OSLER

Cost of compliance increases in Alberta

JUNE 28, 2016 4 MIN READ

Related Expertise

- Capital Markets
- Corporate Governance

The Alberta Securities Commission (the ASC) is adopting a new rule regarding fees, ASC Rule 13-501 *Fees* (the New Rule). The New Rule, which becomes effective on December 1, 2016, will replace the prior ASC rules regarding fees. The New Rule covers the payment of all fees to the ASC, including fees that must accompany annual filings or registrations, as well as those that must accompany certain filings such as prospectuses, notices and applications.

In addition to increasing some existing fees, the New Rule establishes new participation fee models for reporting issuers and certain specified regulated entities such as exchanges and clearing agencies.

Highlights of the New Rule

1. Change from a fixed fee to a participation fee model for reporting issuers based on market capitalization

- Generally, non-investment fund reporting issuers with securities that are listed or traded on a market and reporting issuers that do not have securities listed or quoted on a market but are incorporated in Canada will pay fees based on market capitalization according to the following table:

Capitalization for the previous fiscal year under $10 million	Participation fee
under $10 million	$400
$10 million to under $25 million	$500
$25 million to under $50 million	$1,200
$50 million to under $100 million	$3,000
$100 million to under $250 million	$6,500
$250 million to under $500 million	$14,000
$500 million to under $1 billion	$19,000
$1 billion to under $5 billion	$28,000
$5 billion to under $10 billion	$36,500
$10 billion to under $25 billion	$42,500
$25 billion and over	$48,000

- Investment funds that are subject to National Instrument 81-106 – *Investment Fund Continuous Disclosure* will pay a fixed fee of $350.

1. Maintain different fees for filing prospectuses for a mutual fund and any other prospectus

- Fees for filing a preliminary or *pro forma* prospectus for any issuer other than a mutual fund will be increased to $2,000 per issuer (currently $1,200). Where the distribution of securities is not on the exercise of a right under a special warrant and the value of the distribution of securities under the prospectus will not exceed $1,000,000, the fee will remain at $250.

- Fees for filing a preliminary or *pro forma* simplified prospectus for a mutual fund will remain at $1,200, subject to an exemption if offering proceeds will be less than $1 million and the offering is not for special warrants, in which case the fee will remain at $250.

- Mutual funds under continuous distribution will still be required to file a notice of proceeds with the ASC and pay a fee equal to the amount by which 0.02% of the gross proceeds realized in Alberta (0.02% of the net proceeds for money market funds) exceeds the preliminary or *pro forma* prospectus fee of $1,200.

- Reporting issuers will still be required to file a notice of proceeds with the ASC, but will no longer be required to pay a fee based on gross proceeds.

1. Elimination of fees based on proceeds from either a distribution of securities or exempt distribution for reporting issuers which are not investment funds

- Fees for reports of exempt distribution for investment funds and for non-reporting issuers will remain based on a percentage of the proceeds realized from purchasers in Alberta (0.025% for an issuer that is not a mutual fund, 0.02% for a mutual fund other than a money market fund and 0.02% of net proceeds for a money market fund), subject to a minimum of $200.

- Fees for reports of exempt distribution for reporting issuers that are not investment funds will no longer be based on a percentage of the proceeds realized from purchasers in Alberta and will instead be a flat fee of $200.

- Fees for late reports of exempt distributions will remain at $100 per day, to a maximum of $1,000 per report (currently $5,000).

1. Increase of fees for registration and annual registration for registered firms and individuals

- A firm seeking registration as a dealer, adviser or investment fund manager, regardless of the number of categories, will be required to pay $1,400 (currently $1,200) and an individual seeking registration to act on behalf of a firm, regardless of the number of categories, will be required to pay $400 (currently $300).

- Registered dealers, advisers or investment fund managers, regardless of the number of categories, and registered individuals, regardless of the number of categories, are required to pay annual registration fees of $1,400 (currently $1,200) and $400 (currently $300) respectively.

1. Other noteworthy changes in the New Rule include

- Increase of fees to $1,750 for notice required to be given when a registered firm's securities or assets have been acquired

- Introduction of fees for recognition ($55,000) or exemption ($41,500) of an exchange or clearing agency

- Introduction of participation fees for exchanges and clearing agencies based on either its Canadian trading share or a fixed fee, depending on the nature of the entity and whether they service securities or derivatives markets

- Refinement of the late fees charged with respect to certain filings to better target systemic non-compliance issues

- Introduction of a fee of $1,400 for international dealers and international advisers for submission of Form 31-103F2 – *Submission to Jurisdiction and Appointment of Agent for Service* or a notice given pursuant to one of the international dealer or adviser exemptions in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*