000                      | \$1,000                  |
| \$500,000 to under \$1 million       | \$5,000                  |
| \$1 million to under \$5 million     | \$10,000                 |
| \$5 million to under \$10 million    | \$25,000                 |
| \$10 million to under \$25 million   | \$50,000                 |
| \$25 million to under \$50 million   | \$75,000                 |
| \$50 million to under \$100 million  | \$150,000                |
| \$100 million to under \$200 million | \$250,000                |
| \$200 million to under \$500 million | \$500,000                |
| \$500 million to under \$1 billion   | \$650,000                |
| \$1 billion and over                 | \$850,000                |

## APPENDIX B - ACTIVITY FEES

| Document or Activity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A. Applications for Discretionary Relief</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1. Application under section 38 or 80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | \$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 13-502 under the <i>Securities Act</i> (Ontario)) subject to the overall limitation set out below                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 2. Application under<br>(a) Sections 36(1), 40, 46(2) of the CFA; and<br>(b) Subsection 27(1) of the Regulation to the CFA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Nil                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 3. Any application for discretionary relief from, or regulatory approval under, any other section of the CFA, Regulation and any Rule of the Commission made under the CFA but not listed in items A.1 or A.2 above.<br><br><i>Note: It is noted that the following applications for recognition, registration or approval under the CFA are subject to the fees contained in this item A(2):</i><br><br>(i) <i>recognition of an exchange under section 34 of the CFA, a self-regulatory organization under section 16 of the CFA or a clearing house under section 17 of the CFA;</i><br><br>(ii) <i>registration of an exchange under section 15 of the CFA; and</i><br><br>(iii) <i>approval of the establishment of a council, committee or ancillary body under section 18 of the CFA.</i> | \$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 13-502 under the <i>Securities Act</i> (Ontario)) subject to the overall limitation set out below                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | The maximum fee for an application, or, 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 this Rule or Rule 13-502 under the <i>Securities Act</i> (Ontario), or \$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 13-502 under the <i>Securities Act</i> (Ontario). These limits apply to the application even if the application is made under both the CFA and the <i>Securities 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. |
| <b>B. Registration-Related Activity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1. New registration of a firm in any category of registration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$800                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| Document or Activity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Fee                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Note: If a firm is registering as both a dealer and an adviser, it will be required to pay two activity fees.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                 |
| <p>2. Change in registration category</p> <p><i>Note: This would include a dealer becoming an adviser or vice versa, or changing a category of registration within the general category of adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, would be covered in the preceding section.</i></p>                                                                                                                                                                                                                                                                                                                                                                 | \$800                                                                                                                                           |
| <p>3. Registration of a new director, officer or partner (trading and/or advising), salesperson, floor trader or representative</p> <p><i>Notes:</i></p> <p>(i) <i>Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.</i></p> <p>(ii) <i>An individual registering as both a dealer and an adviser will be required to pay two activity fees.</i></p> <p>(iii) <i>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 his or her previous registrant firm provided that the individual's category of registration remains unchanged.</i></p> | \$400 per person                                                                                                                                |
| <p>4. Change in status from a non-trading and/or non-advising capacity to a trading and/or advising capacity</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$400 per person                                                                                                                                |
| <p>5. Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of registrant firms</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$6,000                                                                                                                                         |
| <p>6. Application for amending terms and conditions of registration</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$1,500                                                                                                                                         |
| <p><b>C. Application for Approval of the Director under Section 9 of the Regulation</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$1,500                                                                                                                                         |
| <p><b>D. Request for Certified Statement from the Commission or the Director under Section 62 of the CFA</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$500                                                                                                                                           |
| <p><b>E. Commission Requests</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                 |
| <p>1. Request for a photocopy of Commission records</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$0.50 per page                                                                                                                                 |
| <p>2. Request for a search of Commission records</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$10                                                                                                                                            |
| <p><b>F. Late Filing</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                 |
| <p>1. Fee for late filing of any of the following documents:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
| <p>(a) Annual financial statements and interim financial statements;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$100 per business day (subject to a maximum of \$5,000 per registrant firm for all documents within one financial year of the registrant firm) |

| Document or Activity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Fee |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <p>(b) Report under section 15 of Regulation to the CFA;</p> <p>(c) Report under section 17 of Regulation to the CFA;</p> <p>(d) Filings for the purpose of amending Form 5 and Form 7 or Form 33-506F4 under Rule 33-506; and</p> <p>(e) 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 CFA with respect to</p> <p style="padding-left: 40px;">(i) terms and conditions imposed on a registrant firm or individual; or</p> <p style="padding-left: 40px;">(ii) an order of the Commission.</p> |     |



**ONTARIO SECURITIES COMMISSION  
FORM 13-503F1  
(COMMODITY FUTURES ACT)**

**PARTICIPATION FEE CALCULATION  
FOR REGISTRANT FIRMS**

**Notes and Instructions**

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 – Advisers and other Dealers
2. The components of revenue reported in this Form should be based on the same principles as the comparative statement of income that is prepared in accordance with generally accepted accounting principles (“GAAP”), or such equivalent principles applicable to the audited financial statements of non-resident advisers, except that revenues should be reported on an unconsolidated basis. It is recognized that the components of the revenue classification may vary between firms. However, it is important that each firm be consistent between periods.
3. Each Part of this Form should be read in conjunction with the related notes and instructions of that Part where applicable.
4. Members of the Investment Dealers Association of Canada may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.
5. Comparative figures are required for the registrant firm’s year end date.
6. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario. The percentage attributable to Ontario for the reported year end should be the provincial allocation rate used in the corporate tax return for the same fiscal period. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.
7. All figures should be expressed in Canadian dollars and rounded to the nearest thousand.
8. Information reported on this questionnaire must be certified by two members of senior management in Part IV to attest to its completeness and accuracy.

**Revenue for Participation Fee**

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Firm Name: \_\_\_\_\_

Calendar or Financial Year Ending,  
used in calculating the Participation Fee: \_\_\_\_\_

**PART I – Investment Dealers Association of Canada Members**

|                                                                                      | <b>Current Year</b> | <b>Prior Year</b> |
|--------------------------------------------------------------------------------------|---------------------|-------------------|
|                                                                                      | <b>\$</b>           | <b>\$</b>         |
| <b>REVENUE SUBJECT TO PARTICIPATION FEE</b>                                          |                     |                   |
| 1. Line 18 of Statement E of the Joint Regulatory Financial Questionnaire and Report | _____               | _____             |
| 2. Less amounts not attributable to CFA activities                                   | _____               | _____             |
| 3. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less line 2)                  | _____               | _____             |

**Part II – Advisers and Other Dealers**

|                                                                                  |       |       |
|----------------------------------------------------------------------------------|-------|-------|
| 1. Gross Revenue as per the audited financial statements (note 1)                | _____ | _____ |
| <b>Less the following items:</b>                                                 |       |       |
| 2. Amounts not attributable to CFA activities                                    | _____ | _____ |
| 3. Advisory or Sub-Advisory fees paid to other Ontario registrant firms (note 2) | _____ | _____ |
| 4. <b>REVENUE SUBJECT TO PARTICIPATION FEE</b> (line 1 less lines 2 and 3)       | _____ | _____ |

**[See Notes and Instructions ]**

**Notes and Instructions**

1. Gross Revenue is defined as the sum of all revenues reported on a gross basis as per the audited financial statements prepared in accordance with GAAP, or such equivalent principles applicable to the audited financial statements of non-resident advisers, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation. Gross revenues are reduced by amounts not attributable to CFA activities.
  
2. Where the advisory or sub-advisory services of another Ontario registrant firm are used by the registrant firm to advise on a portion of its assets under management, such advisory or sub-advisory costs are permitted as a deduction on this line.

**Part III – Calculation of Revenue Attributable to Ontario**

---

**Firm Name:** \_\_\_\_\_

**Calendar or Financial Year Ending,  
used in calculating the Participation Fee:** \_\_\_\_\_

|                                                                         |         |
|-------------------------------------------------------------------------|---------|
| <b>Gross Revenue subject to Participation Fee:</b>                      | \$      |
| Line 3 from Part I                                                      | _____   |
| Line 4 from Part II                                                     | _____   |
| Percentage attributable to Ontario<br>(based on most recent tax return) | _____ % |
| <b>Specified Revenue attributable to Ontario</b>                        | _____   |
| <b>Total Fee payable (refer to Appendix A of the Rule)</b>              | _____   |

**Part IV - Management Certification**

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**Registrant Firm Name:** \_\_\_\_\_

We have examined the attached statements and certify that, to the best of our knowledge, they present fairly the revenues of the firm for the period ended \_\_\_\_\_ and are prepared in agreement with the books of the firm.

We certify that the reported revenues of the firm are complete and accurate and in accordance with generally accepted accounting principles.

|    | <b>Name and Title</b> | <b>Signature</b> | <b>Date</b> |
|----|-----------------------|------------------|-------------|
| 1. | _____                 | _____            | _____       |
|    | _____                 |                  |             |
| 2. | _____                 | _____            | _____       |
|    | _____                 |                  |             |

**FEES RULE  
FORM 13-503F2  
(COMMODITY FUTURES ACT)**

**ADJUSTMENT OF FILING OR FEE PAYMENT  
UNDER SUBSECTION 2.3(4) OF RULE 13-503**

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**Registrant Firm Name:** \_\_\_\_\_

**Calendar or Financial Year Ending,  
used in calculating the Participation Fee:** \_\_\_\_\_

1. State the amount of the participation fee estimated under the filing of Form 13-503F1 previously made:  
\_\_\_\_\_
2. Show the amount of the participation fee based on the audited financial statements for the last completed financial year: \_\_\_\_\_
3. **[Include revised and completed Form 13-503F1.]**
4. Difference between 1 and 2: \_\_\_\_\_
5. Indicate refund due (balance owing): \_\_\_\_\_

**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-503CP  
(COMMODITY FUTURES ACT)**

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**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-503CP  
(COMMODITY FUTURES ACT)**

**PART 1 PURPOSE OF COMPANION POLICY AND INTERPRETATION**

- 1.1 Purpose of Companion Policy** - The purpose of this Companion Policy is to state the views of the Commission on various matters relating to Rule 13-503 Fees under the CFA (the "Rule"), including
- (a) an explanation of the overall approach of the Rule;
  - (b) explanation and discussion of various parts of the Rule; and
  - (c) examples of some matters described in the Rule.
- 1.2 Interpretation** - Terms defined in the Rule and used in this Companion Policy have the respective meaning ascribed to them in the Rule.

**PART 2 PURPOSE AND GENERAL APPROACH OF THE RULE**

**2.1 Purpose and General Approach of the Rule**

- (1) The general approach of the Rule is to establish a fee regime that is consistent with the approach of Rule 13-502 (the "OSA Fees Rule"), which governs fees paid under the *Securities Act* (Ontario). That rule is designed to accomplish three primary purposes – to reduce the overall fees charged to market participants from what existed previously in Ontario, to create a clear and streamlined fee structure and to adopt fees that accurately reflect the Commission's costs of providing services.
- (2) The fee regime implemented by the Rule is based on the concept of "participation fees" and "activity fees".

**2.2 Participation Fees** - Participation fees generally are designed to represent the benefit derived by registrant firms from participating in Ontario's capital markets. Registrant firms are required to pay participation fees annually. The participation fee is based on a measure of the registrant firm's revenues from CFA activities in Ontario, which is intended to serve as a proxy for the registrant firm's activities under the CFA. The amounts of the participation fees have been based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities. Participation fees replace most of the filing fees and other activity fees formerly charged to registrant firms under the previous fees regime.

**2.3 Registrants under the CFA and the *Securities Act* (Ontario)**

- (1) The Rule imposes an obligation to pay a participation fee only on registrant firms, as defined in the Rule. A registrant firm is a person or company registered as a dealer or adviser under the CFA. The only registrant firms to pay a participation fee under the Rule will be those firms registered in Ontario only under the CFA. An entity that is registered both under the CFA and the *Securities Act* (Ontario) is exempted by section 2.8 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. Such an entity will pay its participation fee under the OSA Fees Rule, and will include its revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under that Rule.
- (2) It is noted, of course, that dual registrants will pay activity fees under the Rule in accordance with Appendix B of the Rule even though they may pay their participation fees under the OSA Fees Rule.

**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 CFA". This definition ensures that a participation fee is paid at the firm level, and not by individual partners, directors, officers, representatives, salespersons and floor traders of a firm.

**2.5 Activity Fees** - Activity fees are designed to represent the direct cost of Commission staff resources expended in undertaking certain activities requested of staff by registrant firms or other persons or companies, for example in connection with the applications for discretionary relief or the processing of registration documents. Market participants are charged activity fees only for activities undertaken by staff at the request of the market participant. Activity fees are



charged for a limited number of activities only and are flat rate fees based on the average cost to the Commission of providing the service.

## 2.6 No Refunds

- (1) Generally speaking, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the calendar year for which the fee was paid.
- (2) An exception to the principle discussed in subsection (1) is provided for in subsection 2.3(4) of the Rule. This provision allows for the adjustment of a participation fee paid by a registrant firm based on a good faith estimate of its revenues if its financial statements are not available, or its relevant financial year is not completed, at the time that the Form 13-503F1 is required to be filed under subsection 2.3(1) of the Rule.
- (3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

**2.7 Indirect Avoidance of Rule** - The Commission may examine arrangements or structures implemented by registrant firms and their affiliates that raise the suspicion of being structured solely for the purpose of reducing the fees payable under the Rule. In particular, the Commission will be interested in circumstances in which revenues from registrable activities carried on by a corporate group are not treated as revenues of a registrant firm, thereby possibly artificially reducing the specified Ontario revenue calculations used in determining fees payable under the Rule.

## PART 3 PARTICIPATION FEES

### 3.1 Fees Payable in Advance

- (1) Section 2.1 of the Rule prescribes the annual payment of a participation fee by each registrant firm, for each calendar year, to be based on the specified Ontario revenues of the registrant firm for its previous financial year earned from CFA activities. Section 2.2 of the Rule requires the payment of a participation fee for a calendar year on December 31 of each year.
- (2) The Commission notes that the effect of sections 2.1 and 2.2 of the Rule is that a participation fee is payable in advance by a registrant firm for a calendar year, even though the fee is based on the specified Ontario revenues of the registrant firm for the last financial year of the registrant firm that ends before the beginning of the calendar year for which the participation fee is paid. In respect of a participation fee for the 2004 calendar year, the calculation of the fee would be based on the financial year of the registrant firm ending in 2003.
- (3) Section 2.2 and subsection 2.3(1) of the Rule require each registrant firm to file its Form 13-503F1 respecting its participation fee by December 1, and to pay its participation fee by December 31, of the year before the calendar year for which the participation fee applies. The fixing of one date for each of the filing and fee payment by a registrant firm is consistent with the National Registration Database ("NRD") system of the Canadian securities regulatory authorities; the NRD system uses a common renewal date for all registrants of December 31 in each year.
- (4) By way of illustration, a registrant firm with a financial year end of June 30, will file a Form 13-503F1 by December 1, 2003 and pay its participation fee by December 31, 2003. That filing and payment will satisfy the registrant firm's obligations contained in the Rule for the 2004 calendar year, but the calculation of the participation fee will be based on the specified Ontario revenues of the registrant firm for the financial year ended June 30, 2003.
- (5) A registrant firm with a financial year end of December 31 will, by December 1, 2003, file its Form 13-503F1, and pay its participation fee by December 31, 2003, in order to pay its participation fee for the 2004 calendar year. Even though that filing and payment will satisfy the registrant firm's obligations contained in the Rule for the 2004 calendar year, the calculation of the participation fee will be based on the specified Ontario revenues of the registrant firm for the financial year ended December 31, 2003. In such circumstances, the registrant firm would use the mechanism of subsection 2.3(3) and (4) and section 2.4 to pay a participation fee based on an estimation of its specified Ontario revenues and later to adjust its payment.

**3.2 Late Fees** - Section 2.7 of the Rule prescribes the payment of additional fees in case of overdue payment of fees. The Commission notes that it will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm in considering the registration status of that registrant firm.

- 3.3** “**CFA Activities**” - Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term “CFA activities” is defined in Section 1.1 of the Rule to include “activities for which registration under the CFA or an exemption from registration 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.

**PART 4 CALCULATION EXAMPLES**

- 4.1** **Calculation Examples** - Appendices A and B contain some examples of how fees would be calculated under the Rule.

**Appendix A  
Commodity Trading Manager**

Assume that:

- Financial year-end is December 31<sup>st</sup>
- Firm had specified Ontario revenues of \$450,000 for the financial year ended December 31, 2003
- audited financial statements have to be filed

| Item                                                                                                                                                       | Participation Fee              | Activity Fee                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------|
| files Form 13-503F1 on December 1, 2003, estimating its specified Ontario revenues for the year ending December 31, 2003 as \$550,000                      | \$5,000 <sup>1</sup>           |                                  |
| files annual financial statements, showing actual specified Ontario revenues of \$450,000                                                                  |                                | nil                              |
| files revised Form 13-503F1 and Form 13-503F2, reflecting actual specified Ontario revenues of \$450,000 and actual participation fee for 2004 of \$1,0000 | Refund of \$4,000 <sup>2</sup> |                                  |
| 1 renewal of registration                                                                                                                                  |                                | nil                              |
| 3 appointments of new advising officers/directors                                                                                                          |                                | \$400 x 3 = \$1,200 <sup>3</sup> |
| 2 appointments of new non-advising officer/director                                                                                                        |                                | nil                              |
| 2 new branches                                                                                                                                             |                                | nil                              |
| 1 branch closure                                                                                                                                           |                                | nil                              |
| 1 termination of director                                                                                                                                  |                                | nil                              |
| 1 termination of officer                                                                                                                                   |                                | nil                              |
| 2 requests for change in the status of officers from non-advising to advising                                                                              |                                | \$400 x 2 = \$800 <sup>4</sup>   |

<sup>1</sup> See Section 2.3 and Appendix A of the Rule.

<sup>2</sup> See Subsection 2.3(4) and Section 2.4 of the Rule.

<sup>3</sup> See item B.3 of Appendix B of the Rule.

<sup>4</sup> See item B.4 of Appendix B of the Rule.

**Appendix B  
Futures Commission Merchant ("FCM")**

Assume that:

- FCM's financial year-end is December 31<sup>st</sup>
- FCM had specified Ontario revenues of \$600,000 for the financial year ended on December 31, 2003
- FCM currently has 5 sales representatives
- audited financial statements have to be filed with the IDA

| Item                                                                                                                                                      | Participation Fee    | Activity Fee                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|------------------------------------|
| files Form 13-503F1 on December 1, 2003, estimating its specified Ontario revenues for the year ending December 31, 2003 as \$475,000                     | \$1,000 <sup>5</sup> |                                    |
| files annual financial statements, showing actual specified Ontario revenues of \$600,000                                                                 |                      | nil                                |
| Files revised Form 13-503F1 and Form 13-503F2, reflecting actual specified Ontario revenues of \$600,000 and actual participation fee for 2004 of \$5,000 | \$4,000 <sup>6</sup> |                                    |
| 1 application for discretionary relief of one requirement under the Act                                                                                   |                      | \$1,500 x 1 = \$1,500 <sup>7</sup> |
| files annual financial statements                                                                                                                         |                      | Nil                                |
| 1 renewal of registration                                                                                                                                 |                      | Nil                                |
| 2 appointments of new trading officers/directors                                                                                                          |                      | \$400 x 2 = \$800 <sup>8</sup>     |
| 1 appointment of new salesperson                                                                                                                          |                      | \$400 x 1 = \$400 <sup>9</sup>     |
| 2 transfers of salespersons                                                                                                                               |                      | nil                                |
| 3 transfers of registration of trading officer/director                                                                                                   |                      | nil                                |
| 1 change in business name                                                                                                                                 |                      | nil                                |
| 3 terminations of sales representatives or officer/director                                                                                               |                      | nil                                |
| 3 appointments of non-trading officers/directors                                                                                                          |                      | nil                                |
| 1 request for change in the status of officers from non-trading to trading                                                                                |                      | \$400 x 1 = \$400 <sup>10</sup>    |

<sup>5</sup> See Section 2.3 and Appendix A of the Rule.

<sup>6</sup> See Subsection 2.3(4) and Section 2.4 of the Rule.

<sup>7</sup> See item A.2 of Appendix B of the Rule.

<sup>8</sup> See item B.3 of Appendix B of the Rule.

<sup>9</sup> See item B.3 of Appendix B of the Rule.

<sup>10</sup> See item B.4 of Appendix B of the Rule.