The Cost of Compliance in Alberta is Going Up — ASC Adopts New Participation Fee for Reporting Issuers and Changes Other Fees

June 20, 2016

The Alberta Securities Commission (ASC) is adopting ASC Rule 13-501 *Fees* (Fee Rule), which will become effective on **December 1, 2016**, subject to obtaining the necessary Ministerial approval. The Fee Rule covers the payment of all fees to the ASC and, once effective, will replace the previous ASC fee regulations. The Fee Rule can be found here.

The Fee Rule will result in changes to certain fees and the introduction of a participation fee concept, which will require reporting issuers and certain investment funds (*i.e.* investment funds that are required to file annual financial statements pursuant to National Instrument 81-106 *Investment Fund Continuous Disclosure*) to pay annual participation fees to the ASC. For reporting issuers that are not investment funds with listed securities, the participation fees are generally based upon market capitalization, which can be expected to greatly increase the fees for certain reporting issuers. For investment funds that file financial statements pursuant to National Instrument 81-106 *Investment Fund Continuous Disclosure* the participation fee is a flat fee.

Highlights

Private Placements

- **Increase** — Minimum fee for reports of exempt distribution for investment funds and for non-reporting issuers will be increased to $200 (currently $120)
- **No Change** — 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 Alberta purchasers (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)
- **Decrease** — 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 Alberta purchasers and will instead be a flat fee of $200 (which is equal to the current minimum fee)

- **Decrease** — Fees for late reports of exempt distribution will remain at $100 per day, to a decreased maximum of $1,000 per report (currently $5,000)

Prospectus Filings (other than Mutual Funds)

- **Increase** — 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), 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
- **Decrease** — 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

Securities Dealers, Advisers and Investment Fund Managers

- **New** — Fee of $1,400 for filing a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* filed pursuant to either paragraph 8.18(3)(e) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) or paragraph 8.26(4)(f)) of NI 31-103 (*i.e.* appointing an agent for service in respect of the international dealer exemption or international adviser exemption)
- **New** — Fee of $1,400 for filing a notice given pursuant to either subsection 8.18(5) or subsection 8.26(5) of NI 31-103 (*i.e.* notice to rely on the international dealer or international adviser exemption), which must be paid annually when the filing is made
- **New** — Fee of $1,750 for filing a notice required to be filed in Alberta under section 11.9 or section 11.10 of NI 31-103 (*i.e.* acquisition of a registered firm's securities or assets)
- **Increase** — Initial or annual fee for firm registration as a dealer, adviser or investment fund manager (regardless of the number of categories) will be increased to $1,400 (currently $1,200)
- **Increase** — Initial or annual fee for an individual registering on behalf of a firm (regardless of the number of categories) will be increased to $400 (currently $300)
- **No Change** — Fees for late documents for registered firms (financial statements, subordination agreements, and documents required to be filed due to undertakings or terms and conditions imposed) will remain at $100 per day, to a maximum of $5,000 per document

Reporting Issuers that are not Investment Funds

- **Increase** — Fees for late financial statements will be $100 per day, to a maximum of $5,000 per document (previous late fee was $100 regardless of number of days late)
- **Increase** — Fees for filing a preliminary or *pro forma* prospectus will be increased to $2,000 (currently $1,200)
- **Decrease** — 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
- **New** — Reporting issuers will be required to pay annual participation fees based upon market capitalization (see "*Participation Fees for Reporting Issuers that are not Investment Funds* " below for a summary) which significantly increases the

fees payable by reporting issuers with large market capitalization (currently reporting issuers are required to pay a $2,400 flat fee (short-form prospectus eligible) or $300 flat fee (not short-form prospectus eligible) for filing annual financial statements)

Mutual Funds

- **No Change** —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
- **No Change** — 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
- **No Change** — Fees for an amendment to a prospectus will remain at $250
- **New** — Mutual funds that are reporting issuers will be required to pay an annual participation fee that is a flat fee (see "*Participation Fees for Certain Investment Funds*" below)

Participation Fees for Certain Investment Funds

- Annual participation fee will be $350 per year (flat fee) for an investment fund that is required to file an annual financial statement pursuant to National Instrument 81-106 *Investment Fund Continuous Disclosure* (*i.e.* investment funds that are reporting issuers plus mutual funds established under the laws of Saskatchewan, Ontario, Québec, Nova Scotia, Prince Edward Island or the territories)
- Fee must be paid annually upon the filing of annual financial statements

Participation Fees for Reporting Issuers that are not Investment Funds

- The Fee Rule introduces a participation fee model (similar to the model in Ontario) that is based on a reporting issuer's market capitalization and registration class, which fee must be paid annually upon filing annual financial statements
- Market capitalization for all non-investment fund reporting issuers is calculated using the formula set out in the Fee Rule
- Generally, non-investment fund reporting issuers with securities that are listed or traded on a market place will be considered Class 1 reporting issuers (see the Fee Rule for the definitions of the classes)
- Participation fees for Class 1, 2 and 3B reporting issuers under the Fee Rule are as follows:

Capitalization for previous fiscal year	**Class 1 & Class 2**	**Class 3B**
Under $10 million	$400	$400
$10 million to under $25 million	$500	$500

$25 million to under $50 million	$1,200	$600
$50 million to under $100 million	$3,000	$1,000
$100 million to under $250 million	$6,500	$2,000
$250 million to under $500 million	$14,000	$4,500
$500 million to under $1 billion	$19,000	$6,000
$1 billion to under $5 billion	$28,000	$9,000
$5 billion to under $10 billion	$36,500	$11,500
$10 billion to under $25 billion	$42,500	$13,500
$25 billion and over	$48,000	$15,500

- Participation fees for Class 3A reporting issuers will be $400 regardless of market capitalization
- If market capitalization cannot be determined for applicable reporting issuers, participation fees based on a good faith estimate must be remitted to the ASC until accurate market capitalization may be determined
- Reporting issuers with a December 31 year end will be required to pay the new participation fee by March 31, 2017 (non-venture issuer) or April 30, 2017 (venture issuer) concurrently with filing annual financial statements

Forms

- The Fee Rule introduces new forms for calculating and remitting fees (similar to the forms used by the OSC — although they are not harmonized)
- The ASC has indicated that it will consider whether the forms will be harmonized with the OSC forms for electronic submission in the future

Going Forward

Reporting issuers and other market participants should review the Fee Rule well in advance of its effective date to ensure the correct fees are submitted, in particular those with new deadlines and those that may not currently exist.

Please call the authors of this Bulletin or your usual lawyer in BLG's Securities and Capital Markets Group to discuss the implications of the Fee Rule to your business.

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