

# PLEASE PAY THE FERRYMAN: OSC SEEKS TO LEVY ADDITIONAL FEES ON REGISTERED AND UNREGISTERED CRYPTO ASSET TRADING PLATFORMS (CTPS)

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The Ontario Securities Commission (“**OSC**”) has published [proposed amendments](#) to OSC Rule 13-502 *Fees* and OSC Rule 13-503 (*Commodity Futures Act*) *Fees* (collectively, the “**Fee Amendments**”) for a 90-day comment period. Scheduled to come into force on **July 2, 2024**, the Fee Amendments will increase regulatory costs for firms that are registered, or required to register, as restricted dealers in Ontario. The proposed amendments are initially targeted at recovering costs associated with registration applications of crypto asset trading platforms (“**CTPs**”) operating in the Ontario market. However, the Fee Amendments are intended to be sector neutral, and are intended to proactively permit the subsidization of regulatory costs associated with new and emerging sectors.

Interested parties are being asked to provide their comments on the Fee Amendments to the OSC in writing by **February 7, 2024**.

## Background

The Fee Amendments have been announced outside the usual three-year fee re-evaluation cycle in response to the increased costs incurred by the OSC in connection with the process for registration of CTPs as restricted dealers (including any associated exemptive relief) as compared to other market participants. These increased expenses include additional resources expended to understand the business models of CTPs and the development of detailed compliance obligations for CTPs with the aim of mitigating investor protection concerns.

## What New Fees will be Assessed?

The Fee Amendments seek to add the following additional fees for the restricted dealer category of registration:

- Registration Fee: \$24,500 to the OSC upon registration as a restricted dealer; and
- Marketplace Relief Fee: \$24,500 for exemptive relief required for restricted dealers operating as a

“marketplace” [\[1\]](#) in Ontario.

### The New Fees will Apply to Both Registered and Unregistered Firms

The most noteworthy change being introduced as part of the Fee Amendments is the proposed expansion of the definition of “registrant firm” in the applicable OSC Rules. This expansion aims to extend the application of the participation fee and late fee requirements to “**unregistered persons or companies that are required to be registered**” as dealers, advisers, or investment fund managers, as applicable, under the *Securities Act* (Ontario) or the *Commodity Futures Act* (Ontario).

This change may provide the OSC with the ability to seek payment of fees from firms (such as unregistered CTPs) that are operating without being registered or applying for registration in the Province of Ontario. It is unclear, however, how the OSC would go about seeking to collect these fees from firms in the absence of an application for registration. We also note that historically the OSC has sought amounts in enforcement actions that eclipse these proposed fees. Particular challenges in relation to the collection of these fees will exist where unregistered non-compliant CTPs are domiciled outside of Canada.

### Impact of Fee Amendments on CTPs Seeking Registration as Restricted Dealers

Under the current interim regulatory framework adopted by the Canadian Securities Administrators (the “CSA”) for CTPs, most CTPs operating a marketplace also perform a dealer function and will therefore be subject to appropriate dealer registration requirements ([see our previous bulletin here](#)). As a result, marketplace CTPs will generally register as a restricted dealer and also file exemptive relief applications: (i) for relief from certain dealer requirements (the “**Dealer Relief**”); and (ii) relief from operating as a recognized alternative trading system (the “**Marketplace Relief**”). These CTPs are currently required to pay an aggregate of approximately \$9,600 in regulatory fees in connection with their registration and relief applications. Under the Fee Amendments, these fees will jump to \$58,600.

The table below summarizes the implications of the Fee Amendments for restricted dealers and restricted dealers performing marketplace functions:

One-time fees	Application for Registration as Restricted Dealer with Dealer Relief Only	Application for Registration as Restricted Dealer with Dealer Relief and Marketplace Relief
Registration Fee (Estimate)	\$2,600	\$2,600

Dealer Relief Application Fee (Estimate)	\$7,000	\$7,000
New: Additional registration fee for restricted dealer	\$24,500	\$24,500
New: Additional Marketplace Relief Application Fee	N/A	\$24,500
<b>Total</b>	<b>\$34,100</b>	<b>\$58,600</b>

### McMillan Crypto

McMillan has a comprehensive understanding of blockchain, cryptocurrency, digital assets and other decentralized technologies. We use an integrative, pragmatic, and proactive approach when providing counsel in connection with an ever-changing regulatory landscape. Our cross-disciplinary team brings together specialists across many fields, including litigation, securities regulation, capital markets, investment funds and asset management, mergers and acquisitions, derivatives, technology, privacy and cybersecurity, intellectual property, consumer protection, anti-money laundering, financial services, tax, and bankruptcy and insolvency.

[1] As defined in the *Securities Act* (Ontario) “marketplace” means any of the following but does not include an inter-dealer bond broker: 1. An exchange. 2. A quotation and trade reporting system. 3. A person or company not included in paragraph 1 or 2 that, (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives, (ii) brings together the orders for securities or derivatives of multiple buyers and sellers, and (iii) uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade. 4. With respect to securities, a dealer who executes a trade of an exchange-traded security outside a marketplace described in paragraph 1, 2, or 3; (“marché”).

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### 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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