

## Chapter 5

# Rules and Policies

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### 5.1.1 Notice of Amendments to OSC Rule 13-502 Fees and OSC Rule 13-503 (Commodity Futures Act) Fees

**NOTICE OF AMENDMENTS TO  
ONTARIO SECURITIES COMMISSION RULE 13-502 FEES  
AND  
OSC RULE 13-503 (COMMODITY FUTURES ACT) FEES**

#### Introduction

On August 21, 2019, the Ontario Securities Commission (the **Commission** or **we**) made amendments to:

- Ontario Securities Commission Rule 13-502 *Fees* (**OSC Rule 13-502**) under the Securities Act (Ontario) (the **OSA**), and
- OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (**OSC Rule 13-503**), under the Commodity Futures Act (Ontario) (the **CFA**).

Annex A of this Notice sets out the amendments to OSC Rule 13-502 (the **13-502 Amendments**).

Annex B of this Notice sets out the amendments to OSC Rule 13-503 (the **13-503 Amendments**).

In this Notice, we refer to the 13-502 Amendments and 13-503 Amendments collectively as the “Rule Amendments.”

Annex C of this Notice shows the text changes to be made to section 3.3 of OSC Rule 13-502, section 2.4 of OSC Rule 13-503, and the corresponding fee calculation Form<sup>1</sup> (the **Fee Form**), under the Rule Amendments.

#### Substance and Purpose of Rule Amendments

##### *What is changing under the Rule Amendments*

Currently, firms registered under the OSA, and unregistered capital markets participants, are required, each year, to pay a participation fee to the Commission (by no later than December 31). Similarly, firms registered under the CFA are required, each year, to pay a participation fee to the Commission (by no later than December 31). Fees payable under OSC Rule 13-502 and OSC Rule 13-503 are designed to recover the OSC's costs to provide protection to investors and promote efficient capital markets that are aligned with global markets. Participation fee amounts required to be paid by market participants are intended to serve as a proxy for the market participant's use of Ontario's capital markets.

The fee amount is calculated by the firm in accordance with a Fee Form<sup>2</sup> (the **Fee Form**) that must be certified for completeness and accuracy and submitted to the Commission by no later than December 1.

The Fee Form must be certified by the chief compliance officer (**CCO**) of the firm (or, in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity). The Rule Amendments would change OSC Rules 13-502 and 13-503 to allow others identified in the Rule Amendments to certify.

These changes would mean that the CFO or another specified individual (who might typically be responsible at the firm for preparing the fee calculation) would be allowed to submit the Fee Form directly to the Commission, without requiring additional review by the CCO<sup>3</sup> to certify the Fee Form. This will result in time savings for the submitting firm.

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<sup>1</sup> Form 13-502F4 *Capital Markets Participation Fee Calculation*, under OSC Rule 13-502; and Form 13-502F1 *Capital Markets Participation Fee Calculation*, under OSC Rule 13-503.

<sup>2</sup> Form 13-502F4 *Capital Markets Participation Fee Calculation*, under OSC Rule 13-502; and Form 13-502F1 *Capital Markets Participation Fee Calculation*, under OSC Rule 13-503.

<sup>3</sup> Or, in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity.

Firms that wish to continue their existing processes for Fee Form certification by their CCO<sup>4</sup> will still be permitted to do so.

The Commission is targeting the Rule Amendments to be effective in advance of the December 1, 2019 deadline for industry submission of their Fee Forms (as part of the 2019-2020 participation fee cycle).<sup>5</sup>

This minor change in who will be allowed to certify the applicable participation Fee Form to be submitted to the Commission, will not impair the Commission's confidence in the completeness and accuracy of the submitting firm's calculation.

### *Regulatory Burden Reduction*

The Rule Amendments are expected to have positive benefits for industry stakeholders, as the additional flexibility in the Fee Form certification process offers potential benefits for all fee-paying firms.<sup>6</sup>

For many firms, the Rule Amendments are expected to generate time (and therefore potential) cost savings. As indicated above, the CFO (or other specified individual) who might typically be responsible at the firm for preparing the fee calculation will be able to certify the participation fees and eliminate duplicative time spent by the CCO to also review the participation fees, before their "sign-off" of the Fee Form on behalf of the firm.

The proposed Rule Amendments are part of the OSC's Burden Reduction Task Force initiative and were identified during stakeholder consultation.

The Task Force, which was established by the Commission in coordination with the Ontario Ministry of Finance, 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. The Rule Amendments are linked with the Task Force. On January 14, 2019, Commission staff issued OSC Staff Notice 11-784 *Burden Reduction*. This Notice sought suggestions on ways to further reduce unnecessary regulatory burden. The deadline to provide suggestions and comment was March 1, 2019.

The Rule Amendments would, as indicated above, allow additional individuals to certify the applicable Fee Form calculation. This additional flexibility will facilitate potential time savings for industry and is consistent with the provincial government priority to reduce red tape to support business in Ontario.

### **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.

The Rule Amendments, which do not include any new requirements, were made by the Commission on an expedited basis, and without prior publication for comment, as permitted under ss. 143.2(5)(c) of the OSA and ss. 67(5)(c) of the CFA.

We are satisfied that the Rule Amendments do not "materially change" OSC Rule 13-502 or OSC Rule 13-503.

### **Delivery of Rule Amendments to Minister**

The Commission delivered the Rule Amendments to the Minister of Finance on September 5, 2019. If the Minister approves the Rule Amendments within 60 days after delivery, they will come into force fifteen days after the Minister's approval. If no action under subsection 143.3(3) of the OSA and subsection 68(3) of the CFA is taken by the Minister, the Rule Amendments will come into force on November 19, 2019 (being 75 days after the above delivery date, pursuant to clause 143.4(2)(b) of the OSA and clause 69(2)(b) of the CFA).

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<sup>4</sup> Or, in the case of an unregistered capital markets participant without a CCO, an individual acting in a similar capacity.

<sup>5</sup> Any Fee Forms that are submitted this year may also follow the existing format for certification.

<sup>6</sup> In 2018, approximately 2,900 registrants and unregistered capital market participants submitted Fee Forms to the Commission.

**Questions**

If you have questions, please contact:

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ANNEX A

Amendments to OSC Rule 13-502 Fees

1. **Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.**
2. **Section 3.3 is replaced with the following:**
  - 3.3 **Certification**
  - (1) A form required to be filed under section 3.1 or 3.2 must contain a certificate signed by any one of the following:
    - (a) the chief compliance officer of the registrant or the unregistered capital markets participant;
    - (b) in the case of an unregistered capital markets participant without a chief compliance officer, an individual acting in a similar capacity;
    - (c) a specified officer of the registrant or the unregistered capital markets participant, or an individual acting in a similar capacity;
    - (d) a director of the registrant or unregistered capital markets participant.
  - (2) For the purposes of paragraph (1)(c), "specified officer" of a registrant or an unregistered capital markets participant, means an individual with any one or more of the following positions in relation to the registrant or the unregistered capital market participant:
    - (a) chief executive officer;
    - (b) chief financial officer;
    - (c) chief operating officer.
3. **Form 13-502F4 Capital Markets Participation Fee Calculation is amended**
  - (a) **in the "General Instructions" by replacing paragraph 9 with the following:**
    9. Information reported on this form must be certified by an individual specified in section 3.3 of this Rule to attest to its completeness and accuracy.; **and**
  - (b) **replacing the heading "Chief Compliance Officer's Certification" with "Certification".**
4. **This Instrument comes into force on •.**

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 2.4 is replaced with the following:**
  - 2.4 **Certification**
  - (1) A form required to be filed under section 2.2 or 2.3 must contain a certificate signed by any one of the following:
    - (a) the chief compliance officer of the registrant firm;
    - (b) a specified officer of the registrant firm, or an individual acting in a similar capacity;
    - (c) a director of the registrant firm.
  - (2) For the purposes of subsection (1)(b), "specified officer" of a registrant firm, means an individual with any or more of the following positions in relation to the registrant firm:
    - (a) chief executive officer;
    - (b) chief financial officer;
    - (c) chief operating officer.
3. **Form 13-503F1 (*Commodity Futures Act*) Participation Fee Calculation is amended**
  - (a) **in the "General Instructions" by replacing paragraph 7 with the following:**
    7. Information reported on this form must be certified by an individual specified in section 2.4 of this Rule to attest to its completeness and accuracy.; **and**
  - (b) **replacing the heading "Chief Compliance Officer's Certification" with "Certification".**
4. **This Instrument comes into force on •.**

ANNEX C

Changes to Existing OSC Rule 13-502 and OSC Rule 13-503 Resulting from Rule Amendments

A. **Ontario Securities Commission Rule 13-502 Fees**

**Existing**

**3.3 Certification** – A form required to be filed under section 3.1 or 3.2 must contain a certification signed by

- (a) the chief compliance officer of the registrant or the unregistered capital markets participant, or
- (b) in the case of an unregistered capital markets participant without a chief compliance officer, an individual acting in a similar capacity.

**New (with changes to Existing highlighted)**

**3.3 Certification**

- (1) A form required to be filed under section 3.1 or 3.2 must contain a certificate signed by **any one of the following:**
  - (a) the chief compliance officer of the registrant or the unregistered capital markets participant;
  - (b) in the case of an unregistered capital markets participant without a chief compliance officer, an individual acting in a similar capacity;
  - (c) a specified officer of the registrant or the unregistered capital markets participant, or an individual acting in a similar capacity;
  - (d) a director of the registrant or unregistered capital markets participant.
- (2) For the purposes of paragraph (1)(c), “specified officer” of a registrant or an unregistered capital markets participant, means an individual with any one or more of the following positions in relation to the registrant or the unregistered capital market participant:
  - (a) chief executive officer;
  - (b) chief financial officer;
  - (c) chief operating officer.

**Existing**

**FORM 13-502F4**

**CAPITAL MARKETS PARTICIPATION FEE CALCULATION**

**General Instructions**

...

- 9. Information reported on this form must be certified by the chief compliance officer or equivalent to attest to its completeness and accuracy.

Chief Compliance Officer Certification

I, \_\_\_\_\_, of the registrant firm / unregistered capital markets participant noted below have examined this Form 13-502F4 (the Form) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s) \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

***New (with changes to Existing highlighted)***

**FORM 13-502F4**

**CAPITAL MARKETS PARTICIPATION FEE CALCULATION**

**General Instructions**

...

9. Information reported on this form must be certified by an individual specified in section 3.3 of this Rule to attest to its completeness and accuracy.

**Chief Compliance Officer Certification**

I, \_\_\_\_\_, of the registrant firm / unregistered capital markets participant noted below have examined this Form 13-502F4 (the **Form**) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.

(s) \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

**B. Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees (OSC Rule 13-503)**

***Existing***

- 2.4 Certification** – A form required to be filed under section 2.2 or 2.3 must contain a certification signed by the chief compliance officer of the registrant firm.

***New (with changes to Existing highlighted)***

**2.4 Certification**

- (1) A form required to be filed under section 2.2 or 2.3 must contain a certificate signed by any one of the following:
- (a) the chief compliance officer of the registrant firm;
  - (b) a specified officer of the registrant firm, or an individual acting in a similar capacity;
  - (c) a director of the registrant firm.
- (2) For the purposes of subsection (1)(b), “specified officer” of a registrant firm, means an individual with any or more of the following positions in relation to the registrant firm:
- (a) chief executive officer;
  - (b) chief financial officer;
  - (c) chief operating officer.

**Existing**

**FORM 13-503F1 (Commodity Futures Act) PARTICIPATION FEE CALCULATION**

**General Instructions**

...

- 7. Information reported on this form must be certified by the chief compliance officer to attest to its completeness and accuracy.

Chief Compliance Officer Certification	
I, _____, of the registrant firm noted below have examined this Form 13-503F1 (the Form) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.	
(s) _____ Name:	_____ Date:
Title:	

**New (with changes to Existing highlighted)**

**FORM 13-503F1 (Commodity Futures Act) PARTICIPATION FEE CALCULATION**

**General Instructions**

...

- 7. Information reported on this form must be certified by **the chief compliance officer** **an individual specified in section 2.4 of this Rule** to attest to its completeness and accuracy.

<del>Chief Compliance Officer</del> Certification	
I, _____, of the registrant firm noted below have examined this Form 13-503F1 (the Form) being submitted hereunder to the Ontario Securities Commission and certify that to my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate.	
(s) _____ Name:	_____ Date:
Title:	