

1.1.2 OSC Staff Notice 13-704 – Applications for Participation Fee Relief for Certain Small Registered Firms and Reporting Issuers

**OSC STAFF NOTICE 13-704
APPLICATIONS FOR PARTICIPATION FEE RELIEF
FOR CERTAIN SMALL REGISTERED FIRMS AND REPORTING ISSUERS**

February 20, 2014

Purpose of this Notice

This notice provides information and guidance on an expedited process for certain small registered firms and reporting issuers to apply for participation fee relief.

Staff (**Staff**) of the Ontario Securities Commission (**OSC**) believes that participation fee relief may be appropriate in certain circumstances for smaller registered firms and reporting issuers (in Class 1 and 3C, as those terms are defined in OSC Rule 13-502 **Fees (Fees Rule)**). The participation fee relief contemplated by this notice for applicants that are granted relief is projected to be between \$235 and \$17,275 for registered firms and between \$160 and \$13,150 for reporting issuers (although most registered firms and reporting issuers will be eligible for fee relief closer to the lower ends of these ranges).

The Fees Rule sets out participation fees payable by registered firms and reporting issuers. Participation fee levels are set using a tiered structure based on specified Ontario revenues for registered firms and on capitalization for reporting issuers.

To improve the predictability of OSC fee revenues and simplify cash flow planning for market participants, the Fees Rule was amended in 2013 to base participation fees on specified Ontario revenues (for registered firms) and on capitalization (for reporting issuers) from their last fiscal year ended prior to May 1, 2012 (their 2011 reference fiscal year or **2011 RFY**). Under this approach, registered firms and reporting issuers are required to use data from their 2011 RFY to calculate participation fees for the next three years. The 2013 amendments were designed to (and fees were set at rates to) allow the OSC to reach cost recovery by the end of fiscal 2016, to remain financially stable, and deliver against its mandate.

While the limited fee relief contemplated by this notice will reduce the OSC's 2013/2014 revenues and impact its ability to reach cost recovery by the end of fiscal 2016, as originally set out in the 2013 amendments, Staff believes that targeted relief for smaller registered firms and reporting issuers is appropriate.

The expedited relief processes, and eligibility to apply for relief or a refund using the expedited relief processes, are set out in this staff notice.

Eligibility

Registered firms and reporting issuers that meet the criteria set out below are invited to apply for participation fee relief or a refund before March 31, 2014 using the expedited process set out below.

The expedited application process is available to a registered firm or reporting issuer (in Class 1 or 3C) if, based on its 2013 fiscal year (as defined below):

- it would be in the lowest three participation fee tiers (i.e. registered firms with specified Ontario revenues under \$1 million and reporting issuers with capitalization under \$50 million); and
- its 2013 specified Ontario revenues or capitalization (both defined below) has decreased by at least 50% from its specified Ontario revenues or capitalization in its 2011 RFY.

A registered firm or reporting issuer that meets both of these criteria and follows the process set out below will, if not contrary to the public interest, be considered for a one-time 50% refund (or reduction) of its participation fee, subject to payment of the minimum participation fee of \$800 for registered firms and reporting issuers. Examples of the contemplated fee relief for a sample registered firm and a sample reporting issuer are set out below. We will not charge fees for these applications.

The 2013 specified Ontario revenues and 2013 capitalization are based on the registered firm's or reporting issuer's 2013 fiscal year and are calculated in accordance with the Fees Rule. For registered firms and reporting issuers, the 2013 fiscal year is the firm's last fiscal year ended before January 1, 2014.

The percentage decrease in 2013 specified Ontario revenues for registered firms is calculated as follows. The percentage decrease in 2013 capitalization for reporting issuers is calculated in a similar manner.

$$\% \text{ decrease} = \frac{(\text{2011 RFY specified Ontario revenues}) - (\text{2013 specified Ontario revenues})}{\text{2011 specified Ontario revenues}} \times 100$$

Example for registered firms

- 2011 RFY calculation: A registered firm reports 2011 RFY specified Ontario revenues of \$750,000 and is required to pay a fee of \$3,390 under the Fees Rule.
- 2013 specified Ontario revenues: The registered firm has 2013 specified Ontario revenues of \$240,000.
- Eligibility to apply (must meet both criteria):
 - Are 2013 specified Ontario revenues less than \$1 million? Yes, the registered firm's 2013 specified Ontario revenues are \$240,000.
 - Did the 2013 specified Ontario revenues decrease by at least 50% from the 2011 RFY specified Ontario revenues? Yes, the 2013 specified Ontario revenues decreased 68% from the 2011 RFY specified Ontario revenues.
- Contemplated fee relief:
 - The registered firm would submit a reduced fee of \$1,695 with its application (50% x \$3,390) by following the procedure outlined below.
 - If the registered firm has already paid its participation fees of \$3,390 for the 2013 fiscal year, it should apply for a refund of \$1,695 by following the procedure outlined below for registered firms.

Example for reporting issuers

- 2011 RFY calculation: A reporting issuer (other than a Class 2, 3A or 3B issuer, as those terms are defined in the Fees Rule) reports 2011 RFY capitalization of \$40 million and is required to pay a fee of \$2,320 under the Fees Rule.
- 2013 capitalization: The reporting issuer has capitalization of \$8 million.
- Eligibility to apply (must meet both criteria):
 - Is 2013 capitalization less than \$50 million? Yes, the reporting issuer's 2013 capitalization is \$8 million.
 - Did the 2013 capitalization decrease by at least 50% from its 2011 RFY capitalization? Yes, the 2013 capitalization decreased 80% from the 2011 RFY.
- Contemplated fee relief:
 - If the reporting issuer has yet to pay its participation fees for the 2013 fiscal year, it should submit the lower participation fee of \$1,160 (50% of \$2,320) with its application by following the procedure outlined below for reporting issuers.
 - If the reporting issuer has already paid its participation fees of \$2,320 for the 2013 fiscal year, it should apply for a refund of \$1,160 by following the procedure outlined below for reporting issuers.

Procedures for fee relief or a refund for registered firms

To apply for fee relief or a refund, a registered firm should submit all of the information below through the OSC's **Electronic Filing Portal** (or <https://www.osc.gov.on.ca/filings> under PDF Submissions):

1. Completed Form 13-704F1 *Application for Expedited Fee Relief – Capital Markets Participation Fees* (**Form 13-704F1**) at http://www.osc.gov.on.ca/documents/en/Securities-Category1/form_13-704f1.pdf,
2. Documentation to support each line item on Form 13-704F1 in relation to the 2013 fiscal year (i.e. total revenues, revenues not attributable to capital markets activities, deductions made and Ontario percentage), and

3. A copy of the firm's audited annual financial statements for the 2013 fiscal year, if not previously submitted to the OSC.

Cheques will be issued and mailed to those registered firms who are granted a refund.

Procedures for fee relief or a refund for reporting issuers

To apply for fee relief or a refund, a reporting issuer should submit all information through SEDAR.

Reporting issuers who have not already paid their most current participation fees (and are filing for concurrent relief) should follow all three steps below.

Reporting issuers who are applying for a refund should follow steps 2 and 3 only.

1. File the completed Participation Fee Form (using the 2011 RFY) and submit the participation fee (reduced to account for the contemplated fee relief) with the Annual Financial Statement SEDAR project using the typical process as required under the Fees Rule. Note: the Participation Fee Form should indicate the participation fee if no relief is granted.
2. Using the following SEDAR filing details, submit the completed Form 13-704F2 *Application for Expedited Fee Relief – Corporate Finance Participation Fees (Form 13-704F2)* at http://www.osc.gov.on.ca/documents/en/Securities-Category1/form_13-704f2.pdf.

Filing Category:	Continuous Disclosure
Filer Category:	Other Issuer
Folder:	General
Filing Type:	For Regulator's Use Only
Document Type:	Other (<i>Name the document "OSC Participation Fees Relief Application"</i>)

3. Provide documentation as necessary to support each line item on Form 13-704F2 in relation to the 2013 fiscal year.

Staff will review the application and respond through SEDAR to notify the reporting issuer of the decision.

Cheques will be issued and mailed to those reporting issuers who are granted refunds.

For reporting issuers making a concurrent fee relief application, if the requested fee relief is not granted then the reporting issuer will be required to make an additional payment (to pay the full participation fees due).

Questions

If you have questions regarding this staff notice or how to apply for fee relief or a refund, please refer them to any of the following:

Registered firm questions:

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