

NO LONGER "BEASTS OF BURDEN" OSC REDUCES REGULATORY LOAD FOR REGISTRANTS ON TWO FRONTS

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The Ontario Securities Commission ("**OSC**") recently announced two important changes to certain regulatory requirements applicable to registrants as part of its initiative to reduce the regulatory compliance burden for participants in Ontario's capital markets: (i) investment fund managers ("**IFMs**") will no longer require exemptive relief to act as trustees of privately offered mutual fund trusts; and (ii) the receipt of Ministerial approval for amendments to OSC Rule 13-502 - Fees and OSC Rule 13-503 (Commodity Futures Act) Fees (collectively, the "**Fee Rule**") implementing the previously announced moratorium from January 1, 2019 to December 31, 2021 on fees charged in connection with the late reporting of outside business activities ("**OBA**s").

Exemptive Relief No Longer Required to Act as Trustee of Private Pooled Funds^[1]

On June 27, 2019, the OSC announced that it would no longer require IFMs of privately offered pooled funds that are organized as mutual fund trusts^[2] to apply for and obtain an exemptive relief order to act as the trustee of such funds. Managers of publicly offered mutual fund trusts distributed by means of a prospectus or simplified prospectus are not required to apply for exemptive relief to act as trustee pursuant to Approval 81-901 – *Mutual Fund Trusts: Approval of Trustees Under Clause 213(3)(b) of the Loan and Trust Corporations Act* which was adopted on January 14, 1997 (the "**1997 Approval**"). The announcement included a revocation of the 1997 Approval and its replacement with [Revised Approval 81-901](#) – *Mutual Fund Trusts: Approval of Trustees Under Clause 213(3)(b) of the Loan and Trust Corporations Act dated June 11, 2019* (the "**Revised Approval**"). IFMs that previously obtained exemptive relief from the OSC to act as trustee of privately offered mutual fund trusts can now rely on the Revised Approval going forward.

The OSC explained its decision to eliminate the exemptive relief requirement by referring to IFMs' existing obligations under the securities regulatory framework. As registrants, IFMs are already subject to requirements relating to the safeguarding of pool fund assets.

To provide some context, there have been 134 applications for exemptive relief to act as trustee of private mutual fund trusts since January 1, 2009. The announcement means that IFMs will no longer have to incur legal fees for preparation of the exemptive relief application, pay the application fee (\$1,500)^[3] and lose valuable

time waiting for exemptive relief orders that had largely become routine.

The decision follows a recommendation by the Burden Reduction Task Force (“**Task Force**”). The Task Force has a mandate to identify and reduce unnecessary burdens while protecting investors and Ontario’s capital markets. In referring to the process’ historical beginnings in 1997, the OSC underscored why the exemptive relief process is outdated in 2019.^[4] When the OSC introduced the 1997 Approval, managers were subject to fewer forms of regulatory control and the registration category of “investment fund manager” did not exist. The securities regulatory framework has since evolved and investment fund manager is now a specific category of registration that is subject to regulatory scrutiny and a statutory fiduciary duty to act in the best interests of the fund.

Moratorium on Late Fees for OBAs Receives Ministerial Approval^[5]

On July 9, 2019, the OSC confirmed that amendments to the Fee Rule implementing the moratorium on fees for delayed OBA filings previously announced on May 15, 2019^[6] had received Ministerial approval. The moratorium applies to the late reporting of OBAs or modified OBAs that began on or after January 1, 2019 and will continue until December 31, 2021. However, the late reporting of OBAs or modified OBAs that occurred prior to January 1, 2019 will still be subject to fees (calculated up to January 1, 2019). Fees will also continue to be charged for other required regulatory filings that are made past the applicable deadline.

Registrants are required to file OBA disclosure within ten (10) business days of a new or modified OBA.^[7] Prior to the moratorium, OBA disclosures made after the ten (10) business day deadline were subject to a late filing fee of \$100 per business day, subject to annual fee limitations.

The OSC uses OBA disclosure to help identify and address potential conflicts of interest which may arise for registrants as a result of such activities. In the course of its consultations, the Task Force identified the OBA reporting regime as an area for burden reduction. The decision to introduce the moratorium was based in part on feedback from registrants who indicated that they frequently encountered confusion in identifying and determining what activities constituted an OBA or a modified OBA within the required reporting period. The OSC intends to use the two-year moratorium period to clarify the OBA disclosure regime.

The moratorium will assist in reducing registrants’ compliance costs and operating expenses. The OSC expects that, cumulatively, Ontario registrants will save over \$700,000 as a result of the two-year late fee moratorium.^[8]

The amendments to the Fee Rule implementing the moratorium will come into force on July 25, 2019.

For more information on the Task Force, visit <http://www.osc.gov.on.ca>.

Please do not hesitate to reach out to a member of the McMillan Investment Funds and Asset Management Group at McMillan LLP if you have any questions with respect to the information above.

by Michael Burns and Tess Dimroci (Summer Law Student)

[1] Ontario Securities Commission, News Release, “OSC takes action to reduce burden for investment fund managers” (June 27, 2019).[ps2id id='1' target=""]

[2] The term “mutual fund trust” means a trust that is one or more of: (i) a mutual fund, as defined in the Securities Act (Ontario); (ii) a mutual fund trust, as defined in the Income Tax Act (Canada) (the “ITA”), or (iii) a trust that expects to be in a position to elect to be deemed to have been a mutual fund trust , as defined in the ITA, from the date of its inception.[ps2id id='2' target=""]

[3] Ibid.[ps2id id='3' target=""]

[4] Supra note 1 at para 4.[ps2id id='4' target=""]

[5] Ontario Securities Commission, “Moratorium on fees for delayed OBA filings approved” (July 9, 2019).[ps2id id='5' target=""]

[6] Ontario Securities Commission, News Release, “Fees for delayed OBA filings to be waived as part of OSC burden reduction project” (May 15, 2019).[ps2id id='6' target=""]

[7] National Instrument Registration Information (Unofficial Consolidation), OSC NI 33-109, (2017) at para 4.1(1)(b).[ps2id id='7' target=""]

[8] Supra note 3 at para 6 citing Debra Foubert, Director of Compliance and Registrant Regulation at the OSC.[ps2id id='8' target=""]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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