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ARTICLE

## Concrete Regulatory Burden Reduction From the OSC: A Great Start (Maybe Not as Good as We Had Hoped)

In its Statement of Priorities for the financial year ending March 31, 2020, the Ontario Securities Commission (OSC) explain that one of its key goals is to work on ways to reduce regulatory burden, which was highlighted in [OSC Staff Notice 11-784 Burden Reduction](#). BLG provided suggestions to the OSC in our comment letter of March 1, 2019, and our lawyers participated in two of the three roundtable discussions on burden reduction organized by the OSC. Here are the transcripts for the [first roundtable](#) and for the [second roundtable](#).

Two concrete results of regulatory reduction that will have positive impacts on the investment management industry have since come to pass.

One is straightforward and will benefit fund managers wishing to be trustees of mutual fund trusts that are not publicly offered. With the amended [Approval 81-901 Mutual Fund Trusts: Approval of Trustees Under Clause 213\(3\)\(b\) of the Loan and Trust Corporations Act](#), that became effective on June 27, 2019, any fund manager may be a trustee of a mutual fund trust regardless of whether or not that fund is offered publicly. The OSC has long approved fund managers to be trustees of public mutual funds, but has required fund managers of private funds to apply for approvals. With the revised Approval, this is no longer a requirement.

The second is welcome, but less clear cut than we initially thought. Individual registrants filing so-called OBA Amendments (amendments disclosing an "outside business activity" via a completed Form 33-109F5) outside of the ten day filing window mandated by National Instrument 33-109 *Registration Information* will no longer be charged a late filing fee by the OSC (\$100 per day to an annual maximum) if (i) the OBA for the individual registrant started on or after January 1, 2019 and (ii) the OBA Amendment is filed on or before December 31, 2021. This "late filing fee moratorium" [amendment to OSC Rule 13-502 Fees](#) became effective July 17, 2019.

There are some nuances to this fee moratorium.

- OBA Amendments must still be filed within the ten day time frame set by NI 33-109. The OSC explain that they are working with their CSA colleagues to further develop guidance or revised policy on streamlining the filings that must be made for OBAs. If this guidance or policy becomes effective before December 31, 2021, then the OSC's late filing fee moratorium will end.
- If an individual registrant started an OBA before January 1, 2019 and therefore was required to file a completed Form 33-109F5 ten days thereafter, and missed this deadline, the OSC will charge late filing fees for the period to January 1, 2019.

We provided suggestions on changing the concepts behind OBA Amendments in our comment letter on regulatory burden, including a waiver of or an annual amnesty period for filing fees, as well as a rethink of the entire OBA Amendment process.

Notwithstanding the above nuances, this late filing fee moratorium still provides individual registrants with a good opportunity to consider whether filings disclosing OBAs have been missed and ensure they are filed.

Other regulatory burden reduction initiatives that may impact the investment management industry described in the 2019/2020 Statement of Priorities include:

- Identifying opportunities to enhance electronic delivery of documents
- Adopting a start-up crowdfunding exemption
- Implementing the plan set out in [CSA Staff Notice 81-329 Reducing Regulatory Burden for Investment Fund Issuers](#)
- Reviewing NI 33-109 *Registration Information* to identify options to modernize its requirements.

Please contact your usual lawyer in [BLG's Investment Management Group](#) to discuss the matters in this Bulletin and, in particular, if you would like some assistance in filing OBA Amendments during the late fee moratorium.

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By: Rebecca A. Cowdery, Laurie J. Cook, [Michael Taylor](#)

Services: [Capital Markets](#), [Investment Management](#)


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### Related Contacts

Michael Taylor  
Partner

 Toronto

 [MTaylor@blg.com](mailto:MTaylor@blg.com)

 [416.367.6176](tel:416.367.6176)