

MORE BANG FOR YOUR BUCK: OSC'S UPDATED FEE STRUCTURE TO TAKE EFFECT APRIL 3, 2023

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Spring is just around the corner and market participants are eagerly awaiting amendments to Ontario Securities Commission ("**OSC**") Rule 13-502 - *Fees*, OSC Rule 13-503 - (*Commodity Futures Act*) *Fees* and their related companion policies (the "**Fee Amendments**") to come into force on [April 3, 2023](#). The Fee Amendments reflect changes resulting from the growth in Ontario's over-the-counter (OTC) derivatives market and further the OSC's regulatory burden reduction initiative with the goal of facilitating a fairer allocation of costs across market segments.

Key changes to come into effect as a result of the pending Fee Amendments include:

- the introduction of a new annual participation fee for specific entities engaged in the trading of OTC derivatives (primarily applicable to large financial institutions);
- a reduction in participation fees for small and medium-sized businesses;
- the elimination of certain activity and late fees;
- a reduction in fees payable for exempt trade reports from \$500 to \$350; and
- simplified calculations for certain annual capital market participation fees.

New Annual Participation Fee relating to the Trading of OTC Derivatives

The new OTC derivatives participation fees are designed to help fund some of the OSC's multi-year initiatives, including its derivatives regulatory oversight program and technology modernization projects. The OSC has stated that the new derivatives participation fees are anticipated to raise approximately \$13.5 million annually.

Similar to existing participation fees, the new derivatives participation fee will be calculated on a tiered basis, using the average quarterly outstanding notional value of all transactions that are required to be reported under OSC Rule 91-507 - *Trade Repositories and Derivatives Data Reporting* ("**OSC Rule 91-507**") over a one-year period. No participation fee is payable by a market participant if the average outstanding notional value of its transactions for the relevant one-year fee period is less than \$3 billion. Other market participants exempt from paying this fee include recognized or exempt clearing agencies or issuers that have not been a reporting counterparty (as defined in OSC Rule 91-507) during the applicable one-year period.

The aggregate notional value tiers and associated fees vary from the lowest fee of \$3,000 for entities with outstanding notional amounts of \$3 billion or more and less than \$7.5 billion, to a maximum of \$1.9 million annually for entities with aggregate notional amounts of \$10 trillion and more. Large financial institutions that engage in derivatives dealing should expect their regulatory fees to increase as a result of the new derivatives annual participation fee.

Participation Fee Reduction for Small and Medium-Sized Businesses and Elimination of Activity and Late Fees

While large financial institutions may not be happy, most market participants should expect to see an overall decline in regulatory fees payable to the OSC. The new fee structure is designed to result in cumulative savings to market participants of approximately \$5.6 million annually due to reductions in certain participation fees and the elimination of certain activity fees and late charges.

With respect to activity fees, fees payable on the filing of reports of exempt distribution under OSC Rule 45-501 - *Ontario Prospectus and Registration Exemptions* and National Instrument 45-106 - *Prospectus Exemptions* (NI 45-106) will be reduced to \$350 from \$500.

Moreover, certain infrequently used activity fees, such as the activity fee related to filing a prospecting syndicate agreement and the filing of a rights offering circular applicable to issuers, will be eliminated. The activity fee of \$1,500 associated with the application for approval under section 213(3) of the *Loan and Trust Corporations Act* will also be removed. Further, late fees applicable to certain registration form updates, such as various issuer late fees associated with late filing of participation fee documents, will be eliminated. Fees will be calculated using calendar days as opposed to business days for the late fees that will continue to be imposed.

Simplified Participation Fee Calculation

The Fee Amendments will also simplify the annual capital markets participation fee calculation for registered firms and unregistered capital market participants, such as unregistered investment fund managers, in Ontario. Under the current framework, filers have to estimate their specified Ontario revenues and adjust the filings, if needed, once their actual revenues have been determined. Estimation of revenues will no longer be required under the Fee Amendments. Rather, the OSC will accept a fee calculation based on a “designated financial year” – i.e., actual financial information based upon the firm’s financial statements.

If you have any questions about the Fee Amendments, please do not hesitate to reach out to any member of McMillan’s [Investment Funds & Asset Management](#) Group.

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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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