

New Fee Régime in Ontario

By Larry Markowitz and Johanne Duchesne

The Ontario Securities Commission ("OSC") has revamped its entire fee structure. The new OSC Rule 13-502 came into force on March 31, 2003.

The new fee régime in Ontario has been put into effect in order to achieve three primary objectives:

- to reduce the overall fees charged to market players;
- to simplify, clarify and streamline the former fee schedule; and
- to ensure that the fees more accurately reflect the OSC's cost of providing services to market players.

It should be noted that the new rule relating to the payment of fees only applies in Ontario and does not affect the fee structure in any other province. However, the new rule does affect issuers and registrants that are based outside Ontario if they are reporting issuers in Ontario or have operations in Ontario, as the case may be.

Background and Purpose

In designing the new fee model, the OSC sought input from market players from various focus groups, including reporting issuers, dealers (including the Investment Dealers Association), advisers and mutual fund managers (including the Investment Funds Institute of Canada).

The new fee régime is expected to increase the level of fairness and efficiency in the regulation of the securities industry in Ontario.

Whereas the securities business was previously based mostly on primary offerings, it is now focused mainly on activity in the secondary market. As a result, the securities regulatory authorities have had to shift their focus to monitoring continuous disclosure and trading.

Therefore, the former system, whereby fees were based primarily on filings, no longer reflected the true cost of regulation. The shift to fees based primarily on participation in the capital markets is intended to represent an improvement in fairness.

The new fee régime is also intended to increase the level of efficiency. Based on recent statistics, it is expected that over 40,000 individual fee payments will be eliminated from the system annually.

Fee Régime

The new fee régime requires the payment of both "participation fees" and "activity fees":

- participation fees are intended to pay for the benefit derived by market players from participating in Ontario's capital markets;



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- activity fees are intended to cover the direct cost of OSC staff resources to take a specific action or provide a specific service requested by a market player.

Participation Fees

Reporting issuers, registrant firms and unregistered investment fund managers are now required to pay participation fees annually in consideration of the benefit they derive from participating in Ontario's capital markets. The participation fee is based on the market participant's size, which, in theory, reflects its level of use of the Ontario markets.

Participation fees are divided into two categories:

- a) **Corporate finance participation fees**, which apply to reporting issuers (other than most investment funds) and are based on the level of capitalization¹ as at the financial year-end of the reporting issuer in question; and
- b) **Capital market participation fees**, which apply to registrant firms and unregistered investment fund managers, and are based on the level of revenue generated in Ontario by the market participant in question.

The yearly participation fee for a reporting issuer can range from \$1,000 for a reporting issuer with a capitalization of less than \$25 million, to \$85,000 for a reporting issuer with a capitalization of more than \$25 billion. The participation fee is payable by the time at which a reporting issuer is required to file its annual financial statements.

The yearly participation fee for a registrant can range from \$1,000 for a registrant with specified Ontario revenues of less than \$500,000, to \$850,000 for a registrant with specified Ontario revenues of more than \$1 billion.

Participation fees replace most of the continuous disclosure filing fees and the fees previously paid by investment funds.

Activity Fees

Activity fees cover the direct cost of OSC staff resources in delivering certain services for market participants, including the review of prospectuses, filings of annual information forms, applications for

discretionary relief and the processing of registration documents. Activity fees are charged as a flat rate and are based on the average cost to the OSC of providing the type of service in question.

Examples of activity fees include:

- **prospectuses** – varies between \$1,000 and \$7,500, according to the size of the offering.
- **simplified prospectuses for mutual funds** (National Instrument 81-101) - \$600 per fund.
- **applications for discretionary relief** – free, \$1,500 or \$5,500, depending on the sort of relief requested.
- **take-over bid or issuer bid circular** - \$5,500 (plus \$2,000 if the filer or an affiliate of the filer does not pay a participation fee).
- **new registration of a firm in any category** - \$800.
- **registration of a new director, office or partner, salesperson or representative** - \$400 per person.

¹ The calculation of capitalization will either be based on the market value of the equity securities of the issuer as at the financial year-end or, if the issuer has no securities listed on a stock exchange, the aggregate of specific items contained in its balance sheet as at its financial year-end.

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Filing fees will no longer be payable for a report of an exempt trade on Form 45-501F1 that is filed.

Penalties

Penalties will be imposed for late payments and filings. For example, the late filing of annual or interim financial statements, a renewal annual information form, a material change report or a report on Form 45-501F1 will lead to a late filing fee of \$100 per business day, subject to a maximum of \$5,000 for all documents filed by a given issuer within a financial year.

No Refunds

There is no refund available for a participation fee paid by a market participant that loses its status later in the financial year for which the fee was paid. Similarly, no refund is available for an activity fee paid in connection with an action that is subsequently abandoned by the participant that has paid the fee.

Transitional Requirements

Each reporting issuer or unregistered investment fund manager will be required to pay an initial participation fee within 90 days after the date the new rule came into force (i.e., within 90 days following March 31, 2003). This initial participation fee will cover the remainder of the participant's current financial year. The fee is based on the capitalization of the reporting issuer or the Ontario revenue of the registrant firm, as the case may be, as at the end of its previous financial year. Such amount is to be pro-rated according to the number of months remaining in its current financial year after the date the new rule came into force (i.e., from March 31, 2003).

Registrants are not subject to any transitional requirements. They will pay their initial participation fee in December 2003.

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The new fee régime represents a major change from the previous rules and affects all market participants in Ontario.

The Securities Law team at *Lavery, de Billy* can help you navigate your way through the new fee régime in Ontario. For further information, please contact Mr. Larry Markowitz at (514) 877-3048 or Ms. Johanne Duchesne at (514) 877-3045.

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