

**1.1.4 OSC Staff Notice 13-703 Implementation of
Final Rule 13-502 Fees - FAQs**

**ONTARIO SECURITIES COMMISSION
STAFF NOTICE 13-703**

**IMPLEMENTATION OF FINAL RULE 13-502 FEES
FAQs**

Rule 13-502 - Fees is scheduled to come into force March 31, 2003. A number of stakeholders have raised questions relating to the implementation of the Rule that issuers, registrants and mutual fund managers will need to be aware of. They are as follows:

CORPORATE FINANCE FEES

1. *Who pays corporate finance participation fees and how are participation fees paid?*

In the corporate finance context, participation fees are payable by all reporting issuers and by all investment funds that do not have an investment fund manager.

The participation fee is to be paid through SEDAR no later than the date on which the issuer is required to file its annual financial statements.

2. *What is the fee for filing a 45-501F1?*

At this time there is no fee for filing a 45-501F1. The form will be subject to late fees if it is not filed within the prescribed time.

3. *Is there a late fee payable if Form 45-501F1 is required by reason of s.7.5(1) of Rule 45-501 and not subsection 72(3) of the Act?*

If the form is not filed within the prescribed time then a late fee would be payable under M.1.(k) of Appendix C.

4. *What fees are owing if I file a shelf prospectus prior to March 31, 2003 but the distributions occur on or after March 31, 2003?*

Documents filed prior to March 31, 2003 will have fees attached to them consistent with the current fee schedule. The issuer should provide a report of all distributions in Ontario up until and including March 30, 2003. The current fees will apply to these distributions. Any distributions made on or after March 31, 2003 will have no fee attached to them as the new fee schedule covers these activities under the participation fee payable by an issuer. It is not our intention to offer refunds for any fees paid in respect of documents filed or distributions occurring prior to March 31, 2003.

5. *What fees are owing if I file a preliminary prospectus prior to March 31, 2003 but the final is not receipted until on or after March 31, 2003?*

The preliminary prospectus will have a fee attached to it consistent with the current fee schedule. The final prospectus will have fees owing consistent with A.3 of Appendix C. In the case where the preliminary prospectus discloses gross proceeds, no fees will be owing at the time of final receipt.

6. *I have a December 31, fiscal year end. Although my financial statements are not due until May it is our practice to file them in March. What fees are payable? How does my early filing impact my transitional participation fee owing in May?*

The financial statements will have a fee attached to them consistent with the current fee schedule. Prior to filing your transitional participation fee you may request a refund of the payment made in March. Once granted, the refund can be deducted from the amount owing for the transitional participation fee.

7. *If my company is both a registrant and a reporting issuer, what participation fees do we pay?*

Both the corporate finance and the capital market participation fees will be payable by you.

8. *There is a late fee for report of distributions under OSC Rule 45-503. What is the reporting requirement?*

The reporting requirements under Rule 45-503 have been revoked therefore there will not be any late fees relating to Rule 45-503.

9. *When exactly are my transitional fees due?*

<u>Year End</u>	<u>Transitional Fee Due</u>
April 30, 2002	June 30, 2003
May 31, 2002	June 30, 2003
June 30, 2002	June 30, 2003
July 31, 2002	June 30, 2003
August 31, 2002	June 30, 2003
September 30, 2002	June 30, 2003
October 31, 2002	June 30, 2003
November 30, 2002	April 21, 2003
December 31, 2002	May 20, 2003
January 31, 2003	June 20, 2003
February 28, 2003	See Question 10 below.
March 31, 2003	No transitional fee owing

10. *My company has a February 28 year-end. The transitional fee owing is due three weeks prior to the due date of my annual financial statements. How should I calculate my transitional fee?*

To simplify the transitional process, the Commission will accept your transitional participation fee (which will be for eleven months) on July 18, 2003 (the date the annual financial statements are due) without penalty or late charges. If the transitional participation fee is not paid on the day the financial statements are due the late fee will start to accrue at that time.

11. *What form do I use to file my transitional participation fees?*

Use Form 13-502F1 as you would for your annual participation fees. At the bottom of the form is a line showing how to reduce the fees for a new reporting issuer. The calculation is the same for the transitional fee. Change the line to read "reduction for transitional fee owing", and use the same calculation of:

$$\text{Total Fee Payable} \times \text{Number of entire months remaining in current financial year after the date that the Rule comes into force}$$

12. *If I file my annual financial statements late and as a result I'm late with my participation fee, what late fees do I owe?*

If an issuer files its financial statements late and its participation fee is also late, then the issuer will owe \$100 per business day to a maximum of \$5,000 on the financial statements and 1% per business day to a maximum of 25% on the late participation fee.

CAPITAL MARKETS FEES

1. *I just renewed my firm's registration on December 31, 2002. Since the Rule is effective March 31, 2003, will I be required to pay another renewal fee on March 31?*

No, if you have renewed your registration on December 31, 2002, your next annual renewal date will be December 31, 2003. On December 31, 2003, you will be required to pay a participation fee based on revenues in Ontario. Please refer to the Rule for a description of the participation fees.

2. *As an Ontario registrant, how will I be expected to pay my annual participation fees?*

Annual participation fees for registrants will be payable via NRD every December 31 of each year.

3. *Does my firm still have to pay a per capita renewal fee for all the individuals sponsored by my firm on December 31?*

No, the per capita individual renewal fee will no longer be payable pursuant to the new fee rule.

4. *Since you are no longer requiring an annual per capita individual renewal fee, please explain how we are supposed to divide up the participation fee to the individuals we sponsor.*

Whether or not a registrant firm chooses to divide up its participation fees amongst the individuals it sponsors is a business choice of the registrant firm.

5. *What is an activity fee payable by registrants?*

Please refer to the Rule, Appendix C Paragraph I for a listing of registration related activity fees. Activity fees are transactional fees levied on certain applications for registration. For example, an application to register a new firm to trade will trigger an activity fee of \$800.

6. *What is a participation fee payable by registrants?*

Please refer to the Rule, Part 3 entitled "Capital Markets Participation Fees" for a description of the participation fees payable by registrant firms.

7. *Will I still have to pay an amendment fee to amend my Form 4?*

No. Amendment fees are not payable under the new fee rule. Please refer to Appendix C of the Rule, Paragraph I for a listing of activities that will trigger a fee.

8. *Will I still have to pay a fee to transfer to another sponsoring firm?*

No transfer fee is payable if you transfer to a registrant firm within three months of leaving your old employer and your registration category remains the same as it was with your previous employer.

9. *What if I transfer to a new employer and it has been more than three months since I left my previous employer?*

If it has been more than three months since you left your previous employer, your application to either trade or advise will be considered a new application, and will trigger an activity fee. For example, an application to register as a salesperson by an individual who has left a past employer more than three months ago will trigger an activity fee of \$400.

10. *Why does my registrant firm have to pay NRD fees in addition to registration fees?*

NRD fees are charged by the NRD administrator to pay for the NRD System. Registration fees are payable to the OSC pursuant to the new fee rule. Here is a description from the Companion Policy 13-502CP Fees that explains the OSC's purpose and general approach in collecting fees from our stakeholders:

Purpose and General Approach of the Rule

The general approach of the Rule is to establish a fee regime that accomplishes three primary purposes - to reduce the overall fees charged to market participants from what existed previously in Ontario, to create a clear and streamlined fee structure and to adopt fees that accurately reflect the Commission's costs of providing services.

The fee regime implemented by the Rule is based on the concept of "participation fees" and "activity fees".

Participation Fees

Participation fees generally are designed to represent the benefit derived by market participants from participating in Ontario's capital markets. Reporting issuers, registrant firms and unregistered investment fund managers are required to pay participation fees annually. The participation fee is based on a measure of the market participant's size, which is intended to serve as a proxy for the market participant's use of the Ontario capital markets. The amounts of the

participation fees have been based on the cost of a broad range of regulatory services that cannot be practically or easily attributed to individual activities or entities. Participation fees replace most of the continuous disclosure filing fees and other activity fees formerly charged to market participants under the previous fees regime.

The Fee Rule provides for

- (a) corporate finance participation fees, which are applicable to reporting issuers other than most investment funds; and
- (b) capital markets participation fees, which are applicable to registrant firms and unregistered investment fund managers.

Activity Fees

Activity fees are designed to represent the direct cost of Commission staff resources expended in undertaking certain activities requested of staff by market participants, for example in connection with the review of prospectuses, applications for discretionary relief or the processing of registration documents. Market participants are charged activity fees only for activities undertaken by staff at the request of the market participant. Activity fees are charged for a limited number of activities only and are flat rate fees based on the average cost to the Commission of providing the service.

11. *How will registrant firms be expected to pay any applicable late filing fees? Will they automatically be deducted from the firm's NRD bank account?*

All applicable late filing fees incurred by a registrant will be payable by cheque. A bill will be provided for you to include with your late filing fee remittance.

12. *What is the effective date of the Rule?*

March 31, 2003.

INVESTMENT FUNDS FEES

1. *Who pays capital market participation fees and how are participation fees paid?*

In the investment funds context, participation fees are payable by registered dealers and/or advisers, and by unregistered investment fund managers.

- a) *Registrant Firms*

A person or company that is a registered dealer and/or adviser under the Act will pay the participation fee referred to in s.3.1 of the Rule, for each calendar year, by December 31 of each year.

Registrants pay the participation fees through the National Registration Database ("NRD") system to be implemented

by Canadian securities regulatory authorities on March 31, 2003. The NRD system contemplates a common renewal date for all registrants on December 31 in each year.

- b) *Unregistered Fund Managers*

An unregistered investment fund manager will pay the participation fee referred to in s.3.1 of the Rule, for each of its financial years, no later than 90 days after the end of its financial year.

The participation fee is to be paid by cheque sent to the Ontario Securities Commission, Investment Funds Branch.

The participation fee is for the current financial year, rather than for a calendar year, and is calculated on the basis of the audited financial statements of the unregistered investment fund managers for its previous financial year. See the discussion contained in Part 4 of the Companion Policy to the Rule.

2. *What are activity fees and how are activity fees to be paid?*

Activity fees referred to in Appendix C of the Rule are the fees associated with a specific action or service requested by a market player. In the investment funds context, activity fees apply to prospectus filings, applications for discretionary relief and pre-filings.

- a) *Preliminary or Pro Forma Prospectus Filings*

The activity fees set out in Appendix C (A) of the Rule associated with investment fund preliminary and pro forma prospectus filings, and final prospectus filings in Form 41-501F1, where applicable, are to be paid through SEDAR, under the specified user code for such filings. Where a single prospectus document is filed on behalf of one or more investment funds, the applicable fee is payable for each investment fund.

- b) *Applications*

The activity fees set out in Appendix C (E) of the Rule for applications for discretionary relief are to be paid in the same way as the present application system. That is, fees for applications currently filed through SEDAR shall continue to be paid through SEDAR, under the specified user code for such filings. Fees for applications currently submitted in paper format to the Commission shall continue to be paid by cheque. Where an application is made by or on behalf of one or more investment funds in an investment fund family, only one activity fee needs to be paid. See s.4.2 of the Rule.

- c) *Pre-Filings*

The activity fee set out in Appendix C (F) of the Rule for pre-filings is to be paid by cheque payable to the Ontario Securities Commission, Investment Funds Branch. Pre-filings are to be submitted by paper copy directly to the Investment Funds Branch. The fee for a pre-filing will be credited against the applicable fee payable if and when the

formal filing is actually proceeded with. Otherwise, the fee is non-refundable.

3. *Who pays transitional fees and how are transitional fees paid?*

In the investment funds context, unregistered investment fund managers pay transitional participation fees, and investment funds with securities in continuous distribution pay transitional distribution fees.

a) *Transitional Participation Fees*

An unregistered fund manager will pay an initial participation fee, no later than 90 days after the Rule comes into force (June 30, 2003), for the remainder of its current financial year as calculated in subsection 7.2(4) of the Rule. This participation fee is also paid by cheque sent to the Ontario Securities Commission, Investment Funds Branch.

There is no transitional participation fee for registrant firms.

b) *Transitional Distribution Fees*

An investment fund with securities in continuous distribution will have to pay any fees owing to the Commission based on the amount of securities distributed in Ontario up to and including the date that the Rule comes into force (March 31, 2003), as determined under the present fee requirements.

The distribution fee referred to in subsection 7.2(5) of the Rule is to be paid either at the time the investment fund files its pro forma prospectus, if the pro forma filing occurs during April, May or June, 2003, or by June 30, 2003, if no pro forma filing occurs.

The distribution fee is paid through SEDAR, under the specified user code for such filings.

4. *What Filings are subject to late fees and how are late fees paid?*

Late fees are applicable to participation fees and to any other notice, document, report or form required by Ontario securities law to be filed or submitted within a prescribed period.

A late fee is to be paid in the same way as the fee or form, which is the subject matter of the late fee, is paid.

Late fees applicable to unregistered investment fund managers will be paid by cheque sent to the Ontario Securities Commission, Investment Funds Branch.

5. *Is there any additional information that should be included in the cover letter of filings to the Investment Funds Branch?*

a) *Prospectus Filings*

In the cover letter to a preliminary or pro forma prospectus filing for an investment fund, the following should be specified:

- the activity fee related to the filing and confirmation that such activity fee has been paid through SEDAR;
- the transitional distribution fees relating to the investment funds which are the subject matter of the filing and the status of such payments;
- the participation fees associated with any applicable registrants and/or unregistered investment fund managers of the investment funds which are the subject matter of the filing and the status of such payments; and
- any outstanding late fees for investment fund-related filings by the investment funds which are the subject matter of the filing and by any applicable registrants and/or unregistered investment fund managers.

b) *Applications and Pre-Filings*

In the cover letter to an application filing or pre-filing in the investment funds context, the following should be specified:

- the activity fee related to the filing and confirmation that such activity fee has been paid; and
- any outstanding late fees for investment fund-related filings by the investment funds which are the subject matter of the filing and by any applicable registrants and/or unregistered investment fund managers.

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