

5.1.2 OSC Rule 13-503 (Commodity Futures Act) Fees and Companion Policy 13-503CP (Commodity Futures Act) Fees

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

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

PART 1 — DEFINITIONS

1.1 Definitions — In this Rule

“CFA” means the *Commodity Futures Act*;

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

“IIROC” means the Investment Industry Regulatory Organization of Canada and, where context requires, includes the Investment Dealers Association of Canada;

“Ontario allocation factor” has the meaning that would be assigned by the first definition of that expression in subsection 1(1) of the *Taxation Act, 2007* if that definition were read without reference to the words “ending after December 31, 2008”;

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

- (a) if the registrant firm is a company that has a permanent establishment in Ontario in the fiscal year, the registrant firm’s Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA,
- (b) if paragraph (a) does not apply and the registrant firm would have a permanent establishment in Ontario in the fiscal year if the registrant firm were a company, the registrant firm’s Ontario allocation factor for the fiscal year expressed as a percentage and determined on the assumption that the registrant firm is a company, had a taxation year that coincided with the fiscal year and is resident in Canada for the purposes of the ITA, and
- (c) in any other case, the percentage of the registrant firm’s total revenues for the fiscal year attributable to CFA activities in Ontario;

“permanent establishment” has the meaning provided in Part IV of the regulations under the ITA;

“previous fiscal year” of a registrant firm in respect of a participation fee that becomes payable under section 2.2 on December 31 of a calendar year, the last fiscal year of the registrant firm ending in the calendar year;

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

“specified Ontario revenues” means the revenues determined in accordance with section 2.4, 2.5 or 2.6.

PART 2 — PARTICIPATION FEES

2.1 Application — This Part does not apply to a registrant firm that is registered under the *Securities Act* and that has paid its participation fee under Rule 13-502 *Fees* under the *Securities Act*.

2.2 Participation Fee — On December 31, a registrant firm must pay the participation fee shown in Appendix A opposite the registrant firm’s specified Ontario revenues for its previous fiscal year, as that revenue is calculated under section 2.4 or 2.5.

2.3 Disclosure of Fee Calculation — By December 1, a registrant firm must file a completed Form 13-503F1 showing the information required to determine the participation fee due on December 31.

2.4 Specified Ontario Revenues for IIROC Members

- (1) The specified Ontario revenues for its previous fiscal year of a registrant firm that was an IIROC member at the end of the previous fiscal year is calculated by multiplying
 - (a) the registrant firm’s total revenue for its previous fiscal year, less the portion of that total revenue not attributable to CFA activities, by

- (b) the registrant firm's Ontario percentage for its previous year.
- (2) For the purpose of paragraph (1)(a), "total revenue" for a previous fiscal year means the amount shown as total revenue for the previous fiscal year on Statement E of the Joint Regulatory Financial Questionnaire and Report filed with IIROC by the registrant firm.

2.5 Specified Ontario Revenues for Others

- (1) The specified Ontario revenues of a registrant firm that was not an IIROC member at the end of its previous fiscal year is calculated by multiplying
 - (a) the registrant firm's gross revenues, as shown in the audited financial statements prepared for the previous fiscal year, less deductions permitted under subsection (2), by
 - (b) the registrant firm's Ontario percentage for the previous fiscal year.
- (2) For the purpose of paragraph (1)(a), a registrant firm may deduct the following items otherwise included in gross revenues:
 - (a) revenue not attributable to CFA activities,
 - (b) advisory or sub-advisory fees paid during the previous fiscal year by the registrant firm to a person or company registered as a dealer or an adviser under the CFA or under the *Securities Act*.

2.6 Estimating Specified Ontario Revenues for Late Fiscal Year End

- (1) If the annual financial statements of a registrant firm for the previous fiscal year have not been completed by December 1 in the calendar year in which the previous fiscal year ends, the registrant firm must,
 - (a) on December 1 in that calendar year, file a completed Form 13-503F1 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 in that calendar year, pay the participation fee shown in Appendix A 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 previous fiscal year have been completed,
 - (a) calculate its specified Ontario revenues under section 2.4 or 2.5, as applicable,
 - (b) determine the participation fee shown in Appendix A opposite the specified Ontario revenues calculated under paragraph (a),
 - (c) complete a Form 13-503F1 reflecting the annual financial statements, and
 - (d) if the participation fee determined under paragraph (b) differs from the participation fee paid under subsection (1), the registrant firm must, not later than 90 days after the end of the previous fiscal year,
 - (i) pay the amount, if any, by which
 - (A) the participation fee determined without reference to this section, exceeds
 - (B) the corresponding participation fee paid under subsection (1),
 - (ii) file the Form 13-503F1 completed under paragraph (c), and
 - (iii) file a completed Form 13-503F2.

- (3) If a registrant firm paid an amount paid under subsection (1) that exceeds the corresponding participation fee determined without reference to this section, the registrant firm is entitled to a refund from the Commission of the excess.

2.7 Late Fee

- (1) A registrant firm that is late in paying a participation fee under this Part must pay an additional fee of one-tenth of one percent of the unpaid portion of the participation fee for each business day on which any portion of the participation fee remains due and unpaid.
- (2) The amount determined under subsection (1) in respect of the late payment of a participation fee by a registrant firm is deemed to be nil if
 - (a) the registrant firm pays an estimate of the participation fee in accordance with subsection 2.6(1), or
 - (b) the amount otherwise determined under subsection (1) in respect of the late payment of participation fee is less than \$10.

PART 3 — ACTIVITY FEES

- 3.1 **Activity Fees** — A person or company that files a document or takes an action listed in Appendix B must, concurrently with filing the document or taking the action, pay the activity fee shown in Appendix B opposite the description of the document or action.
- 3.2 **Late Fee** — A person or company that files a document listed in Appendix C after the document was required to be filed must, concurrently with filing the document, pay the late fee shown in Appendix C opposite the description of the document.

PART 4 — CURRENCY CONVERSION

- 4.1 **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 5 — EXEMPTION

- 5.1 **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 6 — REVOCATION AND EFFECTIVE DATE

- 6.1 **Revocation** — Rule 13-503 (*Commodity Futures Act) Fees*, which came into force on April 1, 2006, is revoked.
- 6.2 **Effective Date** — This Rule comes into force on June 1, 2009.

APPENDIX A — PARTICIPATION FEES

Specified Ontario Revenues for the Previous Fiscal Year	Participation Fee
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 B - ACTIVITY FEES

Document or Activity	Fee
<p>A. Applications for relief, approval and recognition</p>	
<p>1. Any application for relief, regulatory approval or recognition under an eligible CFA section, being for the purpose of this item any provision of the CFA or any Regulation or OSC Rule made under the CFA not listed in item A.2 or A.3.</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"> (i) <i>recognition of an exchange under section 34 of the CFA, a self-regulatory organization under section 16 of the CFA or a clearing house under section 17 of the CFA;</i> (ii) <i>registration of an exchange under section 15 of the CFA;</i> (iii) <i>approval of the establishment of a council, committee or ancillary body under section 18 of the CFA;</i> (iv) <i>applications by a person or company under subsection 78(1) of the CFA; and</i> (v) <i>exemption applications under section 80 of the CFA.</i> 	<p>\$3,000 for an application made under one eligible CFA section and \$5,000 for an application made under two or more eligible CFA sections (plus \$2,000 if none of the following is not subject to, or is not reasonably expected to become subject to, a participation fee under this Rule or OSC Rule 13-502 under the <i>Securities Act</i>:</p> <ul style="list-style-type: none"> (i) the applicant; (ii) an issuer of which the applicant is a wholly owned subsidiary; (iii) the investment fund manager of the applicant). <p>Despite the above, if an application is made under at least one eligible securities section described in Appendix C(E) 1 of OSC Rule 13-502 and at least one eligible CFA section, the fee in respect of the application is equal to the amount, if any, by which</p> <ul style="list-style-type: none"> (a) the fee that would have been charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application if each eligible CFA section were an eligible securities section exceeds (b) the fee charged under Appendix C(E) 1 of OSC Rule 13-502 in respect of the application.
<p>2. Application under</p> <ul style="list-style-type: none"> (a) Section 24 or 40 or subsection 36(1) or 46(6) of the CFA, and (b) Subsection 27(1) of the Regulation to the CFA. 	<p>Nil</p>
<p>3. An application for relief from any of the following</p> <ul style="list-style-type: none"> (a) this Rule; (b) OSC Rule 31-509 (<i>Commodity Futures Act</i>) <i>National Registration Database</i>; (c) OSC Rule 33-505 (<i>Commodity Futures Act</i>) <i>Registration Information</i>; (d) Subsection 37(7) of the Regulation to the CFA. 	<p>\$1,500</p>

Document or Activity	Fee
B. Registration-Related Activity	
1. New registration of a firm in one or more categories of registration	\$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 category of 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, the individual is required to pay only one activity fee.</i> <i>(iii) A registration fee will not be charged if an individual makes application to register with a new registrant firm within three months of terminating employment with his or her previous registrant firm if the individual's category of registration remains unchanged.</i>	\$200 per individual
4. Change in status from a non-trading or non-advising capacity to a trading or advising capacity	\$200 per individual
5. Registration of a new registrant firm, or the continuation of registration of an existing registrant firm, resulting from or following an amalgamation of one or more registrant firms	\$2,000
6. Application for amending terms and conditions of registration	\$500
C. Application for Approval of the Director under Section 9 of the Regulation	\$1,500
D. Request for Certified Statement from the Commission or the Director under Section 62 of the CFA	\$100

Document or Activity	Fee
E. Requests of the Commission	
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 7	\$30

APPENDIX C – ADDITIONAL FEES FOR LATE DOCUMENT FILINGS

Document	Late Fee
<p>Fee for late filing of any of the following documents:</p> <ul style="list-style-type: none"> (a) Annual financial statements and interim financial statements; (b) Report under section 15 of the Regulation to the CFA; (c) Report under section 17 of the Regulation to the CFA; (d) Filings for the purpose of amending Form 5 or Form 7 under the Regulation to the CFA or Form 33-506F4 under OSC Rule 33-506, including the filing of Form 33-506F1; (e) Any document required to be filed by a registrant firm or individual in connection with the registration of the registrant firm or individual under the CFA with respect to <ul style="list-style-type: none"> (i) terms and conditions imposed on a registrant firm or individual, or (ii) an order of the Commission; (f) Form 13-503F1; (g) Form 13-503F2. 	<p>\$100 per business day (subject to a maximum of \$5,000 for a registrant firm for all documents required to be filed within a calendar year)</p>

**FORM 13-503F1
(COMMODITY FUTURES ACT)**

PARTICIPATION FEE CALCULATION

General Instructions

1. IIROC members must complete Part I of this Form. All other registrant firms must complete Part II. Everyone completes Part III.
2. The components of revenue reported in this Form should be based on accounting standards pursuant to which an entity's financial statements are prepared under Ontario securities law ("Accepted Accounting Standards"), except that revenues should be reported on an unconsolidated basis.
3. IIROC Members may refer to Statement E of the Joint Regulatory Financial Questionnaire and Report for guidance.
4. Participation fee revenue will be based on the portion of total revenue that can be attributed to Ontario for the firm's most recently completed fiscal year, which is generally referred to the Rule as its "previous fiscal year".
5. If a firm's permanent establishments are situated only in Ontario, all of the firm's total revenue for a fiscal year is attributed to Ontario. If permanent establishments are situated in Ontario and elsewhere, the percentage attributed to Ontario for a fiscal year will ordinarily be the percentage of the firm's taxable income that is allocated to Ontario for Canadian income tax purposes for the same fiscal year. For firms that do not have a permanent establishment in Ontario, the percentage attributable to Ontario will be based on the proportion of total revenues generated from CFA activities in Ontario.
6. All figures must be expressed in Canadian dollars and rounded to the nearest thousand.
7. 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 II

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

Participation Fee Calculation

Firm Name: _____

End date of last completed fiscal year: _____

Last Completed Fiscal Year \$

Part I – IIROC Members

- 1. Total revenue for last completed fiscal year from Statement E of the Joint Regulatory Financial Questionnaire and Report
2. Less revenue not attributable to CFA activities
3. Revenue subject to participation fee (line 1 less line 2)

Part II – Other Registrants

- 1. Gross revenue for last completed fiscal year as per the audited financial statements (note 1) Less the following items:
2. Amounts not attributable to CFA activities
3. Advisory or sub-advisory fees paid to other registrant firms (note 2)
4. Revenue subject to participation fee (line 1 less lines 2 and 3)

Part III – Calculating Specified Ontario Revenues

- 1. Gross revenue for last completed fiscal year subject to participation fee (line 3 from Part I or line 4 from Part II)
2. Ontario percentage for last completed fiscal year (See definition of "Ontario percentage" in the Rule) %
3. Specified Ontario revenues (line 1 multiplied by line 2)
4. Participation fee (From Appendix A of the Rule, select the participation fee opposite 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.

Table with 3 columns: Name and Title, Signature, Date. Rows 1 and 2 for certification.

FORM 13-503F2
(COMMODITY FUTURES ACT)

ADJUSTMENT OF FEE PAYMENT

Firm Name: _____

Fiscal Year End: _____

Note: Subsection 2.6(2) of the Rule requires that this Form must be filed concurrent with a completed Form 13-503F1 that shows the firm's actual participation fee calculation.

- 1. Estimated participation fee paid under subsection 2.6(1) of the Rule: _____
- 2. Actual participation fee calculated under paragraph 2.6(2)(b) of the Rule: _____
- 3. Refund due (Balance owing): _____
(Indicate the difference between lines 1 and 2)

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

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**ONTARIO SECURITIES COMMISSION
COMPANION POLICY 13-503CP
(COMMODITY FUTURES ACT) 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 OSC Rule 13-503 (*Commodity Futures Act 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 general approach of the Rule is to establish a fee regime that is consistent with the approach of OSC Rule 13-502 (the “OSA Fees Rule”), which governs fees paid under the *Securities Act*. Both rules are designed to create a clear and streamlined fee structure.
- (2) The fee regime of the Rule is based on the concepts of “participation fees” and “activity fees”.

2.2 Participation Fees

- (1) Registrant firms are required to pay participation fees annually. Participation fees are designed to cover the Commission’s costs not easily attributable to specific regulatory activities. The participation fee required of each market participant is based on a measure of the market participant’s size, which is used as a proxy for its proportionate participation in the Ontario capital markets.
- (2) Participation fees are determined with reference to gross revenue from a firm’s “previous fiscal year”, which is essentially defined in section 1.1 of the Rule as the last completed fiscal year before the participation fee is required to be paid.

- 2.3 Application of Participation Fees** — Although participation fees are determined by using information from a fiscal year of a registrant firm ending before the time of the payment, participation fees are applied to the costs of the Commission of regulating the ongoing participation in Ontario’s capital markets of the firm and other firms.

- 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 generally charged where a document of a designated class is filed. Estimates of the direct cost of Commission resources expended in undertaking the activities listed in Appendix B of the Rule are considered in determining these fees (e.g., reviewing registration applications and applications for discretionary relief). Generally, the activity fee charged for filing a document of a particular class is based on the average cost to the Commission of reviewing documents of the class.

2.6 Registrants under the CFA and the *Securities Act*

- (1) A registrant firm that is registered both under the CFA and the *Securities Act* is exempted by section 2.1 of the Rule from the requirement to pay a participation fee under the Rule if it is current in paying its participation fees under the OSA Fees Rule. The registrant firm will include revenues derived from CFA activities as part of its revenues for purposes of determining its participation fee under the OSA Fees Rule.
- (2) A registrant firm that is registered both under the CFA and the *Securities Act* must pay activity fees under the CFA Rule even though it pays a participation fee under the OSA Fees Rule.

2.7 No Refunds

- (1) Generally, a person or company that pays a fee under the Rule is not entitled to a refund of that fee. For example, there is no refund available for an activity fee paid in connection with an action that is subsequently abandoned by the payor of the fee. Also, there is no refund available for a participation fee paid by a registrant firm whose registration is terminated later in the year for which the fee was paid.

- (2) An exception to this principle is provided in subsection 2.6(3) of the Rule. This provision allows for a refund where 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 registrant firms 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 — PARTICIPATION FEES

- 3.1 Filing Forms under Section 2.6** — If the estimated participation fee paid under subsection 2.6(1) by a registrant firm does not differ from its true participation fee determined under subsection 2.6(2), the registrant firm is not required to file either a Form 13-503F1 or a Form 13-503F2 under subsection 2.6(3).
- 3.2 Late Fees** — Section 2.7 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.
- 3.3 "CFA Activities"** — Calculation of the participation fee involves consideration of the CFA activities undertaken by a person or company. The term "CFA activities" is defined in section 1.1 of the Rule to include "activities for which registration under the CFA or an exemption from registration is required". The Commission is of the view that these activities include, without limitation, trading in commodity futures contracts, providing commodity futures contracts-related advice and portfolio management services involving commodity futures contracts.