

NOTICE OF AMENDMENTS AND CHANGES TO
OSC RULE 13-502 FEES
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES, AND
CORRESPONDING COMPANION POLICIES

Making of Amending Instruments and Change Documents

On April 30, 2019, the Commission approved amending instruments (**Amending Instruments**) to amend OSC Rule 13-502 *Fees* (**OSC Rule 13-502**) and OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (**OSC Rule 13-503**) (each a **Fee Rule**). On the same date, the Commission approved change documents to make corresponding changes to the Companion Policies for OSC Rule 13-502 and OSC Rule 13-503.

Delivery of Amending Instruments to Minister

The Commission delivered the Amending Instruments to the Minister of Finance on May 9, 2019. If the Minister approves the amendments within 60 days, they will come into force fifteen days after the Minister's approval. If no action is taken by the Minister under subsection 143.3(3) of the *Securities Act* (**OSA**) and subsection 68(3) of the *Commodity Futures Act* (**CFA**), the amendments come into force on July 23, 2019.

Substance and Purpose of Amending Instruments

Moratorium on OBA Late Fees

The Commission has decided to implement a time-limited moratorium on the collection of late fees associated with the late disclosure of outside business activities (**OBAs**).

Registrants have commented that the scope of OBAs that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting.

While the moratorium is in place, the Commission will review National Instrument 33-109 *Registration Information* (**NI 33-109**) to determine, amongst other things, whether the OBA disclosure regime could be streamlined. Any amendments to the OBA reporting regime will require a CSA initiative.

OSC Rule 33-506 (*Commodity Futures Act*) *Registration Information* (**OSC Rule 33-506**) will also be reviewed. OSC Rule 33-506 corresponds to NI 33-109.

The authority for the amendments is paragraph 143(1)43 of the OSA and paragraph 65(1)25 of the CFA. Under subsections 143.2(5) of the OSA and 67(5) of the CFA, the amendments were not required to be published for comment. Given that the Companion Policy changes follow the rule amendments, there is also no requirement for publication for comment of the Companion Policy changes because the changes to the Companion Policy are not material in light of the amendments made to the rules.

Calculation of OBA Late Fees

The Fee Rules currently contemplate late fees of \$100 per business day for the late filing of an OBA disclosure, subject to a maximum aggregate late fee of \$5,000 for all documents required to be filed or delivered by a firm in a calendar year, unless the firm had Ontario specified revenue for the previous financial year of \$500 million or more, in which case the maximum aggregate is \$10,000.

We will not require registrants to pay the \$100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 or OSC Rule 33-506 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021.

OBAs and Regulatory Burden Reduction

The amendments described above are linked with the Burden Reduction Task Force (the **Task Force**) established by the Commission in coordination with the Ministry of Finance.

The Task Force is intended to focus our efforts and to identify steps that can be taken to enhance competitiveness for Ontario businesses by saving time and money for issuers, registrants, investors and other market participants.

The Task Force has a mandate to consider and act on any suggestions to eliminate unnecessary rules and processes while protecting investors and the integrity of our markets.

On January 14, 2019, OSC staff issued OSC Staff Notice 11-784 *Burden Reduction (SN 11-784)*. SN 11-784 sought suggestions on ways to further reduce unnecessary regulatory burden. The deadline to provide suggestions and comment was March 1, 2019.

Partially in response to the comments received because of SN 11-784, the Commission identified the OBA disclosure regime as a potential area of improvement and burden reduction.

As NI 33-109 is a national instrument, any material changes to the OBA reporting regime will require a CSA initiative.

Continued Obligation to Report OBAs

The amendments to the Fee Rule revise the way OBA late fees are calculated. They do not relieve registrants from the obligation to report OBAs under paragraph 4.1(b) of NI 33-109 or the corresponding provision of OSC Rule 33-506.

By requiring disclosure related to OBAs we are better able to monitor the risks of outside business activities relating to conflicts of interest, and where necessary, take regulatory action.

Registrants and permitted individuals are reminded that the disclosure regime in NI 33-109 and OSC Rule 33-506 is unchanged. All OBAs must continue to be disclosed until such time as the OBA disclosure regime may be revised.

Authority for Amending Instruments

Paragraph 143(1)43 of the OSA provides authority for making the amendments to OSC Rule 13-502.

Paragraph 65(1)25 of the CFA provides authority for making the amendments to OSC Rule 13-503.

Annexes

Annexes A and B contain the Amending Instruments. Annexes C and D contain the Change Documents.

Questions

If you have questions, please contact:

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ANNEX A

Amendments to OSC Rule 13-502 Fees

1. *OSC Rule 13-502 Fees is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

“OBA amendment” means an amendment to NI 33-109 that sets out circumstances in which outside business activity is required to be disclosed;

“specified day” means

(a) in relation to the late filing of Form 33-109F5 for the purposes of amending item 10 of Form 33-109F4, a business day occurring:

(i) before January 1, 2019, or

(ii) after the date that is the earlier of:

(A) the date that the first OBA amendment comes into force, and

(B) December 31, 2021, and

(b) in any other case, any business day;

3. *Column B of Row A of Appendix D is amended by replacing “every business day” with “every specified day”.*

4. This Instrument comes into force on the date determined under subsection 143.4(1) or (2) of the Act, as the case may be.

ANNEX B

Amendments to OSC Rule 13-503 (Commodity Futures Act) Fees

1. ***OSC Rule 13-503 (Commodity Futures Act) Fees is amended by this Instrument.***
2. ***Section 1.1 is amended by adding the following definition:***

“OBA amendment” means an amendment to OSC Rule 33-506 (*Commodity Futures Act*) *Registrant Information* that sets out circumstances in which outside business activity is required to be disclosed;

“specified day” means

- (a) in relation to the late filing of Form 33-506F5 for the purposes of amending item 10 of Form 33-506F4, a business day occurring:
 - (i) before January 1, 2019, or
 - (ii) after the date which is the earlier of:
 - (A) the date that the first OBA amendment comes into force, and
 - (B) December 31, 2021, and
- (b) in any other case, any business day;

3. ***Column B of Row A of Appendix D is amended by replacing “every business day” with “every specified day”.***

4. This Instrument comes into force on the date determined under subsection 69(1) or (2) of the Act, as the case may be.

ANNEX C

Changes to Companion Policy 13-502CP Fees

1. *Companion Policy 13-502CP Fees is changed by this Document.*
2. *The following is added immediately after section 7.1:*

7.1.1 Moratorium on OBA Late Fee -- (1) Under paragraph 4.1(b) of National Instrument 33-109 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-109F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-109F5. Subject to the exceptions in subsection (2) and a cap contained in Appendix D, a late filing of Form 33-109F5 gives rise to a late fee of \$100 per business day under subparagraph (e)(i) of Row A of Appendix D.

(2) Registrants have commented that the scope of outside business activities (**OBAs**) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. Amendments to the OBA reporting regime will require a CSA initiative. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the \$100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix D.

3. This change comes into effect on the date that the definition of “OBA amendment” in Annex A comes into force.

ANNEX D

Changes to Companion Policy 13-503CP (Commodity Futures Act) Fees

1. *Companion Policy 13-503CP Fees is changed by this Document.*

2. *The following is added immediately after subsection 5.1(1):*

(1.1) Under subsection 4.1(1) of OSC Rule 33-506 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-506F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-506F5. Subject to the exceptions in subsection (1.2) and a cap contained in Appendix C, a late filing gives rise to a late fee of \$100 per business day under subparagraph (e)(i) of Row A of Appendix C.

(1.2) Registrants have commented that the scope of outside business activities (**OBAs**) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the \$100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix C.

3. This change comes into effect on the date that the definition of “OBA amendment” in Annex B comes into force.