

## Chapter 5

# Rules and Policies

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### 5.1.1 OSC Rule 13-502 Fees, Forms and Companion Policy 13-502CP Fees

#### NOTICE OF REVOCATION AND REPLACEMENT OF OSC RULE 13-502 FEES AND COMPANION POLICY 13-502CP FEES

##### Introduction

On January 10, 2006 the Commission made OSC Rule 13-502 *Fees* and adopted Companion Policy 13-502CP *Fees* (collectively, the “Proposed Materials”) under the *Securities Act*. The Proposed Materials were published for a 90-day comment period on August 12, 2005 and are intended to replace the rule and policy currently in force under the same number.

Under subsection 143.3 of the Act, the Rule was delivered to the Minister responsible for oversight of the Commission on January 19, 2006. Unless the Minister rejects the Rule or returns it to the Commission for further consideration, it will come into force on April 1, 2006.

##### Substance and Purpose of the Rule and Policy

The Proposed Materials are consistent with the current rule and policy. That is, the proposed Rule requires registrants, unregistered investment fund managers, and reporting issuers (other than most investment funds) to pay a “participation fee” each year. This fee is designed to reflect a market participant’s proportionate participation in Ontario’s capital markets in the upcoming year.

As with the current rule, the proposed Rule also requires the payment of “activity fees”. These fees are designed to represent our direct cost where Commission staff has undertaken certain activities for market participants (for example, reviewing a prospectus or a registration application).

While the basic principles of the current rule and policy remain, the Proposed Materials include a number of changes that are intended to:

- ensure that the fees charged are approximately equal to our costs of providing services,
- improve the “readability” and “user-friendliness” of the current rule and policy by employing plain language principles,
- simplify the activity fee schedule, and
- address a number of concerns and comments raised by stakeholders.

The proposed Rule also returns the surplus collected from market participants between April 2003 and March 2006 in the form of reduced participation fees.

Since the end of the comment period, we have made the following non-material changes to the Proposed Materials:

- Given that the capital markets participation fees paid on December 31, 2005 were larger than expected, we have applied these surplus fees to further reduce the capital markets participation fees in the Rule.
- We have amended the definition of “Class 3A reporting issuer”. This change is detailed below.
- We have changed some language in the materials to further improve their “readability”.

For a detailed description of other changes to the current rule and policy, please refer to the request for comment published by the Commission on August 12, 2005.

## Summary of Comments Received

We received comment letters from the following commenters. Their comment letters are available on the Commission's website ([www.osc.gov.on.ca](http://www.osc.gov.on.ca)).

- International Bar Association (letter dated November 14, 2005)
- Investment Dealers Association of Canada (letter dated November 14, 2005)
- Fasken Martineau DuMoulin LLP (letter dated November 10, 2005)
- Borden Ladner Gervais LLP (letter dated November 10, 2005)
- The Investment Funds Institute of Canada (letter dated November 10, 2005)
- Tradex Management Inc. (letter dated November 10, 2005)
- Heathbridge Capital Management Ltd. (letter dated November 9, 2005)
- Rogan Investment Management (letter dated November 9, 2005)
- McCarthy Tetrault LLP (letter dated August 15, 2005)

We would like to thank the commenters for taking the time to provide comments. We have carefully considered them and have provided summaries of the comments and our responses below.

### 1. Definition of 'Class 3A reporting issuer' (Fasken Martineau DuMoulin LLP)

One commenter provided the following suggestions regarding the definition of 'Class 3A reporting issuer':

- (i) Given the number of trustees that may be involved, an issuer with debt securities outstanding may be faced with costs that are disproportionate to the \$600 participation fee payable when determining whether its debt securities are registered in the names of Ontario persons or companies. The commenter suggested that reporting issuers with debt securities outstanding only be required to consider registers maintained by the issuer or by trustees located in Canada.
- (ii) The commenter recommended that guidance be provided on how an issuer is to aggregate its equity and debt securities to determine whether less than 1% of the outstanding securities of the issuer are registered in the names of Ontario persons or companies.
- (iii) An issuer may not know whether its securities trade on a 'marketplace' – in particular, those entities described in paragraphs (c) and (d) of the term (defined in National Instrument 21-101 *Marketplace Operations*). Given this, the commenter suggests the term 'marketplace' be narrowed for the purposes of Rule 13-502.
- (iv) The commenter suggested that if subparagraph (b)(iii) of the definition is just intended to capture trades that are capital-raising activities the use of the term "distribution" is too broad and should be reconsidered.

#### *Response:*

We agree with the commenter's suggestions and we have amended the definition of "Class 3A reporting issuers" as follows:

- (i) The change to the definition provides that a reporting issuer must determine the ownership of outstanding securities using lists of registered owners maintained by the issuer, its transfer agent or its registrar; it will not be required to consider registers maintained by others (whether located in Canada or not). However, even if its own lists indicate that persons or companies who are resident in Ontario own less than 1% of its securities, a reporting issuer is only a Class 3A reporting issuer if it also reasonably believes that its level of Ontario ownership is actually less than 1%.
- (ii) We will require the determination of the percentage of outstanding securities registered in the name of Ontario persons and companies to be based upon the market value of all outstanding securities.

- (iii) We have qualified the determination of a marketplace in Canada to be based upon the reasonable belief of the reporting issuer that no security of the reporting issuer traded on a marketplace in Canada during its previous fiscal year.
- (iv) We have replaced the term “distribution” with reference to an issue of securities and provided an additional exemption from an issuance of securities to include the exercise of rights previously granted.

In addition, we have added section 1.2, interpreting the meaning of “listed or quoted”. This interpretation requires reporting issuers to only include securities listed or quoted on a marketplace if the reporting issuer has applied for, or consented to, the listing or quotation.

## 2. Activity fee for Form 45-501F1 and Form 45-106F1 (McCarthy Tetrault LLP)

One commenter questioned whether the proposed activity fee of \$500 for the filing of a Form 45-501F1 or a Form 45-106F1 is appropriate. The commenter suggested that setting this fee is inconsistent with the intention of activity fees since \$500 may exceed the direct cost to the Commission of activities undertaken by staff when receiving either form.

The commenter also expressed concern that this fee will be required of an Ontario issuer that is distributing securities under an exemption in National Instrument 45-106 to purchasers that are all outside Ontario.

### *Response:*

This fee has both an activity fee component and a participation fee component. That is, it reflects both the costs to the Commission of processing the filing and the issuer’s proportionate benefit of accessing the Ontario capital markets. This fee has been categorized as an activity fee for simplicity. We believe that charging a portion of this \$500 fee as a separate participation fee would create an unnecessary burden for stakeholders and the Commission.

Regarding the commenter’s second concern, in some circumstances there will be a distribution under the Act where an issuer is distributing securities to purchasers that are all outside Ontario. If such a distribution is an exempt distribution under National Instrument 45-106, the Commission believes that it should be treated the same as any other exempt distribution under that rule; that is, the issuer should file a Form 45-106F1 and pay the \$500 activity fee.

## 3. Additional tier for registrant participation fees (Rogan Investment Management and Heathbridge Capital Management Ltd.)

Two commenters strongly support the proposed new tier for participation fees for registrants with revenue between \$1 million and \$3 million.

## 4. Fee schedule should be more graduated (Tradex Management Inc.)

One commenter suggested that the tiers in the proposed participation fee schedule should be further subdivided. The commenter proposed a schedule under which fees would increase with each \$100,000 increase in revenue. The suggested advantage of having more tiers that each cover a smaller range of revenue is that a market participant that moves from one tier to another would be subject to a less dramatic change in its participation fee relative to its increase in revenue.

### *Response:*

The goal of the current fee model is to create a clear and streamlined fee structure that reflects the Commission’s cost of providing services. Given that those costs are relatively stable, year to year, the structure of the participation fees and tiers is designed to minimize volatility in the Commission’s revenue and therefore better match revenue to costs. This also means that market participants generally experience stability in their fees from one year to the next.

The OSC appreciates the constructive suggestions made and understands that there is a significant marginal cost for firms that move up from one tier to the next. However, prior to moving to a higher tier, firms pay a lower fee than would be required if more tiers were used. That is, firms at the top end of each existing tier would see their fees increase so as to balance the decreased fees for firms at the lower end. Although this would reduce the fee increases of concern to the commenter, in our view it would also reduce the benefit of having a smaller change in fees.

A higher number of tiers also increases the complexity of the system and makes the Commission’s revenue more volatile. Given that over 81% of registrants have revenue below \$1 million, the suggested changes would have an impact on the bulk of participants and would greatly increase the volatility of the Commission’s revenue. Under the current system, an overall decrease in Ontario revenue of 5% results in fee changes for 13% of participants with revenue between \$500,000 and \$1,000,000. If \$100,000 increments are used that figure increases to 39% of

participants. Such a threefold increase in the variability of revenue would greatly increase the likelihood of the Commission not covering its operating costs at a given level of fees.

**5. Calculation of registrant's participation fee** (Heathbridge Capital Management Ltd. and Borden Ladner Gervais LLP)

Two commenters suggested that rather than basing an adviser's participation fee on the income allocated to Ontario on the adviser's tax return, the rule should permit advisers to use the proportion of that income that is attributable to revenue from its Ontario clients. The commenters indicated that the latter amount would be smaller for a firm that is located in Ontario but has clients in other jurisdictions.

*Response:*

We partly agree with the principle expressed in this comment. That is, where an adviser is adequately regulated in another jurisdiction it may be appropriate to exclude the revenue generated in that jurisdiction from the calculation of the adviser's participation fee. As one of the commenters noted, this rationale has formed the basis of partial exemptions from the Rule granted by the Director.

However, in our view the rule should not be amended at this time. Over the 2 ½ years the Rule has been in force, the Director has only granted 3 exemptions of this nature. Each exemption was based on the Director's assessment of the applicant's registration in another jurisdiction and each of the 3 cases was somewhat different. The Commission is of the view that until a clearer pattern and need emerges this matter is best dealt with through the exemption process.

**6. Concern about accuracy of projected surplus** (The Investment Funds Institute of Canada)

One commenter expressed concern that the Commission has generated "vast surpluses" since 1998 and has therefore been unsuccessful in setting fees that are roughly equal to its costs. The commenter is of the view that these past surpluses are evidence that the proposed fees are too high.

*Response:*

The comment letter refers to the eight year period of 1998 to 2005, during which the Commission's revenues exceeded its expenses by \$209.9 million. It is important to recognize that this covers a period of transition regarding how fees collected by the Commission were dealt with. Before the Fee Rule became effective in March 2003, we were required by legislation to remit our surpluses (less a small amount to build a reserve) to the Consolidated Revenue Fund (CRF) of the Ontario Government. Between 1998 and 2003 we remitted a total of \$145.1 million to the CRF and built a reserve of \$32 million. The reserve breaks down as follows:

- \$20 million is our general reserve. This represents about three months of operating expenditures and is necessary for us to manage our cash flow requirements arising from the timing of our revenues.
- \$12 million is designated by the Ontario Government for a specified purpose. Should that spending not occur we are obligated to return these funds to the Government.

Since March 2003, the Commission has been committed to collecting no more in fees than is required to cover its expenses and maintain its \$32 million reserve. We have done this by rebating \$15 million to market participants in March 2004 and by setting fees in the new Rule to significantly reduce our current surplus. The proposed fees have been set at levels that will generate a deficit of \$39.5 million across the next 3 years and that will allow us to maintain our \$32 million reserve.

With respect to the March 2004 rebate of \$15 million, the commenter notes that an IFIC member received only a \$12 refund cheque. While this amount is clearly small, it's important to note that the refunds were based on a percentage of the total fees paid. In this example, their member would have only paid \$100 in fees in relation to this refund.

**7. Fees paid by mutual fund industry** (The Investment Funds Institute of Canada)

One commenter suggested that the mutual fund industry pays fees that are too high relative to the Commission resources devoted to regulating the industry. The commenter is also of the view that some firms in the mutual fund industry will pay fees that are significantly higher under the proposed rule and that this increase is unjustified given both the Commission resources consumed by the industry and the past surpluses generated by the Fee Rule.

*Response:*

Our participation fees are set to recover our estimated costs to regulate our capital market. The increase in participation fees for the investment funds sector noted by this commenter is consistent with our increase in costs related to the sector since the introduction of the fee rule three years ago. During this period our staffing in this area has expanded by almost 50% to address growth in investment funds regulatory activities.

The commenter expresses the concern that under the proposed rule “many [IFIC] Members will be obliged to pay materially higher fees”. The majority of mutual fund industry participants realized a reduction in fees when our new fee structure was introduced 3 years ago, with larger participants typically realizing greater reductions. Under the fee rule now coming into effect, while fees will increase for some registrants, participation fees for 81% of registrants (namely, those with annual revenues below \$3 million) will decrease by between 20% and 50%. This is significant since participation fees make up the greater portion of fees paid by registrants and, in most instances, activity fees will be unchanged or lower.

**8. Application of the rule to ‘unregistered investment fund managers’ (International Bar Association and Borden Ladner Gervais LLP)**

Two commenters expressed the view that unregistered investment fund managers that manage investment funds distributed in Ontario pursuant to prospectus and registration exemptions should not be subject to participation fees. The commenters recommended that a participation fee should only be paid by an investment fund manager if the fund it manages is a reporting issuer.

The commenters suggested that unregistered investment fund managers should be treated the same as corporate finance issuers that distribute securities on an exempt basis; that is, only an activity fee, payable when filing a notice of the exempt distribution, should be required in the case of a privately placed fund.

Among the arguments made by one commenter, the commenter suggested that it is incongruous that a non-resident unregistered investment fund manager should be required to pay a participation fee when the portfolio adviser of the same fund may be exempt from registration and therefore not subject to a participation fee. Further, the commenter suggested that the concept of “capital markets activities in Ontario” is particularly meaningless for non-resident unregistered investment fund managers that manage off-shore investment funds that distribute securities in Ontario only pursuant to prospectus exemptions.

*Response:*

*The inclusion of non-reporting investment funds*

Prior to the existing fee rule, mutual fund manufacturers paid very high issuance fees. The purpose of this Rule was, and continues to be, to attribute costs more equitably among capital market participants. It is recognized that this Rule results in increases to certain firms that previously paid very low (or no) fees.

Our view is that investment funds rarely, if ever, function as entities separate from their management companies. Accordingly, we continue to believe that it is appropriate to capture as capital market activities the investment fund manager’s role either as a registrant or as an unregistered investment fund manager. Revenues from capital market activities, whether they relate to reporting issuers or not, are subject to capital market participation fees.

In our view, it is fair and reasonable to collect capital market participation fees from managers (resident or not) of investment funds (resident or not) that distribute their securities to Ontario investors. These managers derive revenue in connection with asset management services from capital raised in Ontario. Our focus on an investment fund’s management company and its capital market activities (rather than on the fund as an issuer) is further reflected in the Rule’s treatment of Form 45-501F1 and Form 45-106F1 filings. That is, under item B2 of the Activity Fee schedule, these filings, which notify the Commission of an exempt distribution, are not subject to an activity fee if the fund has a manager that has paid its participation fee.

*The inclusion of non-resident investment fund managers*

We do not consider whether a participant in the capital markets is registered to be the only determinable measure of whether the capital market participation fee is applicable. We note non-resident advisers are exempt from certain registration requirements only under specified conditions. These exemptions do not mean that non-resident advisers are not participating in the Ontario capital market.

On this point, a commenter suggested that the Commission is collecting multiple fees in respect of a foreign investment fund; namely, distribution fees by the foreign investment fund for any private placement, the participation fee payable by a limited market dealer, and the participation fee payable by the investment fund managers.

The same fees are applicable for reporting investment funds with unregistered investment fund managers with the exception of the activity fees relating to the filing of Form 45-106F1. That is, as mentioned above, no activity fee is required when filing a Form 45-106F1 for an investment fund whose manager pays a participation fee.

**9. Reduction in activity fees attributable to NRD (Heathbridge Capital Management Ltd.)**

One commenter commended the proposed fee reduction attributable to the cost saving the Commission has realized from the National Registration Database.

**10. Registration-related activities performed by IDA (Investment Dealers Association of Canada)**

The Commission has delegated certain activities related to the registration of individuals to the Investment Dealers Association. In circumstances where these activities are undertaken by the IDA, they are not done by Commission staff. The rule proposes that three of the fees associated with these activities be reduced. The IDA is of the view that the proposed reduction is justified in only two cases. Based on their own costs of processing registration applications, the IDA recommends that the fee for this activity not be reduced to \$200 but remain at \$400.

*Response:*

Each activity fee proposed in the Rule is based on the average cost to the Commission of undertaking the activity. Having reconsidered the activity fee proposed for processing registration applications, the Commission is still of the view that it should be reduced to \$200.

**Text of the Proposed Materials**

The text of the Proposed Materials follows. The Proposed Materials are also available on the Commission's website along with a blackline showing the changes made to the Proposed Materials after their publication for comment on August 12, 2005.

**Questions**

Please refer your questions to any of the following:

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**ONTARIO SECURITIES COMMISSION  
RULE 13-502  
FEES**

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**ONTARIO SECURITIES COMMISSION  
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**PART 1 – INTERPRETATION**

**1.1 Definitions – In this Rule**

“capitalization” means the amount determined in accordance with section 2.11, 2.12, 2.13 or 2.14;

“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, or
- (c) activities for which registration under the *Commodity Futures Act*, or an exemption from registration under the *Commodity Futures Act*, is required;

“Class 1 reporting issuer” means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada and that has securities listed or quoted on a marketplace in Canada or the United States of America;

“Class 2 reporting issuer” means a reporting issuer that is incorporated or organized under the laws of Canada or a jurisdiction in Canada other than a Class 1 reporting issuer;

“Class 3A reporting issuer” means a reporting issuer that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada and

- (a) has no securities listed or quoted on a marketplace located anywhere in the world, or
- (b) has securities listed or quoted on a marketplace anywhere in the world and
  - (i) at the end of its previous fiscal year, securities registered in the names of persons or companies resident in Ontario represented less than 1% of the market value of all outstanding securities of the reporting issuer for which the reporting issuer or its transfer agent or registrar maintains a list of registered owners,
  - (ii) the reporting issuer reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all outstanding securities of the reporting issuer,
  - (iii) the reporting issuer reasonably believes that no security of the reporting issuer traded on a marketplace in Canada during its previous fiscal year, and
  - (iv) the reporting issuer has not issued any of its securities in Ontario in the last 5 years, other than
    - (A) to employees of the reporting issuer or employees of a subsidiary entity of the reporting issuer, or
    - (B) pursuant to the exercise of a right previously granted by the reporting issuer or its affiliate to convert or exchange previously issued securities of the issuer without payment of any additional consideration;

“Class 3B reporting issuer” means a reporting issuer

- (a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada,
- (b) that is not a Class 3A reporting issuer, and

- (c) whose trading volume of securities listed or quoted on marketplaces in Canada was less than the trading volume of its securities listed or quoted on marketplaces outside Canada during the reporting issuer's previous fiscal year;

"Class 3C reporting issuer" means a reporting issuer

- (a) that is not incorporated or organized under the laws of Canada or a jurisdiction in Canada, and
- (b) whose trading volume of securities listed or quoted on marketplaces in Canada was greater than the trading volume of its securities listed or quoted on marketplaces outside Canada during the reporting issuer's previous fiscal year;

"IDA" means the Investment Dealers Association of Canada;

"investment fund family" means two or more investment funds that have

- (a) the same investment fund manager, or
- (b) investment fund managers that are affiliates of each other;

"marketplace", subject to section 1.2, has the meaning ascribed to that term in National Instrument 21-101 *Marketplace Operation*;

"MFDA" means the Mutual Fund Dealers Association of Canada;

"Ontario percentage" means, for a fiscal year of a person or company

- (a) that has a permanent establishment in Ontario, the percentage of the income of the person or company allocated to Ontario for the fiscal year in the corporate tax filings made for the person or company under the ITA, or
- (b) that does not have a permanent establishment in Ontario, the percentage of the total revenues of the person or company attributable to capital markets activities in Ontario;

"parent" means a person or company of which another person or company is a subsidiary entity;

"registrant firm" means a person or company registered as a dealer or an adviser under the Act;

"specified Ontario revenues" means, for a registrant firm or an unregistered investment fund manager, the revenues determined under section 3.3, 3.4 or 3.5;

"subsidiary entity" has the meaning ascribed to "subsidiary" under Canadian GAAP; and

"unregistered investment fund manager" means an investment fund manager that is not registered under the Act.

- 1.2 Interpretation of "listed or quoted"** – In this Rule, a reporting issuer is deemed not to have securities listed or quoted on a marketplace that lists or quotes the reporting issuer's securities unless the reporting issuer or an affiliate of the reporting issuer applied for, or consented to, the listing or quotation.

## **PART 2 – CORPORATE FINANCE PARTICIPATION FEES**

### **Division 1: General**

**2.1 Application** – This Part does not apply to an investment fund if the investment fund has an investment fund manager.

### **2.2 Participation Fee**

- (1) A reporting issuer must pay the participation fee shown in Appendix A opposite the capitalization of the reporting issuer, as its capitalization is determined under section 2.11, 2.12 or 2.14.
- (2) Despite subsection (1), a Class 3A reporting issuer must pay a participation fee of \$600.

- (3) Despite subsection (1), a Class 3B reporting issuer must pay the greater of
  - (a) \$600, and
  - (b) 1/3 of the participation fee shown in Appendix A opposite the capitalization of the reporting issuer, as its capitalization is determined under subsection 2.13.

**2.3 Time of Payment** – A reporting issuer must pay the participation fee required under section 2.2 by the earlier of

- (a) the date on which its annual financial statements are required to be filed under Ontario securities legislation, and
- (b) the date on which its annual financial statements are filed.

**2.4 Disclosure of Fee Calculation** – At the time that it pays the participation fee required by this Part,

- (a) a Class 1 reporting issuer must file a completed Form 13-502F1,
- (b) a Class 2 reporting issuer must file a completed Form 13-502F2,
- (c) a Class 3A reporting issuer must file a completed Form 13-502F3A,
- (d) a Class 3B reporting issuer must file a completed Form 13-502F3B, and
- (e) a Class 3C reporting issuer must file a completed Form 13-502F3C.

**2.5 Late Fee**

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

**Division 2: Exceptions**

**2.6 Participation Fee for New Reporting Issuers**

- (1) A person or company that is not a reporting issuer and that has filed a prospectus to distribute securities must pay a participation fee before the issuance of a receipt or an MRRS decision document for the prospectus, calculated by multiplying
  - (a) the participation fee shown in Appendix A opposite the capitalization calculated under subsection (4), by
  - (b) the number of entire months remaining in the fiscal year of the person or company after it becomes a reporting issuer, divided by 12.
- (2) For the purposes of subsections (4) and (5), a person or company is deemed to be a reporting issuer.
- (3) For the purpose of subsection (4), a person or company is deemed to be a Class 1 reporting issuer if the person or company
  - (a) is incorporated or organized under the laws of Canada or a jurisdiction in Canada, and
  - (b) reasonably believes that it will have securities listed or quoted on a marketplace in Canada or the United States of America within 30 days of becoming a reporting issuer.
- (4) The capitalization of a person or company referred to in subsection (1) is determined as provided under section 2.11, 2.12, 2.13 or 2.14, adjusted by

- (a) for a Class 1, Class 3B or Class 3C reporting issuer, using the offering price of the securities being distributed under the prospectus, as disclosed in the prospectus, as the amount required to be calculated under subparagraph 2.11(a)(ii), paragraph 2.11(b), or paragraph 2.13(b),
  - (b) for a Class 2 reporting issuer, basing its capitalization on the audited financial statements for the most recent fiscal year contained in the prospectus, and
  - (c) assuming the completion of all distributions offered under the prospectus as at the date of filing of the prospectus.
- (5) A person or company that is not a reporting issuer and that has filed a non-offering prospectus must pay a participation fee before the issuance of a receipt or an MRRS decision document for the prospectus, calculated by multiplying
- (a) the participation fee shown in Appendix A opposite the capitalization calculated under section 2.12, using the audited financial statements for the most recent fiscal year contained in the prospectus, by
  - (b) the number of entire months remaining in the fiscal year of the person or company after it becomes a reporting issuer, divided by 12.
- (6) A person or company that becomes a reporting issuer, other than through the filing of a prospectus, must pay a participation fee within two business days of becoming a reporting issuer, calculated by multiplying,
- (a) for
    - (i) a Class 1 reporting issuer, the participation fee shown in Appendix A opposite the capitalization calculated under section 2.11,
    - (ii) a Class 2 reporting issuer, the participation fee shown in Appendix A opposite the capitalization calculated under section 2.12,
    - (iii) a Class 3A reporting issuer, \$600,
    - (iv) a Class 3B reporting issuer, the greater of \$600 and one-third of the participation fee shown in Appendix A opposite the capitalization calculated under section 2.13,
    - (v) a Class 3C reporting issuer, the participation fee shown in Appendix A opposite the capitalization calculated under section 2.14, by
  - (b) the number of entire months remaining in the fiscal year of the person or company after it becomes a reporting issuer, divided by 12.
- (7) For the purpose of subparagraphs (a)(i), (iv), and (v) of subsection (6), the value of each class or series of the reporting issuer's listed securities is calculated by multiplying the number of securities of the class or series outstanding by the closing price of the class or series on the day on which the listing occurred.
- (8) This section does not apply to a reporting issuer formed from a statutory amalgamation or arrangement, or to a person or company continuing from a transaction to which paragraph 2.11(1)(a) or (b) of National Instrument 45-106 *Prospectus and Registration Exemptions* applies, if the amalgamation, arrangement or other transaction occurs within a fiscal year of a predecessor issuer in which the predecessor issuer paid a participation fee under this Rule.

**2.7 Participation Fee Exemption for New Reporting Issuers** – Section 2.2 does not apply to a reporting issuer that has paid a participation fee under section 2.6 after its fiscal year end but before it is required to file financial statements in respect of that fiscal year end.

**2.8 Participation Fee for an Issuer Ceasing to be a Reporting Issuer** – An issuer that ceases to be a reporting issuer after its fiscal year end but before it has paid the participation fee required under Division 1, must pay a participation fee immediately before it ceases to be a reporting issuer, calculated by multiplying

- (a) the participation fee that would be payable at the time required under section 2.3 if the issuer remained a reporting issuer, by

- (b) the number of entire months in the fiscal year before it submitted its application to cease to be a reporting issuer, divided by 12.

## 2.9 Participation Fee Exemption for Subsidiary Entities

- (1) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity if
  - (a) a parent of the subsidiary entity is a reporting issuer,
  - (b) the parent has paid the participation fee applicable to the parent under section 2.2,
  - (c) the capitalization of the subsidiary entity was included in the calculation of the participation fee referred to in paragraph (b), and
  - (d) the net assets and gross revenues of the subsidiary entity represent more than 90 percent of the consolidated net assets and gross revenues of the parent for the most recently completed fiscal year of the parent.
- (2) Section 2.2 does not apply to a reporting issuer that is a subsidiary entity if
  - (a) a parent of the subsidiary entity is a reporting issuer,
  - (b) the parent has paid the participation fee applicable to the parent under section 2.2,
  - (c) the capitalization of the subsidiary entity was included in the calculation of the participation fee referred to in paragraph (b), and
  - (d) the subsidiary entity is entitled to rely on an exemption, waiver or approval from the requirements in sections 4.1(1), 4.3(1), 5.1(1), 5.2 and 6.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (3) If, under subsection (1) or (2), a reporting issuer has not paid a participation fee, the reporting issuer must file a completed Form 13-502F6 at the time it is otherwise required to pay the participation fee under section 2.3.
- (4) If, under subsection (2), a reporting issuer has not paid a participation fee and any of paragraphs (2)(a), (b), (c) or (d) cease to apply, the reporting issuer must pay, as soon as practicable, a participation fee calculated by multiplying the participation fee prescribed under section 2.2 by the number of entire months remaining in the fiscal year of the reporting issuer divided by 12.

## 2.10 Participation Fee Estimate for Class 2 Reporting Issuers

- (1) If the annual financial statements of a Class 2 reporting issuer are not available by the date referred to in section 2.3, the Class 2 reporting issuer must, on that date,
  - (a) file a completed Form 13-502F2 showing a good faith estimate of the information required to calculate its capitalization as at the end of the fiscal year, and
  - (b) pay the participation fee shown in Appendix A opposite the capitalization estimated under paragraph (a).
- (2) A Class 2 reporting issuer that estimated its capitalization under subsection (1) must, when it files its annual financial statements for the applicable fiscal year,
  - (a) calculate its capitalization under section 2.12,
  - (b) pay the participation fee shown in Appendix A opposite the capitalization calculated under section 2.12, less the participation fee paid under subsection (1), and
  - (c) file a completed Form 13-502F2A.
- (3) If a reporting issuer paid an amount paid under subsection (1) that exceeds the participation fee calculated under section (2), the issuer is entitled to a refund from the Commission of the amount overpaid.

### Division 3: Calculating Capitalization

**2.11 Class 1 Reporting Issuers** – The capitalization of a Class 1 reporting issuer is the aggregate of

- (a) the average market value over the previous fiscal year of each class or series of the reporting issuer's securities listed or quoted on a marketplace, calculated by multiplying
  - (i) the total number of securities of the class or series outstanding at the end of the previous fiscal year, by
  - (ii) the simple average of the closing prices of the class or series on the last trading day of each month of the previous fiscal year of the reporting issuer on
    - (A) the marketplace in Canada on which the highest volume of the class or series was traded in that fiscal year, or
    - (B) if the class or series was not traded on a marketplace in Canada, the marketplace in the United States of America on which the highest volume of the class or series was traded in that fiscal year, and
- (b) the market value at the end of the fiscal year, as determined by the reporting issuer in good faith, of each class or series of securities of the reporting issuer not referred to in paragraph (a) if any securities of the class or series
  - (i) were initially issued to a person or company resident in Canada, and
  - (ii) 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.

**2.12 Class 2 Reporting Issuers**

- (1) The capitalization of a Class 2 reporting issuer is the aggregate of each of the following items, as shown in its audited balance sheet as at the end of the previous fiscal year:
  - (a) retained earnings or deficit;
  - (b) contributed surplus;
  - (c) share capital or owners' equity, options, warrants and preferred shares;
  - (d) long term debt, including the current portion;
  - (e) capital leases, including the current portion;
  - (f) minority or non-controlling interest;
  - (g) items classified on the balance sheet between current liabilities and shareholders' equity, and not otherwise referred to in this subsection;
  - (h) any other item forming part of shareholders' equity not otherwise referred to in this subsection.
- (2) Despite subsection (1), a reporting issuer may calculate its capitalization using unaudited annual financial statements if it is not required to prepare, and does not ordinarily prepare, audited annual financial statements.
- (3) Despite subsection (1), a reporting issuer that is a trust that issues only asset-backed securities through pass-through certificates may calculate its capitalization using the monthly filed distribution report for the last month of its fiscal year, if the reporting issuer is not required to prepare, and does not ordinarily prepare, audited annual financial statements.

**2.13 Class 3B Reporting Issuers** – The capitalization of a Class 3B reporting issuer is the aggregate of the value of each class or series of securities of the reporting issuer listed or quoted on a marketplace, calculated by multiplying

- (a) the number of securities of the class or series outstanding at the end of the reporting issuer's previous fiscal year, by
- (b) the simple average of the closing prices of the class or series on the last trading day of each month of the previous fiscal year on the marketplace on which the highest volume of the class or series was traded in that fiscal year.

**2.14 Class 3C Reporting Issuers** – The capitalization of a Class 3C reporting issuer at the end of a fiscal year is determined under section 2.11, as if it were a Class 1 reporting issuer.

**2.15 Reliance on Published Information**

- (1) Subject to subsection (2), in determining its capitalization for purposes of this Part, a reporting issuer may rely on information made available by a marketplace on which securities of the reporting issuer trade.
- (2) If a reporting issuer reasonably believes that the information made available by a marketplace is incorrect, subsection (1) does not apply and the issuer must make a good faith estimate of the information required.

**PART 3 – CAPITAL MARKETS PARTICIPATION FEES**

**3.1 Participation Fee**

- (1) On December 31, a registrant firm must pay the participation fee shown in Appendix B opposite the registrant firm's specified Ontario revenues, as that revenue is calculated under section 3.3, 3.4 or 3.5.
- (2) Not later than 90 days after the end of its fiscal year, an unregistered investment fund manager must pay the participation fee shown in Appendix B opposite the fund manager's specified Ontario revenues, as that revenue is calculated under section 3.4.

**3.2 Disclosure of Fee Calculation**

- (1) By December 1, a registrant firm must file a completed Form 13-502F4 showing the information required to determine the participation fee due on December 31.
- (2) At the time that it pays the participation fee required under subsection 3.1(2), an unregistered investment fund manager must file a completed Form 13-502F4 showing the information required to determine the participation fee.

**3.3 Specified Ontario Revenues for IDA and MFDA Members**

- (1) The specified Ontario revenues of a registrant firm that is a member of the IDA or the MFDA is calculated by multiplying
  - (a) the registrant firm's total revenue for its fiscal year ending on or before December 31 of the current year, less revenue not attributable to capital markets activities for its fiscal year, by
  - (b) the registrant firm's Ontario percentage for the fiscal year.
- (2) For the purpose of paragraph (1)(a), "total revenue" means,
  - (a) for an IDA member, the amount shown as total revenue on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with the IDA by the registrant firm, and
  - (b) for an MFDA member, the amount shown as total revenue on Statement D of the MFDA Financial Questionnaire and Report filed with the MFDA by the registrant firm.

**3.4 Specified Ontario Revenues for Others**

- (1) The specified Ontario revenues of a registrant firm that is not a member of the IDA or the MFDA is calculated by multiplying

- (a) the registrant firm's gross revenues, as shown in the audited financial statements prepared for its fiscal year ending on or before December 31 of the current year, less deductions permitted under subsection (3), by
- (b) the registrant firm's Ontario percentage for the fiscal year.
- (2) The specified Ontario revenues of an unregistered investment fund manager is calculated by multiplying
  - (a) the fund manager's gross revenues, as shown in the audited financial statements for its previous fiscal year, less deductions permitted under subsection (3), by
  - (b) the fund manager's Ontario percentage for its previous fiscal year.
- (3) For the purpose of paragraphs (1)(a) and (2)(a), a person or company may deduct the following items otherwise included in gross revenues:
  - (a) revenue not attributable to capital markets activities for the fiscal year;
  - (b) redemption fees earned during the fiscal year on the redemption of investment fund securities sold on a deferred sales charge basis;
  - (c) administration fees earned during the fiscal year relating to the recovery of costs from investment funds managed by the person or company for operating expenses paid on behalf of the investment fund by the person or company;
  - (d) advisory or sub-advisory fees paid during the fiscal year by the person or company to a registrant firm, as "registrant firm" is defined in this Rule and in Rule 13-503 (*Commodity Futures Act*) Fees;
  - (e) trailing commissions paid during the fiscal year by the person or company to a registrant firm.
- (4) Despite subsection (1), a registrant firm that is registered only as one or more of a limited market dealer, an international dealer or an international adviser may calculate its gross revenues using unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.
- (5) Despite subsection (2), an unregistered investment fund manager may calculate its gross revenues using unaudited financial statements if it is not required to prepare, and does not ordinarily prepare, audited financial statements.

### 3.5 Estimating Specified Ontario Revenues for Late Fiscal Year End

- (1) If the annual financial statements of a registrant firm have not been completed by December 1 in a year, the registrant firm must,
  - (a) on December 1, file a completed Form 13-502F4 showing a good faith estimate of the information required to calculate its specified Ontario revenues as at the end of the fiscal year, and
  - (b) on December 31, pay the participation fee shown in Appendix B opposite the specified Ontario revenues estimated under paragraph (a).
- (2) A registrant firm that estimated its specified Ontario revenues under subsection (1) must, when its annual financial statements for the applicable fiscal year have been completed,
  - (a) calculate its specified Ontario revenues under section 3.3 or 3.4, as applicable,
  - (b) determine the participation fee shown in Appendix B opposite the specified Ontario revenues calculated under paragraph (a), and
  - (c) complete a Form 13-502F4 reflecting the annual financial statements.
- (3) If the participation fee determined under subsection (2) differs from the participation fee paid under subsection (1), the registrant firm must, not later than 90 days after the end of its fiscal year,



- (a) pay the participation fee determined under subsection (2), less the participation fee paid under subsection (1),
  - (b) file the Form 13-502F4 completed under subsection (2), and
  - (c) file a completed Form 13-502F5.
- (4) If a registrant firm paid an amount paid under subsection (1) that exceeds the participation fee determined under subsection (2), the registrant firm is entitled to a refund from the Commission of the amount overpaid.

### 3.6 Late Fee

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

## PART 4 – ACTIVITY FEES

- 4.1 Activity Fees** – A person or company that files a document or takes an action listed in Appendix C must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix C opposite the description of the document or action.
- 4.2 Investment Fund Families** – Despite section 4.1, only one activity fee must be paid for an application made by or on behalf of investment funds in an investment fund family, if the application pertains to each investment fund.
- 4.3 Late Fee**
- (1) A person or company that files a document listed in item A of Appendix D after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix D opposite the description of the document.
  - (2) A person or company that files a Form 55-102F2 *Insider Report* after it was required to be filed must pay the late fee shown in item B of Appendix D upon receiving an invoice from the Commission.

## PART 5 – CURRENCY CONVERSION

- 5.1 Canadian Dollars** – If a calculation under this Rule requires the price of a security, or any other amount, as it was on a particular date and that price or amount is not in Canadian dollars, it must be converted into Canadian dollars using the daily noon exchange rate for that date as posted on the Bank of Canada website.

## PART 6 – EXEMPTION

- 6.1 Exemption** – 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 7 – REVOCATION AND EFFECTIVE DATE

- 7.1 Revocation** – Ontario Securities Commission Rule 13-502 *Fees*, which came into force on March 31, 2003, is revoked.
- 7.2 Effective Date** – This Rule comes into force on April 1, 2006.

**APPENDIX A – CORPORATE FINANCE PARTICIPATION FEES**

<b>Capitalization</b>	<b>Participation Fee</b>
under \$25 million	\$600
\$25 million to under \$50 million	\$1,300
\$50 million to under \$100 million	\$3,200
\$100 million to under \$250 million	\$6,700
\$250 million to under \$500 million	\$14,700
\$500 million to under \$1 billion	\$20,500
\$1 billion to under \$5 billion	\$29,700
\$5 billion to under \$10 billion	\$38,300
\$10 billion to under \$25 billion	\$44,700
\$25 billion and over	\$50,300

**APPENDIX B – CAPITAL MARKETS PARTICIPATION FEES**

<b>Specified Ontario Revenues</b>	<b>Participation Fee</b>
under \$500,000	\$800
\$500,000 to under \$1 million	\$2,500
\$1 million to under \$3 million	\$5,600
\$3 million to under \$5 million	\$12,600
\$5 million to under \$10 million	\$25,500
\$10 million to under \$25 million	\$52,000
\$25 million to under \$50 million	\$78,000
\$50 million to under \$100 million	\$156,000
\$100 million to under \$200 million	\$259,000
\$200 million to under \$500 million	\$525,000
\$500 million to under \$1 billion	\$678,000
\$1 billion to under \$2 billion	\$855,000
\$2 billion and over	\$1,435,000

## APPENDIX C - ACTIVITY FEES

Document or Activity	Fee
<b>A. Prospectus Filing</b>	
1. Preliminary or Pro Forma Prospectus in Form 41-501F1 (including if PREP procedures are used)	\$3,000
<p><i>Notes:</i></p> <p>(i) <i>This applies to most issuers, including investment funds that prepare prospectuses in accordance with Form 41-501F1; investment funds that prepare prospectuses in accordance with Form 81-101F1, Form 15 or Form 45 must pay the fees shown in item 4 below.</i></p> <p>(ii) <i>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).</i></p>	
2. Additional fee for Preliminary or Pro Forma Prospectus in Form 41-501F1 of a resource issuer that is accompanied by engineering reports	\$2,000
3. Preliminary Short Form Prospectus in Form 44-101F1 (including if shelf or PREP procedures are used) or a Registration Statement on Form F-9 or F-10 filed by an issuer that is incorporated or that is organized under the laws of Canada or a jurisdiction in Canada in connection with a distribution solely in the United States under MJDS as described in the companion policy to National Instrument 71-101 <i>The Multijurisdictional Disclosure System</i> .	\$3,000
4. Prospectus Filing by or on behalf of Certain Investment Funds	
(a) Preliminary or Pro Forma Simplified Prospectus and Annual Information Form in Form 81-101F1 and Form 81-101F2	\$400
<i>Note: Where a single prospectus document is filed on behalf of more than one investment fund, the applicable fee is payable for each investment fund.</i>	
(b) Preliminary or Pro Forma Prospectus in Form 15	The greater of (i) \$3,000 per prospectus, and (ii) \$600 per investment fund in a prospectus.
(c) Preliminary or Pro Forma Prospectus in Form 45	The greater of (i) \$3,000 per prospectus, and (ii) \$600 per investment fund in a prospectus.
<i>Note: Where a single prospectus document is filed on behalf of more than one investment fund and the investment funds do not have similar investment objectives and strategies \$3,000 is payable for each investment fund.</i>	
<b>B. Fees relating to exempt distributions under Rule 45-501 Ontario Prospectus and Registration Exemptions and National Instrument 45-106 Prospectus and Registration Exemptions</b>	
1. Application for recognition, or renewal of recognition, as an accredited investor	\$500

Document or Activity	Fee
<p>2. Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer that is not an investment fund and is not subject to a participation fee.</p> <p>Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer that is an investment fund, unless the investment fund has an investment fund manager that is subject to a participation fee.</p>	<p>\$500</p>
<p>3. Filing of a rights offering circular in Form 45-101F</p>	<p>\$2,000 (plus \$2,000 if neither the applicant nor an issuer of which the applicant is a wholly owned subsidiary is subject to, or is reasonably expected to become subject to, a participation fee under this Rule)</p>
<p><b>C. Provision of Notice under paragraph 2.42(2)(a) of National Instrument 45-106 Prospectus and Registration Exemptions</b></p>	<p>\$2,000</p>
<p><b>D. Filing of Prospecting Syndicate Agreement</b></p>	<p>\$500</p>
<p><b>E. Applications for Relief, Approval or Recognition</b></p> <p>1. Any application for relief, approval or recognition under any section of the Act, the Regulations or any Rule of the Commission not listed in item E(2), E(3) or E(4) below.</p> <p><i>Note: The following are included in the applications that are subject to a fee under this item:</i></p> <ul style="list-style-type: none"> <li>(i) recognition of an exchange under section 21 of the Act, a self-regulatory organization under section 21.1 of the Act, a clearing agency under section 21.2 of the Act or a quotation and trade reporting system under section 21.2.1 of the Act;</li> <li>(ii) approval of a compensation fund or contingency trust fund under section 110 of the Regulations to the Act;</li> <li>(iii) approval of the establishment of a council, committee or ancillary body under section 21.3 of the Act;</li> <li>(iv) deeming an issuer to be a reporting issuer under section 83.1 of the Act.</li> </ul>	<p>\$3,000 for an application made under one section and \$5,000 for an application made under two or more sections (plus \$2,000 if none of the following 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>) Fees:</p> <ul style="list-style-type: none"> <li>(i) the applicant;</li> <li>(ii) an issuer of which the applicant is a wholly owned subsidiary;</li> <li>(iii) the investment fund manager of the applicant).</li> </ul> <p>An application made under both the Act and the <i>Commodities Futures Act</i> does not require the applicant to pay an additional fee; i.e., the fee for an application under both statutes will not be greater than \$5,000 (or \$7,000 if none of the following 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>) Fees:</p> <ul style="list-style-type: none"> <li>(i) the applicant;</li> <li>(ii) an issuer of which the applicant is a wholly owned subsidiary;</li> <li>(iii) the investment fund manager of the applicant).</li> </ul>

Document or Activity	Fee
<p>2. An application for relief from any of the following:</p> <ul style="list-style-type: none"> <li>(a) Rule 13-502 Fees;</li> <li>(b) Rule 31-506 <i>SRO Membership – Mutual Fund Dealers</i>;</li> <li>(c) Rule 31-507 <i>SRO Membership – Securities Dealers and Brokers</i>;</li> <li>(d) Multilateral Instrument 31-102 <i>National Registration Database</i>;</li> <li>(e) Multilateral Instrument 33-109 <i>Registration Information</i>;</li> <li>(f) Part 3 of Rule 31-502 <i>Proficiency</i>.</li> </ul>	\$1,500
<p>3. An application for relief from Part 1 or Part 2 of Rule 31-502 <i>Proficiency</i>.</p>	\$800
<p>4. Application</p> <ul style="list-style-type: none"> <li>(a) under section 27, subsection 38(3), subsection 72(8) or section 83 of the Act or subsection 1(6) of the <i>Business Corporations Act</i>;</li> <li>(b) 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; and</li> <li>(c) other than a pre-filing, 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).</li> </ul>	Nil
<p>5. Application for relief from section 213 of the <i>Loan and Trust Corporations Act</i>.</p>	\$1,500
<p>6.</p> <ul style="list-style-type: none"> <li>(1) Application made under subsection 46(4) of the <i>Business Corporations Act</i> for relief from the requirements under Part V of that Act.</li> <li>(2) Application for consent to continue in another jurisdiction under paragraph 4(b) of <i>Forms – O. Reg. 289/00</i> to the <i>Business Corporations Act</i>.</li> </ul> <p><i>Note: These fees are in addition to the fee payable to the Minister of Finance as set out in the Schedule attached to the Minister's Fee Orders relating to applications for exemption orders made under the Business Corporations Act to the Commission.</i></p>	\$400
<p><b>F. Pre-Filings</b></p> <p><i>Note: The fee for a pre-filing will be credited against the applicable fee payable if and when the formal filing (e.g., an application or a preliminary prospectus) is actually proceeded with; otherwise, the fee is non-refundable.</i></p>	\$3,000
<p><b>G. Take-Over Bid and Issuer Bid Documents</b></p>	

Document or Activity	Fee
1. Filing of a take-over bid or issuer bid circular under subsection 100(3) or (7) of the Act.	\$3,000 (plus \$2,000 if neither the offeror nor an issuer of which the offeror is a wholly-owned subsidiary is subject to, or reasonably expected to become subject to, a participation fee under this Rule)
2. Filing of a notice of change or variation under subsection 100(4) of the Act.	Nil
<b>H. Registration-Related Activity</b>	
1. New registration of a firm in any category of registration  <i>Note: If a firm is registering as both a dealer and an adviser, it is required to pay two activity fees.</i>	\$600
2. Change in registration category  <i>Note: This includes a dealer becoming an adviser or vice versa, or changing a category of registration within the general categories of dealer or adviser. A dealer adding a category of registration, such as a dealer becoming both a dealer and an adviser, is covered in the preceding section.</i>	\$600
3. Registration of a new director, officer or partner (trading or advising), salesperson or representative  <i>Notes:</i>  <i>(i) Registration of a new non-trading or non-advising director, officer or partner does not trigger an activity fee.</i>  <i>(ii) If an individual is registering as both a dealer and an adviser, they are required to pay two activity fees.</i>  <i>(iii) 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 if the individual's category of registration remains unchanged.</i>	\$200 per person
4. Change in status from a non-trading or non-advising capacity to a trading or advising capacity	\$200 per person
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	\$2,000
6. Application for amending terms and conditions of registration	\$500
<b>I. Notice to Director under section 104 of the Regulation</b>	\$3,000
<b>J. Request for certified statement from the Commission or the Director under section 139 of the Act</b>	\$100
<b>K. Requests to the Commission</b>	
1. Request for a photocopy of Commission records	\$0.50 per page
2. Request for a search of Commission records	\$150
3. Request for one's own Form 4	\$30

## APPENDIX D – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
<p>A. Fee for late filing of any of the following documents:</p> <ul style="list-style-type: none"> <li>(a) Annual financial statements and interim financial statements;</li> <li>(b) Annual information form filed under National Instrument 51-102 <i>Continuous Disclosure Obligations</i>;</li> <li>(c) Form 45-501F1 or Form 45-106F1 filed by a reporting issuer;</li> <li>(d) Notice under section 104 of the Regulation;</li> <li>(e) Report under section 141 or 142 of the Regulation;</li> <li>(f) Filings for the purpose of amending Form 3 and Form 4 or Form 33-109F4 under Multilateral Instrument 33-109 <i>Registration Information</i>;</li> <li>(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 with respect to <ul style="list-style-type: none"> <li>(i) terms and conditions imposed on a registrant firm or individual, or</li> <li>(ii) an order of the Commission;</li> </ul> </li> <li>(h) Form 13-502F4;</li> <li>(i) Form 13-502F5;</li> <li>(j) Form 13-502F6.</li> </ul>	<p>\$100 per business day</p> <p>(subject to a maximum aggregate fee of \$5,000</p> <ul style="list-style-type: none"> <li>(i) per fiscal year, for a reporting issuer, for all documents required to be filed within a fiscal year of the issuer, and</li> <li>(ii) for a registrant firm and an unregistered investment fund manager for all documents required to be filed within a calendar year)</li> </ul>
<p>B. Fee for late filing of Form 55-102F2 – <i>Insider Report</i></p>	<p>\$50 per calendar day per insider per issuer (subject to a maximum of \$1,000 per issuer within any one year beginning on April 1<sup>st</sup> and ending on March 31<sup>st</sup>.)</p> <p>The late fee does not apply to an insider if</p> <ul style="list-style-type: none"> <li>(a) the head office of the issuer is located outside Ontario, and</li> <li>(b) the insider is required to pay a late fee for the filing in a jurisdiction in Canada other than Ontario.</li> </ul>



**FORM 13-502F1  
CLASS 1 REPORTING ISSUERS – PARTICIPATION FEE**

**Reporting Issuer Name:** \_\_\_\_\_

**Fiscal year end date used to calculate capitalization:** \_\_\_\_\_

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the issuer's most recent fiscal year end \_\_\_\_\_ (i)

Simple average of the closing price of that class or series as of the last trading day of each month of the fiscal year (See clauses 2.11(a)(ii)(A) and (B) of the Rule) \_\_\_\_\_ (ii)

Market value of class or series (i) X (ii) = \_\_\_\_\_ (A)

(Repeat the above calculation for each class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the fiscal year) \_\_\_\_\_ (B)

Market value of other securities:

(See paragraph 2.11(b) of the Rule)  
(Provide details of how value was determined) \_\_\_\_\_ (C)

(Repeat for each class or series of securities) \_\_\_\_\_ (D)

**Capitalization**

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) = \_\_\_\_\_

**Participation Fee**

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) \_\_\_\_\_

**New reporting issuer's reduced participation fee**, if applicable  
(See section 2.6 of the Rule)

Participation fee X Number of entire months remaining  
\_\_\_\_\_ in the issuer's fiscal year = \_\_\_\_\_  
12

**Late Fee**, if applicable

(As determined under section 2.5 of the Rule) \_\_\_\_\_

**FORM 13-502F2  
CLASS 2 REPORTING ISSUERS – PARTICIPATION FEE**

**Reporting Issuer Name:** \_\_\_\_\_

**Fiscal year end date used  
to calculate capitalization:** \_\_\_\_\_

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 \_\_\_\_\_ (A)

Contributed surplus \_\_\_\_\_ (B)

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

Long term debt (including the current portion) \_\_\_\_\_ (D)

Capital leases (including the current portion) \_\_\_\_\_ (E)

Minority or non-controlling interest \_\_\_\_\_ (F)

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

Any other item forming part of shareholders' equity and not set out specifically above \_\_\_\_\_ (H)

**Capitalization**

(Add items (A) through (H)) \_\_\_\_\_

**Participation Fee**

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) \_\_\_\_\_

**New reporting issuer's reduced participation fee**, if applicable

(See section 2.6 of the Rule)

Participation fee      X      Number of entire months remaining  
\_\_\_\_\_           in the issuer's fiscal year      =      \_\_\_\_\_  
12

**Late Fee**, if applicable

(As determined under section 2.5 of the Rule) \_\_\_\_\_

FORM 13-502F2A

ADJUSTMENT OF FEE PAYMENT  
FOR CLASS 2 REPORTING ISSUERS

Reporting Issuer Name: \_\_\_\_\_

Fiscal year end date used  
to calculate capitalization: \_\_\_\_\_

State the amount paid under subsection 2.10(1) of Rule 13-502: \_\_\_\_\_ (i)

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 \_\_\_\_\_ (A)

Contributed surplus \_\_\_\_\_ (B)

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

Long term debt (including the current portion) \_\_\_\_\_ (D)

Capital leases (including the current portion) \_\_\_\_\_ (E)

Minority or non-controlling interest \_\_\_\_\_ (F)

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

Any other item forming part of shareholders' equity and not set out specifically above \_\_\_\_\_ (H)

**Capitalization**

(Add items (A) through (H)) \_\_\_\_\_

**Participation Fee**

(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) \_\_\_\_\_ (ii)

**Refund due (Balance owing)**

(Indicate the difference between (i) and (ii)) (i) - (ii) = \_\_\_\_\_

**FORM 13-502F3A  
CLASS 3A REPORTING ISSUERS – PARTICIPATION FEE**

**Reporting Issuer Name:** \_\_\_\_\_

**Fiscal year end date:** \_\_\_\_\_

*Indicate, by checking the appropriate box, which of the following criteria the issuer meets:*

(a) The issuer has no securities listed or quoted on a marketplace located anywhere in the world; or

(b) the issuer has securities listed or quoted on a marketplace anywhere in the world and

i. at the end of its previous fiscal year, securities registered in the names of persons or companies resident in Ontario represented less than 1% of the market value of all outstanding securities of the reporting issuer for which the reporting issuer or its transfer agent or registrar maintains a list of registered owners,

ii. the reporting issuer reasonably believes that persons or companies who are resident in Ontario beneficially own less than 1% of the market value of all outstanding securities of the reporting issuer,

iii. the reporting issuer reasonably believes that no security of the reporting issuer traded on a marketplace in Canada during its previous fiscal year, and

iv. the reporting issuer has not issued any of its securities in Ontario in the last 5 years, other than to

(A) employees of the reporting issuer or employees of a subsidiary entity of the reporting issuer, or

(B) pursuant to the exercise of a right previously granted by the reporting issuer or its affiliate to convert or exchange previously issued securities of the issuer without payment of any additional consideration.

**Participation Fee**

(From subsection 2.2(2) of the Rule)

\$600

**New reporting issuer's reduced participation fee, if applicable**

(See section 2.6 of the Rule)

Participation fee	X	Number of entire months remaining in the issuer's fiscal year	=
	12		

\_\_\_\_\_

**Late Fee, if applicable**

(As determined under section 2.5 of the Rule)

\_\_\_\_\_

**FORM 13-502F3B  
CLASS 3B REPORTING ISSUERS – PARTICIPATION FEE**

**Reporting Issuer Name:** \_\_\_\_\_

**Fiscal year end date used  
to calculate capitalization:** \_\_\_\_\_

Market value of securities:

Total number of securities of a class or series outstanding as at the issuer's most recent fiscal year end \_\_\_\_\_ (i)

Simple average of the closing price of that class or series as of the last trading day of each month of the fiscal year (See section 2.13(b) of the Rule) \_\_\_\_\_ (ii)

Market value of class or series (i) X (ii) = \_\_\_\_\_ (A)

(Repeat the above calculation for each listed or quoted class or series of securities of the reporting issuer) \_\_\_\_\_ (B)

**Capitalization**  
(Add market value of all classes and series of securities) (A) + (B) = \_\_\_\_\_

**Participation Fee**  
(From Appendix A of the Rule, select the participation fee beside the capitalization calculated above) \_\_\_\_\_

**Fee Payable**  
1/3 of the participation fee or \$600, whichever is greater  
(See subsection 2.2(3) of the Rule) \_\_\_\_\_

**New reporting issuer's reduced participation fee, if applicable**  
(See section 2.6 of the Rule)

Participation fee	X	Number of entire months remaining in the issuer's fiscal year	=	_____
_____		12		

**Late Fee, if applicable**  
(As determined under section 2.5 of the Rule) \_\_\_\_\_

**FORM 13-502F3C  
CLASS 3C REPORTING ISSUERS – PARTICIPATION FEE**

**Reporting Issuer Name:** \_\_\_\_\_

**Fiscal year end date used to calculate capitalization:** \_\_\_\_\_

Subsection 2.14 requires Class 3C reporting issuers to calculate their market capitalization in accordance with section 2.11.

Market value of listed or quoted securities:

Total number of securities of a class or series outstanding as at the issuer's most recent fiscal year end \_\_\_\_\_ (i)

Simple average of the closing price of that class or series as of the last trading day of each month of the fiscal year (See clauses 2.11(a)(ii)(A) and (B) of the Rule) \_\_\_\_\_ (ii)

Market value of the class or series (i) X (ii) = \_\_\_\_\_ (A)

(Repeat the above calculation for each class or series of securities of the reporting issuer that was listed or quoted on a marketplace in Canada or the United States of America at the end of the fiscal year) \_\_\_\_\_ (B)

Market value of other securities:

(See paragraph 2.11(b) of the Rule) \_\_\_\_\_ (C)  
(Provide details of how value was determined)

(Repeat for each class or series of securities) \_\_\_\_\_ (D)

**Capitalization**

(Add market value of all classes and series of securities) (A) + (B) + (C) + (D) = \_\_\_\_\_

**Participation Fee**

(From Appendix A of the Rule, select the participation fee beside the Capitalization calculated above) \_\_\_\_\_

**New reporting issuer's reduced participation fee, if applicable**

(See section 2.6 of the Rule)

Participation fee	X	Number of entire months remaining in the issuer's fiscal year	=	
		_____		_____
		12		

**Late Fee, if applicable**

(As determined under section 2.5 of the Rule) \_\_\_\_\_

**FORM 13-502F4**  
**CAPITAL MARKETS PARTICIPATION FEE CALCULATION**

**General Instructions**

1. IDA members must complete Part I of this Form and MFDA members must complete Part II. Unregistered investment fund managers and registrant firms that are not IDA or MFDA members must complete Part III.
2. The components of revenue reported in each Part should be based on the same principles as the comparative statement of income which is prepared in accordance with generally accepted accounting principles ("GAAP"), or such equivalent principles applicable to the audited financial statements of international dealers and advisers and foreign investment fund managers, except that revenues should be reported on an unconsolidated basis.
3. Members of the Investment Dealers Association of Canada may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.
4. Members of the Mutual Fund Dealers Association of Canada may refer to Statement D of the MFDA Financial Questionnaire and Report for guidance.
5. Comparative figures are required for the registrant firms' and unregistered investment fund managers' 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 capital markets activities in Ontario.
7. All figures must 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.

**Notes for Part III**

1. Gross revenue is defined as the sum of all revenues reported on a gross basis as per the audited financial statements, except where unaudited financial statements are permitted in accordance with subsection 3.4(4) or (5) of the Rule. Audited financial statements should be prepared in accordance with GAAP, or such equivalent principles applicable to the audited financial statements of international dealers and advisers and foreign investment fund managers, except that revenues should be reported on an unconsolidated basis. Items reported on a net basis must be adjusted for purposes of the fee calculation.
2. Redemption fees earned upon the redemption of investment fund units sold on a deferred sales charge basis are permitted as a deduction from total revenue on this line.
3. Administration fees permitted as a deduction are limited solely to those that are otherwise included in gross revenue and represent the reasonable recovery of costs from the investment funds for operating expenses paid on their behalf by the registrant firm or unregistered investment fund manager.
4. Where the advisory services of another registrant firm, within the meaning of this Rule or Rule 13-503 (*Commodity Futures Act*) Fees, are used by the person or company to advise on a portion of its assets under management, such sub-advisory costs are permitted as a deduction on this line.
5. Trailer fees paid to other registrant firms are permitted as a deduction on this line.

**Participation Fee Calculation**

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

Fiscal year end: \_\_\_\_\_

**Part I – IDA Members**

	Current Year \$	Prior Year \$ (if available)
1. Total revenue from Statement E of the Joint Regulatory Financial Questionnaire and Report	_____	_____
2. Less revenue not attributable to capital markets activities	_____	_____
3. Revenue subject to participation fee (line 1 less line 2)	_____	_____
4. Ontario percentage (See definition in Rule)	% _____	% _____
5. Specified Ontario revenues (line 3 multiplied by line 4)	_____	_____
6. Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	_____	_____

**Part II – MFDA Members**

1. Total revenue from Statement D of the MFDA Financial Questionnaire and Report	_____	_____
2. Less revenue not attributable to capital markets activities	_____	_____
3. Revenue subject to participation fee (line 1 less line 2)	_____	_____
4. Ontario percentage (See definition in Rule)	% _____	% _____
5. Specified Ontario revenues (line 3 multiplied by line 4)	_____	_____
6. Participation fee (From Appendix B of the Rule, select the participation fee opposite the specified Ontario revenues calculated above)	_____	_____

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

1. Gross revenue (note 1)	_____	_____
<b>Less the following items:</b>		
2. Revenue not attributable to capital markets activities	_____	_____
3. Redemption fee revenue (note 2)	_____	_____
4. Administration fee revenue (note 3)	_____	_____
5. Advisory or sub-advisory fees paid to registrant firms, as defined under this Rule and Rule 13-503 ( <i>Commodity Futures Act</i> ) Fees (note 4)	_____	_____
6. Trailer fees paid to other registrant firms (note 5)	_____	_____



**Rules and Policies**

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- 7. Total deductions (sum of lines 2 to 6) \_\_\_\_\_
- 8. Revenue subject to participation fee (line 1 less line 7) \_\_\_\_\_
- 9. Ontario percentage  
(See definition in Rule)                   %                   %
- 10. Specified Ontario revenues (line 8 multiplied by line 9) \_\_\_\_\_
- 11. Participation fee  
(From Appendix B of the Rule, select the participation fee  
beside the specified Ontario revenues calculated above) \_\_\_\_\_

**Part IV - Management Certification**

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.	_____	_____	_____

**FORM 13-502F5  
ADJUSTMENT OF FEE FOR REGISTRANT FIRMS**

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

**Fiscal year end:** \_\_\_\_\_

**Note:** Subsection 3.5(3) of the Rule requires that this Form must be filed concurrent with a completed Form 13-502F4 that shows the firm's actual participation fee calculation.

1. Estimated participation fee paid under subsection 3.5(1) of the Rule: \_\_\_\_\_
2. Actual participation fee calculated under subsection 3.5(2) of the Rule: \_\_\_\_\_
3. Refund due (Balance owing): \_\_\_\_\_  
(Indicate the difference between lines 1 and 2)

**FORM 13-502F6  
SUBSIDIARY ENTITY EXEMPTION NOTICE**

Name of Subsidiary Entity: \_\_\_\_\_

Name of Parent: \_\_\_\_\_

Fiscal Year End Date: \_\_\_\_\_

Indicate below which exemption the subsidiary entity intends to rely on by checking the appropriate box:

**1. Subsection 2.9(1)**    

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.9(1) of the Rule:

- a) the parent of the subsidiary entity is a reporting issuer;
- b) the parent has paid the participation fee required;
- c) the parent company includes the market capitalization of the subsidiary entity in its calculation of its participation fee; and
- d) the net assets and gross revenues of the subsidiary entity represent more than 90 percent of the consolidated net assets and gross revenues of the parent for the previous financial year of the parent.

	<b>Net Assets for the previous financial year</b>	<b>Gross Revenues for the previous financial year</b>	
Reporting Issuer (Subsidiary)	_____	_____	(A)
Reporting Issuer (Parent)	_____	_____	(B)
Percentage (A/B)	_____ %	_____ %	

**2. Subsection 2.9(2)**    

The reporting issuer (subsidiary entity) meets the following criteria set out under subsection 2.9(2) of the Rule:

- a) the parent of the subsidiary entity is a reporting issuer;
- b) the parent has paid the participation fee required;
- c) the parent company includes the market capitalization of the subsidiary entity in its calculation of its participation fee; and
- d) the subsidiary entity is entitled to rely on an exemption, waiver or approval from the requirements in sections 4.1(1), 4.3(1), 5.1(1), 5.2 and 6.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-502CP  
FEES**

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**ONTARIO SECURITIES COMMISSION  
COMPANION POLICY 13-502CP  
FEES**

**PART 1 PURPOSE OF COMPANION POLICY**

- 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 13-502 Fees (the “Rule”), including an explanation of the overall approach of the Rule and a discussion of various parts of the Rule.

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

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

- (1) The purpose of the Rule is to establish a fee regime that creates a clear and streamlined fee structure and to adopt fees that accurately reflect the Commission’s costs of providing services.
- (2) The fee regime of the Rule is based on the concepts of “participation fees” and “activity fees”.

**2.2 Participation Fees**

- (1) Reporting issuers, registrant firms and unregistered investment fund managers are required to pay participation fees annually. Participation fees are designed to cover the Commission’s costs of providing services whose costs are not easily attributable to specific market participants. The participation fee required of each market participant is based on a measure of the market participant’s size, which is used to approximate its proportionate participation in the Ontario capital markets.
- (2) Over the three year period ending March 2006, the Commission projects that it will have an accumulated surplus of \$39.5 million. This surplus will be used to reduce the participation fees that would otherwise have been payable under the Rule. The appendix to this Companion Policy shows how the Commission has applied the surplus to each participation fee level.

**2.3 Participation Fees Payable in Advance**

- (1) Although participation fees are determined by using information from the payor’s previous fiscal year, both corporate finance and capital markets participation fees are applied to the costs of the Commission of the payor’s participation in Ontario’s capital markets in the upcoming year.
- (2) This principle is reflected in section 2.6 of the Rule, which deals with the payment of a participation fee for a new reporting issuer. The section requires a new reporting issuer to calculate its annual participation fee as it normally would, but only pay a proportionate amount based on the number of months left in its fiscal year.

- 2.4 Registered Individuals** – The participation fee is paid at the firm level under the Rule. That is, a “registrant firm” is required to pay a participation fee, not an individual who is registered as a salesperson, representative, partner, or officer of the firm.

- 2.5 Activity Fees** – Activity fees are designed to represent the direct cost of Commission resources expended in undertaking the activities listed in Appendix C of the Rule (e.g., reviewing prospectuses, registration applications, and applications for discretionary relief). Activity fees are based on the average cost to the Commission of providing the service.

**2.6 Registrants under the Securities Act and the Commodity Futures Act**

- (1) The Rule imposes an obligation to pay a participation fee on registrant firms, defined in the Rule as 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*. Given the definition of “capital markets activities” under the Rule, the revenue of such an entity from its *Commodity Futures Act* activities must be included in its calculation of revenues when determining its fee under the Rule. Section 2.8 of Rule 13-503 (*Commodity Futures Act*) Fees exempts such an entity from paying a participation fee under that rule if it has paid its participation fees under the *Securities Act* Rule.

- (2) Note that dealers and advisers registered under the *Commodity Futures Act* are subject to activity fees under Rule 13-503 (*Commodity Futures Act*) Fees even if they are not required to pay participation fees under that rule.

## 2.7 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 reporting issuer, registrant firm or unregistered investment fund manager that loses that status later in the fiscal year for which the fee was paid.
- (2) An exception to this principle is provided in subsections 2.10(3) and 3.5(4) of the Rule. These provisions allow for a refund where a Class 2 reporting issuer or a registrant firm overpaid an estimated participation fee.
- (3) The Commission will also consider requests for adjustments to fees paid in the case of incorrect calculations made by fee payors.

**2.8 Indirect Avoidance of Rule** – The Commission may examine arrangements or structures implemented by market participants and their affiliates that raise the suspicion of being structured for the purpose of reducing the fees payable under the Rule. For example, 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 firm's specified Ontario revenues and, consequently, its participation fee.

## PART 3 CORPORATE FINANCE PARTICIPATION FEES

**3.1 Application to Investment Funds** – Part 2 of the Rule does not apply to an investment fund if the investment fund has an investment fund manager. The reason for this is that under Part 3 of the Rule an investment fund's manager must pay a capital markets participation fee in respect of revenues generated from managing the investment fund.

**3.2 Late Fees** – Section 2.5 of the Rule requires a reporting issuer to pay an additional fee when it is late in paying its participation fee. Reporting issuers should be aware that the late payment of participation fees may lead to the reporting issuer being noted in default and included on the list of defaulting reporting issuers available on the Commission's website.

## 3.3 Determination of Market Value

- (1) Section 2.11 of the Rule requires the calculation of the capitalization of a Class 1 reporting issuer to include the aggregate market value of classes of securities that may not be listed or quoted on a marketplace, but trade over the counter or, after their initial issuance, are otherwise generally available for sale. Note that the requirement that securities be valued in accordance with market value excludes from the calculation securities that are not normally traded after their initial issuance.
- (2) When determining the value of securities that are not listed or quoted, a reporting issuer should use the best available source for pricing the securities. That source may be one or more of the following:
  - (a) pricing services,
  - (b) quotations from one or more dealers, or
  - (c) prices on recent transactions.
- (3) Note that market value calculation of a class of securities included in a calculation under section 2.11 includes 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 tradable.
- (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.

- 3.4 Owners' Equity** – A Class 2 reporting issuer calculates its capitalization on the basis of certain items reflected in its audited balance sheet. One such item is “share capital or owners' equity”. The Commission notes that “owners' equity” is designed to describe the equivalent of share capital for non-corporate issuers, such as partnerships or trusts.
- 3.5 “Green Shoes” and Over-Allotment Options** – Paragraph 2.6(4)(a) of the Rule requires that the participation fee for Class 1, Class 3B and Class 3C reporting issuers be based on the offering price of the securities being distributed under a prospectus. The Commission notes that this calculation should assume the issue of any securities under “green shoes” or over-allotment options.

#### **PART 4 CAPITAL MARKET PARTICIPATION FEES**

- 4.1 Filing Forms under Section 3.5** – If the estimated participation fee paid under subsection 3.5(1) by a registrant firm does not differ from its true participation fee determined under subsection 3.5(2), the registrant firm is not required to file either a Form 13-502F4 or a Form 13-502F5 under subsection 3.5(3).
- 4.2 Late Fees** – Section 3.6 of the Rule prescribes an additional fee if a participation fee is paid late. The Commission and the Director will, in appropriate circumstances, consider tardiness in the payment of fees as a matter going to the fitness for registration of a registrant firm. The Commission may also consider measures in the case of late payment of fees by an unregistered investment fund manager, such as prohibiting the manager from continuing to manage any investment fund or cease trading the investment funds managed by the manager.
- 4.3 Form of Payment of Fees** – Unregistered investment fund managers make filings and pay fees under Part 3 of the Rule by paper copy. The filings and payment should be sent to the Ontario Securities Commission, Investment Funds. Registrant firms pay through the National Registration Database.
- 4.4 “Capital Market Activities”**
- (1) A person or company must consider its capital market activities when calculating its participation fee. The term “capital market activities” is defined in the Rule to include “activities for which registration under the Act or an exemption from registration is required”. The Commission is of the view that these activities include, without limitation, trading in securities, providing securities-related advice and portfolio management services. The Commission notes that corporate advisory services may not require registration or an exemption from registration and would therefore, in those contexts, not be capital markets activities.
  - (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 include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.
- 4.5 Permitted Deductions** – Subsection 3.4(3) permits certain deductions to be made for the purpose of calculating specified Ontario revenues for unregistered investment fund managers and certain registrant firms. The purpose of these deductions is to prevent the “double counting” of revenues that would otherwise occur.
- 4.6 Application to Non-resident Unregistered Investment Fund Managers** – For greater certainty, the Commission is of the view that Part 3 of the Rule applies to non-resident unregistered investment fund managers managing investment funds distributed in Ontario on a prospectus exempt basis.

#### **PART 5 ACTIVITY FEES**

- 5.1 Investment Funds** – Section 4.3 of the Rule provides for the payment of only one fee for an application made by or on behalf of investment funds in an investment fund family, if the application pertains to each investment fund. It is contemplated that discretionary relief required by investment funds in an investment fund family in circumstances that are the same for all of them can be sought by way of a single application.

**APPENDIX – USE OF SURPLUS TO REDUCE PARTICIPATION FEES**

Over the three year period ending March 2006, the Commission projects that it will have an accumulated surplus of \$39.5 million. This surplus will be used to reduce the participation fees that would otherwise have been payable under the Rule. The charts below show how the Commission has applied the surplus to each participation fee level.

**1. Corporate Finance Participation Fees**

<b>Capitalization</b>	<b>Pre-Surplus Participation Fee</b>	<b>Reduction due to Application of Surplus</b>	<b>Participation Fee</b>
under \$25 million	\$930	\$330	\$600
\$25 million to under \$50 million	\$2,200	\$900	\$1,300
\$50 million to under \$100 million	\$5,300	\$2,100	\$3,200
\$100 million to under \$250 million	\$10,700	\$4,000	\$6,700
\$250 million to under \$500 million	\$23,200	\$8,500	\$14,700
\$500 million to under \$1 billion	\$32,300	\$11,800	\$20,500
\$1 billion to under \$5 billion	\$46,600	\$16,900	\$29,700
\$5 billion to under \$10 billion	\$60,100	\$21,800	\$38,300
\$10 billion to under \$25 billion	\$70,000	\$25,300	\$44,700
\$25 billion and over	\$79,000	\$28,700	\$50,300

**2. Capital Markets Participation Fees**

<b>Specified Ontario Revenues</b>	<b>Pre-Surplus Participation Fee</b>	<b>Reduction due to Application of Surplus</b>	<b>Participation Fee</b>
under \$500,000	\$1,000	\$200	\$800
\$500,000 to under \$1 million	\$3,500	\$1,000	\$2,500
\$1 million to under \$3 million	\$7,500	\$1,900	\$5,600
\$3 million to under \$5 million	\$14,100	\$1,500	\$12,600
\$5 million to under \$10 million	\$29,000	\$3,500	\$25,500
\$10 million to under \$25 million	\$59,000	\$7,000	\$52,000
\$25 million to under \$50 million	\$88,300	\$10,300	\$78,000
\$50 million to under \$100 million	\$177,000	\$21,000	\$156,000
\$100 million to under \$200 million	\$295,000	\$36,000	\$259,000
\$200 million to under \$500 million	\$595,000	\$70,000	\$525,000
\$500 million to under \$1 billion	\$770,000	\$92,000	\$678,000
\$1 billion to under \$2 billion	\$970,000	\$115,000	\$855,000
\$2 billion and over	\$1,600,000	\$165,000	\$1,435,000